



**Supreme Court of California**

350 McALLISTER STREET  
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUYE  
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.

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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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cc: (con't)

Matthew J. Parlow, Dale E. Fowler School of Law at Chapman University  
Susan Westerberg Prager, Southwestern Law School  
Niels B. Schaumann, California Western School of Law  
Deanell Reece Tacha, Pepperdine University School of Law  
John Trasviña, University of San Francisco School of Law  
Rachel Van Cleave, Golden Gate University, School of Law  
Michael E. Waterstone, Loyola Law School



## **Conducting a Standard Setting Study for the California Bar Exam**

Final Report

July 28, 2017

**Submitted By:**

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# Appendix B

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### Executive Summary

The California State Bar conducted a standard setting workshop<sup>1</sup> 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.<sup>2</sup>

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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<sup>1</sup> 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).

<sup>2</sup> 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 <sup>3</sup>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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<sup>3</sup> 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.



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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 in this workshop and this study more broadly.



## Introduction and Overview

The purpose of licensure examinations like the California Bar Exam<sup>4</sup> 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<sup>5</sup>. 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.<sup>6</sup> 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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<sup>4</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 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.



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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<sup>7</sup>. 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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<sup>7</sup> 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.



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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.**

| <b>Race/Ethnicity</b> | <b>Freq.</b> | <b>Percent</b> |
|-----------------------|--------------|----------------|
| 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          |

| <b>Nominating Entity</b> | <b>Freq.</b> | <b>Percent</b> |
|--------------------------|--------------|----------------|
| 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.

| <b>Practice Areas</b> | <b>Freq.</b> | <b>%</b> |
|-----------------------|--------------|----------|
| Business              | 12           | 17%      |
| Personal Injury       | 6            | 9%       |
| Appellate             | 5            | 7%       |
| Criminal              | 5            | 7%       |
| Labor Relations       | 4            | 6%       |

| <b>Gender</b> | <b>Freq.</b> | <b>Percent</b> |
|---------------|--------------|----------------|
| Female        | 9            | 45.0           |
| Male          | 11           | 55.0           |
| Total         | 20           | 100.0          |

| <b>Years of Practice</b> | <b>Freq.</b> | <b>Percent</b> |
|--------------------------|--------------|----------------|
| 5 Years or Less          | 10           | 50.0           |
| >=10                     | 10           | 50.0           |
| Total                    | 20           | 100.0          |

| <b>Primary Employment Type</b> | <b>Freq.</b> | <b>Percent</b> |
|--------------------------------|--------------|----------------|
| 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          |



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|                               |    |      |
|-------------------------------|----|------|
| 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<sup>8</sup> 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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<sup>8</sup> Credentialing is an inclusive term that is used to refer to licensure, certification, registration, and certificate programs.



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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.



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### Orientation

The meeting commenced on May 15<sup>th</sup> 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?





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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.

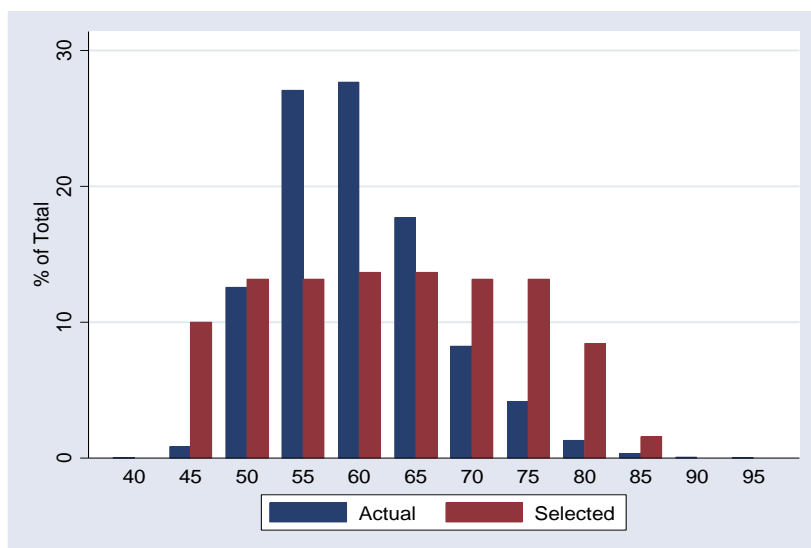
### Training/Practice with the Method

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.

