

AN ANALYSIS OF THE RELATIONSHIP BETWEEN  
CLINICAL LEGAL SKILLS AND BAR EXAMINATION RESULTS

A Report Prepared for the  
Committee of Bar Examiners of the State Bar of California  
and the National Conference of Bar Examiners

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## PREFACE

In 1979, the Committee of Bar Examiners (CBE) of the State Bar of California held a series of conferences with experts in legal education and testing. These meetings focused on identifying the kinds of skills that should and could be measured by a bar examination, especially those that were important in actual legal practice. It was apparent from these discussions that many of the skills and new assessment techniques that were considered warranted further investigation.

The National Conference of Bar Examiners (NCBE) concurred with this view and with their financial assistance, the CBE undertook the development and field testing of several new measures of lawyering skills (e.g., the ability to conduct legal research and to make timely and appropriate decisions during a trial). These tests were given in conjunction with the July 1980 administration of California's general bar examination (GBX).

The results of these studies are being presented in a series of reports. The first report (Klein, 1981b) discussed the findings with the Research Test. As its name implies, the Research Test assessed some of the skills that are required for carrying out legal research (such as the ability to determine whether existing case law can be used to support a client's case). One unique feature of this test is that examinees are given copies of the cases and statutes on which they are to base their answers; i.e., it is analogous to an open book examination.

This report is the second in the series. It discusses the results with a study that involved 485 applicants to the bar that participated in an Assessment Center (AC) in addition to taking the July 1980 examination. The AC was conducted over a two-week period in mid-August of 1980. However, each AC participant attended for only two days. On one day, the participant functioned as counsel for the plaintiff in a simulated case and on the other day as counsel for the defendant in a different simulated case. On both days, the participant took several oral and written tasks. Statistical analyses of the data examined the relationships among the different types of AC scores and their relationships with scores on the GBX and other measures. Special attention was given to investigating whether the inclusion of AC type tasks on the GBX would affect minority passing rates.

Several other NCBE/CBE supported studies also were conducted in conjunction with the July 1980 administration of the California examination. These studies focused on a variety of issues associated with the current form of the examination, such as the degree to which scores on the multiple choice and essay portions of it are affected by the amount of time applicants are given to complete these sections. The results of these studies are presented in another report (Klein, 1981a).



## SUMMARY

State bar examinations have been criticized for measuring only some of the important skills and abilities that are needed for the practice of law. The studies described in this report were conducted to answer the following questions regarding this issue:

- o Is it feasible to construct measures of clinical legal skills that can be administered under standardized testing conditions and scored reliably?
- o Do applicants who perform relatively well on the General Bar Examination (GBX) also perform well on clinical skills measures?
- o Are applicants more or less proficient in clinical skills than they are in the skills measured by the GBX?
- o Are scores on clinical skills tests related to an applicant's legal training and experience?
- o Would the use of clinical skills tests on a bar examination narrow the difference in passing rates that currently exists among racial/ethnic groups?

It was decided to investigate these questions through the use of an Assessment Center (AC). The major features of the AC were: (1) it operated over a two week period beginning shortly after the regular bar examination; (2) each AC enrollee participated for two days at either the Los Angeles or Oakland test site; (3) each participant took several written and oral tasks each day, one set of these tasks involved the participant functioning as the attorney for the plaintiff in a simulated case while a second set involved the participant functioning as the counsel for the defendant in another case; and (4) different but parallel sets of tasks (called problems) were used to help ensure test security. A cadre of specially trained actors played the roles of clients and witnesses for the oral tasks. Performances on the oral tasks were videotaped for later evaluation. A strong desire to participate and do well in the AC was achieved by advising applicants that a high score in the AC would substantially improve their chances of passing the regular bar examination.

Over 4,000 of the 7,439 applicants taking the July 1980 GBX requested to participate in the AC. A sample of 500 applicants was selected from this group on the basis of several factors including racial/ethnic background, sex, law school type, and amount of prior clinical experience.

Analyses of the data on the 485 participants who completed the AC indicated that:

- o Parallel forms of the AC tasks could be constructed in the sense that a participant's score on a task was not a function of the unique fact pattern used or the characteristics of the actors with whom the participant interacted. And, the scores on a given task tended to have the same pattern of correlations with scores on other measures regardless of the particular case situation (problem) used with that task.

- o A participant's score on a problem was not affected by whether he/she had taken another problem previously (i.e., there were no warm-up effects); by the sequence in which problems were taken; by whether the AC was taken in Los Angeles or Oakland; or by whether the problems were taken toward the beginning, middle, or end of the two week testing program.
- o The attorneys that graded the AC tasks generally agreed with one another in the scores that should be assigned to an applicant, however, the level of agreement was higher on the written tasks than on the oral tasks. Scores on the written tasks also tended to correlate higher with one another than did scores on the oral tasks. In short, scores on written tasks tended to be more reliable than scores on oral tasks.
- o Scores on one oral task tended to correlate more highly with scores on another oral task than with scores on a written task. Similarly, scores on one written task tended to correlate more highly with scores on another written task than with scores on a oral task. However, there were several exceptions to this trend.
- o Scores on a task within a particular problem did not tend to correlate higher with the scores on the other tasks in that problem than they did with scores on tasks in a different problem. Thus, scores were related to task type but not to problem type.
- o AC oral and written scores were generally more highly correlated with each other than they were with GBX scores.
- o The corrected correlation between AC oral and written tasks was about as strong as the corrected correlation between the Essay and MBE sections of the GBX.
- o The corrected correlation between the total AC score and the total GBX score was about as strong as the corrected correlation between the Essay and MBE sections of the GBX.
- o The corrected correlation between the two types of problems used in the AC was so high as to imply that they were measuring the same skills.
- o Applicants that had some prior clinical experience had higher AC scores than applicants that had no prior experience even after controlling for differences in the average GBX scores of these groups. However, the amount of experience was not related to AC scores.
- o The relationship of the applicants' AC scores to their background characteristics almost always paralleled the relationship between these characteristics and GBX scores. For instance, applicants that graduated from American Bar Association (ABA) approved law schools tended to do better on both the GBX and the AC than graduates of non-ABA approved schools.

- o The inclusion of AC type tasks on the GBX would make a small but noticeable change in who passed versus failed the examination; i.e., adding AC type tasks would result in some applicants going from a pass to a fail status while the reverse would be true for other applicants. The percentage of applicants changing status would depend on several factors, including how much weight was placed on a practical skills section in determining total score.

Taken together, the foregoing findings suggest that the AC's tasks measured certain skills and abilities that are similar but not identical to those measured by the GBX. And, the degree of similarity is about as strong as it is between the Essay and MBE portions of the GBX.

An in depth analysis of racial/ethnic differences indicated that Asian and especially Black applicants did slightly better on the AC type tasks than would be expected on the basis of their GBX scores. Anglo and Hispanic applicants did slightly less well than would be expected. Most of this differential occurred on the oral tasks; e.g., Blacks had the lowest average written score but the second highest average oral score. The reverse was true for Asian applicants. The differences in average scores among racial/ethnic groups also was relatively smaller on the oral than on the written tasks.

While the foregoing findings regarding racial/ethnic differences are interesting, they have little practical importance. Almost all of the systematic differences in GBX and AC scores among applicants were due to factors that were not related to race or the type of AC task or GBX score studied. A substantial portion of the narrowing of the differences among groups on the oral tasks was due to the relatively lower reliability of these tasks (i.e., scores on the oral tasks were more affected by chance factors than were scores on the written tasks). Scores on the oral tasks also could have been affected by the evaluators of these tasks knowing the race, sex, and approximate age of the applicants. And finally, adding AC type tasks to the GBX would not substantially change the relative passing rates of the groups because of the generally strong relationship between AC and GBX scores.

A panel of 25 lawyers spent over two days conducting an in depth evaluation of the performance of 18 AC participants. Their independent and collective ratings of the applicants' responses correlated very highly with the scores assigned by the AC's graders. They also indicated that in general, the applicants were just as proficient in performing AC oral and written tasks as they were in answering GBX essay and multiple choice type questions.

In summary, the results of the research presented in this report indicated that it is feasible to construct, administer, and reliably score certain types of clinical skills tests. The applicants who took these tests generally felt they were better measures of their legal skills than were the regular sections of the GBX. It also was apparent that while scores on both the oral and written portions of the AC were generally related to performance on the GBX, they still provide some unique information about an applicant's legal skills. And, while clinical skills tests would not substantially or even uniformly narrow the gap in passing rates between Anglo and minority groups, neither would they widen this gap. Thus, it is recommended that further consideration be given to the inclusion of clinical skills tests in a state's bar examination.





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## Chapter 1

### INTRODUCTION

#### BACKGROUND

Many newly licensed attorneys have received little training in several of the areas that are needed for legal practice. Some of these areas include conducting legal research, interviewing clients, examining witnesses, negotiating a settlement, and drafting legal documents. Most law schools do not require that their students take the so called clinical courses that provide such training and experience. And, while there is some evidence that suggests that those who take these courses are more proficient in performing these tasks than those who have not had the training (Alderman, Evans, and Wilder, 1980), there is still a question as to whether the training results in an adequate level of proficiency.

