

## TOWARD MEANINGFUL REFORMS IN THE BAR EXAMINATIONS

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Admission to the bar through a system of written examinations is a uniquely American tradition, which was transplanted into the Philippines in the early 1900's.<sup>1</sup> Most of our bar examination procedures and practices remain the same as they were when bar examinations were first introduced in this country, largely through the efforts of Justice E. Finley Johnson and the American Bar Association of the Philippine Islands.<sup>2</sup> These include the appointment by the Supreme Court of an *ad hoc* Committee on Bar Examinations chaired by a member of the Court, the pure essay-type of questions, the assignment of a single bar examiner in each test area, the use of weighted averages in grading, the provision for adjusting the passing standard, and the anonymity of the bar examiners.

Over the years, the changes in the bar examinations were essentially structural or procedural in scope, rather than substantive or methodological in nature. For example, the membership of the Committee on Bar Examinations, three in the beginning in 1901, was increased to five in 1909 and then to eight in 1940; while the subjects were increased from six<sup>3</sup> in 1906, to seven<sup>4</sup> in 1916, and then to

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\*Associate Justice, Supreme Court of the Philippines and Chair, Committee on the 2002 Bar Examinations. I gratefully acknowledge the assistance of my son, Roger L. Mendoza, Ph. D., Almarin Phillips Associate Professor of Economics, Drexel University, in the preparation of this paper, particularly Part III on the calibration method as used for grading essay examinations in state bar examinations in the United States, and in arranging my meetings with officials of the Educational Testing Service (ETS) at Princeton, New Jersey and the New Jersey Board of Bar Examiners at Trenton, N.J., on October 7, 2002. I want to thank Robert B. Haller, Ph.D., John Dumont, Ph.D., John H. Yopp, Ph.D., Thomas Ewing, Margaret J. Murphy, Ph.D., and Susan Chyn, all of the ETS, for their warm reception and helpful suggestions. I am equally indebted to Laura S. Brooks, Esq., and Audrey Matissa, Esq., both of the New Jersey Board of Bar Examiners at Trenton, N.J., for patiently explaining some of the procedures of the N.J. bar examination. As a result of my conferences with these officials, I received confirmation of the validity of some of the ideas in this paper which had been gestating in my mind for several years.

<sup>1</sup> During the Spanish regime, the licensing of attorneys was based on an individual's attainment of the degree and title of *Licenciado de Juridicos* (Licentiate in Law), or its equivalent, followed, in many instances, by a period of legal apprenticeship. See also DEAN C. WORCESTER, *THE PHILIPPINES: PAST AND PRESENT* 57-59 (1914).

<sup>2</sup> *Archival Collection of Letters of Elias F. Johnson*, Bentley Historical Library, The University of Michigan, Ann Arbor, Michigan. Before coming to the Philippines Mr. Justice Johnson was a member of the Board of Education and Bar Examiners of Michigan. He was the longest serving member of the Philippine Supreme Court (1903-1932).

<sup>3</sup> These are: Civil Law, Civil Procedure, Mercantile Law, Criminal Procedure, Private and Public International Law, and Practical Exercises.

eight<sup>5</sup> in 1922. In 1964 the coverage of the bar examinations was revised by the addition of some subjects<sup>6</sup> and the combination of existing ones.<sup>7</sup> In 1913 the tradition of determining the bar "topnotcher" was begun. In 1923 this was expanded to the "Top Ten" examinees. The office of the deputy clerk of court and bar confidant was established by the Supreme Court in 1926. In 1940 the bar examinations became a four-day series of examinations.

For almost a century now, the bar examinations have been the primary gauge of an applicant's preparation for the practice of law in this country. It is inconceivable that some other mechanism can be devised in the near future to replace the bar examinations. Thirty years ago, a proposal was made for the abolition of the bar examinations and the establishment in their place of a system of accreditation under which only graduates of accredited law schools would be admitted to law practice. This proposal somewhat resembles the system of licensing attorneys, based on the attainment of an academic degree, during the Spanish regime.<sup>8</sup> The proposal, while reported to have gained adherents shortly after it was made in 1975,<sup>9</sup> in the end fizzled out. Yet, the bar examinations process, like any other institution, is not without its shortcomings. Significant developments in the field of educational testing and measurement,<sup>10</sup> as well as in the administration of bar examinations elsewhere, particularly in the United States,<sup>11</sup> underscore the need to

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<sup>4</sup> These are: Civil Law, Mercantile Law, Criminal Law, Political Law, International Law, Remedial Law, and Legal Ethics and Practical Exercises.

<sup>5</sup> By adding Land Registration and Mortgages.

<sup>6</sup> These are: Labor Law and Taxation.

<sup>7</sup> Political Law and Public International Law were made one, while Land Registration and Mortgages was merged with Civil Law, as was Private International Law.

<sup>8</sup> *Supra* note 1. In the United States, graduates of law schools in the State of Wisconsin, approved by the American Bar Association, are exempted from taking the Wisconsin bar examinations. This is referred to as the "diploma privilege" in admission to the Wisconsin state of bar. See Rules on Admission to the Bar of the State of Wisconsin, SCR 40.02.

<sup>9</sup> The proposal was made by Justice, later Chief Justice, Fred Ruiz Castro in 1975, following the example of Indonesia. See IRENE R. CORTES, *Legal Education: The Bar Examination as a Qualifying Process*, 53 PHIL. L. J. 130, 144, 146 (1978). An opposition to the proposal may be found in JUSTO P. TORRES, JR., *Legal Education: The Philippine Experience*, 1 UNIV. EAST L. J. 18, 32 (1976).

<sup>10</sup> These include, among other things, the evolution and development of standardized tests in the United States since the early 1950's. The inclusion of a non-graded equating section and the scaling of scores constitute some of the basic features of standardized tests administered by various institutions in the United States.

<sup>11</sup> Some of the developments in the administration of the bar examinations in the United States since the 1960's and 1970's include the employment of multiple readers per testing subject, the multiple-choice questions of the written examinations, the use of the calibration method, the provision for re-grading of conditional failures, and the provision for character investigation.

