

AGENDA ITEM

136 NOVEMBER 2017

DATE: October 25, 2017

TO: Members, Board Committee on Programs
Members, Board of Trustees

FROM: State Bar Staff

SUBJECT: Report on Content Validation Study

EXECUTIVE SUMMARY

In response to the declining passing rates on the California Bar Examination (CBX), the Committee of Bar Examiners (CBE) authorized, and the Board of Trustees approved the completion of four different studies regarding the California Bar Examination. Two studies: "Recent Performance Changes on the California Bar Exam," prepared by Roger Bolus, Ph.D., and "Conducting a Standard Setting Study for the California Bar Exam," prepared by Chad Buckendahl, Ph.D., have been completed and published. The third study authorized was "Conducting a Content Validation Study for the California Bar Exam," which was also conducted by Chad Buckendahl, Ph.D.; this study has also now been completed. The final study, Law School Bar Exam Performance Study (Performance Study), which requires the participation of law schools in the provision of data regarding their graduates, is in process. While the recent passage of Senate Bill 690 will address some of the data confidentiality issues related to the study, some law schools continue to have concerns about sharing student information with the Bar based on their understanding of the requirements of the federal Family Education Rights and Privacy Act (FERPA). It is hoped that these additional data issues will be resolved in the coming weeks. With the delays experienced in securing the data necessary for the Performance Study, the estimated timeline for its completion will extend beyond the December 1 deadline established by the Supreme Court (Court).

These studies and the recommendations relative to the CBX pass line and content are in response to a letter dated February 28, 2017, from the Chief Justice of California, which directed the State Bar to report back to the Court by December 1, 2017 "once the investigation and all studies are concluded." The report "must include a detailed summary of the investigation and findings, as well as recommendation for changes, if any, to the bar exam and/or grading, and a timeline for implementation."

This agenda item summarizes the results of the Content Validation Study and identifies possible next steps, including future assessment of CBX content and format, which were considered by the CBE during its October 2017 meeting. After review of the report and recommendations, the CBE affirmed the current scope of subjects tested on the California Bar Examination and supports conducting a California job analysis study and an additional content validation study before taking any further actions to modify the scope and make any other changes to the CBX, and by this report, makes this recommendation to the Board of Trustees.

BACKGROUND

There is very little information available regarding the history of the scope of the CBX. The earliest record available dates back to 1933, when, according to the “Report of California Survey Committee”¹ there were 42 questions on the examination covering 22 subjects.

There is a gap in available information about the exam’s scope until June 1983, which is when the Performance Test (PT) was first administered. The written part of the examination (6 – one-hour essays and 2 – three-hour PTs) included questions on: constitutional law, civil procedure, contracts, criminal law, community property, corporations, evidence, real property, remedies, torts, trusts and wills.

A statute enacted in September 1986² required the CBE to “conduct a study and prepare a report on the necessity and practicability of requiring applicants for admission to practice law to be certified as possessing minimum courtroom or trial capabilities.” In response, an eight member special committee composed of lawyers, judges and legal educators was appointed by the CBE to conduct the study and make recommendations. Among the conclusions reached by the special committee was that the “Bar Examination should test California civil and criminal procedure and California statewide rules of court in addition to the Federal rules and procedures now being tested.”³ The CBE approved the special committee’s report and it was forwarded to the legislature by the established deadline. The report, along with several other recommendations relative to a mandatory trial skills training course, was transmitted to the State Bar’s Board of Governors⁴ by the Board Committee on Admissions in May 1988. The Board Committee reported that the CBE had appointed a task force “to develop and identify the parameters for the Bar Exam tests of California procedure and rules of Court.”⁵

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

1. That Federal and California civil and criminal rules and procedures be accorded “equal dignity” in testing on the California Bar Examination;
2. That the scope of testing in the areas of civil procedure and criminal procedure be broadly defined; and
3. That the enhancement of testing in these areas requires that the scope of testing in the area of evidence be redefined.

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

The CBE’s Examination Development and Grading (EDG) Team was formerly known as the Board of Reappraisers. Like the current EDG Team, the Board of Reappraisers was composed of independent contractors appointed by the CBE to perform examination development and grading tasks on behalf of the CBE. They were and are responsible for editing essay questions solicited from law school professors and leading the grading teams during the grading of

¹ This study was prepared in 1933 and published by the State Bar of California.

² Business and Professions Code section 6046.6(a).

³ June 161; Board of Governors Meeting Agenda Item; May 31, 1988.

⁴ Now, Board of Trustees.

⁵ June 161; Board of Governors Meeting Agenda Item; May 31, 1988.

examinations. In 2000, the Board of Reappraisers recommended that the scope of subjects tested on the examination be modified. It believed that the changes were appropriate because these were areas of the law on which most applicants who were about to begin the practice of law should be able to demonstrate minimal competency. The CBE adopted in principle the changes to the scope of the CBX during its meeting in July 2002, and, after multiple meetings with law schools and the Board of Governors, significant input from the law schools, and a two-year notice, the scope of the examination was changed as follows:

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

The CBE also considered replacing Community Property with Family Law, but that proposal ultimately was not adopted after consideration of all the comments received, which were primarily from law schools. Law school deans were united in their belief that expanding the scope of the examination would have the effect of increasing the demand for courses covering the examination subjects, which would lead to a reduction in the number of elective courses their students would take. Although the addition of Family Law was posed as a replacement for Community Property, rather than as a true addition, then, as now, many law students don't take Community Property during law school, and choose to study it on their own or through bar review courses. The addition of Family Law, a much broader subject to test, would most likely have required the law schools to offer it as a course to many more students, which would have negatively affected the overall curriculum, in the law schools' view. It should be noted, however, that Family Law is a subject tested on the Uniform Bar Examination (UBE).

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

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

The addition of Professional Responsibility was at the request of the Board of Trustees; Professional Responsibility is the only subject that is always included as either a standalone or cross-over subject in the question(s) for each administration of the examination. Because there are only five essay questions, no examination will test in all 13 areas of law. Sometimes, subject matters stand alone in questions or there may be "crossovers" where two or more subjects are discussed in the question. The order in which the areas of law are tested vary from one

administration to the next. Not specifying the exact topics for each administration of the CBX is by design intended to ensure that applicants are studying all areas of law within the scope of the exam. The EDG Team nominates the questions for each administration of the examination, which are then reviewed by the CBE and approved for inclusion.

Over time, there have been multiple efforts from outside entities to further expand the scope of the examination, which included requests to add such topics as International Law and Tax Law. There have also been several efforts to reduce the number of subjects tested. In 1995 and 1997, at the behest of interested law schools, the CBE agreed to explore the possibility of reducing the number of subjects tested by eliminating Corporations, Trusts, Wills and Succession, and Remedies. No changes ultimately resulted from those explorations as there was not a consensus that changing the scope was in the best interest of public protection. The most recent time the scope was discussed with the law schools in any depth was during a Law School Assembly meeting in June 2015. UCLA Vice Chancellor Carole Goldberg and Justice Dennis Perluss addressed the Assembly seeking its support to add Federal Indian Law to the scope. Conversely, following that proposal, the former Dean of Thomas Jefferson School of Law, Thomas F. Guernsey, argued that subjects should be eliminated, especially in light of the pending Task Force on Admissions Regulation Reform (TFARR) proposal to require 15 units of experiential training as an admission requirement. No action was taken with regard to either presentation.

MBE, UBE and Other States

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

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

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

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

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

Except for Louisiana, states not using the UBE all test in the MBE subject matters in addition to other subjects. Other states' subject matter scopes vary; see the chart below for subject matters for a few non-UBE states in comparison with California.

Bar Exam Subjects – Alpha Sort
(California, Florida, Illinois and Texas)

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

Subjects tested both by the MBE and other methods (i.e. essay) = B

Extra subjects tested in addition to MBE subjects = E

Bar Exam Subjects – Related Topic Groupings
(California, Florida, Illinois and Texas)

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

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

The Board of Trustees established two TFARRs several years ago, which ultimately resulted in a recommendation that applicants seeking admission to practice law in California be required to complete 15 units of experiential competency training as a condition of admission, in addition to two other proposals relative to required pro bono service and continuing legal education for new

admittees. After discussions during several meetings of the Board of Trustees, the TFARR proposal was referred to the CBE by the Board during its November 2016 meeting. An excerpt from the Board minutes follows:

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

The CBE deferred consideration of the mandated competency training proposal or making any recommendations pending the completion of the bar examination studies that are currently underway. What constitutes minimum competence at the time of admission and how that should be determined, whether through testing or other means, ties directly to the discussion of the content of the CBX. For example, the question of the impact of the current 6 units experiential learning requirement, which was just implemented last fall for ABA approved law schools and is currently pending final approval for schools regulated by the CBE, is not yet known. That relatively new requirement for the law schools and how it may address the issue of what skills and knowledge new attorneys should have as they enter the profession, and its relationship to the number of subjects tested on the CBX, is an area requiring further study and consideration.

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

A Working Group was established to guide the development of the New Attorney Training content. A ten-hour curriculum comprised of: four hours of legal ethics; three hours of basic skills, including civility, pro bono, law practice management and technology; one and a half hours of identification and elimination of bias; and one and a half hours of competency was ultimately designed. In studying the possible topics, the Working Group considered coordinating its curriculum development activity with the Content Validation Study. For example, the Working Group considered a potential scenario where a new admittee MCLE program might be developed on the subject of Community Property, if that subject ultimately was removed from the bar examination. While this concept was initially explored by the Working Group, it was not pursued for the reasons discussed below in connection with follow-up focus group meetings of Content Validation Study panelists.

DISCUSSION

Content Validation Study

The 2017 Content Validation Study (Study) was designed to evaluate whether the breadth and depth of content on the California bar examination is in alignment with the knowledge, skills, and abilities (KSAs) expected of an entry-level attorney. The Study is provided as Attachment A. Two evaluations of the Study prepared by independent consultants Mary J. Pitoniak, Ph.D. and Tracy A. Montez, Ph.D. (Attachment B), are also attached.

Methodology

Panel Selection

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

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

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

Workshop Activities

As noted above, the purpose of the study is to evaluate the extent to which the topics currently covered in the CBX are in alignment with the knowledge, skills, and abilities expected of entry-level attorneys. Consistent with the Standard Setting Study, questions from the July 2016 CBX were used for the workshop. Two external sources of data were used as the basis for comparison to evaluate alignment:

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

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

The main source data for measuring content alignment was the NCBE's job analysis survey. Survey respondents provided an assessment of the relative importance of each knowledge domain as well as the frequency with which their legal practices required those areas of knowledge and skills. Table 1 presents a list of sample items of knowledge domains, skills and abilities from the NCBE survey.

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

Table 1. Sample Items from NCBE Job Analysis in Knowledge Domains, and Skills and Abilities

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

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

In addition to content fit evaluated through the exercise of mapping KSAs between the different source data, which in the literature of content validation research is called “categorical concurrence,” there is another important dimension in the overall measurement of content alignment – the appropriate level of cognitive complexity required in exam questions that is consistent with the expected KSAs for entry-level attorneys. This is a separate exercise that the

panelists engaged in at the early part of the workshop. It required that the panel, through group discussion and consensus decision making, determine the level of cognitive complexity deemed appropriate for each domain of knowledge and skills expected of entry-level attorneys.

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

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

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

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

Evaluation results from the two steps described above provided data to validate the extent to which the CBX content matches with the KSAs, and the extent to which the DOK levels are consistent with the expected level for entry-level attorneys. Beyond these two areas of alignment, the panel also discussed the relative weights given to various topics on the CBX. This has to do with the question of whether there is a balanced and stable distribution of different subjects on the CBX – looking at both a specific exam and multiple exams administered over a period of time. For this exercise the panel relied partly on detailed grading guidelines to evaluate the subtopics and their score points.

Study Findings and Limitations

Following the procedures described above in evaluating the July 2016 CBX questions, the results indicate that all content on the CBX matched with job-related KSAs expected for entry-level attorneys. The distribution of topics and skills requiring different levels of cognitive complexity is also consistent with the relative weights assigned to MBE multiple-choice and

written questions; Table 2 below presents the alignment evidence resulting from the crosswalk exercise. The data shows that all topics covered in the exam are mapped to knowledge domains and skills expected of entry-level attorneys as reflected in the job analysis survey results. Based on score points assigned to different topics in the exam questions, the panel also estimated approximate percentage distribution of the different topics and skills represented on the exam. In addition to categorical concurrence and consistency of cognitive complexity, information about the percentage distribution presents another dimension of content alignment measurement in terms of the balance of subject representation. The estimated distribution shows that a little more than one-third (36 percent) of the current exam content is represented by various skills, the rest by domain knowledge relating to different substantive areas of law. This estimate should be treated as approximate and tentative, however, as the MBE component of the exam was evaluated based on a broad content outline only rather than individual question items.

Table 2. Bar Exam Content Alignment with Job Analysis Results, with Approximate Percentage of Representation of Topics and Skills

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

Looking at the subject areas covered on the CBX over a ten-year period, and taking into account the different weights associated with different knowledge domains and skills, the study also found evidence to show that changes in topics selected for written questions contribute to only a small variation of examination content year after year. This is due to the fact that MBE subjects remain constant over time, which account for 50 percent of the exam from July 2017

forward. For the remaining 50 percent in essay and performance test questions, professional responsibility and ethics appeared in almost all exams administered in the past ten years, as shown in Table 3 below. A significant additional proportion of the written component is represented by subject-neutral skills discussed above, such as writing and synthesizing facts and law. As a result, what remains that allows for rotation of different subjects over time account for a relatively small proportion of the overall subjects covered, estimated at approximately 15 percent of the total content.

Table 3. Representation of Subject Areas from 2008-2017 (n=20 administrations)

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

* Remedies does not align with a single Knowledge Domain because it crosses over multiple substantive areas of practice in law.

** Treated as part of family law in mapping to the NCBE job analysis survey knowledge domains.

In addition to frequency representation on CBX over time, the thirteen subjects in Table 3 are also mapped to the NCBE job analysis survey to show the relative importance (“rating of significance”) and frequency in practice (“percent performing”) as rated by survey respondents of the national sample. The data shows that topics that had been selected more frequently over time tended to be items in the job analysis survey that were given higher ratings on either the importance or percent performing scale. It should be noted that it is only a moderate correlation, further constrained by the limited range and variability of the data. This analysis suggests that, with more up-to-date job analysis information that reflects the practice of law in California, there are opportunities for further alignment of content sampling of CBX over time.

Overall, the validity evidence on content alignment discussed above indicates that no subjects currently measured on the CBX were judged as outside the scope of KSAs expected of entry-level attorneys. In a gap analysis the Study also discusses topic areas and skills that are considered important according to NCBE’s job analysis but currently not covered as primary subjects on the CBX. Examples include knowledge domains such as research methodology and statutory interpretation, and skills such as negotiation, interviewing, and resource management.

It is noted above that NCBE’s job analysis results, supplemented by linking to O*NET information related to attorney KSAs, served as the primary source data for validity evidence regarding the current scope of the CBX content. Gap analysis results or any other suggestions for modifications of the CBX content would require job analysis data more closely reflective of attorney practices in California. In fact, this is one of the main issues raised by the two

independent psychometricians in their evaluation reports. Dr. Pitoniak cited comments from panelists indicating that some of the job analysis survey categories and statements did not quite match the content domains and skills. Dr. Montez's comments highlighted the importance of conducting an updated, comprehensive occupational analysis, with its focus on the practice of law in California as the baseline for evaluating the content validity of the CBX.

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

Follow-Up Focus Group

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

To extend this conversation, with the goal of relying on their experience to inform the development of the 10-hour New Admittee Training course content, the panel was invited to participate in a focus group in which they would have the opportunity to elaborate further on their brief discussions during the workshop. Four of the original members and two observers from law schools attended a half-day meeting in August. To facilitate the discussions, materials prepared for the focus group meeting included the following (Appendices C to F):

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

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

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

With regard to the first question, Remedies as a primary topic area was the only subject matter that focus group members thought could be eliminated from the CBX as it crosses over with

other subjects such as torts and contracts. Wills, Trusts, and Community Property were also mentioned by some members as potential topics to be taken off the examination scope as new attorneys requiring knowledge in these practice areas were thought to be rather limited.

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

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

STAFF RECOMMENDATIONS FOR NEXT STEPS

Dr. Buckendahl concluded his study by saying: "the results of the content validation study suggested that most of the content on the examination was important for entry level practice without substantive gaps in what is currently measured on the examination compared with what is expected for practice" and goes on to provide suggestions for several next steps that could be taken:

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

While the results of this study provided evidence to support the current iteration of the examination, there are also formative opportunities for the program to consider in a program redesign. Specifically, the current design and format for the California

Bar Examination has been in place for many years. Feedback from the content validation panelists suggested that there are likely subject areas that could be eliminated or consolidated to better represent important areas needed by all entry-level practitioners.

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

To date, there does not appear to be any conclusive evidence to support immediately proposing to the Board of Trustees or the Supreme Court that the scope of subjects tested on the CBX⁶ should be changed. There are, however, several opportunities to gather additional information that would or could influence further discussions in this area.

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

The following are the appropriate next steps to continue the effort to validate the content of the CBX and ensure alignment with the KSAs required of entry-level attorneys in California:

- Conduct a California specific job analysis. This would be a critical first step in determining the alignment of the KSAs and the subjects tested on the CBX. It would also be of great benefit if there were to be future consideration of whether California should adopt the UBE; it would also contribute to discussions of whether the development, format or the grading of the examination should be adjusted to reflect today's changing landscape in the areas of technology and the practice of law.
- Following completion of the job analysis, a revised Content Validation Study should be conducted. With the California specific job analysis, a new Content Validation Study would more effectively assess whether existing content should be deleted, or additional subjects added. This study should examine the appropriate distribution between skills and content testing to determine if greater weight needs to be placed on skills over content. Additionally, with the New Admittee Training slated to roll out in February 2018, this study will be better able to study the impact of that training on competence. Experience with that training should inform any discussion of exam content.