Many (if not most) law schools do not see their mission as preparing their graduates to perform the types of day-to-day tasks noted above. Instead, they see their goal as teaching students to "think like a lawyer." Boards of bar examiners, on the other hand, are charged with the responsibility of licensing individuals who are capable of functioning as practicing attorneys. Despite this charge, the bar examinations given throughout the United States appear to measure only a some of the important skills and areas of knowledge that are required for legal practice, such as probing for detail and marshaling facts (O'Hara & Klein, 1981). While these examinations measure analytic ability, they do not assess how well an applicant performs many tasks that are associated with legal practice. There is therefore concern that those who are licensed to practice may not have some of the basic competencies that are actually needed. In short, it is questionable whether the typical bar examination is a sufficiently good indicator of the degree to which an applicant is prepared to practice law.

An additional concern about the bar examination has been expressed by those who feel that the present large gap in passing rates on it between Anglo and minority groups (Klein, 1981) would be reduced if the examination was expanded to include the assessment of clinical skills, especially skills involving oral communication. This prediction is based on two beliefs, namely: minority applicants to the bar are more apt to have relevant clinical experience than their Anglo classmates and minority applicants find it easier to express their ideas orally than in writing. These assumptions (let alone the accuracy of the prediction itself) have yet to be tested adequately with applicants to the bar.

#### PURPOSE

It is evident from the foregoing discussion that there are questions about whether bar examinations indicate the degree to which applicants have many of the important skills that are necessary for legal practice, whether clinical training and/or experience substantially improves these skills, whether the passing score on a bar examination insures that those who are licensed have an adequate level of these skills, and whether differences in passing rates among racial/ethnic groups would be affected if bar examinations were expanded to include the measurement of clinical skills. The studies described in this report were undertaken to provide information regarding these issues.

## MEASUREMENT PROBLEMS

One major obstacle to investigating questions about clinical skills has been the lack of good indices of them. It is very difficult to develop measures that are not affected by the many extraneous factors that might interfere with obtaining reliable and valid scores. For example, a test of the ability to interview clients should involve face-to-face oral communication. It also should involve more than one such encounter so that an examinee's score is not more a function of the person interviewed and the uniqueness of a particular case than it is of the underlying skills of the person doing the interviewing (Erlich and Shavelson, 1978). Similarly, the interview tasks must be structured in a way that permits reliable and systematic evaluations of important skills without overly restricting the realism of the interaction or relying on the idiosyncratic views of the evaluator. Finally, the evaluation system must ensure that a person's score is not affected by special knowledge about the assessment procedures. This last requirement is satisfied on any given bar examination because all applicants take it at the same time. The strategy of simultaneous administration is impractical, however, when research requirements dictate that a large number of individuals have to have both their oral and written clinical skills assessed.

## RESEARCH PLAN

The first two steps involved in conducting the research described in this report were:

- 1) Obtain expert advice regarding the types of clinical skills that were important and potentially feasible to measure under standardized testing conditions.
- 2) Develop strategies for testing clinical skills that considered fiscal and logistical constraints as well as factors that were likely to affect the reliability and validity of the assessment procedures, such as the realism of the case situations, the motivation of the examinees, test security, and methods for evaluating oral performance.

The foregoing activities led to the decision that an Assessment Center (AC) would be an appropriate way to measure clinical skills. Some of the major features of the AC were: (1) it operated over a two week period beginning shortly after the regular bar examination, (2) each AC enrollee participated for two days and took several written and oral tasks each day, (3) one set of these tasks involved the participant functioning as the attorney for the defendant in a simulated case while a second set involved the participant functioning as the counsel for the plaintiff in another case, and (4) different but parallel forms of each test were used to help ensure test security. A strong desire to participate and do well in the AC was achieved by advising applicants that a high score in the AC would substantially improve their chances of passing the regular bar examination.



## Chapter 2

### CHARACTERISTICS OF THE APPLICANT POOL AND PARTICIPANT SAMPLE

#### GENERAL BAR EXAMINATION (GBX)

All the participants in the Assessment Center (AC) took both sections of the July 1980 California General Bar Examination (GBX). One of these sections consisted of 9 essay questions. Each essay question was graded on a 100 point scale. The other section was the Multistate Bar Examination (MBE), a 200 question multiple choice test developed by the National Conference of Bar Examiners. The MBE is used by almost every jurisdiction in the country. MBE scores are scaled across administrations in order to adjust for possible differences in average question difficulty from one examination to another. California MBE scores are then scaled so that the theoretical maximum score equals 600 points.

The sum of an applicant's MBE score plus total score on the first three essay questions graded was computed. If this sum (which was called the Phase I score) was greater than 665, the applicant passed. If the Phase I score was 665 or lower, the remainder of that applicant's essay answers were graded. Applicants having all 9 essay answers graded had to have a total score of 1050 or higher in order to pass (see Appendix A for a discussion of these procedures).

#### APPLICANT POOL

All of the approximately 7500 applicants who planned to take both sections of the July 1980 GBX were invited to apply to participate in the AC. This invitation, which appears in Appendix B, indicated that AC participants could substitute an AC score for either an essay total score or an MBE score (but not both). Thus, doing well in the AC could substantially improve but not diminish an applicant's chances of passing the GBX.

In order to enroll in the AC, an applicant had to complete and return a questionnaire (see Appendix C). This questionnaire inquired about various aspects of the applicant's legal training, experience, and background. A total of 6987 applicants returned questionnaires by the July 10 cutoff date. Of this group, 4330 (62%) indicated they wanted to participate in the AC. Many other applicants indicated that would have liked to enroll but could not do so because of previous commitments and/or travel plans.

#### SAMPLING PROCEDURES

A stratified random sample of 500 applicants was selected from among the 4330 that asked to participate. Enough applicants were selected in each of several subgroups to ensure that reliable conclusions could be drawn about the performance of each subgroup. The variables forming the strata were:

The remaining steps in the research process were:

- 3) Develop a general plan for each type of AC test. This plan specified the types of skills to be tested, important facets of the task/problem situation that were designed to test these skills, instructions to the applicants, materials, and criteria for evaluating performance.
- 4) Construct, field test, and revise the tests and the procedures used to evaluate performance on these measures.
- 5) Obtain information about the background characteristics of potential examinees and use this data to select a sufficiently large and representative sample of them so that the results obtained would be generalizable to all applicants.
- 6) Obtain adequate testing sites, train and supervise testing staff, purchase and operate a bank of video cameras and recorders, schedule examinees for testing, print test materials, and administer tests.
- 7) Train teams of evaluators to score the written and oral responses.
- 8) Score each examinee's performance on each of a set of 11 separate tasks using a relative scale (i.e., how well did the applicant do relative to the other applicants who took the same test?), assess the reliability of the scoring process, and adjust scores so that results could be combined with scores on the regular bar examination.
- 9) Have an expert panel use an absolute scale (as distinct from a relative one) in evaluating the performance of a subset of examinees.
- 10) Analyze results in order to answer questions about the adequacy of the testing and scoring procedures, the relationship between performance on clinical skills tests and scores on the essay and multiple choice sections of the regular bar examination, and the relationship between scores on all of these tests and an applicant's background characteristics (especially race and clinical experience).

#### ORGANIZATION OF REPORT

Chapter 2 of this report describes how the participants were selected for this study and their background characteristics. Chapter 3 describes the 11 clinical skills tests and the procedures used to administer and score them. Chapter 4 presents the results of preliminary analyses. Chapter 5 presents analyses of the relationships among background characteristics, clinical skills test scores, and scores on the regular bar examination. Chapter 6 describes the procedures and results of an ancillary study that investigated the relationship between the relative scores assigned by the evaluators and the absolute judgments of the quality of performance that were made by the expert panel. The final chapter discusses the implications of these findings.

- o Number of Hours of Clinical Experience. Applicants were divided into three groups depending upon whether they had less than 15, 15 to 100, or more than 100 hours of experience in conducting simulated or actual direct and cross-examinations, interviewing clients and witnesses for hearings, interviewing clients for general legal matters, and presenting oral arguments at legal proceedings.
- o Law School's Passing Rate. Applicants were divided into four groups on the basis of the percentage of applicants at their law school that passed the July 1979 GBX. This variable was used as a proxy for the applicant's own general ability level. Approximately one fourth of the applicants fell into each of the following categories: less than 30%, 30 to 53%, 54 to 71%, and over 71%.
- o Repeater Status. Applicants were divided into two groups on the basis of whether they had taken the GBX previously. If they had taken it previously, they were divided further on the basis of the number of attempts. More repeaters were drawn from schools with relatively low July 1979 passing rates than from schools with high rates.
- o Sex. Data regarding an applicant's sex and racial/ethnic group was obtained from a questionnaire completed by all applicants at the time they applied to take the GBX.
- o Racial/Ethnic Group. The four major groups taking the GBX were: Anglo, Asian (including Filipino), Black, and Hispanic. An effort was made to select applicants within the Asian and Hispanic groups who did and did not come from homes where English was the dominant language.

The selection process also took into consideration the days the applicant said he/she could participate in the AC and whether the applicant was willing to participate at the Los Angeles and/or the Oakland site. Finally, an alternate was picked for each selected applicant in the event that applicant could not be tested. About 10% of the alternates participated in the AC. Appendix D contains a more detailed discussion of the sampling procedures.