The current bar examination practice in the United States is described in a recent literature:

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The sole means of initial entry to the profession in forty-nine states and most territories is a two-day pencil and paper examination, written and graded by persons who are, or are supervised by, bar examiners. The bar examiners themselves are generally chosen and supervised by a state's highest court. Over the years, a National Conference of Bar Examiners (NCBE) has exerted increasing influence, developing standardized tests which individual states may purchase. These tests are intended to promote consistency and validity in scoring. The NCBE's dominant product is the MultiState Bar Examination (MBE), a one-day, two hundred question multiple choice examination, which tests six areas of the law. MBE questions do not, and are not intended to, test the law of the state in which the bar examination is administered. Rather, successful takers are expected to apply multistate law, allegedly the majority view of the application of legal principles. With 1.8 minutes per question, an applicant is required to "ignore refinement and pick the proper response by drawing upon that assemblage of 'majority' rules, 'traditional rules' and 'trends' which she presumably carries in her head."

The second day of bar examinations is generally devoted to essay questions. The essays may be created by bar examiners of the state of administration to test that state's law, or by the NCBE. If created by the NCBE, the state graders may choose to use the NCBE's answers based on "majority law" or to grade based on local state law. As a supplement to the essay portion of the exam, many states have adopted one or more "performance test" questions, also developed and written by the NCBE. Originally more ambitious and comprehensive, performance test questions are now ninety minutes in length, and one or two may be included with the more traditional essay questions. Unlike the state essays, these questions, in theory at least, do not depend on memorization, but require the applicant to "perform" a lawyering task (like writing a legal memo or drafting an opinion) based on a closed library of facts and authorities provided by the examiners. By July 2003, twenty-nine states will include one or more MPT questions on their bar exams.

In most states, the scores of the first and second days of the bar examination are combined. The passing score, determined by the bar examiners, is generally derived from the total.

In addition, applicants for admission in all but three states must successfully complete the Multi-State Professional Responsibility exam (MPRE), also developed by the NCBE. The MPRE, allegedly testing the complex and nuanced areas of legal ethics and professional responsibility, is, like the MBE, an easily graded but hardly subtle fifty-question multiple choice test. Unlike the two-day bar exam, which is offered after graduation from law school, the MPRE is generally taken in the second year of law school and is scored separately. Like the bar exam, it may be repeated until a passing score has been obtained.

Finally, after successfully completing the MPRE and the state's two-day bar exam, applicants must pass a "character and fitness" examination, usually conducted by lawyers (not bar examiners) named and supervised by the state's court system.

These three "tests" comprise the gateway to the profession for law school graduates. Once admitted, with minor exceptions, one is permitted to practice law until death or disciplinary action resulting in suspension or disbarment. Although an increasing number of states are suggesting or requiring participation in continuing legal education, a lawyer, once admitted, is never again tested on her continuing competence. Nor is there any limitation on what kind of law an attorney is permitted to practice.

introduce practical reforms in the Philippine bar examinations arising from the following concerns:

- The reliability of the bar examinations as a test of professional competence when examinees are tested solely on the basis of essay-type questions.
- The lack of consistency in grading procedures.
- The question of subjectivity or bias arising from the formulation of test questions and the reading and marking of test answers by a single individual (the bar examiner) in each test area
- Significant year-to-year variations in the level of difficulty of the examinations which, in effect, “penalize” or “reward” examinees, as the case may be.
- The time it takes to administer the bar examinations and release its results.
- The need for computerization or automation to facilitate testing, grading, and reporting of test results.
- The insufficient determination of an examinee’s character and fitness for admission to the Bar.
- The need for a permanent bar examining authority with a tenured membership.

With the goal of making the bar examinations a more reliable, equitable, and reasonable measure of legal competency, the following changes in the bar examinations are hereby proposed:

1. Structural and administrative reforms, particularly

- The appointment of a tenured Board of Examiners in lieu of the *ad hoc* Committee on Bar Examinations;
- The creation of readership panels for each subject area to address the issue of bias or subjectivity and facilitate the construction of test questions and the correction of examination books;
- The creation of an advisory committee to assist the Board and the Supreme Court and to address related issues in legal education to better prepare law school graduates in taking the bar examinations; and

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After admission as a “generalist,” she may practice in any specialized area, regardless of whether she has received training in the particular substantive law during or after law school.

- The provision for character and fitness investigation as a prerequisite for taking the bar examinations.
2. Changes in the design and construction of test questions, particularly
- The introduction of a section on objective multiple-choice questions in the bar examinations;
  - The formulation of essay test questions and “model” essays by more than one bar examiner; and
  - The introduction of performance testing by way of revising and improving the essay examination on Legal Ethics and Practical Exercises. Performance testing will not only improve the overall validity of the bar examinations by testing for a broader range of lawyering skills, but will also emphasize skills training as a necessary part of the education of every lawyer.
3. Methodological reforms, particularly:
- Adoption of the calibration method to correct variations in the level of test difficulty and scoring leniency;
  - Consideration of alternative grading methodologies, such as scaling, to promote test equity and further standardize levels of test difficulty; and
  - Further computerization or automation of the bar examinations to facilitate testing and the reporting of test results.

This paper is accordingly divided into three parts corresponding to the foregoing areas of reforms. The first part deals with the structural and administrative mechanisms that are essential in carrying out the short-term and long-term proposals contained in this paper. The second part outlines suggested changes in the design and construction of the bar examinations. Lastly, the third part offers a methodology for marking the bar examinations and identifies key areas that may require technological enhancements.

## I. STRUCTURAL AND ADMINISTRATIVE REFORMS

### A. Board of Bar Examiners

*Appointment and Term of Office.* – In lieu of the *ad hoc* Committee on Bar Examinations of the Supreme Court, A Board of Bar Examiners (the Board) should be created. Such Board should remain as an agency of the Supreme Court.<sup>12</sup>

The Board shall be chaired by a member of the Supreme Court to be designated as such by the Court. In addition to the chair, there shall be eight members who shall serve as bar examiners for each of the subjects in the examination. They shall also be appointed by the Supreme Court. Each member shall be at least 35 years of age, a member of the bar, with a minimum of 10 years of experience in the practice of law or law teaching and expertise in his/her assigned subject, and known for his/her probity.

The member shall have staggered terms of five years. Of the members first appointed, three shall serve for five years, the next three also for three years, and the last two for two years. Thereafter, their successors will have a regular term of five years. The staggered terms of office are intended to ensure continuity of policy, which is not possible under the present *ad hoc* committee set-up. No member may be appointed to serve for more than two consecutive terms, unless otherwise decided by the Supreme Court.

The identity of the bar examiners need not be confidential. Secrecy serves no useful purpose and only breeds unwarranted speculation, especially on the part of the examinees. It may be mentioned in this connection that the members of examining boards for various professions under the Professional Regulation Commission are publicly known, and no complaint has been heard that this makes them susceptible to influence. The selection of examiners who are known for their probity is the best guarantee of the integrity of the bar examinations.