⁶ In accordance with Business and Professions Code Section 6046.6: "The examining committee shall not alter the bar examination in a manner that requires the substantial modification of the training or preparation required for passage of the examination, except after giving two years' notice of that change."

CBE REVIEW

The Content Validation Study and a report from staff on the study were reviewed by the CBE during its October 13 and 14, 2017 meeting. The day prior to that meeting, the Law School Council, an advisory group to the CBE, also considered the study and report and took the following action:

It was moved, seconded and duly carried that the Committee of Bar Examiners be asked to support a recommendation to the Board of Trustees and the California Supreme Court that a Blue Ribbon Panel or Task Force be appointed by the Court to study and make recommendations relative to the future structure, format, content, and grading of the California Bar Examination and reciprocity; and that if the Court determines to establish such a Panel or Task Force, the individuals appointed to serve include, but not be limited to, representatives from the law schools, the CBE, the Board of Trustees, the judiciary, practicing attorneys and others the Court may appoint.

The CBE discussed the Council's recommendation, but declined to accept its recommendation, as it believes that it is within the Committee's responsibilities to consider the matters related to the CBX in accordance with Court Rule 9.6, which states: "The Committee of Bar Examiners is responsible for determining the bar examination's format, scope, topics, content, questions and grading process, subject to review and approval by the Supreme Court...." Instead of a Panel or Task Force established by the Court, the CBE supported the establishment of a special committee that would be composed of the same members as suggested by the Council to discuss further studies and conduct a further review of the CBX. The members would be appointed by the CBE and the special committee's meetings would be facilitated under its leadership. The matter of the establishment of a special committee will be on the agenda for discussion during the CBE's next meeting, which will be held December 1 and 2, 2017.

With regard to the study and report, the CBE took the following action:

It was moved, seconded and unanimously carried that the report "Conducting a Content Validation Study for the California Bar Exam" prepared by Chad Buckendahl, Ph.D. and the two evaluations of the report prepared by independent consultants Mary J. Pitoniak, Ph.D. and Tracy A. Montez, Ph.D. be received and filed and authorized for publication, subject to the Board of Trustees' approval; that the Committee's position that the current scope of subjects tested on the California Bar Examination not be modified at this time be reported to the Board of Trustees and the California Supreme Court; and that the Board of Trustees and the California Supreme Court be advised that the Committee supports conducting a California job analysis study, and then a revised Content Validation Study that will inform further discussions of possible future changes to the content, development, format and grading of the examination.

Following the CBE's meeting, the Content Validation Study was posted on the State Bar's website and public comment was invited. As of the date of this agenda item, no comments have been received.

As noted in the beginning of this staff report, this study, as well as the other three, was initiated as a result of a directive received from the Supreme Court and the results of the study and staff's analysis will be reported to the Court no later than December 1, 2017. Unless the Court directs otherwise, it is recommended that the Board of Trustees consider approving the

completion of a California job analysis study, which would commence in 2018, followed by a revised content validation study. Further, it is recommended that staff be directed to identify the appropriate method for conducting such future studies and identify the necessary resources to fund the studies.

FISCAL/PERSONNEL IMPACT

The costs associated with conducting future studies have been included in the proposed 2018 budget.

RULE AMENDMENTS

None

BOARD BOOK IMPACT

None

BOARD GOALS & OBJECTIVES

2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for more than 250,000 lawyers licensed in California.

* * *

- g. Implement the two-day Bar Exam and evaluate results of the new exam on pass rates and costs.
- h. Conduct Bar Exam validity and pass line studies to determine whether or not additional changes to exam content, format, administration, or grading are needed, and implement changes.

BOARD COMMITTEE/BOARD RECOMMENDATIONS

If the Committee agrees with staff's recommendation, the following resolution for presentation to the Board of Trustees is recommended:

RESOLVED, that the Board of Trustees accepts the "Conducting a Content Validation Study for the California Bar Exam" prepared by Chad Buckendahl, Ph.D. and the report on the study prepared by State Bar staff; and it is

RESOLVED, that the Board of Trustees recommends that the current scope of subjects tested on the California Bar Examination not be modified at this time and that position be reported to the California Supreme Court; and it is

RESOLVED, that the California Supreme Court be advised that the State Bar intends to conduct a California job analysis study, followed by a revised Content Validation Study, which will inform further discussions of possible future changes to the content, development, format and grading of the California Bar Examination; and it is

FURTHER RESOLVED, that staff further investigate the best method and costs associated with conducting these future studies for report back to the Board of Trustees at its January 2018 meeting.

ATTACHMENT(S) LIST

- A: "Conducting a Content Validation Study for the California Bar Exam" prepared by Chad Buckendahl, Ph.D.
- B: Evaluations of the report prepared by independent consultants Mary J. Pitoniak, Ph.D. and Tracy A. Montez, Ph.D.



Conducting a Content Validation Study for the California Bar Exam

Final Report

October 4, 2017

Submitted By:

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Executive Summary

The California Bar Exam recently undertook a content validation study to evaluate the alignment of content and cognitive complexity on their exams to the results of a national job analysis. This study involved gathering judgments from subject matter experts (SMEs) following a standardized process for evaluating examination content, discussing judgments made by the SMEs, summarizing these judgments, and evaluating the representation of content on the examination.

In this process, content validation judgments for the assessments were collected on two dimensions – content match and cognitive complexity. The Written and Multistate Bar Exam (MBE) components of the examination were evaluated for their match to the results of the National Conference of Bar Examiners' (NCBE) 2012 job analysis in terms of content and cognitive complexity as defined by an adaptation of Webb's (1997) Depth of Knowledge (DOK). For the constructed response items (i.e., essay questions, performance task), score points specified in the scoring rubric were evaluated separately to acknowledge the potential for differential alignment evidence (i.e., that different aspects of the scoring criteria may measure different knowledge, skills, or abilities). Because MBE items were not available for the study, the subject areas as described in the publicly available content outline were reviewed and evaluated based on their proportional contribution to the examination.

Summary results suggested that all content on the examination matched with job-related expectations for the practice of law. The cognitive complexity for the written component of the examination as measured by DOK was also consistent with the level of cognitive complexity (e.g., analysis vs. recall) expected of entry-level attorneys. In addition, a review of the content sampling of the examination over time suggests that most content on the examination is consistent with content expected for entry level practice. The sampling plan and the current representation of knowledge and skills when considering the combination of the Written and MBE components of the examination suggest stable representation year to year. This is discussed in more detail in the body of the report. However, there are opportunities for improvement in both the content representation and sampling plan of the existing subject areas.

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



While the results of this study provided evidence to support the current iteration of the examination, there are also formative opportunities for the program to consider in a program redesign. Specifically, the current design and format for the California Bar Examination has been in place for many years. Feedback from the content validation panelists suggested that there are likely subject areas that could be eliminated or consolidated to better represent important areas needed by all entry-level practitioners. From a design perspective, it may be desired to define the components of the examination as a combination of a candidate's competency in federal law, California-specific law, and job-related lawyer skills. Further, if the MBE continues to be included as part of the California Bar Examination, it would be important to be able to review the items on a recently operational form (or forms) of the test to independently evaluate the content and cognitive complexity of the items. If the California is unable to critically review this component of their program, it should prompt questions about whether it is appropriate to continue to include it as part of their examination.

Similarly, such a redesign activity would offer the program an opportunity to evaluate the assessment item types of the examination (e.g., multiple choice, short answer, extended response), scoring policies and practices for human scored elements (e.g., rubric development, calibration, evaluation of graders), alternative administration methods for components (e.g., linear on the fly, staged adaptive, item level adaptive), and alternative scoring methods for constructed response (e.g., automated essay scoring). Advances in testing practices and technologies as well as the evolution of the practice of law since the last program design activity suggest that this interim study may facilitate additional research questions. As an additional resource about the current practices within credentialing programs, interested readers are encouraged to consult Davis-Becker and Buckendahl (2017) or Impara (1995).

For licensure examination programs, in terms of evidence to define content specifications, the primary basis for evidence of content validity come from the results of a job analysis that provides information about the knowledge, skills, and abilities for entry-level practitioners. Although the results of the 2012 NCBE job analysis were used for this study, it would be appropriate for the program to conduct a state-specific study as is done for other occupations in California to then be used to develop and support a blueprint for the examination. The specifications contained in the blueprint are intended to ensure consistent representation of content and cognitive complexity across forms of the examination. This would strengthen the content evidence for the program and provide an opportunity for demonstrating a direct link between the examination and what occurs in practice. These two activities – program design and job analysis – should be considered as priorities with additional redevelopment and validation activities (e.g., content development, content review, pilot testing, psychometric analysis, equating) occurring as subsequent activities.

Recognizing the interrelated aspects of validation evidence for testing programs, it is valuable to interpret the results of this study and its potential impact on the recently conducted standard setting study for the California Bar Examination. Specifically, the results of the content validation study suggested that most of the content on the examination was important for entry level practice without substantive gaps in what is currently measured on the examination compared with what is expected for practice. However, if the examination is revised in the future, it would likely require revisiting the standard setting study.

The purpose of this report is to document who was involved in the process, processes that were used, results of the content validation study, conclusions about content validity of the examination, and recommendations for next steps in the examination development and validation process.

Introduction

The purpose of licensure examinations like the California Bar Exam is to distinguish candidates who are at least minimally competent from those that could do harm to the public (i.e., not competent). This examination purpose is distinguished from other types of exams in that licensure exams are not designed to evaluate training programs, evaluate mastery of content, predict success in professional practice, or ensure employability. As part of the validation process for credentialing examinations, a critical component includes content validation (see Kane, 2006). Content validation involves collecting and evaluating evidence of alignment of content (e.g., knowledge, skills, abilities) and cognitive processing (e.g., application, analysis, evaluation) to established job-related knowledge, skills, abilities, and judgments. Substantive overlap between what is measured by the examination and what is important for entry level practice is needed to support an argument that the content evidence contributes to valid scores and conclusions.

Current Examination Design

The California Bar Exam is built on multiple components intended to measure the breadth and depth of content needed by entry level attorneys. Beginning with the July 2017 examination, these components include the Multistate Bar Exam (MBE) (175 scored and 25 unscored multiple-choice questions), five essay questions, and a performance task. The combined score for the examination weights the MBE at 50% and the written response components at 50% with the performance task being weighted as twice as much as an essay question.¹ A decision about passing or failing is based on the compensatory performance of applicants on the examination and not any single component. This means that a total score is used to make decisions and no one question or task is determinant of the pass/fail determination.

Study Purpose

The purpose of this study was to evaluate the content representation and content complexity of the California Bar Examination in comparison with the results of a job analysis conducted by the National Conference of Bar Examiners (NCBE) in 2012. To collect the information to evaluate these questions, Dr. Chad Buckendahl of ACS Ventures, LLC (ACS) facilitated a content validation workshop on June 6-8, 2017 in San Francisco, CA. The purpose of the meeting was to ask subject matter experts (SMEs) to make judgments about the content and cognitive complexity of the components of the California Bar examination.

This report describes the sources of validity evidence that were collected, summarizes the results of the study, and evaluates the results using the framework for alignment studies suggested by Davis-Becker and Buckendahl (2013). The conclusions and recommendations for the examination program are based on this evaluation and are intended to provide summative (i.e., decision making) and formative (i.e., information for improvement) feedback for the California Bar Examination.

¹ Before July 2017, the written section of the bar exam was weighted 65 percent of the total score and consisted of six essay questions and two performance test questions administered over two days.

Procedures

The content validation approach used for the study relies on the content and cognitive complexity judgments suggested by Webb (1997). In this method, panelists make judgments about the cognitive complexity and content fit of exam items or score points relative to content expectations. For this study, those content expectations were based on the 2012 NCBE job analysis supplemented by links to the U.S. Department of Labor's O*NET² regarding lawyers that was updated in 2017.

A job analysis is a study often conducted every five to seven years to evaluate the job-related knowledge, skills, and abilities that define a given profession. Conducting a job analysis study for a profession can often take 9-12 months to complete. In using the results from the NCBE study as a reference point, these data were within the typical range for conducting these studies and it was a readily available resource given the timeline under which the California Bar Exam was asked to provide evidence of content validation of its examination.

Panelists

Ten panelists participated in the workshop and were recruited to represent a range of stakeholder groups. These groups were defined as Recently Licensed Professionals (panelists with less than five years of experience), Experienced Professionals (panelists with ten or more years of experience), and Faculty/Educator (panelists employed at a college or university). A summary of the panelists' qualifications is shown in Table 1.

Table 1. Profile of content validation workshop panel

Race/Ethnicity	Freq.	Percent	Gender	Freq.	Percent
Asian	1	10.0	Female	5	50.0
Black	2	20.0	Male	5	50.0
Hispanic	1	10.0	Total	10	100.0
White	6	60.0			
Total	10	100.0			
Nominating Entity	Freq.	Percent	Years of Practice	Freq.	Percent
ABA Law Schools	2	20.0	5 Years or Less	2	20.0
Assembly Judiciary Comm.	1	10.0	>=10	8	80.0
Board of Trustees	1	10.0	Total	10	100.0
BOT – COAF ³	3	30.0			
CALS Law Schools	1	10.0	Employment type	Freq.	Percent
Registered Law Schools	1	10.0	Academic	3	30.0
Senior Grader	1	10.0	Large Firm	2	20.0
			Non Profit	1	10.0
			Small Firm	1	10.0
			Solo Practice	3	30.0

² The O*NET is an online resource when evaluating job-related characteristics of professions. See <https://www.onetonline.org/> for additional information.

³ Council on Access & Fairness.



Workshop Activities

The California Bar Exam content validation workshop was conducted June 6-8, 2017 in San Francisco, CA. Prior to the meeting, participants were informed that they would be engaging in tasks to evaluate the content and cognitive complexity of the components of the California Bar Examination. The content validation process included an orientation and training followed by operational alignment judgment activities for each essay/performance task and MBE subject area, as well as written evaluations to gather panelists' opinions of the process. Workshop orientation and related materials are provided in Appendix B.

Orientation

The meeting commenced on June 6th with Dr. Buckendahl providing a general orientation and training for all panelists that included the goals of the meeting, an overview of the examination, cognitive complexity levels, and specific instructions for panel activities. Additionally, the orientation described how the results would be used by policymakers and examination developers to evaluate the current structure and content representation of the examination.

Specifically, the topics that were discussed in the orientation included:

- The interpretation and intended use of scores from the California Bar Exam (i.e., licensure)
- Background information on the development of the California Bar Exam
- Summary results of the NCBE job analysis and O*NET descriptions
- Purpose of alignment information for informing validity evidence

After this initial orientation, the panel was trained on the alignment processes that were used. This training included discussions of the following:

- Cognitive complexity framework – understanding each level, evaluating content framework
- Content match – evaluating fit of score points or subject areas to job-related content
- Decision making process – independent review followed by group consensus

After the training, the panelists began making judgments about the examination. Their first task involved making judgments about the intended cognitive complexity of the knowledge, skills, abilities, and task statements from the 2012 NCBE job analysis. The cognitive complexity framework used for this study was an adaptation of Webb's (1997) Depth of Knowledge (DOK) for a credentialing exam. The DOK levels represent the level of cognitive processing associated with performing a task or activity. Lower DOK levels correspond to cognitive processes such as recall or remembering while higher levels correspond to application of knowledge, analysis, or evaluation. Within Webb's (1997) framework, Level 1 is defined as recall and reproduction, Level 2 is defined as working with skills and concepts, Level 3 is defined as short-term strategic thinking, and Level 4 is defined as extended strategic thinking. For this study, Level 1 was defined as recall or memorization, Level 2 was further clarified as representing the understanding and application level of cognitive process, Level 3 was defined as analysis and evaluation, and Level 4 was defined as creation of new knowledge.

Within psychological measurement, the depth of cognitive processing is considered in combination with the content to ensure that the claims made about candidates' abilities are consistent with the target construct. The DOK framework is one of many potential scales that can be used to evaluate this aspect of content.

Another commonly used model comes from Bloom (1956) and defines cognitive processes being knowledge, comprehension, application, analysis, synthesis, and evaluation. The inclusion of cognitive complexity as a consideration in the evaluation of the content validity of the California Bar Exam is important because it provides information on not only *what* may be needed on the examination, but *at what cognitive level* should candidates be able to function with the content. Procedurally, after rating the DOK of the first few statements as a group, panelists made judgments independently followed by consensus discussions. This consensus judgment was then recorded and used for the subsequent analysis.

Content Validity Judgments

Although characterized as “content,” content validation is inclusive of judgments about both cognitive complexity and content match. After a review of the knowledge and task statements from the job analysis, the panelists began reviewing the components of the examination. For these components, panelists made independent judgments regarding the content match with the results of the NCBE job analysis. To calibrate the group to the process and the rating tasks, some of the judgments occurred as a full group facilitated discussions with other judgments occurring independently followed by consensus discussions. At key phases of the process panelists completed a written evaluation of the process including how well they understood the alignment tasks, their confidence in their judgments, and the time allocated to make these judgments.