#### PARTICIPANT SAMPLE

Table 2.1 contrasts the GBX scores of all the applicants who took both the Essay and MBE sections with the GBX scores of the 485 applicants who also had a complete set of AC scores (10 applicants were deleted from the sample because of missing data problems, such as not completing the AC due to illness). An inspection of this table indicates that the AC participants tended to have slightly lower average scores than applicants in general. This difference is attributable mainly to the larger proportion of minority applicants in the AC sample than in the applicant pool.

Tables 2.2 through 2.5 provide additional information about the participant sample and the applicant pool from which they were selected.

Table 2.1

SUMMARY STATISTICS FOR TOTAL APPLICANT POOL  
AND ASSESSMENT CENTER PARTICIPANTS

	Assessment Center	All Applicants
Number of Applicants	485	7379
Means MBE	414.6	424.5
Essay	607.7	617.5
Total	1022.3	1042.0
SD's MBE	42.7	46.0
Essay	51.6	54.4
Total	86.0	92.2
MBE - Essay Correlation	.66	.68

SD = Standard Deviation

Table 2.2

NUMBER OF AC PARTICIPANTS BY SEX AND RACE

Race	Male	Female	Total
Anglo	199	69	268
Asian	53	23	76
Black	44	28	72
Hispanic	44	25	69
Total	340	145	485

Table 2.3

NUMBER OF AC PARTICIPANTS BY SCHOOL TYPE AND REPEATER STATUS

School Type	1st Timer	Repeater	Total
ABA Approved	229	86	315
CA Accredited	75	43	118
Unaccredited	24	15	39
Other	8	5	13
Total	336	149	485

Table 2.4

NUMBER OF AC PARTICIPANTS BY EXPERIENCE AND SCHOOL CATEGORIES

Passing Rate at Applicant's Law School in 1979	Number of Hours of Clinical Experience			Total
	<15	15-100	>100	
Less than 30%	32	33	37	102
30 to 53%	43	41	48	132
54 to 71%	40	41	44	125
More than 71%	42	42	42	126
Total	157	157	171	485

Table 2.5

NUMBER OF APPLICANTS IN EACH RACIAL/ETHNIC GROUP  
BY NUMBER OF HOURS OF CLINICAL EXPERIENCE

Group	Number of Hours of Clinical Experience			Total
	<15	15-100	>100	
Anglo	92	88	88	268
Asian	22	22	32	76
Black	20	24	28	72
Hispanic	23	23	23	69

Chapter 3

ASSESSMENT CENTER TASKS AND PROCEDURES

OVERVIEW

The Assessment Center (AC) utilized six case situations (or problems). Three problems required the examinee to function as counsel for the plaintiff. These were designated as the A type problems. In the three B type problems, the examinee functioned as counsel for the defendant. Each A problem had five separate subtests or tasks, such as interviewing a client, while each B problem had six tasks. Each type of problem took about six hours to complete and each participant took one A and one B problem.

Each problem involved both written and oral tasks. The oral tasks, such as interviewing a client, were videotaped so that an applicant's performance could be evaluated at a later time. Four oral tasks utilized specially trained actors to play the role of clients or witnesses, while two oral tasks (opening statement and closing argument) involved the participant speaking to a hypothetical jury. Table 3.1 contains a list of the tasks within each problem type.

Table 3.1

LIST OF TASKS WITHIN EACH PROBLEM TYPE

Task Number	Problem Type	Task Type	Task Title
1	A	Oral	Initial Client Interview
2	A	Written	Discovery Plan and Interrogatives
3	A	Oral	Preparation of Client for Direct Examination
4	A	Written	Trial Brief
5	A	Oral	Closing Argument
6	B	Written	Memorandum for the File
7	B	Oral	Client Interview and Counseling
8	B	Written	Draft of Counter Proposal and Letter to Client
9	B	Oral	Opening Statement
10	B	Written	Reply to Points and Authorities Memorandum
11	B	Oral	Cross-Examination

TEST DEVELOPMENT

There was one drafting team per problem. The six drafting teams were composed of practicing attorneys and law professors who were involved in clinical courses. A detailed test plan was used to guide the development process and to help ensure that all three problems of a given type presented essentially the same kinds of tasks and measured the same kinds of skills. This plan included general directions to applicants, required task elements (such as a client suggesting to take an illegal action like destroying evidence), the types of materials that would be given to the applicant, and guidelines for evaluating performance on the task.

Appendix E contains a description of the tasks in each problem type and Appendix F contains the general evaluation schema. These two appendixes provided the basis for the drafting process. It should be noted, however, that the plans underwent several revisions. Some changes were due to suggestions made by the drafting teams (such as when they found that a given task requirement would be unrealistic for one or more of the problems), some modifications stemmed from comments made by a panel of outside experts who reviewed all the materials, and some were based on field tests of the tasks. Changes in the fundamental nature of a task were made across all three problems that used that task.

All the tasks in all the problems were field tested at least once and some were tested twice. This testing was done with about four to five attorneys per problem. These attorneys had recently passed the California Bar Examination and most had applied to be readers for the Essay portion of the GBX. The field testing was conducted to check the clarity of directions, the appropriateness of time limits, the feasibility of the videotaping system, logistics, examinee attitudes towards the tasks, the evaluation guidelines, and the consistency of actor performance across participants. One A and one B problem were tested prior to completing the development of the other problems so that any major difficulties could be detected and corrected before all the problems were constructed.

#### PARTICIPANT ORIENTATION AND DIRECTIONS

Participants were sent materials in advance of the date they were to come to the AC. These materials contained the final set of general directions for all 11 tasks (see Appendix G). An orientation session on procedures also was conducted at the AC for each group of participants. Appendix H contains information given to the participants during this on site orientation session.

#### SCHEDULE

An AC participant attended either the Los Angeles or Oakland test site. There were about 24 participants per day at the Los Angeles site and about 18 participants per day at the Oakland site. The AC ran for six pairs of days at each site. The two sites were operated concurrently.

Each AC participant took one complete plaintiff (A) problem and one complete defendant (B) problem. Participants worked on one problem on one day and the other problem on the following day. On one pair of days, participants took Problem A on the first day and Problem B on the following day. The reverse order was used with the next set of participants. Thus, A and B problems were never given on the same day at a site.

Three groups of participants went through the AC each day, with one group starting about one hour after the previous group. All the applicants within a group worked on the same problem. However, a different problem was assigned to each group. Applicants were reassigned to groups on the second day so as to counter-balance the number of applicants receiving each combination of problems (and the order in which the problems within a combination were given). Table 3.2 shows the number of applicants that took each problem at each site and Table 3.3 shows the number that took each combination of problems and the total number that took each problem.

Table 3.2

PERCENTAGE OF PARTICIPANTS TAKING EACH PROBLEM FIRST AT EACH SITE

Test Site	Problem Number						Total
	A-1	A-2	A-3	B-1	B-2	B-3	
Los Angeles	9	10	10	10	9	10	58
Oakland	7	7	7	7	7	7	42

Table 3.3

NUMBER OF PARTICIPANTS TAKING EACH COMBINATION OF PROBLEMS

	A-1	A-2	A-3	Total
B-1	54	52	55	161
B-2	54	55	52	161
B-3	55	54	54	163
Total	163	161	161	485

SPECIAL PROCEDURES FOR ORAL TASKS

The AC's use of oral communication tasks was one of the most significant ways in which it differed from the General Bar Examination. The inclusion of these tasks required that a cadre of specially trained actors be used to play the roles of clients and witnesses. The thespian staff varied in age, sex, and racial/ethnic background. Professional actors were employed because they were used to giving essentially the same performance over and over again. The actors also were given extensive written instructions and rehearsed in order to standardize how they played their roles (e.g., when to offer certain pieces of information, the attitudes they were supposed to project, etc.).

One set of actors was used for the A problems and another set for the B problems. This was done so that an applicant would not encounter the same actor playing different roles.

Each site contained one testing room per group member for the oral tasks. Each room had two chairs (one for the participant and one for the actor), a desk or table, a videocamera, and a microphone. The microphones and cameras were connected by an extensive cable system to a control room. The control room contained one 1/2" videocassette recorder and TV monitor for each test room plus backup equipment and all the peripheral equipment that was required to coordinate activities.



## OTHER PROCEDURES

All the tasks were separately timed, although more time was allowed for some tasks, such as preparing a memo to the file, than for other tasks, such as initial client interview (see Appendix G).

One segment of Task 9, Opening Statement, involved the applicants watching a videotape of opposing counsel's opening statement. A room with a bank of TV monitors and earphones was set aside for this purpose. All the applicants taking a particular problem saw the same videotape.

The five written tasks were administered under proctored conditions. One room was set aside for those writing their answers on these tasks and another room for those who typed their answers.

Certain written tasks, such as the preparation of a discovery plan and interrogatories, involved the use of a "mini-library." This library contained an index and over 100 pages of case materials that applicants could use in preparing their answers. There was one mini-library for all three A problems and another mini-library for all three B problems. Applicants were given their own copies of the mini-library each day.

Applicants were allowed to keep and refer to their work products during the day. However, applicants were not allowed to talk with one another during the day and all materials had to be turned in at the end of each day.