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<sup>12</sup>Three structural models of a bar examining authority exists in the United States, with minor variations from state to state. The first and most widely adopted is the *Supreme Court agency model* in which the bar examining authority is appointed by and responsible to the highest state court (e.g., the New Jersey Board of Bar Examiners). The second is the so-called *bar association model* (e.g., Alaska, California and Washington) in which the state bar association, or a committee thereof, assumes responsibility for examining applicants for admission to the bar and for setting the standards for the legal profession. The third is a collaborative or *hybrid model* (e.g., Hawaii) in which the Supreme Court appoints and empowers the bar examining authority based on the recommendation of the state bar association.

The author's preference is for a Supreme Court agency model because this is closer to our experience with the Court-appointed Committee on Bar Examinations.

Indeed, this is not the first time that the creation of a Board in place of the present *ad hoc* Committee on Bar Examinations is being proposed.<sup>13</sup> The creation of such a Board will professionalize the administration of bar examinations, reduce the associated costs of constituting and training bar committees, and do away with unnecessary secrecy in appointing the examiners.

The Bar Confidant of the Supreme Court shall serve as *ex officio* secretary of the Board.

*Compensation.* - The members of the Board shall receive such compensation for their services, and may be reimbursed for travel and other expenses incidental to the performance of their duties, as may be determined by the Court.

*Powers and Responsibilities.* - the Board shall have the following powers and responsibilities:

1. Subject to the approval of the Court, to adopt rules for the admission of qualified individuals to the Philippine Bar.
2. To investigate the character and fitness of all applicants for admission to the Bar.
3. To develop standards and policies for the preparation of test questions.
4. To prepare, conduct, and mark the bar examinations based upon principles of law and equity.
5. To recommend to the Court the admission to the bar of successful examinees.
6. To recommend to the Court the appointment of qualified readers for each examinations.
7. To take steps towards the computerization or automation of the bar examinations.
8. To determine the fees to be paid by each applicant for admission to the Bar, prior to and after examinations.
9. To adopt internal rules of procedure for the conduct of its duties.
10. To recommend to the Court the appointment of staff and other assistants as may from time to time be necessary or proper.

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<sup>13</sup> See AMIEURFINA A. MELENCIO-HERRERA, *Law and Qualifying Process for Practice*, UP LAW ALUMNI YEARBOOK 79 (1980) (suggesting the creation of "a professional body of examiners," with a term of three years, to "attain consistency in standard and expertise in methodology"); JUSTO P. TORRES, JR., *supra* note 9 (deploring the lack of "uniformity and stability of policy regarding the nature, content and even style of bar tests" and proposing the conversion of the Bar Examiners' Committee into a "continuing body, with the terms, qualifications and compensation of its members determined by the Supreme Court.").

11. To render an annual report to the Court.
12. To perform such other duties and responsibilities as may be assigned to it by the Court.

Thus, while the preparation, correction, and grading of examination booklets will be undertaken individually by the members of the Board, the other functions of the Board, such as the development of appropriate test standards, will be performed by them as a collegial body. This feature distinguishes the Board from the present *ad hoc* Committee on Bar Examinations.

#### B. Readership Panels

Readership panels shall be constituted for each subject area of the bar examinations.

*Appointment and Functions.* –Board members, as bar examiners, shall chair their respective readership panels and shall be primarily responsible for the formulation of the multiple-choice and essay test questions.

Each panel shall have such equal number of readers of at least two, as the Board may determine, to assist Board members in fulfilling their duties and responsibilities as individual examiners, particularly in the calibration of essay test answers and the marking of test booklets.<sup>14</sup>

The employment of readership panels has the following advantages:

- a) It addresses the issue of bias or subjectivity when there is only one bar examiner in each test area.
- b) It facilitates the correction of test booklets.
- c) It eliminates the “tailor-fitting” syndrome (i.e., the tendency of examinees to speculate on the identity of the bar examiners and try to fit their answers to test questions to the style and inclination of the perceived examiners).

Readers shall be members of the Philippine Bar for at least five years. They shall be selected by their respective bar examiners on the basis of competence and probity and recommended to the Court for appointment. They shall be considered as associate members of the Board, but they shall not have the power to vote upon any determination or decision of the Board.

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<sup>14</sup> The work of the readership panels in calibrating test essays is discussed in Part III of this paper, *infra* at 25-40.



2. *Term and Compensation.* – Readers may be appointed for a term of three years and reappointed for a second and final three-year term. They shall be paid such compensation for their services, and reimbursed for such travel and other expenses incidental to the performance for their duties, as may be determined by the Supreme Court.

*C. Bar Admissions Advisory Committee*

1. *Membership.* – Similar to the practice in several states or jurisdiction in the United States, an advisory panel or committee, to be known as the bar Admissions Advisory Committee (the Committee),<sup>15</sup> may be established. The Committee shall be composed of representatives of the various law schools, incumbent or retired members of the judiciary, and members of the bar, as may be determined by the Court. The Court shall select one of the members to serve as chair, who shall act as liaison between the Court and the Board.

2. *Purpose.* – The Committee's primary responsibility will be to advise and assist the Board on "issues relating to legal education, eligibility, and admission to the bar."<sup>16</sup> This includes the design and implementation of short-term and long-term reforms in the bar admissions process.

The Committee shall meet at least once a year. It shall solicit critiques of each written examination and shall provide such critiques to the Board. The present practice whereby a committee of experts and law professors is convened by the University of the Philippines Law center to "suggest" answers to test questions should be continued. The "suggested" answers can serve as critiques of the examinations.

The Committee shall attend the regular meeting of the Board and shall perform such other duties as may be requested by the Board or directed by the Supreme Court, particularly in instances where a potential or actual conflict of interest on the part of the Board or any of its members arises.

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<sup>15</sup> The Bar Admissions Advisory Committee herein proposed is largely modeled after a similarly named committee appointed by the Supreme Court of Louisiana. RULES GOVERNING ADMISSION TO PRACTICE LAW IN THE STATE OF LOUISIANA, §10.

<sup>16</sup> CODE OF STANDARDS FOR BAR EXAMINERS, §VI (31) (1987) (By the American Bar Association (ABA), the National Conference of Bar Examiners (NCBE), and the Association of American Law Schools (AALS)).