On the first day, panelists reviewed and determined the cognitive complexity levels of each knowledge and task statement of the job analysis. This activity was done to establish the expected depth of knowledge (DOK) associated with the respective knowledge, skill, and ability (KSA). A summary of the results from these judgments suggested that most KSAs were judged to be at Levels 2 and 3 of the DOK framework. This means that most of the California Bar Examination is expected to measure candidates’ abilities at levels beyond recall and memorization, specifically at the understanding, application, analysis, and evaluation levels. As shown below in Table 2, the current examination illustrates measurement expectations consistent with these expectations.

On the second day, the panel began making alignment judgments on the essay questions with the first one occurring as a full group activity. This was then followed by dividing up the task to have two subgroups each evaluate two essay questions and come to consensus on the judgments. After completing judgments on the essay questions, the full group then reviewed the expected content and DOK for the performance task and discussed the representation of content/skills. The third day then involved a full group facilitated discussion where judgments about the representation of domains of the MBE examination to evaluate proportional contribution to the overall content representation.

These judgment activities were followed by a facilitated discussion about content that could be measured on the examination that was not discussed (e.g., subject areas that were measured in other years). A related part of this brief discussion was where content that is eligible for sampling on the California Bar Exam may be more appropriately represented (e.g., Bar Examination, MCLE). These results are included in the evaluation section of this report, but should not be interpreted as a program design or redesign activity. The inclusion of this part of the study responded to a request to gather some high-level information as a starting point for additional exploration of how the California Bar Examination should be defined and structured.

Analysis and Results

The content validation findings are intended to evaluate the following questions:

- What is the content representation of the California Bar Exam essay questions, performance task, and MBE subject areas relative to the knowledge and task statements of the NCBE job analysis?
- What knowledge and task statements from the NCBE job analysis are NOT covered by the California Bar Exam?
- What California Bar Exam content does NOT align with the knowledge and task statements of the NCBE's 2012 job analysis?

There are currently 13 subject areas that can be sampled on the written portion of the California Bar Exam. This means that not all subject areas can be included each year and need to be sampled over time. To answer these content validation questions, the proportional contribution (i.e., percentage) of each exam component was estimated to approximate the distribution of content for the examination. This distribution is influenced by the sampling of content that occurs on the examination each year. As noted, each of the 13 subject areas cannot be included each year, so the content specifications require sampling to occur over multiple years.

For example, if a Real Property essay question is included for an examination, we would expect to see greater representation of the Real Property subdomain relative to years where this subject area is not included as part of the sampling plan. This is also why consideration was given to the content sampling plan for the program and not any single year. To apply a content sampling approach, it is important that the examination meet an assumption of unidimensionality (i.e., there is a dominant construct that is measured by the exam). If this assumption is met, then the variability of content year-to-year does not pose a significant threat to the validity of interpretations of the scores, even if there is an intuitive belief about what content should or should not be on the examination.

To illustrate the effect of the content sampling over time, it is important to understand what parts of the examination are constant versus variable across years. With the weighting of the exam beginning in July 2017 being 50% from the Multistate Bar Exam (MBE) and 50% from the written component (i.e., essay questions and performance task, we can calculate how much each part of the examination contributes to the whole. This breakdown is shown here:

Multistate Bar Exam (50%)

- The MBE is comprised of seven subject area sections, each with 25 scored questions. This means that each of these sections contributes approximately 7% to the total score (i.e., 1 section divided by 7 total sections and then multiplied by 50% to reflect that the MBE is only half of the exam).
- The blueprint for the MBE is fixed, meaning that the same seven content areas are measured each year. Therefore, the representation of content from this exam is consistent year-to-year until any changes are made to the blueprint.

Written Component (50%)

- The written component of the examination is comprised of five essay questions and one performance task that is weighted twice as much as one essay question. This means that for the written component, each of the five essay questions represent approximately 7% of the total score and the performance task represents approximately 14% of the total score (i.e., 1 essay



question divided by 7 total scoring elements [the performance task is calculated as 2 divided by 7 total scoring elements to reflect the double weighting] and then multiplied by 50% to reflect that the written component is only half of the exam.

- The blueprint for the written component is fixed with respect to the number of essay questions and performance task, but there is content sampling that occurs across the 13 subject areas currently eligible for selection. However, one of these subject areas, Professional Responsibility, is represented each year on the examination. Additional discussion about the potential impact of content sampling is discussed below.

The summary matrix in Table 2 represents the combination of information from the cognitive complexity ratings (reflected as Depth of Knowledge levels) in addition to the proportion of aligned content. For efficiency, the results are included for areas of content that were judged to align. Note that there were no components or subcomponents of the California Bar Exam that did not align with knowledge and task statements from the job analysis. There were, however, some areas suggested by the job analysis that could be considered in future development efforts by the Bar Exam that are discussed in the Conclusions and Next Steps section of this report.

Additional explanation is needed for readers to interpret the information presented in Table 2. Within the table, the first two columns refer to the knowledge, skills, abilities, or general tasks that were part of the summary results from the NCBE job analysis. Information in the third column relies on a coding scheme where K-1 refers to the first knowledge statement, S-1 refers to the first skill statement, A-1 refers to the first ability statement, T-1 refers to the first task statement in the O*NET framework. Other links within this framework will associate a letter and numerical code to the appropriate statement (e.g., K-2 refers to the second knowledge statement, T-3 refers to the third task statement). This information is provided to illustrate alignment with a concurrent source of evidence regarding knowledge, skills, abilities, and tasks that may be representative of entry-level practice. For interested readers, the narrative descriptions of these links to the O*NET that were used by panelists are provided in Appendix B.

The Statement DOK column provides information about the expected cognitive complexity for entry-level lawyers on the given knowledge, skill, ability, or task statement with lower numbers being associated with lower levels of cognitive complexity on the 1 (recall or memorization), 2 (understanding and application), 3 (analysis and evaluation) and 4 (creation) scale described above.

In the last three columns of Table 2, information about the estimated percent of the examination that was represented by content on the July 2016 administration with an important caveat. Because the goal of the content validation study was to evaluate the content representation that may occur on the California Bar Examination based on the new examination format that began in July 2017, we selected five essay questions and a performance task as representative of how an examination could be constructed without regard to specific content constraints (i.e., specific subject areas that may be included). This means that the interpretation of the results is dependent on the content sampling selected for the study. This concept is further discussed in the next section.

As described above, to calculate the percentage of coverage for a given content area, we first applied the weights to the respective components of the examination (i.e., 50% for the essays and performance task [written] component, 50% for the multistate bar exam [MBE]). We then calculated the proportion of each subsection within a component based on its contribution to the total score. For example, each essay question



is weighted equally with the performance task weighted twice as much as an essay question. This means that within the written component, there are six questions where one of the questions is worth twice as much. Proportionally, this means that each essay question is worth approximately 14% of the written component score whereas the performance task is worth approximately 28% of the written component score.

However, because the written component only represents half of the total test score, this means that these percentages are multiplied by 50% to determine the weight for the full examination (i.e., approximately 7% for each essay question, 14% for the performance task). The same calculation was applied to the seven equally weighted sections of the MBE. Ratings from panelists on each of the essay questions, performance task, and the content outline from the MBE were communicated as consensus ratings and based on proportional contributions of knowledge, skills, and abilities. These proportions could then be analyzed as weights based on the calculations described above to determine the component and overall content representation.

Table 2. Consolidated content validation results with approximate percentage of representation.

			% of Exam			
	Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey	Link to O*NET	Statement DOK	Essays and PT	MBE	Total
Section I. Knowledge Domains⁴						
1	Rules of Civil Procedure	K-1	2	4%	4%	7%
2	Other Statutory and Court Rules of Procedure	K-1	1	-	4%	4%
3	Rules of Evidence	K-1	2	-	7%	7%
10	Contract Law ⁵	K-1	2	3%	7%	10%
11	Tort Law	K-1	2	-	4%	4%
12	Criminal Law	K-1	2	-	7%	7%
13	Rules of Criminal Procedure ⁶	K-1	2	-	-	0%
14	Other Privileges ⁷	K-1	2	-	-	0%
15	Personal Injury Law	K-1	1	-	4%	4%
19	Principles of Electronic Discovery ⁸	K-1	1	1%	-	1%
20	Real Property Law	K-1	2	3%	7%	10%
21	Constitutional Law ⁹	K-1	2	3%	7%	10%

⁴ Note that a current content constraint of the examination is that Professional Responsibility and Ethics is represented on each form of the test. When this content area is included it would reduce the representation of another content area that would be sampled.

⁵ MBE content for this area was also judged to partially align with Real Property.

⁶ MBE content for this area was also judged to partially align with Criminal Law and Procedure.

⁷ MBE content for this area was also judged to partially align with Evidence.

⁸ MBE content for this area was also judged to partially align with Civil Procedure.

⁹ MBE content for this area was also judged to partially align with Civil Procedure, Criminal Law and Procedure, and Torts.

24	Family Law	K-1	2	3%	-	3%
Section II. Skills and Abilities						
87	Written communication	S-9, A-5	3	4%	-	4%
93	Critical reading and comprehension	S-3, A-3	3	3%	-	3%
94	Synthesizing facts and law	A-7	3	8%	-	8%
95	Legal reasoning	A-6, A-7	3	15%	-	15%
100	Issue spotting	S-5	3	1%	-	1%
108	Fact gathering and evaluation	S-5	3	2%	-	2%
Section III. General Tasks						
123	Identify issues in case	T-1, T-12	2	2%		2%
Total				50%	50%	100% ¹⁰

As shown in the footnotes of Table 2, there were areas of the MBE that could represent additional areas of content. However, the extent of that alignment is unknown because we did not have access to the actual test items; only the publicly available content outline. As a result, this report includes the judgments from the panel as a reference point for future study if the actual forms of the MBE are available for external evaluation in the future. To avoid speculation for this report, we did not estimate the potential contribution of these additional areas and only noted them.

Content Sampling Across Years

As noted above, the written component of the examination currently samples from 13 subject areas. Table 3 shows the number of times that each of these subject areas has been represented by essay questions over the last decade. This information is useful to evaluate whether the content emphasis is consistent with the subject areas that have been judged as more or less important in the practice analysis. In noting that one of the subject areas, Professional Responsibility, is sampled every year, we would expect some variability in the other four essay questions as subjects are sampled across years. Note that the performance is not related to the subject area and focuses specifically on lawyer skills, so the proportional measurement of these abilities also appears to be consistent across years.

¹⁰ Note that totals for each component of the examination and overall will not equal 100% due to rounding.



Table 3. Representation of subject areas from 2008-2017 (n=20 administrations).

Subject area	Frequency of representation¹¹	Rating of significance¹²	Percent Performing¹³
Professional Responsibility	19	2.83	93%
Remedies	12	N/A ¹⁴	N/A
Business Associations	11	2.33	67%
Civil Procedure	10	3.08	86%
Community Property ¹⁵	10	2.23	53%
Constitutional Law	10	2.29	76%
Contracts	10	2.67	84%
Evidence	10	3.01	81%
Torts	10	2.50	61%
Criminal Law and Procedures	9	2.50/2.47 ¹⁶	54%/54%
Real Property	9	2.30	56%
Trusts	7	1.95	44%
Wills	7	2.21	46%

¹¹ Frequency is defined as the number of times a subject area was represented as a main or crossover topic on the California Bar Examination from 2008-2017.

¹² Ratings are based on the average Knowledge Domain ratings for the 2012 NCBE Job Analysis study on a scale of 1 to 4 with values closer to 4 representing more significant content.

¹³ Ratings are based on the percentage of respondents indicating that they perform the knowledge for the 2012 NCBE Job Analysis study. Values range from 0% to 100% with higher percentages indicating that more practitioners perform the knowledge.

¹⁴ Remedies does not align with a single Knowledge Domain because it crosses over multiple, substantive areas of practice in law.

¹⁵ Community Property was interpreted to be part of Family Law.

¹⁶ Criminal Law and Procedures were asked as separate Knowledge Domain statements. Each significance rating is included.

For the essay questions in this study, panelists judged each one as measuring approximately 50% of the subject area knowledge (e.g., real property, contracts) and 50% of lawyer skills (e.g., application of law to facts, analysis, reasoning). This means that for a given essay question, the measurement of the subject area knowledge represents approximately 3.6% of the total examination (i.e., each essay question contributes approximately 7% to the total score (7.14% to be more specific), so if 50% of this is based on the subject area, 7% multiplied by 50% results in approximately 3.6% of the measurement being attributable to the subject area).

Knowing that the current sampling plan includes Professional Responsibility effectively yearly along with the performance task, this means that subject area sampling only applies to the four essay questions that may represent a different subject area year-to-year. In aggregate, this means that the potential variability in the measurement of the examination across years is approximately 14%-15% (i.e., 3.6% multiplied by the 4 essay questions). Another way to communicate these results is to say that 85%-86% of the measurement of the examination remains constant across years. This suggests that what is being measured on the examination remains stable.

In addition, the relationship between the emphasis of the subject areas in Table 3 as represented by the frequency of occurrence, the average significance rating, and the percent performing provides some information that will inform future examination redevelopment. Specifically, the correlation between the frequency of subject areas being represented on the examination and the average significance rating was 0.48 while the correlation between the frequency of subject area representation and percent performing was 0.70. The correlation between the significance of the topic and the percent performing was 0.83. However, these results should not be over-interpreted based on the limited number of observations (n=12). These results suggest that there is moderate relationship between the content sampling and evidence of importance of subject areas to entry level practice. However, there are likely opportunities to further align the content sampling with subject areas that were rated as more or less significant for entry-level practice.

Evaluating the Content Validation Study

To evaluate the content validation study, we applied Davis-Becker and Buckendahl's (2013) framework for alignment studies. Within this framework, the authors suggested four sources of evidence that should be considered in the validation process: procedural, internal, external, and utility. If threats to validity are observed in these areas, it will inform policymakers' judgments regarding the usefulness of the results and the validity of the interpretation. Evidence within each area that was observed in this study is discussed below.

One important limitation of the study that could pose a threat to the validity of the results is the lack of direct evidence from the MBE. Content validation studies generally involve direct judgments about the characteristics of the examination content. Because examination items (i.e., questions) from the MBE were not available for the study, panelists were asked to make judgments about the content evidence from publicly available subject matter outlines provided by the NCBE. There is then assumption that items coded to these sections of the outline align as intended. However, these assumptions should be directly reviewed. Because

California is using scores from the MBE as an increasingly important component of its decision-making process, it is reasonable to expect that NCBE make forms of the test available for validation studies.¹⁷

Procedural

Procedural evidence was available when considering panelist selection and qualifications, choice of methodology, application of the methodology, and panelists' perspectives about the implementation of the methodology. For this study, the panel that was recruited represented a range of stakeholders: both newer and more experienced attorneys as well as representatives from higher education. Because content validation judgments are more objective in nature (i.e., what does this question measure) as opposed to making standard setting judgments (e.g., how would a minimally competent candidate perform), there are fewer criteria needed with respect to panelist selection other than that they were knowledgeable about the content and familiar with the population of examinees. Again, this was not an activity to determine what *should* be on the examination, but rather, what *is* currently being measured by the examination.

In selecting the methodology for the study, alternative designs were considered. One design could have had panelists making judgments about whether the content and cognitive complexity of the components of the examination were appropriate for entry-level practice. The risk in this approach is the diverse opinions represented by stakeholder groups without a common reference point or link to evidence of what occurs in practice. This type of evidence is typically available following a practice analysis and is then used to build a blueprint from which examination forms are constructed. At that point, such a design could have been implemented because the common reference point would have been the blueprint that was developed with a clear link to practice. However, this information was not available; therefore, this design would have been inappropriate and would have only highlighted individual panelists' opinions or biases (e.g., practitioners' preference for content that aligns with their respective area(s) of practice, high education representatives' preference for content that aligns with their curriculum).

To have a common reference point for panelists to evaluate the alignment of content, we selected the summary results from the 2012 NCBE job analysis study. These results were derived from a national survey that collected information about the knowledge, skills, abilities, and tasks of lawyers. Although the results were not specific to California, it is reasonable to expect that these results would generalize to expectations for attorneys in California. So, the design that included this information along with the evidence from the U.S. Department of Labor's O*NET provided concurrent evidence of the characteristics of attorneys in practice.

For the rating activities, essay questions and the performance task are based on scoring considerations that include multiple traits. Therefore, panelists were asked to breakdown the scoring to proportionally align the parts of these questions that matched with different knowledge, skills, or abilities. To have only evaluated the questions holistically would not have revealed the differential content representation. Given the constructed response aspects of the essay questions and performance task, the methodology and rating tasks were consistent with the types of questions and judgments that could be provided.

¹⁷ For security reasons and to protect the integrity of the empirical characteristics of operational questions, NCBE only makes available practice questions or "retired" questions, but not the entire exam from a specific administration.

With respect to the process evaluation, panelists' perspectives on the process were collected and the evaluation responses were consistently positive suggesting that they understood the process and were confident in their judgments about the content validity. In addition, panelists provided comments about aspects of the process that could be improved. This feedback did not threaten the validity of the results, but does inform some of the suggested next steps for the program.

Internal

The internal evidence for content validation studies can be evaluated by examining the consistency of panelists' ratings and the convergence of the recommendations. One approach to content validity studies is to use one or more rating scales where panelists rate individual questions or score points on different criteria (Davis-Becker & Buckendahl, 2013). Decision rules can then be applied to analyze and evaluate the results along with calculating levels of agreement among the panelists. However, this methodology is often more appropriate with more discrete items.

For this study, the rating tasks and decision rules were based on consensus judgments that occurred based on discussions among panelists following individual ratings. This approach is more qualitative in nature and was selected based on the types of assessment items and corresponding scoring criteria/rubrics that were evaluated (i.e., constructed response) along with the lack of an opportunity for direct judgments on items on the MBE. Although the results should not be interpreted as unanimous support by the panelists, consensus was achieved for the content and cognitive complexity rating tasks.