## ANSWER FORMATS

An applicant had one videocassette per problem. This cassette contained about 75 minutes of performance (about 10 to 30 minutes per task). Each cassette was documented so that an evaluator could identify quickly the location on the cassette of the performance he/she was assigned to grade. The answers to the written tasks were in standard blue books or on typed sheets, depending upon the applicant's choice of answer format.

## SCORING GUIDES AND CALIBRATION AIDS

A general scoring guide was developed for each task. Each guide was designed to be applicable to the three problems that included the task. However, a different version of a task's guide was developed for each problem so that the guide used with a particular problem could contain reference to the unique names and events in that problem. A detailed explanation of the guide, called a Calibration Aid, also was developed. Appendix I contains an example of a scoring guide and its calibration aid for one written task and one oral task on one of the six problems.

Each of the 33 guides was in the form of a score card. Evaluators were instructed to rate how well an applicant performed on each facet of a task relative to how well the other applicants who took that same task/problem combination performed. A five point rating scale, from 1 = very poor to 5 = very good, was generally used for this purpose. There are two important ways in which this procedure differed from the one used to score the Essay portion of the GBX. First, evaluators graded each facet of an answer rather than just providing holistic assessment of answer quality. And second, applicants were graded relative to one another rather than in terms of an absolute scale that focused on whether an answer was "passing."

The number of facets that were evaluated varied across tasks and sometimes within tasks. The scoring guide also required the evaluator to provide an assessment of the relative quality of performance with respect to as many as six general dimensions, including an overall assessment of answer or performance quality. Table 3.4 contains the average number of separate facets and general dimensions per task type.

Table 3.4

NUMBER OF SEPARATELY GRADED FACETS AND GENERAL DIMENSIONS PER TASK

	Task Number										
	1	2	3	4	5	6	7	8	9	10	11
Facets	21	10	19	11	22	8	17	14	7	12	16
General Dimensions	2	5	3	4	6	5	2	4	1	3	1

EVALUATOR SELECTION, ASSIGNMENT, AND TRAINING

Evaluators were selected from the pool of attorneys who regularly score the essay portion of the General Bar Examination, the Board of Reappraisers who supervise this grading, and the consulting staff who designed and developed the AC tasks.

Two evaluators graded all the written answers on the A problems (i.e., a total of 6 task/problem combinations) and three evaluators graded all the written answers on the B problems (9 task/problem combinations). There were three evaluators assigned to each oral task. These three evaluators graded all the performances on that task across problems. Thus, there was a total of 18 oral task evaluators (6 oral tasks X 3 evaluators per task).

The evaluators assigned to a particular task met with a member of the Committee of Bar Examiners and/or its staff and consultants prior to the grading of the answers. This one day meeting involved a detailed review of the problem, task, scoring guide, and calibration aid; round robin grading of a sample of written answers or independent assessments of oral performances; and a discussion of the tentative scores assigned. These activities focused on helping the evaluators employ the same grading criteria and standards across applicants so that an applicant's score on a task would not be a function of who was assigned to evaluate it.

There was a separate calibration meeting for each task/problem combination; i.e., a total of 33 meetings. However, the time required for the meetings generally declined as the evaluators became more familiar with the grading system.

SCORING PROCESS

All the answers (or cassettes) on one task/problem combination were graded before an evaluation team held its calibration meeting and began scoring the responses to another combination.

Answers and cassettes were assigned randomly to evaluators within each task/problem combination. About 15 answers and cassettes from the pool of about 162 applicants that took a given combination were duplicated. These duplicates were inserted into each evaluator's batch. Thus, an evaluator grading a written task had about 89 answers to score per combination ( $[(162 - 15)/2 + 15 = 89]$ ) while an evaluator assigned to an oral task had about 64 cassettes per combination ( $[(162 - 15)/3 + 15 = 64]$ ).

The sequence of grading the oral tasks was counterbalanced across problems in order to allow the evaluation teams to work concurrently. For example, one team graded Task 1 on Problem A-1 first and then Task 1 on Problem 2 while another team graded Task 3 on Problem A-3 first and Task 3 on Problem A-1 second. This procedure also helped to avoid any bias in the total score on a problem that might be related to the order in which the problems were graded.

All the answers to a written task on one problem were scored before the evaluators graded the answers to the next problem. This strategy was used so that the evaluators did not have to relearn a problem's general fact pattern each time they went to grade a new task.

Written answers and cassettes were identified solely by code numbers in order to protect anonymity. Oral task evaluators disqualified themselves from grading an applicant's cassette if they recognized that applicant.

#### COMPUTATION OF PART, TASK, AND PROBLEM SCORES

There was general agreement among the test planners, drafters, and evaluators that some of the facets and overall dimensions were more important than others. This view led to the use of a complex system for weighting and combining each facet and general dimension score into a set of part scores and then weighting and combining the part scores into total task scores.

For example, the "content" part score for Task 2 on problem A-2 was the sum of the scores on facet 24, 26, and 27; plus two times the sum of the scores on facet 20 - 23, 25, and 28. All the raw scores on this part on this task/problem combination were then scaled to a mean of 50 and standard deviation of 10 (i.e., across all the applicants who took Problem A-1, Task 2). An applicant's scale score on a part was then multiplied by a weight to reflect the relative importance of that part score in computing the total task score. For example, on Task 2, the "content" part score carried 45% of the weight while the "method" and "overall" part scores carried 35% and 20% of the weight, respectively.

The next step in the process involved summing each applicant's weighted part scores. The sums for a particular task/problem combination were then scaled to mean of 50 and standard deviation of 10 (i.e., across all the applicants who took that task/problem combination). As a result of these procedures, the scores on every task/problem combination had a mean of 50 and a standard deviation of 10. Appendix J contains the formulas for computing the total raw score on each task for one of the A problems (i.e., it is one of the six sets of scoring formulas).

The total score on an A Problem was the sum of its five task scores. Similarly, the total score on a B Problem was the sum of its six task scores. The total scores on a given combination of problems (e.g., A-1 + B-3) were converted to the same mean and standard deviation as the MBE scores of the applicants who took that combination in order to place the total AC score on the same scale of measurement as the MBE. A parallel process was used to convert AC total scores to the same scale of measurement as the Essay section of the GBX (more precisely, to three times the score in Phase I of the essay grading process because all applicants did not have all of their essay answers scored).

#### SUMMARY OF ACTIVITIES

The major activities associated with developing, administering, and scoring the AC are listed below. Over 150 persons were involved in these activities.

- o Developing the general design for the AC, including specifying the types of case situations that should be used and the kinds of skills and abilities that should and could be tested.
- o Designing each task and developing the criteria for evaluating performance on each facet of it.
- o Drafting, reviewing, and revising test materials (including making sure that all three problems of the same type were consistent in how they adhered to the test plan).
- o Typing, editing, duplicating, and distributing materials.
- o Arranging, administering, and participating in field tests.
- o Coordinating activities, site selection, and management.
- o Purchasing, setting up, and running the videotaping equipment.
- o Selecting, scheduling, and notifying participants.
- o Selecting, training, and directing actors and actresses.
- o Checking-in participants, providing orientation, proctoring test sessions, controlling test and answer materials, etc.
- o Developing scoring guides and calibration aids.
- o Organizing answers and videocassettes for scoring.
- o Recruiting, selecting, training, and supervising evaluators.
- o Distributing and collecting answers, cassettes, and score report forms; including supervising the circulation of cassettes across evaluation teams and monitoring interevaluator agreement indices.
- o Developing and implementing the procedures used to compute AC part, task, problem, and total scores.

Chapter 4

PRELIMINARY ANALYSES

OVERVIEW

This chapter discusses the results of analyses that investigated the degree to which: applicants taking different combinations of problems were of comparable ability, problem sequence or test site affected scores, separately scored facets and dimensions of a task were correlated with one another, evaluators agreed with one another in their assignment of scores, and scores on different tasks correlated with one another.

BALANCE OF APPLICANT ABILITY ACROSS PROBLEMS

Table 4.1 presents the average total GBX scores of the applicants that took each problem. An inspection of these data (and an analysis of variance within each problem type) indicated that the different groups had very similar average GBX scores.

Table 4.1

AVERAGE GBX SCORES OF THE APPLICANTS THAT TOOK EACH PROBLEM

Problem	A-1	A-2	A-3	B-1	B-2	B-3	Total
Total GBX	1026	1023	1019	1028	1018	1020	1022

SEQUENCE AND WARM-UP EFFECTS

Table 4.2 presents the average total GBX score and the average task score on each problem type for the applicants that took Problem A first and for those that took Problem B first. These data indicate that although the applicants that had the sequence A then B were slightly more able than those that had B then A, the two groups had almost identical average task scores on both problems. While these data suggest that the sequence B then A might have been slightly more beneficial than the opposite sequence, an analysis of the difference in average task scores (after controlling for the difference in average GBX scores) indicated that this slight tendency was not statistically significant.

It also is evident from the data in Table 4.2 that there was no "warm-up" effect; i.e., the average score on a problem was not related to whether that problem was taken first or second.

None of the tasks or types of tasks (i.e., oral versus written) deviated from the trends observed in Table 4.2.

The average AC and GBX scores of the applicants who participated during the first two pairs of days at a site were essentially the same as the average scores of the applicants who participated during the middle or last two pairs of days at that site. This is an important finding because it suggests that the participants adhered to the security restrictions (or at the very least, applicants who had not yet participated in the AC did not benefit from any information they may have obtained from those who had participated).