**Written Exam Score Distributions - Actual and Sample Selected for Workshop**

| Score | Actual |       | Selected |       |
|-------|--------|-------|----------|-------|
|       | Freq.  | %     | Freq.    | %     |
| 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.**



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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



## Appendix B

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 -<br>Mean | Combined Score –<br>Mean (pass rate) | Written Score<br>– Median | Combined Score –<br>Median (pass rate) |
|---|-------------------------|--------------------------------------|---------------------------|--|
| <b>-2 SE<sub>Mean/Median</sub></b>                      | 419                     | 1414 (53%)                           | 414                       | 1388 (60%)                             |
| <b>-1 SE<sub>Mean/Median</sub></b>                      | 424                     | 1436 (47%)                           | 419                       | 1414 (53%)                             |
| <b>Recommended score<br/>(SE<sub>Mean/Median</sub>)</b> | 428 (4.47)              | 1451 (43%)                           | 425 (5.60)                | 1439 (45%)                             |
| <b>+1 SE<sub>Mean/Median</sub></b>                      | 432                     | 1480 (36%)                           | 431                       | 1477 (37%)                             |
| <b>+2 SE<sub>Mean/Median</sub></b>                      | 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.



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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 ( $SE_{\text{median}}$ ), 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  $SE_{\text{median}}$  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 -<br>Lower | 2  | 3  | 4 -<br>Higher |
|--|--------|--------------|----|----|---------------|
| <b>1. Success of Training</b>                            |        |              |    |    |               |
| 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            |
| <b>2. Time allocation to Training</b>                    | 2      | 4            | 16 | 0  | N/A           |
| <b>3. Confidence moving from Practice to Operational</b> | 3      | 1            | 1  | 15 | 3             |
| <b>4. Time allocated to Practice</b>                     | 3      | 1            | 6  | 10 | 3             |
| <b>6. Confidence in Day 1 recommendations</b>            | 3      | 1            | 2  | 11 | 6             |
| <b>7. Time allocated to Day 1 recommendations</b>        | 2      | 5            | 6  | 9  | 0             |
| <b>9. Confidence in Day 2 recommendations</b>            | 3      | 0            | 1  | 11 | 6             |
| <b>10. Time allocated to Day 2 recommendations</b>       | 3      | 1            | 3  | 8  | 6             |
| <b>12. Confidence in Day 3 recommendations</b>           | 4      | 0            | 0  | 5  | 15            |
| <b>13. Time allocated to Day 3 recommendations</b>       | 3      | 2            | 1  | 8  | 9             |
| <b>14. Overall success of the workshop</b>               | 3      | 0            | 1  | 12 | 7             |
| <b>15. Overall organization of the workshop</b>          | 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.





### 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, &



## Appendix B

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.<sup>9</sup>**

| 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.<sup>6</sup> 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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<sup>9</sup> 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

### 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?



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- 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



## Appendix B

- 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.



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

Stephen P. Klein, Ph.D.

September 25, 1985

## Appendix C

### 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 administration 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 findings 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.

## Appendix C

### 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.

## Appendix C

- 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.



## Appendix C

### 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                    | <u>60</u>  | <u>0.8</u> |
| 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 | <u>137</u> | <u>1.9</u> |
| 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, initial total score was related to eventual success. 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 ( $.567 \times 110 = 62.4$ ).
- 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 ( $.429 \times 114 = 48.9$ ).

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 ( $.0157 \times 113 = 1.78$ ).
- 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 calculations 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.

**MEMBERS** **Appendix D**  
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# Assembly California Legislature



## ASSEMBLY COMMITTEE ON JUDICIARY MARK STONE, CHAIR

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**COMMITTEE SECRETARY**  
T. RENEE SANCHEZ

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



## Appendix D

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 28<sup>th</sup>, 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 28<sup>th</sup> 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.

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The Honorable Tani Cantil-Sakauye

March 2, 2017

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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

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The State Bar of California

April 10, 2017

VIA HAND DELIVERY

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)<sup>1</sup>*

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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<sup>1</sup> See Attachment A. Supreme Court's Letter to State Bar President James Fox and Executive Director Elizabeth Parker.