External

The primary source of external evidence for the study was based on the results of 2012 NCBE job analysis as an indicator of suggested content for entry level practice based on a nationally representative sample of practitioners. In addition, links to the U.S. Department of Labor's O*NET that was updated for lawyers in 2017 were also included to provide another source. The summary results of the NCBE job analysis study included ratings of knowledge, skills, abilities, and tasks.

There is an important caveat to note about NCBE's study. Specifically, because the study was designed and implemented as a task inventory (i.e., a list of knowledge, skills, abilities, and tasks) rather than competency statements, there were many statements that were redundant, overlapping, or that could be consolidated or subsumed within other statements. This means that an activity such as preparing a memo for a client was broken down into its component parts (e.g., critical reading and comprehension, identifying the primary question, distinguishing relevant from irrelevant facts, preparing a written response) were listed as separate statements when these part of the same integrated, job related task. More important, the scoring criteria or rubric would not distinguish these elements and would instead allocate points for skills such as identifying and applying the appropriate legal principles to a given fact pattern or scenario; or drawing conclusions that are supported with reasoning and evidence.

However, the value of the job analysis study is that it served as a common, external source against which to evaluate the content and cognitive complexity of the California Bar Examination. A lack of overlap in some areas should not be interpreted as a fatal flaw due to the design of the job analysis. The results can be used to inform next steps in evaluating validity evidence for the program.

Utility

Evidence of utility is based largely on the extent to which the summative and formative feedback can be used to inform policy and operational decisions related to examination development and validation. The summative information from the study suggests that the content and cognitive complexity as represented by content of the examination are consistent with expectations for entry level attorneys when compared with the highly rated knowledge, skills, and abilities of the 2012 NCBE job analysis.

However, whether the proportional contribution of this content (i.e., the percentage of representation of the range of knowledge, skills, abilities) is being implemented as intended is a question that would need to be evaluated as part of the next steps for the program. The intended representation of content for a credentialing examination is generally informed by a job analysis (also sometimes called a practice analysis or occupational analysis, see Clauser and Raymond (2017) for additional information).

These studies often begin with a focus group or task force that defines the knowledge, skills, and abilities for the target candidate (e.g., minimally competent candidate, minimally qualified candidate) to create task or competency statements. These statements are then typically compiled into a questionnaire that is administered as a survey of practitioners to evaluate the relative emphasis of each statement for entry level practice. The results from the survey can then be brought back to the focus group or task force to discuss and make recommendations to the appropriate policy body about the recommended weighting of content on the examination. This weighting is communicated through an examination blueprint that serves as the guide for developing examinations for the program.

The formative information from the panelists' ratings for the individual essay questions and performance task can be evaluated internally to determine whether this is consistent with expectations. For example, if the panelists judged a question to require a candidate to demonstrate knowledge of a subject area as representing 50% of the measurement the question with the other 50% representing skills, the internal evaluation would ask the question of whether this was intended. This intent is evaluated through the design of the question, the stimulus material contained in it, the specific call of the question for the candidate, and the scoring criteria or rubric associated with the question. The information from this study provided evidence to the program of what is currently being measured by the California Bar Examination, but does not conclude whether this is the information that should be measured on the examination. That type of determination would be a combination of information from a job analysis in concert with discussions about the design.

In addition, the panelists' qualitative discussions about potential structural changes to the examination or whether some content is more appropriate as part of continuing education will be useful for policymaker deliberations and examination development purposes. The summary of this discussion is included as part of comments in Appendix C. However, because this was not a primary goal of the study, this information should be interpreted as a starting point for further study and evaluation, not for decision-making at this point. A program design activity that involves a look at the examination and the related components would be valuable to inform decision-making. For example, a potential design for the California Bar Examination might include the MBE as a measure of federal or cross-jurisdictional competencies, the essay questions may be useful for measuring subject areas of law that are important and unique to California, and the performance task serving as a content-neutral measure of the important skills that lawyers need in practice. However, this is a facilitated activity that is more appropriate for policymakers and practitioners to engage in as a precursor to the job analysis.



Process Evaluation Results

Panelists completed a series of evaluations during the study that included both Likert scale (i.e., attitude rating scale) and open-ended questions. The responses to the Likert scale questions are included in Table 4 and the comments provided are included in Appendix C. With respect to training and preparation, the panelists felt the training session provided them with an understanding of the process and their task. Following the training, the panelists indicated they had sufficient time to complete the rating process and felt confident in the results. The rating scales for questions can be interpreted as lower values being associated with less satisfaction or confidence with higher values being associated with greater satisfaction or confidence with the respective statement. Note that for question 2, panelists were only asked to indicate whether the time allocated for training was too little (1), about right (2), or too much (3).

Table 4. Summary of Process Evaluation Results

	Median	1	2	3	4
1. Success of Training					
Orientation to the workshop	4	0	1	3	6
Overview of alignment	4	0	1	3	6
Discussion of DOK levels	3.5	0	1	4	5
Rating process	3.5	0	1	4	5
2. Time allocation to Training	2	0	9	1	
3. Confidence in Cognitive Complexity Ratings	3	0	1	7	2
4. Time allocated to Cognitive Complexity Ratings	3	0	1	5	4
6. Confidence in Day 1 ratings	4	1	0	2	6
7. Time allocated to Day 1 ratings	3	0	0	5	4
9. Confidence in Day 2 ratings	3	0	0	5	3
10. Time allocated to Day 2 ratings	3.5	0	0	4	4
12. Confidence in Day 3 ratings	3.5	0	0	4	4
13. Time allocated to Day 3 ratings	3.5	0	0	4	4
14. Overall success of the workshop	3.5	0	0	4	4
15. Overall organization of the workshop	4	0	0	3	5



Gap Analysis

The content validation study was designed to evaluate the extent to which content on the California Bar Examination aligned with expectations for entry level practice for lawyers. In addition, a gap analysis was conducted to also respond to the question about what content may be important for entry level practice, but is not currently measured on the examination. For this analysis, two criteria were evaluated.

Specifically, the ratings of significance and percent performing from the NCBE job analysis survey were analyzed. For the purposes of this analysis, if a knowledge, skill, ability, or task (KSAT) statement received a significance rating of 2.5 or higher on a 1-4 scale, it was included as a potential gap. Note that some KSAT statements were not included, because they were ambiguous or not appropriate for the purposes of licensure (e.g., Professionalism, Listening Skills, Diligence). Further, statements that were judged to be subsumed within other statements (e.g., Organizational Skills as an element of Written Communication) are not included to avoid redundancy. The results of this analysis are shown in Table 5.

Table 5. Summary of gap analysis of content not primarily measured on the California Bar Examination.

	Knowledge, Skills, Abilities and Tasks from the NCBE Job Analysis Survey	Link to O*NET	Statement DOK	Significance (Mean)	% Performing
Section I. Knowledge Domains					
5	Research Methodology	K-1	2	2.91	89%
8	Statutory Interpretation	K-1	1	2.83	86%
9	Document Review/Documentary Privileges	K-1	2	2.73	81%
Section II. Skills and Abilities					
92	Using office technologies (e.g., word processing and email)	K-6	1	3.56	99%
102	Answering questions succinctly	N/A	1	3.30	99%
104	Computer skills	K-6	1	3.28	99%
105	Electronic researching	T-8	2	3.26	98%
113	Negotiation	S-7	1	2.97	87%
114	Resource management	K-4, T-11	1	2.93	96%
115	Interviewing	T-14	1	2.92	91%
118	Attorney client privilege - document reviewing	T-9	3	2.84	86%
119	Trial skills	T-7	1	2.71	68%
120	Legal citation	T-9, T-15	2	2.67	95%
Section III. General Tasks					
Management of attorney-client relationship and caseload					
124	Establish attorney-client relationship	T-18	2	2.86	76%
125	Establish and maintain calendaring system	T-18	1	2.86	78%

127	Establish and maintain client trust account	T-21	1	2.52	36%
128	Evaluate potential client engagement	T-12	1	2.51	67%
Research and Investigation					
142	Conduct electronic legal research	T-8	2	3.42	96%
143	Research statutory authority	T-8	2	3.38	95%
144	Research regulations and rules	T-8	2	3.31	96%
145	Research judicial authority	T-8	2	3.19	89%
146	Conduct document review	T-8	2	3.10	86%
147	Interview client and client representatives	T-14	2	3.04	77%
148	Conduct fact investigation	T-14	2	2.91	83%
149	Interview witness	T-14	1	2.75	69%
150	Research secondary authorities	T-8	2	2.70	92%
151	Obtain medical records	T-14	1	2.58	61%
152	Conduct transaction due diligence activities	T-2	1	2.54	58%
153	Request public records	T-16	1	2.53	81%
Analysis and resolution of client matters					
157	Analyze law	T-1	3	3.46	97%
158	Advise client	T-2	2	3.20	87%
159	Develop strategy for client matter	T-13	1	3.13	87%
160	Negotiate agreement	T-9, T-10	1	2.93	77%
161	Draft memo summarizing case law, statutes, and regulations, including legislative history	T-15	3	2.81	86%
163	Draft demand letter	T-9	1	2.60	65%
164	Draft legal opinion letter	T-15	2	2.54	76%
165	Draft case summary	T-15	2	2.53	80%



The information from the gap analysis can be used to evaluate the current content representation of the examination to determine whether a) existing elements of measurement should be retained, b) new elements of measurement should be added, and c) the extent to which the current design of the examination supports measurement of the important aspects of the domain. A caution in interpreting these results is that some of the knowledge, skills, abilities, and tasks are not easily measurable in a written examination and may require different types of measurement strategies, some of these being potentially technology enhanced. An additional caution is that the statements from the 2012 NCBE job analysis overlapped with each other and were not mutually exclusive with respect to the tasks that lawyers might perform. For future studies, I would suggest a competency or integrated task statement based approach that is more consistent with the tasks, responsibilities, and activities that lawyers engage with as opposed to discrete aspects of practice.

Conclusions and Next Steps

At a summative level, the results of the content validation study suggest that the current version of the California Bar Examination is measuring important knowledge, skills, and abilities consistent with expectations of entry level attorneys as suggested by results from the 2012 NCBE job analysis. Whether the observed representation and proportional weighting are in alignment with the expectations for California cannot be determined without further evaluation. However, it is important to note that all content on the current examination was judged to align with elements of the NCBE job analysis that were rated as reasonably significant and/or performed frequently in practice. This also included the subject areas that are sampled across years, but were not included in this study.

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

While the results of this study provided evidence to support the current iteration of the examination, there are also formative opportunities for the program to consider in a program redesign. Specifically, the current design and format for the California Bar Examination has been in place for many years. Feedback from the content validation panelists suggested that there are likely subject areas that could be eliminated or consolidated to better represent important areas needed by all entry-level practitioners.

To briefly reiterate an example described above, from a design perspective, it may be desired to define the components of the examination as a combination of a candidate's competency in federal law, California-specific law, and job-related lawyer skills. Further, if the MBE continues to be included as part of the California Bar Examination, it would be important to be able to review the items on a recently operational form (or forms) of the test to independently evaluate the content and cognitive complexity of the items. If the

California is unable to critically review this component of their program, it should prompt questions about whether it is appropriate to continue to include it as part of their examination.

Similarly, such a redesign activity would offer the program an opportunity to evaluate the assessment item types of the examination (e.g., multiple choice, short answer, extended response), scoring policies and practices for human scored elements (e.g., rubric development, calibration, evaluation of graders), alternative administration methods for components (e.g., linear on the fly, staged adaptive, item level adaptive), and alternative scoring methods for constructed response (e.g., automated essay scoring). Advances in testing practices and technologies as well as the evolution of the practice of law since the last program design activity suggest that this interim study may facilitate additional research questions. As an additional resource about the current practices within credentialing programs, interested readers are encouraged to consult Davis-Becker and Buckendahl (2017) or Impara (1995).

For licensure examination programs, in terms of evidence to define content specifications, the primary basis for evidence of content validity come from the results of a job analysis that provides information about the knowledge, skills, and abilities for entry-level practitioners. Although the results of the 2012 NCBE job analysis were used for this study, it would be appropriate for the program to conduct a state-specific study as is done for other occupations in California to then be used to develop and support a blueprint for the examination. The specifications contained in the blueprint are intended to ensure consistent representation of content and cognitive complexity across forms of the examination. This would strengthen the content evidence for the program and provide an opportunity for demonstrating a direct link between the examination and what occurs in practice. These two activities – program design and job analysis – should be considered as priorities with additional redevelopment and validation activities (e.g., content development, content review, pilot testing, psychometric analysis, equating) occurring as subsequent activities.

Recognizing the interrelated aspects of validation evidence for testing programs, it is valuable to interpret the results of this study and its potential impact on the recently conducted standard setting study for the California Bar Examination. Specifically, the results of the content validation study suggested that most of the content on the examination was important for entry level practice without substantive gaps in what is currently measured on the examination compared with what is expected for practice. However, if the examination is revised in the future, it would likely require revisiting the standard setting study.



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Appendix A – Panelist Information



Content Validity
Panelists.xlsx

Last Name	First Name	City	Role	Years in Practice
Baldwin-Kennedy	Ronda			
Barbieri	Dean			
Cramer	Mark			
Dharap	Shounak			
Gramme	Bridget			
Jackson	Yolanda			
Layon	Richard			
Lozano	Catalina			
Maio	Dennis			
Shultz	Marjorie			

Appendix B – Content Validation Materials and Data

The documentation used in the standard setting are included below.



Overview of
Content Validation 1



Cal Bar Content
Validation Worksho



Cal Bar Content
Validation Worksho



Cal Bar Content
Validation Worksho



NCBE Job Analysis
Summary 2013



O*NET Summary for
Lawyers

California Bar Exam

Content Validation Workshop

Agenda

Tuesday, June 6

7:30 – 8:00	Breakfast
8:00 – 8:30	Introductions and Purpose of the Study
8:30 – 10:00	Initial training Purpose and design of the California Bar Exam Content validation judgments (Job Analysis/O*NET)
10:00 – 10:15	Break
10:15 – 11:45	DOK Ratings for knowledge, skills, and abilities (independent)
11:45 – 12:45	Lunch
12:45 – 2:15	DOK Ratings for knowledge, skills, and abilities (group consensus)
2:15 – 2:30	Complete first evaluation form
2:30 – 2:45	Break
2:45 – 3:45	Begin content validation judgments for first essay question (facilitated) Review scoring rubric/criteria for the question Evaluate content and cognitive complexity match
3:45 – 4:00	Break
4:00 – 4:45	Continue content validation judgments for first essay question (facilitated)
4:45 – 5:00	Complete second evaluation form

Wednesday, June 7th

8:00 – 8:30	Breakfast
8:30 – 9:30	Begin content validation judgments for second/fourth essay question (independent within subgroup) Review scoring rubric/criteria for the question Evaluate content and cognitive complexity match
9:30 – 10:15	Discuss initial content validation judgments for second/fourth essay question (subgroup)
10:15 – 10:30	Break
10:30 – 11:30	Continue content validation judgments for third/fifth essay question (independent)
11:30 – 12:15	Discuss initial content validation judgments for third/fifth essay question (subgroup)
12:15 – 1:00	Lunch
1:00 – 2:15	Begin content validation judgments for performance task (independent) Review scoring rubric/criteria for the question Evaluate content and cognitive complexity match
2:15 – 2:30	Break
2:30 – 3:30	Discuss initial validation judgments for performance task (group)
3:30 – 3:45	Break
3:45 – 4:45	Begin judgments for MBE Subject Matter Outline – content focus (independent)
4:45 – 5:00	Complete third evaluation form

Thursday, June 8

8:00 – 8:30	Breakfast
8:30 – 9:30	Continue judgments for MBE Subject Matter Outline – content focus (independent)
9:30 – 9:45	Break
9:45 – 10:45	Discuss judgments for MBE Subject Matter Outline (group)
10:45 – 11:00	Break
11:00 – 11:45	Continue discussing judgments for MBE Subject Matter Outline
11:45 – 12:00	Complete fourth evaluation form

The purpose of this evaluation is to get your feedback about the various components of the content validation workshop. Please do not put your name on this evaluation form. The information from this evaluation will be used to improve future projects. Thank you!

Training

The training consisted of several components: orientation to the workshop, overview of alignment, discussion of cognitive complexity levels, and training on the rating process.

1. Using the following scale, please rate the success of each training component:

Training Components		Rating of Training Success			
		Very Unsuccessful		Very Successful	
a.	Orientation to the workshop	1	2	3	4
b.	Overview of alignment	1	2	3	4
c.	Discussion of DOK levels	1	2	3	4
d.	Rating process	1	2	3	4

2. How would you rate the amount of time allocated to training?
 - a. Too little time was allocated to training.
 - b. The right amount of time was allocated to training.
 - c. Too much time was allocated to training.

Cognitive Complexity Ratings of Job Analysis/O*NET KSAs

3. How confident were you about the cognitive complexity ratings you made?
 - a. Very Confident
 - b. Somewhat Confident
 - c. Not very Confident
 - d. Not at all Confident
4. How did you feel about the time available to make your cognitive complexity ratings?
 - a. More than enough time was available
 - b. Sufficient time was available
 - c. Barely enough time was available
 - d. There was not enough time available
5. Please provide any comments about the training or cognitive complexity ratings that would help in planning future workshops.