Table 4.2

AVERAGE GBX TOTAL AND AC TASK SCORES BY PROBLEM SEQUENCE

Problem Sequence	Total GBX	Problem		Task Type	
		A	B	Oral	Written
A then B	1030	49.7	49.8	49.1	50.2
B then A	1015	50.0	50.3	50.1	50.2

SITE EFFECTS

Table 4.3 presents average GBX and AC scores by site. These data indicate that the Los Angeles and Oakland participants had almost identical average scores. The comparability of the average oral task scores is especially important because it indicates that the use of one group of actors in Los Angeles and a different group in Oakland had no effect on AC scores.

Table 4.3

AVERAGE GBX TOTAL AND AC TASK SCORES BY SITE

Test Site	Total GBX	Problem		Task Type	
		A	B	Oral	Written
Los Angeles	1022	49.6	49.8	49.8	49.7
Oakland	1023	50.2	50.3	50.2	50.2

INTERNAL TASK CONSISTENCY

An analysis was conducted to determine the degree to which the facets and general dimension scores within a task were correlated with one another. The results of this study (which involved a statistical technique called factor analysis) indicated that the facets that went to make up one part score were generally no more highly correlated with each other than they were with the facets that were used to construct another part score. And, the level of correlations among the scores was generally quite high.

One explanation of these findings is that an evaluator formed a general impression of an applicant's performance level on a task and that this impression influenced all the separate scores the evaluator assigned to that applicant. This tendency often occurs with rating scales and is called a "halo" effect.

Table 4.4 provides the average internal consistency (coefficient alpha) of each task type (where the "items" used in the computation were all the separately scored facets and general dimensions). These data are consistent with the factor analysis results discussed above and indicate that no unique information would be obtained from an analysis of each task's part scores. These data also indicate that there was no consistent difference in internal consistency levels between oral (odd numbered) and written (even numbered) tasks. The insensitivity of the alphas to the number of separate dimensions scored (see Table 3.4) provides additional support for the hypothesis that the scores assigned to each facet were influenced by a halo effect.

Table 4.4

AVERAGE INTERNAL CONSISTENCY COEFFICIENT OF EACH TASK

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Task	1	2	3	4	5	6	7	8	9	10	11
Mean Alpha	.90	.91	.86	.90	.92	.88	.94	.91	.87	.83	.90

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INTEREVALUATOR CONSISTENCY

An analysis was conducted of the degree to which the 2 to 3 evaluators that graded a task agreed with one another in the scores they assigned. The data for this analysis consisted of the scores that were assigned to the 15 applicants on each task/problem combination that had their responses graded by all the evaluators that scored that combination. The results of this analysis indicated that the evaluators agreed highly with one another with respect to average scores they assigned; i.e., one evaluator did not tend to be more lenient than another.

The average correlation between readers on each task/problem combination is presented in Table 4.5. These data indicate that there was a moderate to high degree of agreement between the evaluators in their assessments of the relative quality of the applicants' responses. Written tasks had a higher average level of interevaluator consistency (.59) than the oral tasks (.42). Problem A tasks had a higher average level of interevaluator agreement (.64) than the Problem B tasks (.48). There was no apparent relationship between the degree of interevaluator agreement and the sequence in which the task/problem combinations were graded.

Table 4.5

AVERAGE CORRELATION BETWEEN EVALUATORS ON EACH TASK

Problem	Task Number										
	1	2	3	4	5	6	7	8	9	10	11
1	.66	.66	.40	.71	.56	.69	.42	.31	.41	.38	.29
2	.57	.86	.81	.52	.58	.62	.57	.71	.61	.41	.39
3	.77	.80	.47	.72	.47	.68	.23	.68	.50	.12	.67
Average	.67	.77	.56	.65	.54	.66	.41	.57	.51	.30	.45

CORRELATIONS AMONG TASKS

Table 4.6 contains the correlations among the task scores. A factor analysis of these data (see Appendix K) suggested that there was one cluster of oral tasks and another cluster of written tasks (although Task 8 fell in both clusters and Task 9 tended to correlate more highly with the tasks in the written cluster than with the tasks in the oral cluster).

The tasks on Problem A were no more highly correlated with one another than they were with the tasks on Problem B. The last row of Table 4.6 contains the average of the correlations with each task while the right hand column presents the correlation of the scores on a task with the sum of the scores on the other 10 tasks. These data indicate that the scores on Task 7 (client interview and counseling) had unusually low correlations with the scores on the other tasks. There was no apparent reason for Task 7's unusually low correlations, except that the evaluators on this task had a relatively low average level of agreement with one another (see Table 4.5).

Table 4.6

INTERTASK AND TASK/TOTAL CORRELATIONS

	1	2	3	4	5	6	7	8	9	10	11	Task/Total Correlation
1	-	.12	.25	.10	.20	.08	.12	.16	.11	.10	.13	.28
2			.16	.25	.22	.22	.08	.19	.14	.21	.06	.33
3				.22	.31	.17	.04	.19	.14	.11	.20	.36
4					.22	.28	.12	.19	.15	.30	.07	.38
5						.22	.13	.24	.18	.19	.20	.43
6							.12	.22	.19	.27	.13	.38
7								.05	.10	.06	.17	.20
8									.11	.18	.15	.34
9										.20	.11	.29
10											.08	.34
11												.26
Mean	.14	.17	.17	.19	.21	.19	.09	.17	.14	.17	.13	



The average correlation between tasks of the same type (i.e., oral versus written) and between tasks within the same problem are presented in Table 4.7. These data indicate that the correlations among the written tasks tended to be slightly higher than they were among the oral tasks. The relatively low average intercorrelation among Problem B's tasks was due mainly, but not entirely, to the scores on Task 7 (client interview and counseling) not correlating well with the scores on the other tasks in this problem.

The last column of Table 4.7 contains the estimated (internal consistency) reliability of each Task Type, Problem, and Total AC score based on the correlations among tasks. These estimates were computed using the Spearman Brown formula. Stepping up the .48 correlation between the Problem A and B scores provided an estimate of .65 for the reliability of the combined total score as compared to .67 based on the average of the intertask correlations. For consistency throughout the remainder of this report, analyses employing the reliability of AC scores will use the values in Table 4.7. Previous studies (Klein, 1981) have reported MBE, Essay, and Total GBX score reliabilities of .88, .81, and .91; respectively.

Table 4.7

RELIABILITY OF AC TASK TYPE, PROBLEM, AND TOTAL SCORES

	Average Intertask Correlation	Number of Tasks	Estimated Reliability
Oral	.16	6	.53
Written	.23	5	.60
Problem A	.21	5	.56
Problem B	.14	6	.49
AC Total	.16	11	.67

Chapter 5

RESULTS

OVERVIEW

This chapter presents a summary of the major findings of the Assessment Center (AC). This summary presents information regarding the relationships between AC scores and scores on the Essay and Multistate (MBE) portions of the General Bar Examination (GBX) as well as between AC scores and background characteristics (including race, law school type, and amount of prior legal clinical experience). The final portion of this chapter discusses the participants' evaluation of various aspects of the AC.

Throughout this chapter, results are presented as averages across the three problems of the same type. There are four reasons for this strategy: (1) the pattern and level of correlations within one problem were essentially the same as those on the other two problems (e.g., the correlation of GBX Total score with the total scores on Problems A-1, A-2, and A-3 were .45, .47, and .44, respectively); (2) there was essentially the same number of applicants taking each problem (see Table 3.3), (3) there was very little difference in the average GBX scores of the applicants taking each problem (see Table 4.1), and (4) the focus of this report is on general trends rather than on the unique characteristics of particular problems.

RELATIONSHIP OF AC SCORES TO GBX SCORES

Table 5.1 shows the relationships among GBX and AC task scores. These data indicate that scores on certain tasks were more highly related to GBX scores than scores on other tasks. Tasks 1 and 7 had the lowest correlations with GBX scores. Both of these tasks involved interviewing a client. However, the source of this pattern did not appear to be something that was unique to interviewing skills in that Task 1 scores had only a .12 correlation with Task 7 scores. And, with the exception of Tasks 1 and 7, oral and written tasks tended to correlate with GBX scores to about the same degree. There also was no systematic difference in the pattern of correlations due to problem type (e.g., the tasks in both problems had an average correlation .27 with GBX total).

Table 5.1

CORRELATION OF GBX AND AC TASK SCORES

GBX	1	2	3	4	5	6	7	8	9	10	11
MBE	.15	.26	.24	.21	.33	.35	.15	.28	.20	.27	.21
Essay	.14	.32	.20	.32	.32	.36	.14	.22	.27	.37	.16
Total	.16	.32	.24	.29	.35	.39	.16	.27	.26	.36	.20

One explanation of the pattern of correlations with Tasks 1 and 7 is that the applicants' scores on these tasks may have been affected by the characteristics of the actors with whom they interacted. Such an effect could be systematic (e.g., the actors may have varied in how they played there assigned roles) or random (e.g., one participant might relate well to Actor A but not to B while the reverse might be true for another participant).