3. *Compensation.* – Committee members shall receive such compensation for their services and shall be reimbursed for such travel and other incidental expenses as the Supreme Court may determine.

*D. Character and Fitness Investigation*

There should be a systematic and much more thorough screening of applicants for the bar examinations. The primary purpose of character and fitness investigation *before* admission to the Philippine Bar is to assure the protection of the public and to safeguard the administration of justice. As the American Bar Association, the National Conference of Bar Examiners, and the Association of American Law Schools well stated:

The public is adequately protected only by a system that evaluates character and fitness as those elements relate to the practice of law. The public interest requires that the public be secure in its expectation that those who are admitted to the Bar are worthy of the trust and confidence clients may reasonably place in their attorneys.<sup>17</sup>

All examinees should be required to produce competent proof of good moral character through the completion of a standard character and fitness questionnaire.

1. *Public Policy.* – The concept of “good moral character” includes, but is not limited to, the qualities of honesty, candor, trustworthiness, observance of fiduciary responsibility and of the laws, and a respect for the rights of other persons. Membership in the bar is not satisfied by proof that merely enables one to escape the meshes of the criminal law.<sup>18</sup> On the other hand, “fitness” includes, but is not limited to, the mental and emotional suitability of the examinee-applicant to practice law.

2. *Factors to be Considered.* – While the Board may consider any factor or circumstance that bears reasonably on an examinee-applicant’s character and fitness, any of the following should be considered as basis for investigation and inquiry:

- a) Arrests or criminal charges, whether or not resulting in a conviction.
- b) Any unlawful conduct, such as making or procuring any false or misleading statement or omission of relevant information,

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<sup>17</sup> *Id.*

<sup>18</sup> *In re Del Rosario*, 52 Phil. 399 (1928).

including any false or misleading statement or omission on the application for admission to the Bar or in any testimony or any statement submitted to the Board.

- c) Misconduct in employment.
- d) Acts involving dishonesty, fraud, deceit, or misrepresentation.
- e) Commission of an act constituting the unauthorized practice of law.
- f) Any form of academic misconduct, including those at the undergraduate level.
- g) Membership in an organization which advocates the overthrow of the government by force or violence.
- h) Abuse of legal process.
- i) Litigation.
- j) Neglect of financial responsibilities.
- k) Neglect of professional obligations.
- l) Violation of an order of a court.
- m) Military misconduct.
- n) Evidence of mental or emotional instability.
- o) Evidence of drug or alcohol misuse, abuse, or dependency.
- p) Denial of admission to the Bar in any other jurisdiction on character and/ or fitness grounds.
- q) Disciplinary action by a lawyer, disciplinary agency, or any other professional disciplinary agency of any jurisdiction.
- r) Conviction or a plea of guilty or “no contest” to any misdemeanor or felony.
- s) Any other conduct which reflects adversely upon the character or fitness of the applicant.

3. *Burden of Proof.* – The burden of proof should be on the examinee-applicant. No examinee-applicant shall be recommended for admission to the Bar by the Board unless such applicant first produces the required evidence of good moral character and the fitness necessary to practice law in this country.

## II. CHANGES IN TEST DESIGN

The bar examinations shall continue to be administered and graded on an anonymous basis. They shall consist of two main sections: one for multiple-choice questions and another for the essay questions, which shall include a performance test.

### *A. Essay Section*

There shall be an essay section in the questionnaire in each of the following subjects:

1. Political Law and International Law
2. Labor Law
3. Civil Law
4. Taxation
5. Commercial Law
6. Criminal Law
7. Remedial Law
8. Legal Ethics and practical Exercises

The essay section should be designed to test the examinee's ability to analyze a given set of facts, to identify the issues involved and the applicable principles of law, and to reason out a sound conclusion. As in the New York State bar examination, the examinee should be asked to state his conclusion at the beginning of his answer, followed by his analysis and reasoning. The answer should be clear and concise and should be confined to the particular issues presented (*i.e.*, it should not volunteer information that is not material).

Each of the eight Board members, as bar examiners, shall be responsible for constructing the essay-type questions for their designated subject areas. The essay question may cover two or more subject areas, whether or not such areas covered in any of the eight test subjects listed above.

The Board en banc shall determine the system of scoring the essays as well as the weight to be assigned to each test subject. The use of the calibration method for identifying a "model" essay and for marking the essays is proposed on Part III of this paper.

#### *B. Performance Test*

Forty years ago, Justice Labrador told a conference of legal educators that the Supreme Court, of which he then was a member, was deeply concerned that the bar examinations were turning out large numbers of lawyers who were unprepared for law practice. For this reason, he said:

[T]he Court, knowing that the intelligent application of the law is necessary for any practitioner, finds it absolutely essential that the bar examinations devote at least one-half of the questions to practical questions, with a view to determining whether the student has the intelligence and practical common sense necessary to apply corresponding legal provisions that he has studied from the law books, [otherwise] those who would pass the bar examinations become mere

encyclopedias of legal provisions without [the] ability to apply them to particular cases, in situations brought before them when in practice.<sup>19</sup>

Since Justice Labrador spoke, little, if any, has been done to address the problem. Of the eight essay subjects, it is Legal Ethics and Practical Exercises that I find most in need of revision. The examination on this subject should be an important part of the bar examinations and should not be treated as a minor subject. It should consist of performing an assigned task using given resource materials. The task shall include the preparation of a brief in support of a motion, a memorandum evaluating grounds for objecting to the probate of a will, a simple complaint, or some other legal document. The assignment may raise an ethical issue as well. For this purpose, examinees should be provided with the “record” of the case containing the facts and a “library” containing cases, statutes, or regulations.<sup>20</sup> The exercise is a similar to an open-book exam.

By transforming the essay question on Legal Ethics and Practical Exercises into a performance test, this portion of the examinations can help the Board assess the examinee’s ability for case planning, problem solving, factual investigation, and other skills that are critical to the competent practice of law, but are not necessarily measured by the traditional essay and multiple-choice questions of the bar examinations. As the chair of the State Board of Law Examiners of New York noted when the performance question was first introduced in that state, “It will test candidates in situations very much like those encountered every day by practicing lawyers- that is, analyzing facts, identifying legal issues, and looking up the law to apply to those issues.”<sup>21</sup>

### C. Multiple-Choice Section

This proposed section is designed to be an objective examination containing approximately 150 to 200 questions. Examinees will be asked to choose the best answer from four stated alternatives. Credit will be given only if the examinee has selected the best answer. Examinees shall be asked to mark only one answer for each question, and multiple answers will not be counted.