Day 1 Content Validity Judgments

6. How confident were you about your Day 1 judgments of content validity for the California Bar Exam?
 - a. Very Confident
 - b. Somewhat Confident
 - c. Not Very Confident
 - d. Not at all Confident

7. How did you feel about the time allocated for making these judgments?
 - a. More than enough time was available
 - b. Sufficient time was available
 - c. Barely enough time was available
 - d. There was not enough time available

8. Please provide any comments about the Day 1 content validity activities that would be helpful in planning future workshops.

Day 2 Evaluation of Essay Questions and Performance Task

9. How confident were you about your Day 2 judgments of content validity for the California Bar Exam?
 - a. Very Confident
 - b. Somewhat Confident
 - c. Not Very Confident
 - d. Not at all Confident
10. How did you feel about the time allocated for making these judgments?
 - a. More than enough time was available
 - b. Sufficient time was available
 - c. Barely enough time was available
 - d. There was not enough time available
11. Please provide any comments about the Day 2 rating activities that would be helpful in planning future workshops.

Day 3 Evaluation of Content Outline for the MBE

12. How confident were you about your Day 3 judgments of content validity for the California Bar Exam?
 - a. Very Confident
 - b. Somewhat Confident
 - c. Not Very Confident
 - d. Not at all Confident
13. How did you feel about the time allocated for making these judgments?
 - a. More than enough time was available
 - b. Sufficient time was available
 - c. Barely enough time was available
 - d. There was not enough time available

Overall evaluation of the content validation workshop

14. Overall, how would you rate the success of the content validation workshop?
 - a. Very Successful
 - b. Successful
 - c. Unsuccessful
 - d. Very Unsuccessful
15. How would you rate the organization of the content validation workshop?
 - a. Very Organized
 - b. Organized
 - c. Unorganized
 - d. Very Unorganized
16. Please provide any comments about the content validation activities that would be helpful in planning future workshops.

Thank you for your contributions to the Content Validation Workshop!

**Summary of the National Conference of Bar Examiners
Job Analysis Survey Results**

January 2013

Prepared by Susan Case, Ph.D.,
Director of Testing, National Conference of Bar Examiners

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Summary of the National Conference of Bar Examiners Job Analysis Survey Results

In 2011 and 2012, Applied Measurement Professionals, Inc. (AMP), conducted a job analysis at the request of the National Conference of Bar Examiners (NCBE). The purpose of the study was to describe the job activities of a newly licensed lawyer in sufficient detail to provide a job-related and valid basis for the development of licensing examinations offered by NCBE.

This summary of the AMP report, *A Study of the Newly Licensed Lawyer*, is divided into the same four sections of a survey that was developed and sent to lawyers, but is reordered here as follows: I. Knowledge Domains, II. Skills and Abilities, III. General Tasks, and IV. Specific Practice Area Tasks. It retains the specific practice area task inventories appearing in the AMP report.

The following pages are organized by section, as outlined above. After the line number for each entry, the first column shows the average significance rating indicated by the respondents (i.e., “Considering importance and frequency, how significant is this entry to your performance as a newly licensed lawyer?”) on a scale of 4 (“Extremely significant”) to 1 (“Minimally significant”). The second column shows the percentage of respondents who indicated that the knowledge domain, skills and ability, or task is performed or used by them in their work. The final column provides a reference back to the full AMP report.

Section I. Knowledge Domains

Line No.	Average Significance*	Percent Performing**	Knowledge Domains	Survey Number
1	3.08	86%	Rules of Civil Procedure	Knowledge 1
2	3.06	88%	Other Statutory and Court Rules of Procedure	Knowledge 3
3	3.01	81%	Rules of Evidence	Knowledge 33
4	2.95	87%	Professionalism	Knowledge 37
5	2.91	89%	Research Methodology	Knowledge 7
6	2.91	84%	Statutes of Limitations	Knowledge 34
7	2.83	93%	Rules of Professional Responsibility and Ethical Obligations	Knowledge 10
8	2.83	86%	Statutory Interpretation	Knowledge 48
9	2.73	81%	Document Review/Documentary Privileges	Knowledge 15
10	2.67	84%	Contract Law	Knowledge 6
11	2.50	61%	Tort Law	Knowledge 12
12	2.50	54%	Criminal Law	Knowledge 14
13	2.47	54%	Rules of Criminal Procedure	Knowledge 2
14	2.40	71%	Other Privileges	Knowledge 16
15	2.38	49%	Personal Injury Law	Knowledge 11
16	2.34	70%	Agency Procedural Rules	Knowledge 5
17	2.33	67%	Law of Business Organizations	Knowledge 13
18	2.32	71%	Administrative Law and Regulatory Practice	Knowledge 4
19	2.31	62%	Principles of Electronic Discovery	Knowledge 43
20	2.30	56%	Real Property Law	Knowledge 32
21	2.29	76%	Constitutional Law	Knowledge 8
22	2.27	49%	Practice Management	Knowledge 85
23	2.26	57%	Basic Accounting	Knowledge 86
24	2.23	52%	Family Law	Knowledge 9
25	2.21	46%	Wills, Probate and Estate Planning	Knowledge 19
26	2.20	67%	Freedom of Information Act/Public Records	Knowledge 45
27	2.19	45%	Insurance Law	Knowledge 83
28	2.18	58%	Alternative Dispute Resolution	Knowledge 71
29	2.16	55%	HIPAA/Privacy Law	Knowledge 57
30	2.15	67%	Legislative Knowledge	Knowledge 30
31	2.11	50%	Landlord-Tenant Law	Knowledge 20
32	2.10	54%	Data Privacy	Knowledge 66
33	2.10	45%	Labor and Employment Law	Knowledge 84
34	2.08	48%	Debtor Creditor	Knowledge 51
35	2.08	49%	Civil Rights	Knowledge 54
36	2.07	65%	Choice of Law and Conflicts of Law	Knowledge 46
37	2.06	53%	Employment Law	Knowledge 17
38	2.06	32%	Uniform Child Custody Jurisdiction and Enforcement Act	Knowledge 61
39	2.04	48%	Secured Transactions	Knowledge 23
40	2.04	43%	Employment Discrimination Law	Knowledge 69
41	2.01	52%	Sales and Leases of Personal Property	Knowledge 24
42	2.01	48%	Bankruptcy	Knowledge 50
43	1.97	53%	Tax Law	Knowledge 35
44	1.96	52%	Negotiable Instruments	Knowledge 25
45	1.96	39%	Securities Law	Knowledge 52
46	1.96	42%	ADA	Knowledge 68
47	1.95	44%	Trust Law	Knowledge 36
48	1.95	41%	Worker's Compensation	Knowledge 62
49	1.95	40%	Consumer Protection Law	Knowledge 65

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section I. Knowledge Domains

Line No.	Average Significance*	Percent Performing**	Knowledge Domains (cont.)	Survey Number
50	1.93	39%	Healthcare Law	Knowledge 58
51	1.93	36%	Juvenile Law	Knowledge 59
52	1.90	39%	Immigration Law	Knowledge 22
53	1.90	41%	Intellectual Property	Knowledge 38
54	1.88	44%	Social Security	Knowledge 67
55	1.86	41%	Government Contract Law	Knowledge 78
56	1.84	42%	ERISA and Other Employee Benefits Law	Knowledge 18
57	1.83	45%	Non-Profit Organizations	Knowledge 49
58	1.83	43%	Employee Benefits	Knowledge 53
59	1.83	35%	Public Employees Discipline and Termination	Knowledge 70
60	1.81	40%	Investment Securities	Knowledge 31
61	1.80	38%	Housing Law	Knowledge 21
62	1.79	43%	Funds Transfers	Knowledge 29
63	1.79	36%	International Law	Knowledge 56
64	1.79	30%	Patent Law	Knowledge 77
65	1.78	35%	Construction Law	Knowledge 64
66	1.76	43%	Bank Deposits	Knowledge 28
67	1.76	38%	Unemployment Compensation	Knowledge 63
68	1.75	42%	Letters of Credit	Knowledge 27
69	1.75	33%	Public Contract Law	Knowledge 81
70	1.69	35%	Mental Health Law	Knowledge 79
71	1.68	32%	Energy	Knowledge 40
72	1.66	28%	Hospital Law	Knowledge 76
73	1.65	32%	Natural Resources	Knowledge 41
74	1.63	32%	Land Use Planning	Knowledge 44
75	1.62	38%	Bills of Lading, Warehouse Receipts, and Other Documents of Title	Knowledge 26
76	1.62	34%	Environment	Knowledge 39
77	1.57	30%	Education Law	Knowledge 47
78	1.56	24%	Indian Law	Knowledge 42
79	1.55	33%	Antitrust	Knowledge 55
80	1.55	29%	Science and Technology Law	Knowledge 82
81	1.51	27%	Public Utility Law	Knowledge 74
82	1.45	22%	Indian Child Welfare Act	Knowledge 60
83	1.42	26%	Transportation Law	Knowledge 72
84	1.42	26%	Communication Law	Knowledge 80
85	1.35	21%	Admiralty Law	Knowledge 73
86	1.25	21%	Bioethics	Knowledge 75

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section II. Skills and Abilities

Line No.	Average Significance*	Percent Performing**	Skills and Abilities	Survey Number
87	3.77	100%	Written communication	Skill/Ability 2
88	3.67	99%	Paying attention to details	Skill/Ability 29
89	3.60	99%	Listening	Skill/Ability 10
90	3.58	99%	Oral communication	Skill/Ability 1
91	3.58	99%	Professionalism	Skill/Ability 3
92	3.56	99%	Using office technologies (e.g. word processing and email)	Skill/Ability 19
93	3.55	98%	Critical reading and comprehension	Skill/Ability 16
94	3.55	97%	Synthesizing facts and law	Skill/Ability 17
95	3.54	99%	Legal reasoning	Skill/Ability 8
96	3.46	99%	Knowing when to go back and ask questions	Skill/Ability 21
97	3.46	99%	Organizational skills	Skill/Ability 26
98	3.44	99%	Working within established time constraints	Skill/Ability 13
99	3.44	99%	Interpersonal skills	Skill/Ability 27
100	3.43	98%	Issue spotting	Skill/Ability 24
101	3.31	98%	Decisiveness	Skill/Ability 18
102	3.30	99%	Answering questions succinctly	Skill/Ability 25
103	3.29	89%	Judgment	Skill/Ability 15
104	3.28	99%	Computer skills	Skill/Ability 22
105	3.26	98%	Electronic researching	Skill/Ability 5
106	3.26	95%	Diligence	Skill/Ability 31
107	3.24	94%	Advocacy	Skill/Ability 9
108	3.22	96%	Fact gathering and evaluation	Skill/Ability 7
109	3.15	97%	Consciousness of personal and professional limitations	Skill/Ability 36
110	3.13	96%	Planning and strategizing	Skill/Ability 32
111	3.10	96%	Information integrating	Skill/Ability 23
112	2.98	97%	Working collaboratively	Skill/Ability 12
113	2.97	87%	Negotiation	Skill/Ability 20
114	2.93	96%	Resource management	Skill/Ability 11
115	2.92	91%	Interviewing	Skill/Ability 28
116	2.87	74%	Courtroom presence	Skill/Ability 33
117	2.85	95%	Creativity	Skill/Ability 35
118	2.84	86%	Attorney client privilege - document reviewing	Skill/Ability 30
119	2.71	68%	Trial skills	Skill/Ability 34
120	2.67	95%	Legal citation	Skill/Ability 4
121	2.31	44%	Jury selection	Skill/Ability 14
122	2.27	91%	Non-electronic researching	Skill/Ability 6

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section III. General Tasks

General Tasks				
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Line No.	Average Significance*	Percent Performing**	Management of attorney-client relationship and caseload	Survey Number
123	3.40	95%	Identify issues in case	Task 2
124	2.86	76%	Establish attorney-client relationship	Task 5
125	2.86	78%	Establish and maintain calendaring system	Task 8
126	2.59	88%	Analyze application of rules of professional conduct and related law	Task 6
127	2.52	36%	Establish and maintain client trust account	Task 9
128	2.51	67%	Evaluate potential client engagement	Task 1
129	2.22	50%	Terminate attorney-client relationship	Task 10
130	2.11	60%	Draft engagement letter	Task 3
131	2.05	49%	Draft initial report and budget for client	Task 4
132	1.99	57%	Draft disclosure of potential conflict of interest and waiver	Task 7

Line No.	Average Significance*	Percent Performing**	Communications	Survey Number
133	3.49	89%	Supervising attorney	Task 19
134	3.48	88%	Client	Task 12
135	3.42	83%	Court	Task 17
136	3.33	88%	Counsel for other party	Task 16
137	3.22	93%	Non-lawyer staff	Task 18
138	2.85	83%	Government agency	Task 15
139	2.80	69%	Prospective client	Task 11
140	2.48	62%	Investigator	Task 13
141	2.43	56%	Law enforcement	Task 14

Line No.	Average Significance*	Percent Performing**	Research and Investigation	Survey Number
142	3.42	96%	Conduct electronic legal research	Task 34
143	3.38	95%	Research statutory authority	Task 30
144	3.31	96%	Research regulations and rules	Task 31
145	3.19	89%	Research judicial authority	Task 29
146	3.10	86%	Conduct document review	Task 26
147	3.04	77%	Interview client and client representatives	Task 20
148	2.91	83%	Conduct fact investigation	Task 25
149	2.75	69%	Interview witness	Task 21
150	2.70	92%	Research secondary authorities	Task 32
151	2.58	61%	Obtain medical records	Task 28
152	2.54	58%	Conduct transaction due diligence activities	Task 24
153	2.53	81%	Request public records	Task 27
154	2.38	69%	Investigate the background of opposing party	Task 23
155	2.29	85%	Research legislative history	Task 33
156	2.16	48%	Investigate the scene of the incident	Task 22

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section III. General Tasks

General Tasks (cont.)				
Line No.	Average Significance*	Percent Performing**	Analysis and resolution of client matters	Survey Number
157	3.46	97%	Analyze law	Task 35
158	3.20	87%	Advise client	Task 37
159	3.13	87%	Develop strategy for client matter	Task 36
160	2.93	77%	Negotiate agreement	Task 43
161	2.81	86%	Draft memo summarizing case law, statutes, and regulations, including legislative history	Task 39
162	2.79	72%	Negotiate dispute	Task 42
163	2.60	65%	Draft demand letter	Task 41
164	2.54	76%	Draft legal opinion letter	Task 40
165	2.53	80%	Draft case summary	Task 38

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks

Line No.	Average Significance*	Percent Reporting**	Administrative Law Tasks (Practice Area for 21 percent of Respondents)	Survey Number
166	3.31	99%	Research agency procedural and substantive rules	Task 44
167	3.12	98%	Review agency opinions and determinations	Task 45
168	2.68	87%	Request documents from administrative agencies	Task 46
169	2.47	74%	Respond to document requests from administrative agencies	Task 47
170	2.67	68%	Prepare application to government agency	Task 48
171	2.60	53%	Advise client on permitting or licensing decisions	Task 49
172	2.59	55%	Advise client regarding benefit eligibility	Task 50
173	2.78	82%	Develop and review administrative records	Task 51
174	3.03	70%	Represent client before administrative agency	Task 52
175	2.85	74%	Draft or respond to petition for review of administrative action	Task 53
176	2.66	52%	Prosecute appeal on denial of eligibility	Task 54
177	2.23	49%	Participate in rulemaking procedures	Task 55

Line No.	Average Significance*	Percent Reporting**	Business Organizations Tasks (Practice Area for 20 percent of Respondents)	Survey Number
178	3.00	87%	Draft documents for formation of business organizations	Task 57
179	2.86	71%	Draft resolutions, written consents, and/or meeting minutes of shareholders and directors	Task 63
180	2.75	86%	Advise client regarding forms of business organizations	Task 56
181	2.67	75%	Draft purchase agreement	Task 59
182	2.54	61%	Draft closing checklist and flow of funds statement	Task 60
183	2.50	71%	Draft non-compete agreement or provisions	Task 65
184	2.46	73%	Draft term sheet or letter of intent for business transactions	Task 58
185	2.46	62%	Evaluate applicability of state and federal securities law	Task 69
186	2.40	47%	Prepare schedules for merger and acquisition transactions	Task 68
187	2.38	67%	Draft employment agreement	Task 67
188	2.27	66%	Negotiate non-compete agreement or provisions	Task 64
189	2.22	55%	Draft merger and acquisition agreement	Task 62
190	2.14	60%	Negotiate employment agreement	Task 66
191	1.99	51%	Negotiate merger and acquisition agreement	Task 61

Line No.	Average Significance*	Percent Reporting**	Civil Litigation Tasks (Practice Area for 43 percent of Respondents)	Survey Number
192	3.25	85%	Draft/respond to motion for summary judgment or other dispositive motion	Task 110
193	3.19	85%	Prepare/respond to request for production (including electronically stored information)	Task 82
194	3.17	79%	Draft answer to complaint	Task 74
195	3.16	80%	Draft summons and complaint	Task 72
196	3.16	92%	Conduct document review	Task 90
197	3.13	85%	Prepare/respond to interrogatories	Task 80
198	3.10	82%	Represent client in court hearing	Task 112
199	3.09	84%	Draft/respond to motion to dismiss	Task 109
200	3.06	82%	Prepare/respond to request for admission	Task 81
201	3.06	84%	Draft/respond to non-dispositive motion	Task 111