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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.<sup>2</sup> 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 6<sup>th</sup> 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."<sup>3</sup> (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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<sup>2</sup> See Attachment B. CALS letter to State Bar President Fox and Executive Director Parker.

<sup>3</sup> See Attachment C. E-mail to CALS from Executive Director Parker.



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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 28<sup>th</sup> 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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Please send correspondence for the California Accredited Law Schools to:

James Schiavenza  
Chair, California Accredited Law Schools  
c/o Lincoln Law School Sacramento  
3140 J St.  
Sacramento, CA 95816  
Schiavenza@lincolnlaw.edu  
(916) 446-1275

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

## Appendix E

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

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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  
Interim Dean and Professor of Law  
Whittier Law School

## Appendix E

Allen K. Easley  
Dean & Professor of Law  
Western State College of Law

David L. Faigman  
Chancellor and Dean  
John F. Digardi Distinguished Professor of Law  
University of California Hastings College of Law

Stephen C. Ferruolo  
Dean and Professor of Law  
University of San Diego School of Law

Thomas F. Guernsey  
President and Dean  
Thomas Jefferson School of Law

Andrew T. Guzman  
Dean and Carl Mason Franklin Chair in Law and  
Professor of Law and Political Science  
University of Southern California Gould School of Law

Gilbert Holmes  
Dean & Professor of Law  
University of La Verne College of Law

Lisa Kloppenberg  
Dean & Professor of Law  
Santa Clara University School of Law

M. Elizabeth Magill  
Richard E. Lang Professor of Law and Dean  
Stanford Law School

Jennifer L. Mnookin  
Dean and David G. Price & Dallas P. Price Professor of Law  
UCLA School of Law

Francis J. Mootz III  
Dean and Professor of Law  
University of the Pacific, McGeorge School of Law

Melissa Murray  
Interim Dean  
Alexander F. and May T. Morrison Professor of Law  
University of California Berkeley School of Law

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**Matt Parlow**  
Dean and Donald P. Kennedy Chair in Law  
Dale E. Fowler School of Law at Chapman University

**Susan Prager**  
Dean and Chief Executive Officer  
Southwestern Law School

**Niels Schaumann**  
President and Dean  
California Western School of Law

**Deanell Reece Tacha**  
Duane and Kelly Roberts Dean  
Pepperdine University School of Law

**John Trasviña**  
Dean & Professor of Law  
University of San Francisco School of Law

**Rachel Van Cleave**  
Dean & Professor of Law  
Golden Gate University, School of Law

**Michael B. Waterstone**  
Fritz B. Burns Dean and Professor of Law  
Loyola Law School

## Appendix F

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>

# Appendix G

|                       |             | Simulated Cut Scores for July 2008 GBX |       |       |       |       | Simulated Cut Scores for July 2016 GBX |        |       |       |       |
|-----------------------|-------------|--|-------|-------|-------|-------|--|--------|-------|-------|-------|
|                       |             | 1330                                   | 1350  | 1390  | 1414  | 1440  | 1330                                   | 1350   | 1390  | 1414  | 1440  |
| <b>Total</b>          | # 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%  |       |
| <b>Gender</b>         |             |  |       |       |       |       |  |        |       |       |       |
| 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%  |       |
| <b>Race/Ethnicity</b> |             |  |       |       |       |       |  |        |       |       |       |
| 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%  |       |



## Appendix G

|                             |             | Simulated Cut Scores for July 2008 GBX |        |       |       |       | Simulated Cut Scores for July 2016 GBX |        |       |       |       |
|-----------------------------|-------------|--|--------|-------|-------|-------|--|--------|-------|-------|-------|
|                             |             | 1330                                   | 1350   | 1390  | 1414  | 1440  | 1330                                   | 1350   | 1390  | 1414  | 1440  |
| <b>First Time or Repeat</b> |             |  |        |       |       |       |  |        |       |       |       |
| 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% |       |
| <b>School Type</b>          |             |  |        |       |       |       |  |        |       |       |       |
| 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 current cut score of 1440.