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<sup>19</sup> ALEJO LABRADOR, *The Bar Examination as an Instrument of Legal Education*, 12 ATENEO L. J. 329, 330-31 (1963).

<sup>20</sup> This proposal is inspired by the Multi-State performance test (MPT), which is a 90-minute skills and methods test designed and administered by the National Conference of Bar Examiners (NCBE) for the bar examinations in the majority of the American states.

<sup>21</sup> Richard J. Bartlett, *Press Release of the Court of Appeals of the State of New York*, Albany, New York, March 1, 2000.

There need be no fear that multiple—choice questions will easily lend themselves to guesswork. To the contrary, this type of questions can be a combination of rigor and precision as the following question demonstrates:

10. City enacted an ordinance banning from its public sidewalks all machines dispensing publications consisting wholly of commercial advertisements. The ordinance was enacted because of a concern about the adverse aesthetic effects of litter from publications distributed on the public sidewalks and streets. However, City continued to allow machines dispensing other types of publications on the public sidewalks. As a result of the City ordinance, 30 of the 300 sidewalk machines that were dispensing publications in City were removed.

Is this City ordinance constitutional?

- (A) Yes, because regulations of commercial speech are subject only to the requirement that they be rationally related to a legitimate state goal, and that requirement is satisfied here.
- (B) Yes, because City has a compelling interest in protecting the aesthetics of its sidewalks and streets, and such a ban is necessary to vindicate this interest.
- (C) No, because it does not constitute the least restrictive means with which to protect the aesthetics of City's sidewalks and streets.
- (D) No, because there is not a reasonable fit between the legitimate interest of City in preserving the aesthetics of its sidewalks and streets and the means it chose to advance that interest.<sup>22</sup>

This author used the multiple-choice questions in the University of the Philippines College of Law beginning 1982, allotting 30 per cent of the examination to them. The results were satisfying. The following is taken from an examination given on September 28, 1983:

12. A bill, as certified by the Speaker of the Batasan Pambansa and as signed into a law by the President, fixes a uniform margin fee of 25% on all foreign exchange transactions with the exception of foreign exchange for the importation of "urea formaldehyde". However, the Journal of the Batasan Pambansa shows that what was exempted from the payment of the margin fee was the importation of "urea and formaldehyde." Philchem Company applied for foreign exchange to import urea and formaldehyde, but the Central Bank denied its request

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<sup>22</sup> NATIONAL CONFERENCE OF BAR EXAMINERS, THE MULTISTATE BAR EXAMINATION 2003 INFORMATION BOOKLET, p. 31 (2002).

for exemption from the 25% margin fee. Philchem contemplates filing an action in court. As its counsel you are asked what the state of the law is in case of Conflict between the enrolled copy of a bill and an entry in the Journal. Which of the following should be your answer?

- (A) The Journal entry should prevail
- (B) The question is still an open one
- (C) The enrolled copy of the bill is conclusive
- (D) The stenographic notes during the debates are conclusive
- (E) The report of the committee which recommended the bill is conclusive

A given question may involve a choice of the applicable statute, theory of liability, or comparable principle of law. Questions can be so designed as to require the examinee to analyze the legal relationships arising from a factual situation or to take a position as an advocate. Some questions could be designed to call for suggestions about interpreting, drafting, or counseling that might lead to more effective structuring of a transaction.

Indeed, the multiple-choice question can be an excellent exercise for developing precision on the part of examinees. Obviously, this type of question requires corresponding care and precision in construction on the part of examiners.

The bar examiners shall prepare the multiple-choice questions for their respective subject areas, which shall then be submitted to the chair of the Board. As a law teacher, this author devoted thirty per cent of the examination to this type of question, but he thinks as much as forty per cent can be allotted for the purposes of the bar examinations. Ultimately, the Board en banc should determine the number of questions to be allocated to each subject area. Multiple-choice questions can reduce the percentage allotment to the essay questions and speed up the correction of bar examination booklets.

In the United States, the multiple-choice portion of the bar examinations in 48 of the 50 states is a standardized test known as the Multi-State Bar Examination (MBE). It is designed, administered, and scored by the National Conference of Bar Examiners or NCBE. The MBE consists of two-hundred multiple-choice questions covering six law subjects. It is given twice a year within a six-hour time frame for each sitting.<sup>23</sup>

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<sup>23</sup> The standardized tests administered by the Educational Testing Service (ETS) for admission to various academic programs also contain multiple-choice questions which are scored by computerized key pads.

Immediately following the examinations, the answer sheets should be delivered to the Bar Confidant's Office for scoring. Both raw scores and scaled scores can then be computed for each applicant. The *raw score* and the *scaled score* will be discussed in detail in Part III.<sup>24</sup> At this point it is enough to state that the raw score is the number of questions answered correctly. Raw scores on different administrations of the bar examinations, even weighted, are thus not comparable primarily because of differences in the difficulty of test forms. A statistical process called *equating* adjust for variations in the difficulty of different administrations of the examination, so that any particular scaled score will represent the same level of performance from bar examination to bar examination. The purpose of reporting a scaled score is therefore to help ensure that no examinee is unfairly penalized (or rewarded) for taking a more (or less) difficult administration of the bar examinations.

### III. METHODOLOGICAL REFORMS: THE CALIBRATION METHOD

The calibration method applies to the marking of the essay questions in the bar examinations. The multiple-choice portion of the examinations does not require calibration because the correct answer or the best possible answer to a question is derived from a predetermined and fixed set of choices.

In the United States, the adoption of a calibration method of marking the essay section of state bar examinations<sup>25</sup> came about as a result of renewed interest in promoting consistency and equity in grading practices in the 1960s.<sup>26</sup>

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These tests include the SAT (Scholastic Achievement Test), AP (Advanced Placement), TOEFL (Test of English as a Foreign Language), GRE (Graduate Record Examination), GMAT (Graduate Management Admissions Test), and MCAT (Medical College Admissions Test). The ETS formerly designed and administered the LSAT (Law School Admissions Test) before the Law School Admissions Council was formed.

The author's meeting with ETS officials on October 7, 2002 enabled him to explore possible areas of consulting with ETS, particularly in test construction and scoring of the multiple-choice section.

<sup>24</sup> *Infra* at 33-37.

<sup>25</sup> In some states, like New Jersey, the bar examining authority is responsible for the development and correction of the essay test questions. Other states rely on the standardized Multi-State Essay Examinations (MEE), which is prepared and administered by the National Conference of Bar Examiners (NCBE) either on a state-wide basis or for a particular state. Correction of the MEE is exclusive responsibility of the participating state bar examining authority.