The values above the main diagonal in Table 5.2 are the observed correlations among GBX and AC scores. These data indicate that GBX scores correlated slightly higher with Problem B scores than with Problem A scores even though the Problem B scores were slightly less reliable than the Problem A scores (see Table 4.7). However, none of these differences were statistically significant.

Table 5.2

OBSERVED AND CORRECTED CORRELATIONS BETWEEN GBX AND AC PROBLEM SCORES

	GBX Scores			Assessment Center Scores		
	MBE	Essay	Total	Problem A	Problem B	Total
MBE	-	.66	.89	.39	.45	.50
Essay	.78	-	.93	.43	.46	.52
Total	NC	NC	-	.45	.50	.56
Problem A	.56	.64	.64	-	.48	.85
Problem B	.69	.73	.75	.93	-	.86
AC Total	.65	.71	.72	NC	NC	-

Observed and corrected correlations appear above and below the main diagonal, respectively. The corrected correlation between a total score and the score on one of its parts was not computed (and designated NC in the table above).

The observed correlations in Table 5.2 also shows that AC scores correlated to about the same degree with MBE scores as they did with Essay scores ( $r = .50$  and  $.52$ , respectively).

The values below the main diagonal in Table 5.2 are the correlations among the variables after they have been corrected for "attenuation" (i.e., the less than perfect reliability of the measures). The corrected correlations provide an estimate of the magnitude of the true underlying relationship between the tests. For example, there would be a near perfect correlation ( $r = .93$ ) between the Problem A and B scores if both of these scores were perfectly reliable. This finding suggests that the two problems are measuring almost identical skills and abilities.

The data in Table 5.2 further suggest that if AC scores were more reliable, there would be a strong but far from perfect relationship between AC and GBX scores. This relationship ( $r = .72$ ) is about as strong as the underlying relationship between the Essay and MBE sections of the GBX ( $r = .78$ ). In short, the AC and the GBX appear to be measuring similar but not identical abilities.

Table 5.3 contains the correlations between GBX scores and scores on the AC's written and oral tasks. These data indicate that the total score on the written tasks correlated more highly with GBX scores than did the total score on the oral tasks. As expected, the highest correlation was between the written tasks and the Essay portion of the GBX. The corrected correlation between oral and written tasks ( $r = .73$ ) was about as strong as the underlying relationship between the Essay and MBE.

An analysis of the total oral and written scores within problems indicated that the highest correlation was between Oral A and Written B ( $r = .33$ ) while the lowest was between Oral B and Written A ( $r = .20$ ). The relatively low correlations with Written A were probably a function of this score being based on only two tasks whereas all the other task type scores within problems were based on three tasks (and thereby more reliable).

Table 5.3

OBSERVED AND CORRECTED CORRELATIONS  
BETWEEN GBX AND AC ORAL AND WRITTEN SCORES

	Observed		Corrected	
	Oral	Written	Oral	Written
.Oral	-	.41	-	.73
Written	.41	-	.73	-
MBE	.39	.44	.57	.61
Essay	.37	.51	.56	.73
Total	.42	.52	.60	.70

RELATIONSHIP OF AC SCORES TO RACIAL/ETHNIC GROUP

One of the major reasons for conducting the AC was to investigate whether the large differences in GBX passing rates among racial/ethnic groups would be reduced if the GBX were expanded to include AC type tasks. Table 5.4 addresses this issue by showing the percentage of applicants in each group that would fall in each pass/fail category if applicants were allowed to substitute their AC score for their MBE score, their Essay score, or either their MBE or Essay score (but not both). This third option was the one offered to all GBX applicants to encourage them to apply for (and if selected) to do well in the AC. When a substitution was made, the AC score on the MBE scale replaced the MBE and the AC score on the Essay scale replaced the Essay.

The data in Table 5.4 suggest that Asian applicants benefited the most and Hispanic applicants the least from the AC's substitution rule. However, differences were not statistically significant (i.e., they could have occurred by chance). More applicants were able to pass as a result of replacing their Essay than their MBE scores because in California, fewer applicants pass the Essay than pass the MBE. Overall, 11% (52 of the 485 applicants) were able to pass the complete California July 1980 examination (GBX + AC) as a result of their efforts in the AC.

Table 5.4

ADDITIONAL PERCENT PASSING IF APPLICANTS WERE ALLOWED TO SUBSTITUTE AN AC SCORE FOR A GBX MBE OR ESSAY SCORE

When AC score replaced GBX:	Anglo	Asian	Black	Hispanic
MBE	8	8	7	1
Essay	6	13	6	6
MBE or Essay	10	18	10	6

The major reason the passing rate went up by only 11% when AC scores were substituted for GBX scores is that there was a relatively strong relationship between an applicant's pass/fail status on the GBX and that applicant's overall performance level in the AC. This relationship is illustrated in Table 5.5. For the purposes of this table, an applicant was considered to have passed the AC if the sum of that applicant's AC MBE and AC Essay scores was equal to or greater than 1050.

Table 5.5

PERCENTAGE OF PARTICIPANTS IN EACH PASS/FAIL CATEGORY ON THE GBX AND AC

Group	Fail Both	Pass AC Fail GBX	Fail AC Pass GBX	Pass Both	Total Passing	
					AC	GBX
Anglo	39	13	16	32	45	48
Asian	61	16	13	11	27	24
Black	68	17	11	4	21	15
Hispanic	71	9	12	9	18	21

The data in Table 5.5 show that Anglo and Hispanic applicants had slightly lower AC than GBX pass rates while the reverse was true for Asian and Black applicants. The reader is cautioned not to over interpret these small differences in that a chi square test (on the number of Black and Anglo applicants in each of the two categories where the AC and GBX results led to different pass/fail decisions) indicated that these differences could easily have occurred by chance. A parallel analysis limited to ABA graduates produced the same pattern of results although total passing rates on both the AC and GBX were higher for all groups.

About 76% of the applicants had their pass/fail status classified the same way by the AC and GBX (i.e., percent passing both plus percent failing both). About 75% of all applicants and 75% of all AC participants had their pass/fail status classified the same way by the Essay and MBE.

Table 5.6 shows that Anglo applicants had the highest average GBX and AC scores whereas Black applicants had the lowest average total scores. The smallest difference between Anglo and minority applicants was on the oral tasks. The same pattern of results was obtained when the participant sample was limited to ABA graduates.

Table 5.6

AVERAGE GBX AND AC TASK SCORES WITHIN RACIAL/ETHNIC GROUPS

Group	GBX Scores			AC Scores		
	MBE	Essay	Total	Oral	Written	Total
Anglo	428	620	1047	51.0	51.1	51.1
Asian	407	604	1011	48.3	49.9	49.0
Black	388	577	965	48.9	46.9	48.0
Hispanic	398	598	997	48.8	48.6	48.7

The standard deviations of the AC oral, written, and total scores were 4.8, 5.0, and 4.1, respectively.

Some of the oral tasks' ability to narrow the gap in scores between Anglo and minority groups was a function of the lower reliability of the oral scores; i.e., they were more subject to chance variation than were the AC written or GBX scores (see Table 4.6). Specifically, how well an applicant performed on one oral task had a relatively low correlation with how well that applicant performed on another oral task even when the two oral tasks were similar in nature, such as client interviewing. Part of this lower reliability was due to evaluators being less consistent with one another in assigning scores to oral tasks than to written tasks (see Table 4.5). And, the more scores are a function of random error, the greater the the likelihood they will mask true differences between groups.

If the oral score was based on 18 rather than 6 tasks, then the oral test would take about 3 days to complete and its reliability would be about as high as the reliability of the essay score, but not nearly as high as the reliability of the Total GBX score. Statistical analyses (based on normal curve projections and the reliability and standard deviation of an 18 task oral test) indicated that the passing rate for Blacks would increase by about 12% and the rate for Asians would decrease by about 10% if pass/fail decisions were determined solely by an 18 task oral test rather than by the GBX. If the oral test contained 50 tasks, its reliability would be comparable to that of the Total GBX score, but it would be far less likely to narrow the gap between Anglo and minority passing rates.

Table 5.7 contains the correlations between Total GBX scores and AC oral, written, and total scores within each racial/ethnic group. These data indicate that the relationships between the measures in one group were generally consistent with the pattern and level of relationships in another group. The one exception was with Hispanic participants. Their AC scores and particularly their oral scores did not correlate as highly with their total GBX scores as would be expected given the pattern of relationships in the other groups. There was no apparent reason for this anomaly.

RELATIONSHIP OF AC SCORES TO BACKGROUND CHARACTERISTICS

Table 5.9 contains the mean GBX and AC scores for applicants in each school type, repeater classification, and sex group. These data indicate that the relationships of these background variables to GBX scores are generally consistent with the relationship of these variables to AC scores.