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Reporting**	Civil Litigation Tasks (cont.) (Practice Area for 43 percent of Respondents)	Survey Number
202	3.03	82%	Analyze deposition testimony	Task 89
203	2.99	84%	Analyze medical/business records	Task 91
204	2.98	79%	Represent client at court conference	Task 96
205	2.95	84%	Draft proposed order	Task 106
206	2.94	81%	Draft/respond to discovery motion	Task 95
207	2.92	86%	Draft affidavits and declarations	Task 78
208	2.89	74%	Conduct/defend deposition	Task 88
209	2.85	78%	Prepare client for testimony	Task 99
210	2.83	75%	Draft release/settlement agreement	Task 103
211	2.79	76%	Draft settlement proposal	Task 102
212	2.79	64%	Draft/assist with appellate brief	Task 128
213	2.78	58%	Perform direct examination and cross-examination	Task 116
214	2.77	61%	Make objections	Task 118
215	2.76	81%	Draft witness and exhibit lists	Task 97
216	2.75	73%	Draft/respond to discovery deficiency letters	Task 92
217	2.74	75%	Draft and serve subpoena duces tecum	Task 100
218	2.73	80%	Resolve discovery disputes	Task 93
219	2.71	62%	Make trial motions	Task 119
220	2.70	75%	Prepare testimony outlines	Task 98
221	2.70	73%	Draft motions in limine	Task 101
222	2.70	60%	Introduce exhibits	Task 117
223	2.70	54%	Represent client at mediation	Task 133
224	2.69	56%	Communicate with insurer	Task 77
225	2.66	68%	Prepare/respond to request for inspection	Task 83
226	2.66	56%	Draft proposed jury instructions	Task 120
227	2.65	63%	Draft/respond to post-judgment motion	Task 123
228	2.65	52%	Present oral argument	Task 129
229	2.64	53%	Present closing argument	Task 122
230	2.63	76%	Prepare pretrial order	Task 113
231	2.62	53%	Draft mediation statement	Task 132
232	2.60	75%	Draft discovery plan	Task 79
233	2.58	73%	Identify/evaluate expert witnesses	Task 86
234	2.51	53%	Present opening statement	Task 115
235	2.49	41%	Represent client at arbitration	Task 134
236	2.48	65%	Prepare expert disclosure	Task 87
237	2.46	53%	Represent client in post-judgment proceedings and other collection activities	Task 124
238	2.43	54%	Prepare or designate record on appeal	Task 127
239	2.42	38%	Analyze Medicare issues in personal injury action	Task 76
240	2.41	60%	Prepare meet-and-confer letter	Task 94
241	2.38	62%	Draft protective order	Task 105
242	2.37	52%	Prepare/respond to request for independent medical examination	Task 84
243	2.36	42%	Negotiate with subrogation claimants and lien holders	Task 125
244	2.34	62%	Prepare privilege log	Task 85
245	2.34	43%	Select jury	Task 114
246	2.29	44%	Draft demand for arbitration and response	Task 130
247	2.28	46%	Prepare offer of judgment	Task 126
248	2.25	43%	Draft contempt documents	Task 121
249	2.23	58%	Draft removal and remand documents	Task 75

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Reporting**	Civil Litigation Tasks (cont.) (Practice Area for 43 percent of Respondents)	Survey Number
250	2.18	50%	Draft litigation hold letter	Task 104
251	2.17	57%	Draft petition for extraordinary relief	Task 73
252	2.14	50%	Develop "market value" of similar cases in similar venues	Task 70
253	2.12	28%	Draft foreclosure documents	Task 108
254	2.11	59%	Draft confidentiality agreement	Task 71
255	2.04	35%	Draft settlement brochure	Task 131
256	1.89	32%	Draft civil/criminal forfeiture documents	Task 107

Line No.	Average Significance*	Percent Performing**	Commercial Law Tasks (Practice Area for 12 percent of Respondents)	Survey Number
257	3.28	86%	Draft contracts	Task 135
258	3.03	78%	Draft Terms and Conditions for client forms and agreements	Task 136
259	2.82	62%	Draft resolutions, written consents, and/or meeting minutes of shareholders and directors	Task 149
260	2.80	76%	Analyze loan documents	Task 138
261	2.65	54%	Draft closing checklists and flow of funds statements	Task 144
262	2.63	64%	Draft assignment and assumption agreements	Task 148
263	2.62	66%	Draft asset purchase agreements	Task 141
264	2.51	66%	Perform lien, litigation, and bankruptcy filing searches	Task 150
265	2.50	58%	Draft licensing agreements	Task 137
266	2.49	61%	Draft loan documents	Task 139
267	2.48	61%	Draft term sheet letters of intent for business transaction	Task 143
268	2.44	60%	Draft, perfect, or enforce liens	Task 151
269	2.38	45%	Draft merger and acquisition agreements	Task 146
270	2.36	67%	Analyze issues of insurance coverage	Task 140
271	2.25	54%	Draft UCC financing statements	Task 142
272	2.23	45%	Negotiate merger and acquisition agreements	Task 145
273	2.01	38%	Draft bond documents	Task 147

Line No.	Average Significance*	Percent Performing**	Criminal Law Tasks (Practice Area for 18 percent of Respondents)	Survey Number
274	3.55	87%	Conduct plea negotiations	Task 157
275	3.54	73%	Advise client regarding plea options	Task 159
276	3.42	75%	Try misdemeanor case (jury and non-jury)	Task 167
277	3.39	86%	Raise/respond to suppression/evidentiary issues	Task 166
278	3.30	61%	Try felony case (jury and non-jury)	Task 168
279	3.23	80%	Draft/review plea agreement	Task 160
280	3.16	79%	Prepare/present sentencing arguments	Task 172
281	3.05	80%	Evaluate collateral effects of criminal conviction	Task 171
282	3.00	76%	Interview criminal complainant	Task 152
283	2.93	62%	Represent client in probation violation proceedings	Task 176
284	2.87	53%	Represent client in domestic violence/family offense protective order proceedings	Task 165
285	2.84	65%	Represent client at bail hearing	Task 155
286	2.84	69%	Draft jury instructions	Task 170
287	2.75	68%	Conduct proffer negotiations	Task 158
288	2.75	42%	Represent client in license revocation proceedings	Task 162

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Performing**	Criminal Law Tasks (cont.) (Practice Area for 18 percent of Respondents)	Survey Number
289	2.72	75%	Communicate with probation agent	Task 175
290	2.68	62%	Represent client in traffic matters	Task 161
291	2.68	43%	Represent client in juvenile delinquency matters	Task 163
292	2.67	74%	Raise/respond to defendant's mental competency issues	Task 156
293	2.65	49%	Represent client in post-conviction relief proceedings	Task 173
294	2.63	41%	Draft criminal charging documents	Task 154
295	2.53	60%	Conduct pre-charging negotiations	Task 153
296	2.50	35%	Represent client in child protection matters	Task 164
297	2.37	41%	Petition for writ of habeas corpus	Task 174
298	2.22	40%	Litigate property forfeiture issues	Task 169

Line No.	Average Significance*	Percent Performing**	Debtor/Creditor Relations Tasks (Practice Area for 11 percent of Respondents)	Survey Number
299	2.91	82%	Advise client regarding collection options	Task 179
300	2.80	89%	Analyze loan documents	Task 177
301	2.79	62%	Analyze bankruptcy petition and schedules	Task 182
302	2.77	83%	Analyze effects of bankruptcy on enforcement of liens	Task 178
303	2.73	50%	Engage in motion practice in bankruptcy court	Task 188
304	2.68	51%	Draft pleadings in bankruptcy court	Task 187
305	2.65	43%	Represent client in 341 hearing	Task 185
306	2.65	50%	Assess or object to dischargeability	Task 189
307	2.63	45%	Draft complaint for adversary proceedings in bankruptcy	Task 186
308	2.62	63%	Advise client regarding bankruptcy filing options	Task 180
309	2.61	55%	Analyze avoidability of transfers	Task 190
310	2.58	62%	Represent client in post-judgment proceedings and other collection activities	Task 193
311	2.54	45%	Draft bankruptcy petition and schedules	Task 181
312	2.54	45%	Draft debtor's disclosure statement and plan	Task 183
313	2.52	49%	Participate in automatic stay proceedings	Task 191
314	2.46	39%	Draft foreclosure documents	Task 194
315	2.42	42%	Draft claim against bankrupt estate	Task 192
316	2.36	39%	Represent client in bankruptcy committee meeting	Task 184

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Performing**	Employment Law Tasks (Practice Area for 11 percent of Respondents)	Survey Number
317	2.94	72%	File and respond to federal and state discrimination claim	Task 206
318	2.89	73%	Represent client on employment rights and obligations	Task 202
319	2.76	80%	Advise client on discipline and termination issues	Task 198
320	2.76	76%	Analyze client practices and procedures in light of employment laws	Task 200
321	2.74	65%	Conduct witness interviews in light of discrimination claim	Task 205
322	2.57	69%	Advise client on disability accommodation issues	Task 199
323	2.41	57%	Draft employment and non-compete agreements	Task 196
324	2.40	55%	Draft employee handbook and employment policies	Task 195
325	2.39	61%	Advise client on unemployment laws	Task 203
326	2.34	33%	Represent client in collective bargaining matters and related proceedings	Task 208
327	2.33	53%	Draft separation agreement	Task 197
328	2.14	32%	Prosecute/defend workers' compensation claim	Task 207
329	2.08	48%	Determine applicability of workers' compensation benefits	Task 201
330	1.91	29%	Draft/revise appeal of denial of employee benefits (ERISA)	Task 204

Line No.	Average Significance*	Percent Performing**	Environmental Law/Natural Resources Tasks (Practice Area for 4 percent of Respondents)	Survey Number
331	3.15	89%	Research applicability of var. fed. and state environmental programs & procedural rules	Task 210
332	2.66	77%	Perform environmental litigation support	Task 221
333	2.64	53%	Support preparation of comments on proposed environmental regulations	Task 222
334	2.61	55%	Draft FOIA requests	Task 218
335	2.51	49%	Perform environmental liability research in real estate transactional contexts	Task 220
336	2.36	55%	Review and analyze Phase 1 environmental reports	Task 211
337	2.26	70%	Negotiate with regulatory authorities	Task 214
338	2.26	62%	Conduct compliance activities and support client in responding to non-compliance issues	Task 215
339	2.23	53%	Draft permit applications	Task 209
340	2.14	40%	Draft conservation agreements	Task 219
341	2.02	57%	Support client during permit application/review process and communications with regulators and opponents of permit	Task 213
342	2.00	58%	Support client during environmental data/information response requests from regulators	Task 212
343	1.81	43%	Draft insurance coverage opinions	Task 217
344	1.76	49%	Draft response to audit reports	Task 216

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Performing**	Family Law Tasks (Practice Area for 13 percent of Respondents)	Survey Number
345	3.51	86%	Draft property settlement agreement and documents related to spousal support, child support, and child custody/visitation	Task 236
346	3.50	89%	Represent client in support, child custody, and visitation proceedings	Task 230
347	3.49	88%	Represent client in divorce, property settlement, and child custody hearings	Task 235
348	3.31	84%	Prepare petition for custody	Task 237
349	3.17	86%	Draft motion/brief for modification of prior court order	Task 232
350	3.10	80%	Draft motion/brief for interim relief	Task 231
351	3.10	79%	Draft motion/brief for enforcement of prior court order	Task 240
352	2.95	76%	Represent client in domestic violence/family offense proceedings	Task 226
353	2.82	52%	Represent client in juvenile court proceedings	Task 239
354	2.70	70%	Represent client in paternity proceedings	Task 227
355	2.64	69%	Represent client in abuse and neglect proceedings	Task 228
356	2.56	64%	Represent client in termination of parental rights proceedings	Task 229
357	2.29	59%	Prepare adoption petitions	Task 225
358	2.23	35%	Draft special needs trust documents	Task 238
359	2.15	48%	Prepare placement petitions	Task 224
360	2.11	25%	Represent client in Indian Child Welfare proceedings	Task 234
361	2.09	39%	Analyze tribal jurisdiction	Task 233
362	1.98	54%	Draft prenuptial agreements	Task 223

Line No.	Average Significance*	Percent Performing**	Immigration Law Tasks (Practice Area for 5 percent of Respondents)	Survey Number
364	3.55	91%	Review regulations to determine client's eligibility for immigration benefit	Task 241
365	3.51	81%	Evaluate client's criminal record to determine if conviction/crime renders client deportable or excludable	Task 250
366	3.48	90%	Prepare visa applications and asylum petitions	Task 244
367	3.40	79%	Draft immigration and deportation documents	Task 254
368	3.38	74%	Evaluate collateral effects of criminal conviction	Task 251
369	3.37	90%	Review forms submitted in conjunction with immigration benefit petitions	Task 246
370	3.27	87%	Analyze client's eligibility for relief from removal	Task 249
371	3.16	79%	Represent client in deportation or other immigration proceeding	Task 253
372	3.09	81%	Prepare client for and accompany client to interviews by case adjudicators	Task 252
373	3.03	80%	Review agency and ALJ opinions related to immigration benefits denials	Task 255
374	2.88	70%	Assist client with completion of online forms for consular appointments	Task 247
375	2.51	76%	Communicate with law enforcement	Task 248
376	2.36	53%	Audit client's activities to determine compliance	Task 243
377	2.24	43%	Assist employer in determining legality of workforce	Task 242

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Performing**	Intellectual Property Tasks (Practice Area for 7 percent of Respondents)	Survey Number
378	3.14	63%	Review alleged prior art	Task 276
379	3.08	50%	Analyze patentability of invention	Task 264
380	3.04	40%	Draft patent application	Task 266
381	3.02	50%	Draft trademark application	Task 268
382	2.96	62%	Draft cease-and-desist letter	Task 277
383	2.94	72%	Advise client on types of intellectual property protection available for inventions and creations and any gaps in coverage	Task 262
384	2.94	73%	Maintain industry knowledge of intellectual-property-focused industries (e.g., publishing)	Task 281
385	2.89	57%	Negotiate licensing agreement	Task 274
386	2.87	66%	Draft non-disclosure agreement	Task 260
387	2.83	54%	Perform and analyze trademark clearance searches	Task 267
388	2.83	51%	Draft release agreement for use of intellectual property	Task 272
389	2.79	67%	Draft licensing agreement	Task 275
390	2.71	62%	Maintain calendaring system for trademark and patent filings	Task 256
391	2.70	58%	Draft intellectual property assignment agreement for transaction	Task 271
392	2.65	59%	Advise client on maximizing intellectual property portfolio	Task 278
393	2.62	49%	Prepare copyright application	Task 269
394	2.57	60%	Evaluate new technologies' impact on and treatment under existing law	Task 279
395	2.56	53%	Draft intellectual property development agreement	Task 257
396	2.48	47%	Draft work-for-hire agreement	Task 259
397	2.46	56%	Draft website terms of use and privacy policy	Task 261
398	2.46	39%	Identify open-source software licenses and advise client on commercialization of same	Task 273
399	2.45	64%	Advise client on fair use doctrine	Task 270
400	2.44	52%	Review office-specific resources (e.g., Copyright Office circulars)	Task 280
401	2.43	52%	Draft intellectual-property-specific representations and warranties in purchase agreement	Task 258
402	2.38	55%	Prepare intellectual property due diligence checklist	Task 263
403	2.33	45%	Draft invention assignment agreement	Task 265

Line No.	Average Significance*	Percent Performing**	Real Estate Tasks (Practice Area for 10 percent of Respondents)	Survey Number
404	3.23	70%	Draft deed and real estate closing documents	Task 298
405	2.98	75%	Communicate with title agent and other third parties	Task 294
406	2.98	64%	Draft real estate purchase and sale agreement	Task 297
407	2.96	84%	Review and evaluate a title examination/report	Task 293
408	2.96	58%	Conduct real estate closing	Task 296
409	2.92	60%	Represent client in real estate closing	Task 307
410	2.89	55%	Draft closing checklist	Task 295
411	2.89	72%	Draft lease agreement, amendments, and memorandum of lease	Task 300
412	2.85	71%	Represent client in landlord-tenant matters	Task 308
413	2.75	83%	Analyze loan documents	Task 282
414	2.75	46%	Represent client in loan closing	Task 306
415	2.68	70%	Draft power of attorney	Task 287
416	2.64	49%	Draft deeds of trust	Task 310
417	2.62	52%	Draft easements and other servitudes	Task 302
418	2.57	53%	Draft, perfect, or enforce lien	Task 305
419	2.56	75%	Review organizational documents	Task 290
420	2.55	72%	Review and analyze land survey	Task 288

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

Section IV. Specific Practice Area Tasks

Specific Practice Area Tasks (cont.)

Line No.	Average Significance*	Percent Performing**	Real Estate Tasks (cont.) (Practice Area for 10 percent of Respondents)	Survey Number
421	2.40	51%	Represent client in foreclosure proceedings	Task 309
422	2.34	38%	Draft real estate construction agreement	Task 303
423	2.32	60%	Draft loan documents and modifications/amendments	Task 284
424	2.31	55%	Review and analyze environmental reports	Task 289
425	2.31	37%	Draft condominium documents	Task 299
426	2.26	51%	Negotiate with zoning and other regulatory authorities	Task 291
427	2.25	57%	Review insurance certificates	Task 292
428	2.24	44%	Draft operating agreement and division order	Task 304
429	2.23	57%	Negotiate loan document	Task 283
430	2.21	53%	Draft construction/mechanic's lien waiver	Task 286
431	2.14	54%	Draft UCC financing statement	Task 285
432	2.13	37%	Draft land use planning documents	Task 301

Line No.	Average Significance*	Percent Performing**	Wills, Trusts, Estate Planning, and Probate Law Tasks (Practice Area for 12 percent of Respondents)	Survey Number
433	3.32	91%	Draft wills	Task 312
434	3.21	91%	Draft power of attorney	Task 315
435	3.20	85%	Draft healthcare surrogate/healthcare power of attorney	Task 318
436	3.18	91%	Advise client on estate planning matters	Task 311
437	3.15	88%	Draft living will	Task 316
438	3.10	82%	Draft estate plan documents	Task 314
439	3.09	79%	Draft trusts	Task 313
440	2.90	73%	Draft documents for probate proceeding	Task 323
441	2.88	66%	Represent client in probate proceeding	Task 328
442	2.57	52%	Draft closing checklist	Task 324
443	2.57	53%	Prepare/review estate and inheritance tax filings	Task 327
444	2.51	64%	Draft conservatorship/guardianship documents	Task 321
445	2.49	56%	Draft special needs trust	Task 317
446	2.40	55%	Evaluate need for mental competency evaluation	Task 322
447	2.28	45%	Draft claim against estate	Task 325
448	2.17	43%	Draft motion/brief for interim relief	Task 326
449	2.15	49%	Draft prenuptial agreement	Task 320
450	2.09	47%	Draft covenants and restrictions	Task 319

* 1-4 with 4 being extremely significant.