<sup>26</sup> The Code of Standards for Bar Examiners, adopted jointly by the American Bar Association (ABA), the National Conference of Bar Examiners (NCBE), and the Association of American Law Schools (AALS) in 1987, recommended that "the bar examining authority [in each state] should adopt procedures for the calibration of the grades to assure uniformity of the grading standards."



Indeed, it is likely that the essay test questions in successive bar examinations may differ in the aggregate degree of difficulty or complexity. In addition, bar examiners and readers, as a group, may be stricter or more lenient in the reading of one administration of the examinations than in another. Calibration corrects for possible variations in test difficulty and grader leniency on the basis of what is deemed to be representative, as well as reasonable or acceptable, test answers. It helps ensure that the passing standard is relatively consistent over successive administrations of the bar examinations.

*A. Basic Components of the Calibration Method*

The calibration method has the following features: (1) the appointment of readership panels for each subject or test area of the bar examinations; (2) an adequate provision for "checks and balances" through multiple levels of calibrations; (3) sampling procedures to select a reliable sample essays; (4) a built-in appeals process for examinees whose overall bar examination scores fall slightly below the passing standard; and (5) a scoring system that measures the performance of each examinee relative to the performance of the other examinees.

*B. Calibration Procedures*

The calibration of the written essays involves the performance of several procedures:

1. *Setting up the Readership Panels.* – The initial step in calibration is the constitution of readership panels for each subject area, consisting of a bar examiner as panel chair and a number of readers (which range from two to six per panel in various American states). The readers are usually selected by the bar examiner and/or the chair of the Board of Bar Examiners from the ranks of private practitioners and in a few instances, from law faculties.

Each readership panel is responsible for preparing the essay test questions for its assigned subject area months in advance of the administration of the bar examinations. Before the essay is accepted for use, every point of law in the question must be thoroughly briefed and the particular question analyzed and approved by the panel.

Finally, care should be taken so that no examiner or reader within each panel would have the opportunity to mark an examinee's booklet more than once in any given administration of the bar examinations.

2. *Polling: Identifying Grading Parameters or Guidelines for Model Essays.* Either immediately before or after the conduct of the examinations, the readership panels should be convened by the chair of the Board for the purpose of setting guidelines and defining the parameters in marking the essays.

The grading guidelines should include a list of the most salient elements or points that are deemed essential to cover both the relevant and material facts and aspects of the law. Equal emphasis should be given to what the panel and the experts in the field determine to be the “model answers,” and what can be reasonably expected of an examinee. The readership panels may assign point values to each of these elements in this initial stage of calibration. This is usually done by dividing the perfect raw score of an essay by the number of predetermined elements. For example, assume that the essay question in Political Law and International Law, just like the rest of the essay questions, carries a perfect score of 10 points. Assume further that the panel has agreed that the model essay should contain more or less five basic elements or items. The presence of each item in the model essay would then gain the examinee two points (10/5), unless the panel decides to assign unequal point values to these elements.

3. *Selecting the Sample Essays.* -- *Calibration* need not be an intimidating term. It is what is attempted to be accomplished when examiners are told to sample a representative number of test booklets before starting to mark them. Alas, this is not quite possible if the examinee pool is large, as in the 2002 bar examinations in which a total of 4,670 candidates took the exams.

The purpose of sampling is to obtain an unbiased (and defensible) estimates of the average answer which should be as precise as possible on the assumption that the sampled test booklets are representative of the entire pool of examinees in a given administration of the examinations. The estimate must be as precise as possible given the resources for designing the sample and collection the needed information for calibration purposes.

Because of its simplicity and utility, systematic selection with a random start (or *random sampling*) is generally preferred. The sample of test booklets is chosen from the pool of examinee booklets on the basis of a fixed or uniform interval between the sampling units (i.e., all of the essay test booklets which are randomly re-ordered from first to last after the bar examinations are held.) The uniform interval between the test booklets is obtained by dividing the population size by the sample size,<sup>27</sup>

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<sup>27</sup> A statistical formula is typically used to obtain sample size, whether calculated manually or through a statistical software program like SPSS or SAS. For an easy to understand, comprehensive treatment

dropping any decimals in the result. Next, the random starting number is selected by any unbiased method or computerized program of selecting random numbers. The selected random number is always between one and the uniform sampling interval inclusive. This random start ensures that all essay test booklets have an equal opportunity of being part of the sample.

Thus, assume that the readership panel on Political Law and Public International Law wishes to draw a sample of 31 essay test booklets (which is equivalent to one per cent of the entire pool of 3,100 bar examinees). Dividing the population size by the sample size ( $3100/31$ ) yields a quotient of 100.00. Rounding downward gives a sampling interval of 100. The random starting number can be any number between one and 100.

Suppose that the selected random starting point between one and 100 is 36. The panel then starts by selecting the 36<sup>th</sup> booklet and pulls every 100<sup>th</sup> booklet thereafter; next the 136<sup>th</sup> booklet, and so on until the 3,036<sup>th</sup> booklet is chosen from the entire pool. This ensures that the sampled booklets are at least the required sample size (31 test booklets). Note that during random sampling, the test booklets are mixed together and then arranged in some numerical order (*e.g.*, one to 3,100), regardless of the test booklet coding system used to guarantee the anonymity of the bar examinees.

4. *Calibrating the Test Answers.* -- After the sample of essay test booklets is drawn, the readership panels should “match” the sample against the grading parameters or guidelines it has previously established to determine the benchmark examinee answers and to assign or distribute points for marking the essays.

There are two basic scoring methods for assigning point values to essays: the *analytic scoring* and *holistic scoring*. In analytic scoring, a model answer is prepared and then broken down into specific points or elements that should be included in a good answer. In holistic scoring, readers are instructed to read each

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of sample size determination, see UNITED STATES GENERAL ACCOUNTING OFFICE, USING STATISTICAL SAMPLING 47-68 (1992).