Table 5.9

AVERAGE GBX AND AC TASK SCORES WITHIN EACH SCHOOL TYPE, REPEATER CLASSIFICATION, AND SEX GROUP

Group	N	GBX Scores			AC Scores		
		MBE	Essay	Total	Oral	Written	Total
ABA approved	315	422	617	1039	50.6	50.8	50.7
CA accredited	118	401	591	992	48.6	48.2	48.2
Unaccredited	39	401	586	987	49.2	48.3	48.8
Other	13	408	588	997	48.7	50.1	49.4
Repeater	149	397	589	986	48.9	48.2	48.6
First Timer	336	423	616	1038	50.4	50.7	50.5
Male	340	419	607	1026	49.8	49.7	49.8
Female	145	404	610	1014	50.2	50.4	50.3

PARTICIPANT EVALUATIONS OF AC TASKS AND PROCEDURES

Participants were asked to complete a questionnaire regarding their experiences in and evaluation of the AC. This questionnaire was completed at the end of the second day of participation. A copy of the questionnaire appears in Appendix K along with a tabulation of the responses of the 400 participants for whom data were available. These data indicated that:

- o About 43% of the participants prepared for the AC by reading a book on clinical practice and 27% did not engage in any special preparation activities.
- o When asked how helpful it was to have a copy of the directions for each task in advance of participation, 3% said it was no help, 46% said it was somewhat helpful, 42% said it was very helpful, and 8% reported that they did not receive them.
- o When asked to evaluate the clarity of the directions; 5% said they were poor or very poor, 29% said they were fair, and 66% said they were good or very good.
- o About 80% of the respondents said the time limits on the written tasks were too short. Less than 20% of the applicants complained about the time limits on the oral tasks.

Table 5.7

OBSERVED CORRELATIONS OF AC SCORES WITH TOTAL GBX SCORES  
WITHIN EACH RACIAL/ETHNIC GROUP

Group	Oral	Written	Total
Anglò	.38	.46	.52
Asian	.49	.48	.54
Black	.39	.51	.52
Hispanic	.21	.44	.39

RELATIONSHIP OF AC SCORES TO CLINICAL EXPERIENCE

The effect of clinical experience on AC scores was assessed by examining the relationship between various combinations of AC scores and: (1) having held a job related to legal practice, (2) the number of hours spent in each of various types of legal practice activities (such as interviewing clients), (3) the number of hours spent in these kinds of cases across the various types of activities, and (4) the number of clinical courses taken (see items 3, 9, and 10 in Appendix C). These analyses indicated that applicants that had some prior clinical experience on actual cases outside of law school and/or on simulated cases in law school had significantly higher AC scores than applicants that had no experience. These differences were statistically significant even after controlling (through analysis of covariance) for differences in the average GBX scores among experience groups. However, experience obtained on actual cases as part of a law school program was not related to AC scores (see Table 5.8).

The amount of experience (such as 5 hours versus 50 hours) was not related to AC scores. This may have been due to many applicants indicating they had far more experience than would be reasonable given that most of them had just graduated from law school. For instance, 65% said they had over 100 hours of paid or volunteer time on actual cases outside of law school.

Table 5.8

AVERAGE ADJUSTED AC TASK SCORES FOR APPLICANTS WITH NONE VERSUS SOME  
CLINICAL EXPERIENCE RELATIVE TO WHERE THE EXPERIENCE WAS OBTAINED

	Oral		Written		AC Total	
	None	Some	None	Some	None	Some
Simulated cases in law school	48.2	50.4	48.6	50.3	48.3	50.3
Actual cases in law school	49.6	50.1	49.8	50.0	49.5	50.2
Actual cases not in law school	48.1	50.2	48.1	50.1	48.1	50.1

Averages adjusted for differences in GBX scores.



- o About 45% of the respondents said the AC was a good to very good measure of their legal skills and abilities as compared to 11% and 30% checking these choices for the MBE and Essay, respectively.

Table 5.10 contains the respondents' evaluations of how well the actors played their roles. These data indicate that the participants were generally quite satisfied with this aspect of the AC.

Table 5.10

PERCENTAGE OF RESPONDENTS CHECKING EACH CHOICE TO THE QUESTION:  
"HOW WELL DID THE ACTORS PLAY THEIR ROLES?"

Type of Role	Evaluation		
	Poor	Fair	Good
Your Client	1	9	90
Other Witness	2	21	77

Table 5.11 shows the percentage of respondents saying that a task was a poor, adequate, or good measure of the type of skill it was designed to assess ("did the nature of the problem, actors, materials, etc. give you the opportunity to do the things you were instructed to do by the directions?"). These data show that the evaluations of the oral (odd numbered) tasks tended to be higher than the evaluations of the written (even numbered) tasks. This trend paralleled the participants' complaint about the time available to complete the written tasks.

Table 5.11

PARTICIPANT RATINGS OF TASK QUALITY:  
AVERAGE RATING AND PERCENTAGE SELECTING EACH CHOICE

Rating	1	2	3	4	5	6	7	8	9	10	11
1 = Poor	2	35	9	46	13	26	4	17	15	30	24
2 = Adequate	39	45	49	37	53	54	49	52	52	45	48
3 = Good	59	20	42	17	34	20	47	31	34	24	28
Mean Rating	2.6	1.9	2.3	1.7	2.2	1.9	2.4	2.1	2.2	1.9	2.0

None of the variables in the questionnaire were significantly correlated with an applicant's AC or GBX scores. For instance, whether or not an applicant felt there was adequate time to complete a task was unrelated to how well the applicant performed on that task.

## Chapter 6

### EXPERT PANEL EVALUATIONS

#### PURPOSE

A panel of 25 lawyers was convened for 2.5 days to evaluate the quality of applicant performance in the Assessment Center (AC). This was done to determine whether: (1) the panelists' independent and collective judgments about the quality of performance in the AC were consistent with those made by the attorneys who did the actual grading and (2) whether the pass/fail line in the AC was drawn at the appropriate place.

#### PROCEDURES

The lawyers who served on the panel generally had considerable clinical experience and with few exceptions, were not involved in the regular grading of AC tasks. On the first half day, the panelists received an orientation to the project and general directions for evaluating an applicant's performance. The panelists were then divided into six teams. Four panelists served on each of five teams and five panelists (including a member of the Committee of Bar Examiners) served on the sixth team. The panelists also received copies of the problem to which they were assigned, scoring guides, calibration aids, directions to the AC's participants, and other related materials and information.

The remaining two days were spent in evaluating the performance of three applicants on one of the AC's six problems; i.e., there was one panelist team per problem. All the members of a team evaluated an applicant's performance on all of the tasks associated with the problem to which they were assigned (i.e., five or six tasks, depending upon whether it was a Plaintiff or Defendant problem, respectively). The sequence of steps for making these evaluations consisted of the panelists (1) reviewing the directions and applicant materials for a task, (2) independently evaluating the performance of each of their three applicants on this task, (3) depositing their evaluations in an envelope, (4) discussing their evaluations with their teammates, and (5) assigning a consensus rating to each applicant. This process was repeated for each of their problem's five or six tasks. The panelists also rated the relative importance of each task and assigned an overall grade to each applicant.

Performance on a task was evaluated on three to five dimensions, depending upon whether the task was written or oral. The five dimensions were Content, Method, Relationship to Client (on oral interview tasks), General Dimensions, and Overall Evaluation. All of these ratings were made using the following five point scale:

- 1 = Very Unsatisfactory (clear fail)
- 2 = Unsatisfactory (fail)
- 3 = Borderline
- 4 = Satisfactory (pass)
- 5 = Very Satisfactory (clear pass)

Panelists were directed to interpret the scale literally rather than make relative judgments about performance quality among the three applicants they evaluated. They were further advised that some teams were assigned applicants who did relatively well in the AC, some teams were assigned applicants who did relatively poorly, and some were assigned applicants who represented the full range of quality that was exhibited. Panelists were not told the grades given to the applicants they evaluated or whether they did relatively well or poorly in the AC.

## RESULTS

In general, the panelists agreed fairly well with one another in their evaluations of an applicant's performance (e.g., two panelists rarely differed by more than one point). However, the three teams assigned to a particular problem type did differ from one another in their suggestions as to how much emphasis should be placed on each task in determining a total problem score. The average of the relative weights for each task within a problem are presented in Table 6.1.

Table 6.1

AVERAGE OF THE PANELISTS' RATINGS REGARDING  
THE RELATIVE WEIGHT THAT SHOULD BE ASSIGNED TO EACH TASK

---

Task	1	2	3	4	5	6	7	8	9	10	11
Rating	20	18	18	22	22	18	25	17	10	15	15

---

Ratings sum to 100% within problems (A = 1-5, B= 6-11)

Table 6.2 provides the mean and standard deviation on the following variables for the 18 applicants whose AC responses were evaluated by the expert panel: average score across five or six tasks on the problem evaluated, the average of the panelists' consensus ratings on these same tasks, and the applicants' average total General Bar Examination (GBX) score. Note that the standard deviation of the average score across tasks is substantially smaller than it is within a single task due to the only moderate correlation among tasks.

The data in Table 6.2 show that the average score assigned by the panelists was 2.97; i.e. "borderline." The 18 applicants' average GBX score (1044) also was borderline in the sense that a score of 1050 was needed for passing the GBX. This finding suggests that the overall quality of performance in the AC was about the same as it was on the GBX.

There was no evidence of any systematic effect due to task type; the average ratings on the oral and written tasks across problems were 2.96 and 2.98, respectively. All the tasks tended to have means near 3.00, with the exception of Task 9 (opening statement) which had a mean of 2.22 and Task 1 (client interview) which had a mean of 3.67. The reader is cautioned not to attach too much significance to these differences since they were based on only 9 applicants per task.