** % reporting this is performed and/or expected of them

O*NET Tasks, Knowledge, Skills, and Abilities

Tasks

T-1	Analyze the probable outcomes of cases, using knowledge of legal precedents.
T-2	Advise clients concerning business transactions, claim liability, advisability of prosecuting or defending lawsuits, or legal rights and obligations.
T-3	Select jurors, argue motions, meet with judges, and question witnesses during the course of a trial.
T-4	Interpret laws, rulings and regulations for individuals and businesses.
T-5	Present evidence to defend clients or prosecute defendants in criminal or civil litigation.
T-6	Represent clients in court or before government agencies.
T-7	Present and summarize cases to judges and juries.
T-8	Study Constitution, statutes, decisions, regulations, and ordinances of quasi-judicial bodies to determine ramifications for cases.
T-9	Prepare, draft, and review legal documents, such as wills, deeds, patent applications, mortgages, leases, and contracts.
T-10	Negotiate settlements of civil disputes.
T-11	Supervise legal assistants.
T-12	Examine legal data to determine advisability of defending or prosecuting lawsuit.
T-13	Evaluate findings and develop strategies and arguments in preparation for presentation of cases.
T-14	Gather evidence to formulate defense or to initiate legal actions, by such means as interviewing clients and witnesses to ascertain the facts of a case.
T-15	Prepare legal briefs and opinions, and file appeals in state and federal courts of appeal.
T-16	Search for and examine public and other legal records to write opinions or establish ownership.
T-17	Confer with colleagues with specialties in appropriate areas of legal issue to establish and verify bases for legal proceedings.
T-18	Perform administrative and management functions related to the practice of law.
T-19	Work in environmental law, representing public interest groups, waste disposal companies, or construction firms in their dealings with state and federal agencies.

T-20	Probate wills and represent and advise executors and administrators of estates.
T-21	Act as agent, trustee, guardian, or executor for businesses or individuals.
T-22	Help develop federal and state programs, draft and interpret laws and legislation, and establish enforcement procedures.

Knowledge

K-1	Law and Government — Knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules, and the democratic political process.
K-2	English Language — Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
K-3	Customer and Personal Service — Knowledge of principles and processes for providing customer and personal services. This includes customer needs assessment, meeting quality standards for services, and evaluation of customer satisfaction.
K-4	Administration and Management — Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.
K-5	Personnel and Human Resources — Knowledge of principles and procedures for personnel recruitment, selection, training, compensation and benefits, labor relations and negotiation, and personnel information systems.
K-6	Computers and Electronics — Knowledge of circuit boards, processors, chips, electronic equipment, and computer hardware and software, including applications and programming.

Skills

S-1	Active Listening — Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
S-2	Speaking — Talking to others to convey information effectively.
S-3	Reading Comprehension — Understanding written sentences and paragraphs in work related documents.
S-4	Critical Thinking — Using logic and reasoning to identify the strengths and weaknesses of alternative solutions, conclusions or approaches to problems.
S-5	Complex Problem Solving — Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions.
S-6	Judgment and Decision Making — Considering the relative costs and benefits of potential actions to choose the most appropriate one.
S-7	Negotiation — Bringing others together and trying to reconcile differences.

- S-8 **Persuasion** — Persuading others to change their minds or behavior.
- S-9 **Writing** — Communicating effectively in writing as appropriate for the needs of the audience.
- S-10 **Active Learning** — Understanding the implications of new information for both current and future problem-solving and decision-making.
- S-11 **Time Management** — Managing one's own time and the time of others.
- S-12 **Social Perceptiveness** — Being aware of others' reactions and understanding why they react as they do.
- S-13 **Monitoring** — Monitoring/Assessing performance of yourself, other individuals, or organizations to make improvements or take corrective action.
- S-14 **Systems Analysis** — Determining how a system should work and how changes in conditions, operations, and the environment will affect outcomes.
- S-15 **Coordination** — Adjusting actions in relation to others' actions.
- S-16 **Instructing** — Teaching others how to do something.
- S-17 **Service Orientation** — Actively looking for ways to help people.
- S-18 **Learning Strategies** — Selecting and using training/instructional methods and procedures appropriate for the situation when learning or teaching new things.
- S-19 **Systems Evaluation** — Identifying measures or indicators of system performance and the actions needed to improve or correct performance, relative to the goals of the system.

Abilities

- A-1 **Oral Expression** — The ability to communicate information and ideas in speaking so others will understand.
- A-2 **Oral Comprehension** — The ability to listen to and understand information and ideas presented through spoken words and sentences.
- A-3 **Written Comprehension** — The ability to read and understand information and ideas presented in writing.
- A-4 **Speech Clarity** — The ability to speak clearly so others can understand you.
- A-5 **Written Expression** — The ability to communicate information and ideas in writing so others will understand.

- A-6 **Deductive Reasoning** — The ability to apply general rules to specific problems to produce answers that make sense.
- A-7 **Inductive Reasoning** — The ability to combine pieces of information to form general rules or conclusions (includes finding a relationship among seemingly unrelated events).
- A-8 **Information Ordering** — The ability to arrange things or actions in a certain order or pattern according to a specific rule or set of rules (e.g., patterns of numbers, letters, words, pictures, mathematical operations).
- A-9 **Near Vision** — The ability to see details at close range (within a few feet of the observer).
- A-10 **Problem Sensitivity** — The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.
- A-11 **Category Flexibility** — The ability to generate or use different sets of rules for combining or grouping things in different ways.
- A-12 **Fluency of Ideas** — The ability to come up with a number of ideas about a topic (the number of ideas is important, not their quality, correctness, or creativity).
- A-13 **Originality** — The ability to come up with unusual or clever ideas about a given topic or situation, or to develop creative ways to solve a problem.
- A-14 **Selective Attention** — The ability to concentrate on a task over a period of time without being distracted.
- A-15 **Speech Recognition** — The ability to identify and understand the speech of another person.

Overview of Content Validation

Content serves as a prioritized source of validity evidence for credentialing (e.g., licensure, certification) examinations (see *Standards for Educational and Psychological Testing*, [AERA, APA, & NCME, 2014]). The process of content validation involves collecting and evaluating evidence alignment of content and response processes (e.g., cognitive complexity, depth of knowledge) with job-related knowledge, skills, abilities, and tasks. Substantive overlap between what is measured by an examination and what occurs in entry level practice is needed to support an argument that the content evidence contributes to valid scores and decisions for the purpose of licensure.

In the content validation study being conducted June 6th-8th, panelists will provide a series of judgments about the evidence of content and response processes for the California Bar Examination. The materials will include results from the most recent National Conference of Bar Examiners (NCBE) job analysis, information from the U.S. Department of Labor's O*NET, exam questions and scoring criteria from the 2016 exam, and the content outline from the Multistate Bar Examination (MBE). The tasks will involve making judgments about:

- Cognitive complexity/Depth of Knowledge – level of response processes for job analysis statements and elements of examination content; and
- Content – fit of score points or subject area topics to job-related content.

Procedurally, these judgments will occur in two phases. Panelists will initially make these judgments independently followed by consensus discussions with the group. This consensus judgment will be recorded by a table lead and used for the analysis.

The findings from the study will be used to evaluate several questions of alignment:

- What is the representation of content and cognitive level of the California Bar Examination score points relative to the knowledge, skill, and task statements of the NCBE job analysis?
- What knowledge and task statements from the NCBE job analysis are NOT covered by the California Bar Exam?
- What California Bar Exam content does NOT align with the knowledge and task statements of the NCBE job analysis?

Following the study, we will prepare a technical report that includes a summary of the alignment findings and results, including evidence of the people, process, results, and decision rules applied during the study.



CALIFORNIA BAR EXAM

Content Validation Workshop

June 6-8, 2017

Chad W. Buckendahl, Ph.D.

PURPOSE OF THE WORKSHOP

- Align test score points and topic areas:
 - Cognitive complexity
 - Content fit
- Communicate results to the Committee of Bar Examiners (CBE)

WHY IS THIS IMPORTANT?

- Support interpretations of candidate performance
 - Want scores to represent important aspects of entry level practice
 - Valid score interpretations
- Professional standards define as a source of evidence for technical quality
 - Content evidence
 - Response processes

WHAT WE ARE NOT ABLE TO CHANGE IN THE WORKSHOP

- Purpose of the examination
- Examination questions
- MBE topics
- Examination grading/scoring criteria

ROLES IN THE PROCESS

- Facilitator
 - Guide panel through standard setting method
- Panelists
 - Use subject matter expertise to evaluate content and cognitive complexity
- California Bar Staff
 - Provide test, policy, and logistics support to panelists and facilitator
- External Evaluator
 - Monitor and evaluate fidelity of the content validation process
- Observers
 - Watch, but not participate or interact with panelists

STEPS IN CONTENT VALIDATION



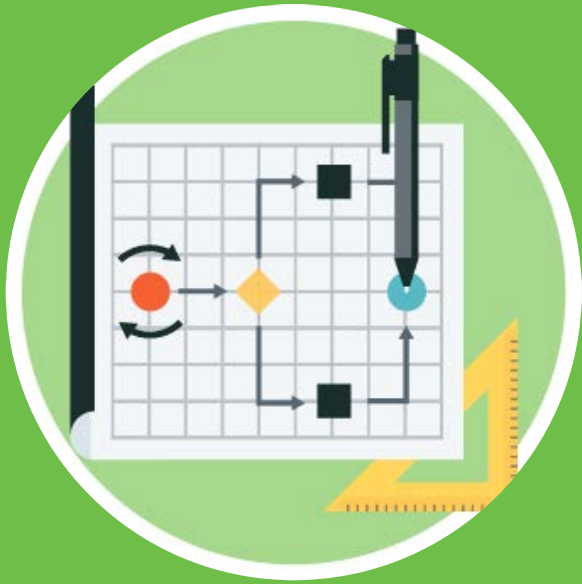
Step 1: Understanding the purpose of the exam

Step 2: Orientation to the structure and scoring of the examination

Step 3: Overview of alignment judgments

Step 4: Initial ratings of content and cognitive complexity followed by consensus discussions

STEP 1: PURPOSE OF THE BAR EXAM



- The purpose of a licensure examination like the California Bar Exam is to distinguish minimally competent candidates from those that could do harm to the public.
- How is this examination different from:
 - Classroom or course assessments
 - Outcomes assessments
 - Certification tests
 - Employment tests

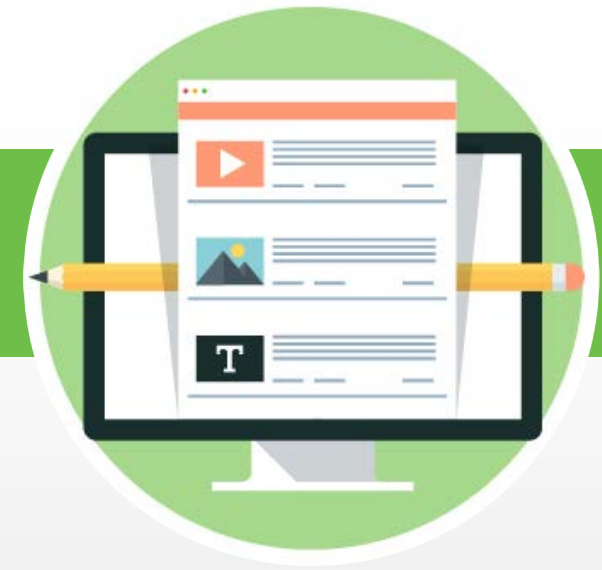
STEP 2: OVERVIEW OF EXAMINATION STRUCTURE



- Components of the California Bar Examination
 - Selected response
 - Multistate Bar Examination
 - Constructed response
 - Essay Questions
 - Performance Task

SCORING CONSTRUCTED RESPONSES

- Scoring criteria/rubrics are question specific
- General scoring structure
 - Issue spotting
 - Identifying elements of applicable law
 - Analysis and application of law to fact pattern
 - Formulating conclusions based on analysis
 - Justification for conclusions



STEP 3: OVERVIEW OF ALIGNMENT JUDGMENTS



- Evaluate cognitive complexity knowledge, skills, and abilities
- Evaluate cognitive complexity of exam score points and topics
- Evaluate content fit of exam score points and topics to knowledge, skills, and abilities

WEBB'S DEPTH OF KNOWLEDGE

- Level 1: Recall and Reproduction
- Level 2: Skills and Concepts
- Level 3: Strategic Thinking
- Level 4: Extended Thinking



LEVEL 1: RECALL AND REPRODUCTION

- Remembering a fact, definition, term, or simple procedure
- Performing a one-step, well-defined, and straight algorithmic procedure
 - Recalling a fact, term, or property
 - Retrieving information from text, a graph, table, or figure

LEVEL 2: SKILLS AND CONCEPTS

- Some mental processing
- Make decisions as to how to approach a problem, more than one step
 - Solving a problem involving application and/or reasoning
 - Retrieving information from text, a graph, table, or figure AND using it to solve a problem
 - Providing a justification for steps in a solution process

LEVEL 3: STRATEGIC THINKING

- Deep knowledge using reasoning, planning, and using evidence
- Complex and abstract
 - Multistep
 - Describing, comparing, and contrasting solution methods
 - Providing domain specific justification

LEVEL 4: EXTENDED THINKING

- Very complex
- Requires complex reasoning, planning, developing, and thinking
- Usually observed over an extended period of time
- Not an intended component of licensure or most education examinations

STEP 4: ALIGNMENT PROCESS

- 1. DOK of the knowledge, skill, or ability
 - NCBE practice analysis/O*NET
- 2. DOK of the score point or topic area
- 3. Content match of score points or topic areas
- How does the item fit within the standard?
 - **Complete/Partial Fit** – significant portion or all of the content fits within a knowledge, skill, or ability
 - **Slight/No Fit** – only a small portion or none of the content fits



STEP 4 (CONT.): OPERATIONAL ALIGNMENT JUDGMENTS

- 5 essay questions (first one facilitated as a group)
- 1 performance task
- MBE topics
- Independent judgments followed by consensus discussion

LIMITATIONS/NEXT STEPS

- No access to the MBE items; limited to topics
- Evaluation of content sampling plan for the Essay Questions and Performance Tasks
- Evaluation of content for the Bar Exam or the MCLE



CONFIDENTIALITY AND NONDISCLOSURE

- Content validation/alignment process is published information and can be shared
- Results of judgments and discussions cannot be shared until the final technical report becomes public

SUMMARY

- Provide independent information to the Committee of Bar Examiners regarding the alignment of the content and response processes of the California Bar Exam to knowledge, skills, and abilities for entry level practitioners
- Thank you in advance for your hard work!

Appendix C – Evaluation Comments

Each panelist completed written evaluations of the content validation process that included several open-ended response questions. The responses provided to each are included below.

Day 1 – Training and DOK Ratings

- Civ[il] Pro[cedure] should be a "3"
- Chad explained things very well and moderated and kept the discussions on pace.
- I think a more in-depth discussion up front about minimal competent lawyer would help with context.
- This was a difficult task for building consensus, largely due to vague and ambiguous terms that were being rated using terms/ratings that were also difficult to define/understand/read agreement about. That said, the process was enlightening and thought-provoking. Thanks for facilitating.
- The job analysis was so BAD, it was useless to do this task. [The job analysis contained] overlap, inconsistency, unclear terms, wouldn't be a minimally competent document.
- Examples illustrating the knowledge levels would be helpful to establish a baseline early on.

Day 1/2 – Content Validation Judgments

- Very good discussion.

Day 2/3 – Content Validation Judgments

- Starting with a large [concept] for each category was helpful in narrowing down. A whiteboard might be more effective/helpful.
- [Sufficient time was available] with the extension into Day 3.
- Having more than one performance test which assessed different skills (i.e., objective vs. persuasive vs. communications with a client/opposing counsel) would be helpful and provide additional information.
- I did feel that some of the ultimate skills we selected may have been subsumed within others and therefore it was difficult to break down, but ultimately I felt good about the final consensus.
- The required use/application of artificial constructs can be frustrating; many overlap. Devising a way to manipulate or modify categories would be very helpful.

Day 3 – Content Validation Judgments and Overall Evaluation

- The MBE section was unclear as to how it would actually affect the Bar.
- Discussion/evaluation of the relative weights of the different components of the Bar Exam i.e. Essay/PT/MBE [would be helpful].
- I felt the MBE portion was difficult to assess without having the questions. Overall, I felt the group was good and we came to consistent conclusions and I felt confident in our results.



Summary of group feedback about the design of the exam¹⁸

Suggestions for elimination

- Remedies (already part of Torts, Contracts, Real Property)

Suggestions for addition

- Skills, additional performance task

Suggestions for MCLE

- 1st year: Professional Responsibilities
- 1st year: Practice Management
- Business Associations
- Wills and Succession
- Trusts

¹⁸ Note that the summary information provided here was based on a brief discussion with panelists during the workshop and should not be interpreted as the outcome of a comprehensive program design activity that would evaluate the structure and substance of the examination.