In some jurisdictions in the United States, the ideal sample size of test booklets can pose a problem to readership panels owing to the relatively large number of test booklets that would need to be reviewed. For this reason, states like New Jersey usually select approximately 1 percent of the examinees' pool to constitute its sample of essay test booklets, taking into account the usual implications on the estimate of confidence intervals.

answer rapidly and make judgments about its overall quality, without making counts of particular elements. The answers are then grouped by level of quality.<sup>28</sup>

Either method should work as long as the essay test question is properly designed or structured. The readership panels of the New Jersey Board of Bar Examiners, for example, assign essay points using the analytic method. The number of calibrated elements or variables is initially determined, and then divided by the "perfect" (raw) score (*i.e.*, the highest possible score of the essay). The resulting quotient is the point value to be assigned to each element (if it appears in an examinee's booklet). For example, if the readership panel for the Remedial Law question finds that the majority of the 31 sampled essays contain only four out of the five basic elements or guidelines which the panel has earlier identified and approved and the perfect score for this essay is 10 points, the panel may chose to assign 2.5 points for each of the four calibrated elements (10/4). A fraction of 2.5 points may be assigned to any element that is present in an examinee's essay but is not sufficiently developed in the judgment of the grader. If all of the five (or more) elements (identified by the panel at the polling stage) appear in an examinee's essay, then bonus points may be assigned. The chair of the Board should determined whether and how bonus points are to be assigned to essay answers.

Other jurisdictions in the United States use the holistic scoring method by assigning scores based on a range or continuum of points that correlate with demonstrated performance, rather than the presence or absence of calibrated elements. The Board of Bar Commissioners of the State of Utah uses a five-point standard ranging from one (well below the average/calibrated essay) to five (well above average).<sup>29</sup> Maryland's State Board of Law Examiners' standard is a modified version of the Utah scale. The perfect essay score is six points. Grades between one and six represent varying and increasing levels of demonstrated competence depending on an examinee essay's relative proximity to the calibrated model essay. A grade of zero is given only if the examinee fails to answer the question or if the answer is determined to be totally unresponsive to the question.<sup>30</sup>

After the calibration of the sampled essays is completed, the sampled test booklets are returned to the pool of booklets. Readership panels are now ready to mark all of the examinees' essay booklets (including those which were sampled) using the benchmark answers and grading system approved at this level of calibration.

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<sup>28</sup> JULIA C. LENEL, *The Essay Examination Part III: Grading the Essay Examination*, THE BAR EXAMINER 16 (1990).

<sup>29</sup> RULES GOVERNING ADMISSION TO THE BAR OF THE STATE OF UTAH, §§ 7-4.

<sup>30</sup> BAR ADMISSION RULES OF THE STATE OF MARYLAND, Rule 7(b).

5. *Scoring.* -- The grades assigned by the readership panels for each essay are next computed by the staff to determine the total score for the essay section. Multiple-choice answers can be corrected either manually or through a computer scanning program.

The examinee's final grade should be based on the combination of scores from the multiple-choice and essay portions of the bar examinations. That is, there should be no minimum grade required to pass each section or each essay test question.

The multiple-choice and essay test scores, as well as the overall or final examination grade, may be expressed in various forms or combinations, to wit:

Raw Scores. A bar examinee's is generated from the number of questions that were correctly answered (for example, 150/200 in the multiple-choice portion, 65/80 in the eight-question essay portion, and an overall raw score of 215/280). No deductions are made for incorrect answers. Although it is the simplest to administer, raw scoring is very rarely used on its own because it does not allow for meaningful comparisons of test performance.

Weighted Scores. A raw score is converted into a fraction which is then multiplied by the assigned weight or factor to obtain a weighted score. In the previous illustrations, a raw score of 150/200 in the multiple-choice portions yields a quotient of 0.7500. The corresponding fraction for the essay portion is 0.8125 (65/80). Assume that the multiple-choice portion carries 40 per cent of the overall grade, while the essay portion is assigned the balance of 60 per cent. The examinee's weighted score in the multiple-choice portion is 30.00, and that in the weighted essay portion is 48.75. The final weighted grade in this instance is 78.75 (over 100.00). There are, of course, variations to this practice, such as doubling the weight of the total essay score in relation to the score assigned to the multiple-choice section.

Weighted raw scores are simple and easy to understand. They allow for grade ranking as well as comparisons within a given administration of the bar examinations. In the Philippine context, score weighting assumes even greater significance because of the tradition, dating back to 1913, of determining and reporting the bar "topnotchers." In most instances, the bar examination grades of the top 10 or top 20 differ only by a fraction or by a few points.

Raw score weighting appears to be a convenient tool for retaining these fractional differences in examinees' scores. However, weighted scores do not account for possible examination-to-examination fluctuations in the level of difficulty of a particular administration. This is precisely what score scaling seeks to solve.

**Scaled scores.** In the state bar examination, the raw scores in the multiple choice section are scaled, or statistically adjusted, by comparing the performance of current examinees to those of prior examinee pools. This comparison is achieved by statistically analyzing a particular examinee pool's responses to similar or equivalent questions which have appeared in prior multiple-choice examinations and then comparing them to the responses of prior examinee pools. The comparison reveals the relative level of knowledge of current examinees versus prior examinees and determines how many points should be added to or subtracted from the raw score to arrive at a scaled score. A scaled score is this standardized score which has been adjusted to account for the differences in difficulty of the questions appearing on the different administrations of the bar examinations. The total essay score is also standardized using the same scale for the multiple-choice section.<sup>31</sup>

A particular scaled score on the multiple-choice or essay test is, therefore, indicative of approximately the same level of proficiency as the identical scaled score on any multiple-choice or essay test, regardless of differences in the raw or weighted raw score.<sup>32</sup> Conversely, two examinees who obtained the same final grade of 78.75, but who took the bar examinations in different years, could have different scaled scores. On a scale of 100 to 950, for example, the first examinee could potentially receive a scaled final score of 900, while the second examinee could have a lower score of 800, in spite of equal raw or weighted scores in the bar examinations.

As with other professional examinations in the United States, most jurisdictions have adopted the scaling method for scoring the bar examinations.<sup>33</sup> Scaling is generally considered as another layer of calibration because it is the most equitable system of reporting scores.

Statistical consulting is at present an integral part of the technical infrastructure of the majority of American bar examining authorities.<sup>34</sup> For the Philippines, however, application of scaling may pose some problems. For one,

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<sup>31</sup> In most American states, scaling is a two-part process. The first portion summarized above is referred to as *equating*. It is typically used for the multiple-choice portion (MBE) of the bar examination. The essay scores (in the MEE, MPT, and/or the state-administered essay sections) are then scaled based on the MBE scale using the equipercentile (ranking) method.

