

THE TESTING COLUMN

FINAL MUSINGS

by Susan M. Case, Ph.D.

After 50 publications in the *Bar Examiner*, this is my last column. By the time you receive this issue of the *Bar Examiner*, I will have retired after 40 years in the field of licensure. In thinking about final words for this column, I cycled through a number of options ranging from expressing warm feelings for the years of fun interactions and interesting issues to delivering a stern lesson full of dire predictions for those who do not choose to heed my advice. In the end, I decided that I can't help myself: I have to do both.

No one could ever legitimately maintain the belief that those in bar admissions are anything but fully committed to doing the best possible job at admitting those—and only those—who should be admitted to the bar. The only legitimate area of challenge from my perspective is the belief that lawyers can do the job without outside expertise. A law degree does not provide the measurement knowledge to ensure that they have admitted those (and only those) who should be admitted; it simply does not provide the measurement expertise to make the correct decisions. They need outside expertise.

This resistance to outside expertise leads me to raise a few questions and challenges surrounding the key issue of whether or not you are spending your time on the right things.



TEST DEVELOPMENT

- If you are developing your own test materials, are you spending the necessary effort to ensure that your questions and grading guidelines are of the highest quality?
- Are your materials reviewed by outside experts to ensure that there are no mistakes on the legal issues?
- Are your materials reviewed by others to ensure that the questions assess knowledge and skills necessary for the beginning practice of law? (That is, do you use lawyers with specific legal expertise to review each question and its grading guidelines, and use lawyers who know what newly licensed lawyers are expected to do to review the relevance of each question?)
- Do you focus on ensuring the competence particularly of lawyers who are going to be solo practitioners who might be practicing law with no one reviewing their work?

(In 2012, NCBE conducted a national study of what new lawyers are actually doing and what knowledge, skills, and abilities they believe they need to carry out their work. The results of this job analysis, which jurisdictions may find helpful, are available on the NCBE website.)

GRADING

- Do you have clear grading guidelines and a shared perspective on how to evaluate the quality of the essays—for example, is the grade based on content only or does writing quality contribute to the grade?
- Are your grading guidelines of sufficiently high quality that you would be willing to publish these on your website or otherwise subject them to critical review by outside experts?
- Are your graders calibrated so that it is immaterial to the examinees who grades their papers because any of the graders would have awarded the same grade?
- Are your grading guidelines awarding points for the most important aspects of the questions, those that are essential knowledge and skills for the newly licensed lawyer?
- Are the questions and grading guidelines sufficiently but appropriately complex to spread out your grades using the entire score scale?

TEST ADMINISTRATION

- Have you systematically evaluated your test administration process and procedures?
- Can you be positive that the proper person, and not an imposter, is sitting for the test?
- Are you using eight-foot tables with enough space between them to ensure that no one can see another person's answer sheet or response to written questions?

It will increase your costs to meet test administration guidelines, but every examinee has the right to a fair test where no one has an advantage due to cheating. Go to the test site or set up a mock testing center;

have 20-somethings try to copy from one another's papers, and use their success as guidance for seat spacing.

SCORING

Finally, we have to talk about scoring. At a minimum, you need to make sure that your scores meet standards for high-stakes tests. Few readers of my column will ever be truly proficient in psychometrics. Expertise in this field requires at least a Ph.D. in measurement, and then decades of experience. If you needed help on a legal matter, you would not ask a nonlawyer to take your case, nor would you ask a law professor—expertise requires both education and practical experience. Give it up. Smart isn't enough. Let the experts in high-stakes testing do it. NCBE offers an array of services at no cost. If you prefer to hire your own expert, make sure that you have competent help from a practicing psychometrician with special expertise in high-stakes exams. This will not be inexpensive; expect to pay roughly the same hourly rate you would pay an experienced lawyer.

My final words on this topic are shown below in haiku form. (For those of you questioning whether I've exceeded my haiku syllable limit in the first line, read about diphthongs!)

Tongue-in-Cheek Haiku on Expertise

We have a few hours.

You teach me to draft a trust.

I'll teach you scaling.

The point is that you cannot teach me to be an expert lawyer in a few hours. Similarly, you might learn a few Cliff's Notes about the principles of psychometrics, but you cannot attain the expertise that your candidates and the public deserve without

a solid doctorate-level education and decades of practice.

And now to the fun stuff. I have thoroughly enjoyed my interactions with all of you. I will miss the questions and the challenges. You have forced me to work on my language to describe things that I never expected to be questioned about. Your perspectives regarding all things measurement have been a constant source of enlightenment (and, often, entertainment). Your compliments regarding my presentations, followed by your admissions that you forgot it all with your first sip of coffee at the break, have been humbling. Regardless, I will remember you with fondness and wish you nothing but the best

as you move forward to ever more precisely make the decisions about who should be admitted to the practice of law.

I have no retirement plans. I have found it impossible to think about retirement while I'm still working, so I expect to spend a while doing nothing, then a while making plans, then a while revising plans—my husband of 47 years, Bob, hopes this iterative process will keep me busy. You have left me with great memories, but I hope to continue my relationship with many of you as I enter this new phase of life. Please keep in touch. 📧

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