

# PRESIDENT'S PAGE

by Erica Moeser

Over the course of the 36-year life of the Multi-state Bar Examination, our flagship test, there has been only one addition to its content coverage. Shortly after the test debuted in 1972, Constitutional Law was added as a topic to a lineup that included—and still includes—Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts. In August NCBE moved forward with a decision to explore the desirability of adding Civil Procedure to the subject matter tested by asking chief justices, law school deans, and bar examiners to comment.

The results have been interesting because of the high volume of responses, the prevalence of positive reactions, and the thoughtfulness of the reservations that have also been expressed.

The key question to us at NCBE as we tee up the matter for decision is whether an entry-level lawyer should be required to demonstrate sufficient knowledge of Civil Procedure as well as the ability to apply that knowledge to fact situations. Some commentators have expressed the view that the MBE should not be tilted toward trial practice. Another question, then, is to what extent every lawyer seeking the general law license that is characteristic of this profession should be tested on this subject matter.

If NCBE's MBE Committee and its Board of Trustees determine that the MBE would be



strengthened by the addition of Civil Procedure, then the next stages of inquiry will take us to the tasks of identifying suitable test content and fashioning multiple-choice questions that constitute fair measures. While I doubt that the addition of this topic will falter at either of those stages, we will not move forward without a firm belief that the addition of this breadth of coverage will contribute to the snapshot of the basic knowledge and skills

we wish to measure at the professional entry level, nor will we add a subject that does not lend itself to testing.

If Civil Procedure finds its way into a future MBE (and the elaborate nature of our test development process suggests that it will be in the neighborhood of a couple of years before any change, if authorized, would be implemented), it will be necessary to revisit the current distribution of questions on each of the existing six topics. Currently, Contracts and Torts are represented by 33 questions each, with the other four topics accounting for 31 questions each, for a total of 190 scored items. The door will be open for us to consider what the ideal distribution of test content should be.

Given that the objective of the MBE is to assess knowledge and skills of entry-level lawyers, we will continue to consider what topics might be added to the multiple-choice format—along with

what might be discarded or diminished in terms of the number of items devoted to a content area.

In October the American Bar Association sponsored a program in Chicago on the subject of bar passage. Some of us with NCBE affiliations attended and participated. The program was evidently prompted by the ABA's growing emphasis on assessing educational outcomes—an approach that is having an impact across the educational spectrum and not solely in legal education.

The program participants, numbering over 200, had a great deal to say about educating all the members of the law school class and preparing them for entry into the legal profession. There are fresh winds blowing, perhaps due to the renewed emphasis on achieving success on the bar or due to the prods and enlightenments that have resulted from the appearance of the Carnegie and *Best Practices* publications.

Now that the ABA accrediting authorities are permitting law schools to offer bar preparation courses for credit, law schools are engaging in serious experimentation with the content, pedagogy, and timing of course work that will help students from matriculation through and beyond graduation. Serendipitously, this heightened emphasis on the law schools' mission to educate lawyers has aligned with NCBE's own efforts to focus its test content on the knowledge and skills that are appropriate to require of a new lawyer. This convergence of objectives is an interesting one, with law students/bar candidates the beneficiaries because the objectives are as compatible as they are.

Of course, there are clear differences between the educational objectives of a law school and the role of a licensing agency. Law schools interact with students over a long period of time, and this pro-

vides a platform for diagnosing, educating, and nurturing the learner. Licensing agencies have limited, glancing contact with most test candidates, and the most important aspect of the relationship is to furnish each candidate with a fair process, a testing environment conducive to measuring performance, high-quality test instruments, and high-quality grading methodologies and execution.

Elsewhere in this issue, Dr. Susan Case, NCBE's Director of Testing, discusses the increase in the MBE mean that NCBE observed when the July 2008 MBE was scored. It is noteworthy that not all of the increase over the mean from the prior July can be explained by the LSAT mean for the test-takers who recently emerged from law schools and took the July 2008 MBE as part of their first bar examination. One hypothesis to explain the balance of the increase in MBE mean is that we are observing the results of the efforts to prepare students for the bar examination (and therefore for entry-level practice) now undertaken by so many law schools.

We will need to examine the results further, investigating what we know about this cohort of applicants. In the meantime, it is encouraging to think that the synergy between educating the entire student body and preparing students for entry into the profession may be matching up with NCBE's test instruments. There are other factors to rule out (or in) by studying the profiles of the students who began law school in 2005 and, of those, the May 2008 graduates.

Legal education is forging ahead, and it would be a positive sign if changes in curriculum and approaches to when and how information is transmitted to students result in favorable outcomes on the bar examination as we observe MBE performance over a span of several years. 