<sup>32</sup> The Educational Testing Services (ETS), based in Princeton, New Jersey, is considered one of the foremost experts in standardized testing and measurement. Examinee scores for the ETS-administered standardized tests (TOEFL, AP, SAT, GRE, GMAT, MCAT) are scaled for reporting and notification purposes.

<sup>33</sup> See REPORT AND RECOMMENDATIONS OF THE NEW YORK STATE BOARD OF LAW EXAMINERS TO THE COURT OF APPEALS REGARDING THE PASSING STANDARD ON THE STATE BAR EXAMINATIONS 5-6 (2002).

<sup>34</sup> *Id.* at 5.

statistical scaling of examinee scores can be costly because it needs to be performed for each and every bar examination and would most likely require the services of statistician or psychometrician. Furthermore, scaling tends to ignore fractional or minimal differences in examinee grades, so that, for example, 10 or 20 or even 30 examinees, whose final raw or weighted grades may differ by only few points, could still receive the same scaled score. Using scaled scores in reporting the results of the Philippine bar examinations would virtually do away with the practice of determining the bar “topnotchers” (and replace it with Pass/Fail marks as used in various states in the United States).

**Percentile Score.** Percentile ranking indicates how an examinee performed in relation to all others taking the test over a given administration/s of the bar examinations. A percentile ranking of 60 percent, for example, means that the examinee scored higher than 60 percent of all other examinees (and lower than 40 percent of all other examinees). The examinee pool’s average would be 50 per cent.

Percentile rankings are typically not reported alone but in combination with an examinee’s raw, weighted, and/or scaled scores. The following hypothetical score-conversion table, based on the illustrations above, shows by comparison the various possible ways of scoring the bar examinations. As the table indicates, a bar examinee need not respond correctly to every question to attain the highest or “perfect” scaled score of 950 or the highest percentile score of 99.9, in contrast to a raw or weighted score.

RAW SCORE	WEIGHTED SCORE	SCALED SCORE	PERCENTILE RANK
(over 280)	(over 100.00)	(highest = 950)	(highest = 99.9)
276-280	98.57-100.00	950	99.99
275	98.21	940	
140-145	39.43-45.78	650	60.00
16	8.00	150	10.50
1	2.6	110	0.59

*6. Segregating Final Grades --* After the examinees’ combined scores (whether raw, weighted, scales, percentile, etc.) for the multiple-choice and essay portions are

computed, a three-fold classification is established similar to the hypothetical illustration below.<sup>35</sup>

DECISION	OVERALL (WEIGHTED) GRADE
Pass;	70.00 and above
Conditional (Re-read):	65.00-69.99
Fail:	64.99 and below

This classification allows for a built-in appeals process for examinees whose scores fall slightly below the predetermined "cut-off" or passing standard. Examinees whose final scores are at least 70.00 in the illustration are considered to have successfully passed the examinations, while those whose scores fall below 65.00 are deemed to have failed.

The essays of the examinees falling into the so-called "Conditional (Re-read)" category are re-read and re-graded by a second reader in each panel who is unaware of the first grade given to the examinee's essay. The first and second grades are then averaged to produce the final grade for a particular essay and then recomputed with the other essay grades to produce the new score for the essay section.<sup>36</sup>

If the essay grade given by the second reader differs from the first reader's by more than one or two points,<sup>37</sup> the essay is forwarded to the bar examiner, as panel chair, for a third and final reading. The "resolution grade" given by the bar examiner is the final grade for the essay and is recomputed with the other essays. The bar examiner cannot give a grade which is either above the higher of the two grades. For example, if the first reader assigned a score of 7/10 to the Political Law and International Law essay of an examinee, and the second reader gave the same essay a grade of 4/10, the "resolution" grade should fall between 4 and 7 points inclusive.

The Pass/Fail determination for the recomputed final grades of the "Conditional" examinees is thus amended to take into consideration the results of

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<sup>35</sup> This illustration is a modified version of the procedure employed by the New Jersey Board of Bar Examiners. See *ADMISSION TO THE BAR, STATE OF NEW JERSEY* 7-8 (2002).

<sup>36</sup> The range of scores which constitute the "Conditional (Re-read)" category can be either statistically calculated (e.g., using the standard error of measurement) or arbitrarily determined (e.g., states like Ohio allow for essay regrading only if the final score is one point below the passing standard).

<sup>37</sup> The permitted difference in the first and second grades is usually one point, since essay questions carry a perfect score of 6 points in most state bar examinations. However, if the perfect score is about 10 points or more, a difference of two points (to account for a wider spread of possible grades) should be acceptable.



this appeals process. The new passing standard (which applies only to the "Conditional" examinees) is determined by calculating the average of the lower and upper ranges of the "Conditional" scores.<sup>38</sup> Using the overall (weighted) scores in the preceding illustration, the revised Pass/Fail grades are as follows:

DECISION	RECOMPUTED FINAL GRADE
Pass:	67.51 and above
Fail:	67.50 and below

There is no further appeals process beyond this stage, and all grades are deemed final.

#### *C. Releasing the Bar Examination Results*

The Board en banc should approve the results of the bar examinations, as submitted by the various readership panels, and then report them to the Court. In various states or jurisdictions of the United States, only Pass/Fail marks are reported in the notification letters to the bar examinees. In our case, the final grades of those who initially passed and failed, and the recomputed final grades of the "Conditional" examinees, may be released. This concludes the calibration process.

### **IV. SUMMARY AND CONCLUSIONS**

The integrity of any professional examination is enhanced by grading procedures and practices which are consistent, reliable, and equitable. This paper proposes the calibration of the essay portion of the bar examinations to permit test standards to remain as constant as possible from one examination to the next, so that an examinee is neither rewarded nor penalized for having taken one examination rather than another. This is because the questions asked, and the grades given out, in one examination may prove to be, on average, tougher than those in some other administrations of the bar examinations.

To adjust for differences in the level of difficulty and scoring leniency, multiple levels of calibrating test answers are performed by the readership panel (in contrast to the current practice of having a single examiner per subject).

Polling, sampling, benchmarking, scaling, and an internal appeals or resolution process constitute these multiple layers of calibration. The expected outcome is that, over time, the passing standards for bar admission will be

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<sup>38</sup> Adapted from the resolution procedure of the New Jersey Board of Bar Examiners.

consistent, reasonable, more reliable, and representative of demonstrated performance without sacrificing the acceptability of these standards to the bar examining authority.

The proposals herein made are realistic. Given a firm resolve to reform the system of bar examinations, they are not beyond realization. For so long have we been talking about the problems of the present system. It is time we confront and solve them.

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