Memo

To: Ron Pi, State Bar of California
From: Mary J. Pitoniak, Independent Consultant
Date: August 13, 2017
Re: Evaluation of Content Validation Study Conducted for State Bar of California

Overview

This memo represents my evaluation of the content validation activities for the California Bar Exam conducted by Chad Buckendahl of ACS Ventures for the State Bar of California. Some of the observations contained herein were also provided in my memo of May 8, 2017, regarding the plans for the workshop prior to its being conducted.

This memo is framed in terms of four general sources of validity evidence: procedural, internal, external, and utility (Davis-Becker & Buckendahl, 2017). In some cases I will reference guidelines developed for standard setting that I believe are also relevant for this content validation workshop.

The report referred to in this memo is Buckendahl (2017), which is a draft report. My memo may be updated if relevant portions of the Buckendahl report are revised.

Procedural Evidence

Procedural evidence from this meeting includes the three areas outlined by Davis-Becker and Buckendahl (2017)—panelists, method, and process. In addition, I include other two sources of evidence typically used for standard setting studies—explicitness and documentation (Kane, 1994, 2001; see also Hambleton & Pitoniak, 2006).

1) Panelists

Selection of Panelists

In terms of panelists, I noted my concern when reviewing the plan that the only target for panelist demographics was length of practice, specifically the number of recently licensed attorneys vs. experienced ones who supervise entry-level attorneys. The draft report also noted that some panelists had been selected to represent the Faculty/Educator category (panelists who are employed at a college or university). Generally panelists are selected in relation to other criteria as well, such as gender, area of the state, etc., and the characteristics obtained for the panel are then compared against them. No such characteristics were set in advance or reported for this workshop. Neither were target number of panelists in each of the three

categories specified. However, the total number of panelists was sufficient for this activity; Davis-Becker and Buckendahl (2013) note that the Webb (2007) method has typical panel sizes of 5–8 panelists. This study had 10 panelists.

A decision faced during panelist selection for any licensing exam is whether to include panelists who have previously been closely involved with the examination. In the context of standard setting, Raymond and Reid (1991) discuss the advantages and disadvantages of including what they term “members of the existing examination committee” (p. 134). Advantages include sensitivity to the factors that influence item performance, a genuine interest in the process, and possession of knowledge of the items and content specifications: “in short, examination committees are experts who know what to expect of items and examinees” (p. 134). However, they note that some agencies have policies that specifically exclude such individuals from the standard setting process so that the standard-setting group is totally independent of the test development process. The examination committee members may also be viewed as having expectations or biases that could unfairly influence their ratings. Raymond and Reid acknowledge that this is a reasonable concern but state that in their experience they have found that such members provide similar judgments to non-members.

At the content validation meeting described in this memo, one panelist had extensive experience with the California Bar Exam, having served as the Chair of the Examination Development and Grading (EDG) Team. In my opinion, his experience, coupled with his outspoken nature, may have influenced other panelists (he also participated in the standard setting study, at which I had the same concern). Similarly, one of the panelists at this meeting had previously served as the Director for Examinations at the State Bar of California for nine years, which could have given his opinions more weight; he was also rather outspoken with his views compared to other panelists.

While Raymond and Reid (2001) indicate that in their standard setting experience the judgments did not differ across exam committee members vs non-members, in my opinion given the high-profile nature of this content validation activity, any appearance of bias would best have been avoided by not having any members of the committee involved. Of note is that Davis-Becker and Buckendahl (2013) list as one of their threats to validity of content validation in the procedural category “panel members were part of the item writing team raising concerns about conflict of interest” (p. 26).

However, as Cizek and Bunch (2007) indicated in relation to standard setting, “the specification of the pool of participants in a standard-setting procedure is first a policy matter. As we have recommended vis-à-vis other policy matters in standard setting, we believe that the entity responsible for setting standards should explicitly discuss and adopt a position on the issue in advance of standard setting” (p. 50). It is my understanding that the policy makers, the California Supreme Court, weighed in in some manner to the effect that having panelists with some direct experience with the Bar Exam would be useful for the content validation workshop, which is of course their prerogative.

2) Method

Neither the proposal nor the plan presented in advance of the study explicitly described the method that would be used in the study. For example, the proposal refers to a “cognitive complexity framework (e.g., Bloom’s, Webb’s Depth of Knowledge), but leaves the choice of method open.

The report indicates that content and cognitive complexity were as defined by Webb's (1997) Depth of Knowledge, but does not describe why the method was chosen and what alternatives were available. Davis-Becker and Buckendahl (2013) provides descriptions of available methods, and it would have been helpful if the report had touched at least briefly on other approaches and why Webb's was chosen. That said, the Webb method is sound and has been often used for alignment studies, and is an appropriate choice for this workshop. It is worth noting that Davis-Becker and Buckendahl (2013) observe that the Webb method usually relies on data analysis for the final alignment ratings, though others use a consensus approach. In this study a consensus approach was used, which is a departure from how the Webb method is usually implemented.

An additional point is that, as noted in the report, it is unfortunate that panelists were not able to use items from the MBE:

One threat to the validity of the results is the lack of direct evidence from the MBE. Content validation studies generally involve direct judgments about the characteristics of the examination content. Because examination items (i.e., questions) from the MBE were not available for the study, panelists were asked to make judgments about the content evidence from subject matter outlines provided by the NCBE. There is then [sic] assumption that items coded to these sections of the outline align as intended. (Buckendahl, 2017, p. 10).

3) Process

Training of Panelists

Two slides provided the context for the meeting. The first slide conveyed that the purpose was to “align test score points and topics areas: cognitive complexity and content fit” and “communicate results to the Committee of Bar Examiners.” The second slide explained why the activity is important, followed by a slide outlining what could not be changed at the workshop. An additional slide outlined the roles of the attendees. The next slide outlined the steps in content validation. Three slides followed that focused on the purpose of the bar exam, an overview of the examination structure, and the general scoring framework. There were eight slides describing the method to be used for alignment judgments.

I tend to prefer more text-heavy slides for those panelists who are visual learners, vs. providing limited text and communicating the information verbally. Graphics would also have been useful for this, as well as other, topics.

Panelists' Evaluation of Process

Design of Evaluation Forms. The original agenda had panelists completing two evaluation forms, with the first being given at mid-day on the first day of the workshop, after the practice activity, and the second at the end of the workshop. In my May 8 memo I suggested that the first evaluation form have panelists indicate on the first survey, done after the practice activity, whether they felt confident in their ability to perform the task so that remediation could be done before providing content validation judgments for the first essay question. I also strongly suggested having additional evaluations, such as at the end of the first day, in order to allow for targeted remediation the next morning. Showing panelists that evaluation feedback is being reviewed and addressed can increase their confidence in the process as well as answering any questions they may have. I also suggested having an evaluation at the end of the second day.

There were four evaluation forms administered during the workshop, which was a useful modification to the design. However, the forms were rather short, and I would have liked to have seen additional questions. For example, on the first form a question asking how clear they were with the purpose of the meeting would have been informative.

On the final evaluation form panelists were asked “Overall, how would you rate the success of the content validation workshop?” However, it is not clear to me what the panelists would view as “success.” Question 1 on the first evaluation form also asked about success of four activities: orientation to the workshop, overview of alignment, discussion of DOK levels, and the rating process. Again, I am not sure how the panelists would define success and if they would define it similarly.

The ratings scales used for the same category of questions also had some inconsistencies, making it difficult to make valid comparisons across questions in the same category:

- “Success” questions: Question 1 on form 1 had labels only for the ends of the rating scale (i.e., very unsuccessful and very successful), whereas question 14 on the final evaluation form had all four points on the scale labeled (very unsuccessful, unsuccessful, successful, and very successful).
- “Time” questions: Question 2 on form 1 had three points on the scale (too little time, the right amount of time, and too much time). The other questions related to time (questions 4, 7, 10, and 13) had four points on the rating scale (not enough time, barely enough time, sufficient time, more than enough time).
- “Confidence” questions: The questions asking about confidence had the label “somewhat confident” for rating point 3. Other questions (with the exception of questions 2 and 3) had an unqualified label for that rating point, such as “sufficient,” “successful,” and “organized.” It would have been more consistent to have rating point 3 be labeled as “confident” rather than “somewhat confident.”

Because of these rating scale inconsistencies, comparisons of median ratings across the questions could be misleading. More appropriate interpretations could be made by looking at the frequency of responses to each questions and within the same category (with the exclusion of questions 1 and 2, which had different labels than the other questions in that category).

Feedback Obtained. Most of the questions on the evaluation forms fell into three categories: timing, confidence, and success. It is of interest whether any panelists provided negative responses to any of the questions (the ACS report provides the full range of responses to each question; the breakdown of frequency between the two positive responses is not provided in this report).

Timing questions were asked about training and cognitive complexity ratings on the first day, and content validity ratings on each of the three days. Nine panelists indicated that there was barely enough time for training. One indicated that there was barely enough time for cognitive complexity ratings on the first day. In all other cases, panelists indicated that there was sufficient or more than enough time for ratings.

Four questions asked about panelists’ confidence levels; one about cognitive complexity ratings and three about content validity ratings. In general, one expects panelist confidence to grow over the course of the workshop, which was the case. One panelist indicated they were not very confident in their cognitive complexity ratings, and one indicated that they were not at all confident in the first day’s content validity ratings. On subsequent days all panelists felt somewhat confident or very confident in their content validity ratings.

Several questions asked about the success of different activities conducted during the workshop. One question asked about four different aspects of the training—orientation, overview of alignment, discussion of DOK levels, and rating process. For each of those aspects, one panelists gave a rating of 2 (which had no label, but presumably was interpreted as somewhat unsuccessful). One question asked about the overall success of the workshop; all panelists rated it as successful or very successful.

One question that does not fall into the previous categories asked about the overall organization of the workshop. All panelists rated it as organized or very organized.

Panelists were also asked open-ended questions on each of the four evaluation forms. (Because the forms were anonymous, it is not possible to know whether the same or different panelists provided responses on different forms throughout the process.)

- There were several comments voicing frustration with working with the job analysis:
 - “This was a difficult task for building consensus, largely due to vague and ambiguous terms that were being rated using terms/ratings that were also difficult to define/understand/read agreement about. That said, the process was enlightening and thought-provoking. Thanks for facilitating.” (evaluation form 1)
 - The job analysis was so BAD, it was useless to do this task. [The job analysis contained] overlap, inconsistency, unclear terms, wouldn't be a minimally competent document.” (evaluation form 1)
- One panelist indicated that it was difficult to evaluate the MBE on the basis of a content outline, while feeling positive about the overall outcome:
 - “I felt the MBE portion was difficult to assess without having the questions. Overall, I felt the group was good and we came to consistent conclusions and I felt confident in our results. (evaluation form 3)

4) Explicitness

Explicitness refers to the extent to which the study's activities were clearly and explicitly described in advance of implementation (van der Linden, 1995). As I noted in my May 8 memo, my concerns about the explicitness of the workshop plans fell into two categories, as described in the following sections.

Lack of One Comprehensive Document

Planning information was spread across multiple documents.

- *Proposal to Conduct a Content Validation Study for the California Bar Exam*, dated March 10, 2017
- *California Bar Content Validation Plan*, dated April 4, 2017
- *California Bar Exam Content Validation Workshop Agenda—DRAFT*, dated April 3, 2017

Ideally, the information about how the workshop would be conducted would have been in one comprehensive, detailed document. Such a document would have facilitated my review and evaluation of all of the different design designs that have been made. It would also have enhanced my ability to do a better evaluation of the procedural validity of the workshop now, after it had been conducted. As it stood I needed to check three different sources for information.

Lack of Detail

As I noted in an email on March 14, 2017 to Leah Wilson (Chief Operating Officer) after reviewing the proposals, to be able to evaluate evidence for procedural validity, the design, or plan, has to be thorough enough so that a reviewer could evaluate the extent to which the procedures were carried out as intended. Generally plans are detailed enough that they can be used as the basis for the technical report. An additional consideration is whether a future study could use the same procedures using the technical report as a basis, thus ensuring consistency across implementations.

I had thought that perhaps the proposals provided were less detailed since they were a general outline of the work. However, the subsequent documents did not provide additional detail in the following areas:

- Targets for panelist demographics, beyond differentiation between recently licensed attorneys and experienced ones who supervise entry-level attorneys. For example, targets could be set for gender, area of the state, etc., and the characteristics obtained for the panel would be compared against them.
- Description of any materials to be sent in advance, such as the agenda, purpose of the workshop, etc.
- More detailed description of the exam materials (content assessed, item types, etc.) and the rubrics
- Indication of the type of information that will be included in the technical report (to be sure it is collected during the study)
- More information about the validity criteria that would be used for evaluating the results of the study

5) Documentation

This criterion refers to extent to which features of the study are reviewed and documented for evaluation and communication purposes.

One component of documentation relates to the description of the procedures used. As I noted above under the explicitness criterion, I think more detail could have been provided in the plans. Now that the study has been conducted, I think the report should include more detail so that in the future the method can be clearly understood and, if necessary, replicated based on the documentation. As it stands it is difficult for the reader to know exactly what the tasks consisted of (e.g., the specific instructions that panelists were given).

Also, since the author of the report was a co-author of Davis-Becker and Buckendahl (2013), it would have been useful for an appendix to provide responses to the 18 questions provided in Table 1 of that publication.

Internal Evidence

Davis-Becker and Buckendahl (2013) list four sources of internal validity evidence--analysis of panelists' independent ratings, estimates of agreement among panelists/reliability, determination of final alignment results, and panelists' evaluation of the final results.

Although panelists did provide initial independent ratings, those data were not provided in the report and thus no reliability estimate can be calculated. Final ratings were obtained through consensus. As the report observes, though this does not indicate that panelists were unanimous in their views, they did agree to the outcomes during the discussion and did not indicate any unease with this report in the evaluations.

In terms of panelists' evaluation of the final results, no question directly addressed this issue. Panelists did indicate confidence in each day's ratings, particularly for days 2 and 3. However, the only question related to overall outcomes referred to the "success of the workshop." As I noted above, I do not see this as a very useful question. Ideally the panelists would have been asked something more direct about the specific outcomes of the workshop vis-à-vis alignment.

External Evidence

According to Davis-Becker and Buckendahl (2013), there are four sources of external evidence: results from separate panels, results from application of multiple methods, results from other applications of content analysis, and intended alignment of items to test content.

There were not separate panelists in the study, nor were there multiple methods. Strictly speaking there were no separate applications of content analysis.

According to Davis-Becker and Buckendahl (2013), the fourth source, intended alignment of items to test content relates to the question of whether "the results of the alignment study converge with the blueprint and the intentions of the test developer" (p. 26). The report describes how the NCBE job analysis and the O*NET categories were used as sources of external evidence. However, it does not clearly state the degree to which the alignment referred to in Davis-Becker and Buckendahl was achieved, which would ideally be rectified in the final report.

Utility

Davis-Becker and Buckendahl (2013) list three sources of evidence related to utility: interpretation and use of test-level results, interpretation and use of standard-level results, and interpretation and use of item-level results.

The report notes that "evidence of utility is based largely on the extent to which the summative and formative feedback can be used to inform policy and operational decisions related to examination development and validation" (p. 10). It concludes that the study results suggest alignment between the content and cognitive complexity of the exam and expectations for entry-level attorneys. I think a more lengthy discussion of utility in the final report would be beneficial.

Conclusion

Although both the plans and the report could be more detailed, in general the study was conducted in a reasonable fashion using established methodology. The inability of the panelists to review actual MBE items, having instead to rely on a content analysis, was unfortunate. Greater transparency of the content of the MBE as compared to the California-specific exam would have been helpful. In general, however, the workshop yielded useful information about the alignment of the exam and observations about gaps in coverage.

References

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August 7, 2017

Ron Pi, Principal Analyst
Office of Research & Institutional Accountability
The State Bar of California
180 Howard Street, San Francisco, CA 94105

Dear Mr. Pi:

Although the National Conference of Bar Examiners' (NCBE) job analysis and the California Bar Exam (CBE) Content Validation have been conducted, it is highly recommended that The State Bar conduct a comprehensive occupational analysis (OA) of the practice of law by California attorneys. Given that a state-specific OA does not appear to have been conducted, it is critical to have this baseline for making high-stakes decisions (e.g., determining content to be measured on the CBE; creating a common frame of reference for a Minimally Competent Candidate when establishing passing scores; providing preparation and training information to candidates and schools).

A California-specific OA should be conducted using California attorneys to develop and rate task and knowledge statements. The OA survey sample should be large enough to be representative of California practice and attorney demographics. Further, the results of a California-specific OA should then describe the relationship and relative importance of California practice content and entry-level performance expectations.

Finally, an audit of the Multistate Bar Exam program and a gap analysis of the NCBE job analysis can be performed. This sequence of steps should provide stronger evidence to support the validity of pass/fail decisions.

As The State Bar continues to explore possible causes of low pass rates, opportunities to educate stakeholders about entry-level expectations, psychometric guidelines and technical standards should be pursued. It is my understanding that the actions taken by The State Bar are not intended to necessarily make the exam easier but rather to ensure measurement of current, entry-level performance for public protection. These actions are consistent with validation efforts taken by other licensing examination programs.

If you have questions about these recommendations, please contact me at (916) 574-7956.

A handwritten signature in cursive script that reads 'Tracy A. Montez'.

Tracy A. Montez, Ph.D., Chief
Division of Programs & Policy Review