Table 6.2

MEANS AND STANDARD DEVIATIONS FOR AC EVALUATORS  
AND EXPERT PANELISTS (N = 18)

	AC Evaluators	Expert Panel	GBX
Average Score	50.1	2.97	1043.6
Standard Deviation	3.7	.84	111.4

The panelists' evaluations correlated .82 with the Assessment Center's graders' ratings and .68 with GBX scores. There was a .83 correlation between the Assessment Center graders' evaluations and GBX scores. Thus, all three measures rank ordered the 18 applicants in about the same way.

Figure 6.1 shows the relationship between an applicant's average score on an AC task (i.e., the score assigned by the actual grader) and the average of the panelists' consensus judgment on these same tasks. The numbers 1 through 6 in the figure refer to problems (1 = A-1, 2 = A-2, 3 = A-3, 4 = B-1, 5 = B-2, and 6 = B-3). Each problem number appears three times, corresponding to the three applicants that had their responses evaluated by the panel on that problem.

Figure 6.1 has two important features. First, it shows that the AC evaluators and panelists generally agreed with one another about the relative performance levels of the participants. For example, the two applicants with the lowest average AC task scores also received the lowest overall ratings by the panelists. The second important feature of Figure 6.1 is that it shows that this high correlation between the panelists and the AC graders was not due to the panelists just spreading their ratings around the midpoint of the five point scale. For example, if a team was given three applicants with average AC task scores above 50, the team tended to assign scores above 3.0 to all three applicants (e.g., Problem #4). In other words, the panelists' pass/fail judgments were not unduly influenced by whether they evaluated applicants whose performance was homogeneously high, homogeneously low, or spread out across the distribution of grades assigned by the AC's evaluators.

The foregoing findings indicate that the panelists' judgments as to where the pass/fail line should be drawn in the AC was consistent with where it was drawn on the GBX. In short, applicants were judged to be just as proficient in performing AC type tasks as they were in answering GBX type questions. However, because only 18 applicants were evaluated, the results obtained with them should be considered as a suggestive rather than as a definitive assessment of the degree of correspondence between performance levels on the two types of examinations.

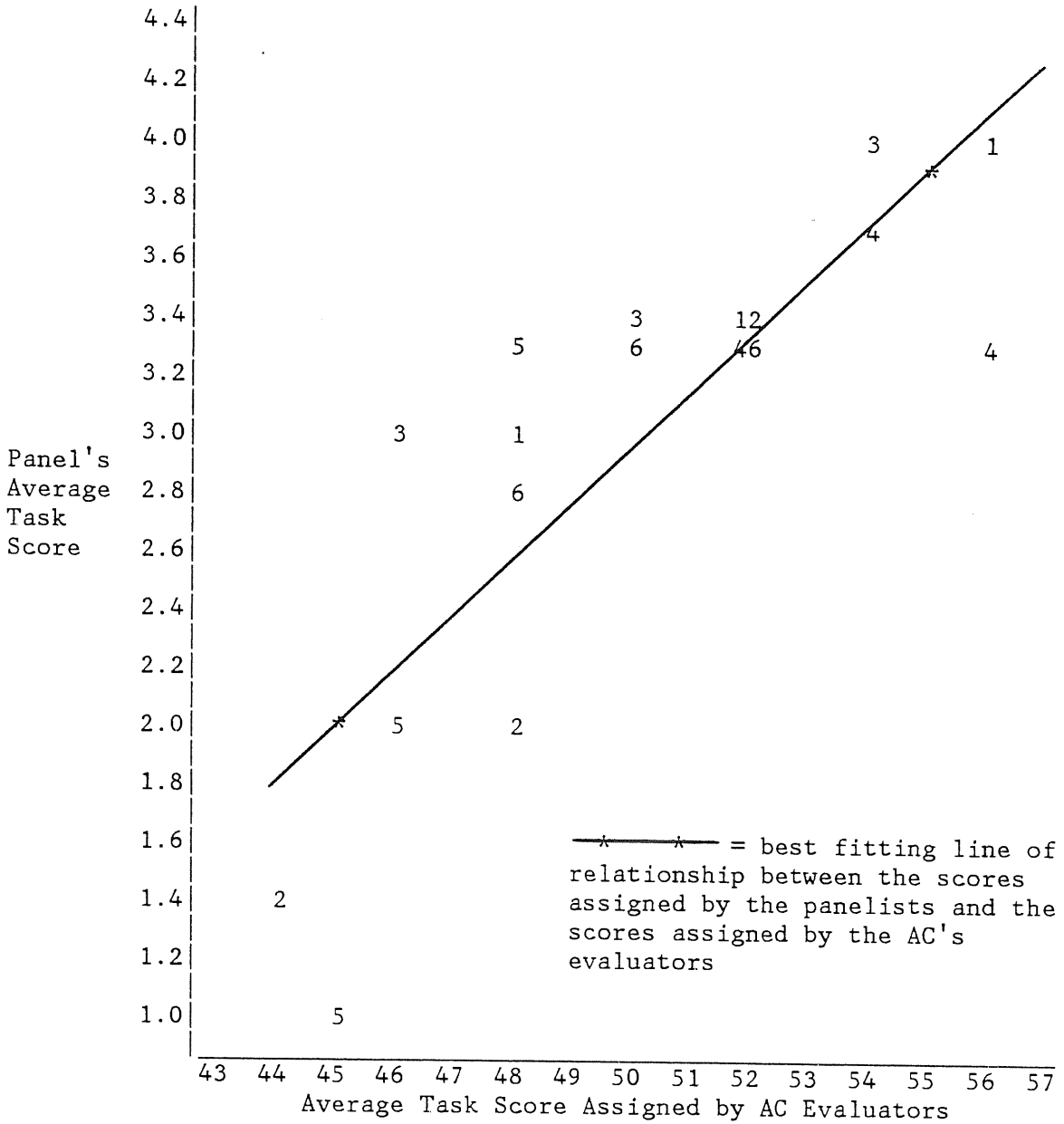


Figure 6.1 - RELATIONSHIP BETWEEN SCORES ASSIGNED BY PANELISTS AND ASSESSMENT CENTER EVALUATORS

## Chapter 7

### DISCUSSION OF RESULTS

#### OVERVIEW

The Assessment Center (AC) was conducted in order to answer the following questions:

- o Is it feasible to construct measures of clinical legal skills that can be administered under standardized conditions and scored reliably?
- o Do applicants who perform relatively well on the General Bar Examination (GBX) also perform well on clinical skills measures?
- o Are applicants generally more or less proficient in clinical skills than they are in the skills measured by the GBX?
- o Are AC scores related to an applicant's legal training and experience?
- o Would the use of AC type tests on a bar examination narrow the difference in passing rates that currently exists between racial/ethnic groups?

The answers to these questions and the policy implications of these answers are discussed in the remainder of this chapter.

#### FEASIBILITY

One major finding of the AC was that it was possible to construct tests that appeared to assess important clinical skills. For instance, participants interviewed clients, presented oral arguments, negotiated an offer to settle, and prepared a trial brief. And, professors who taught clinical courses as well as practitioners who reviewed test materials generally concurred that the structure and nature of the AC tasks were such that they were measuring what they were designed to measure. This view was shared by most of the participants as well.

It also was apparent that the tests could be administered under reasonably standardized conditions. Scores were not affected by whether: the applicant took the AC in Los Angeles or Oakland; a plaintiff or defendant type problem was taken first; the applicant participated toward the beginning, middle, end of the two week period in which the AC was given; or the applicant did or did not take a problem previously (i.e., there was no warm-up effect).

Statistical analyses of the data indicated that the evaluators generally agreed with one another in their assessments of the overall relative quality of the applicants' responses. However, the scores on the separate aspects of a task were so highly correlated with one another as to render them useless for the purposes of providing information about different skills within that task.

The level of agreement between evaluators and the correlation between the scores on different tasks were somewhat related to the type of task. Written tasks tended to correlate more highly with one another than did oral tasks (see Table 4.7). Written tasks also tended to have higher levels of interevaluator agreement than oral tasks (see Table 4.5). And, while oral tasks tended to correlate slightly higher with scores on other oral tasks than they did with scores on a written tasks, there were numerous exceptions to this trend.

The foregoing pattern did not appear to be due to some oral tasks measuring one type of skill and other oral tasks measuring a different skill. For example, although Tasks 1 and 7 both involved interviewing, scores on these tasks had relatively low correlations with each other and with scores on the other oral tasks (see Table 4.6). Similarly, Tasks 5 (Closing Argument) and 9 (Opening Statement) did not correlate particularly highly with each other even though both involved speaking to a hypothetical jury. Task 5 also had the highest average correlation with the other tasks while Task 9 had a relatively low average correlation with the other tasks. In addition, the amount or nature of the interaction with an actor did not appear to be systematically related to an oral task's correlation with other tasks or its interevaluator consistency indices.

Written tasks, on the other hand, tended to have much higher intertask correlations; e.g., five written tasks had a higher overall reliability than six oral tasks. The only major problem with the written tasks was that 80% of the applicants complained that they did not have enough time to complete them. Increasing the time allowed on these tasks (or shortening the task requirements) might lead to even more reliable scores and higher correlations with GBX scores.

One implication of the findings above is that a practical skills test would have to include several oral tasks in order to provide even a moderately reliable estimate of an applicant's performance on such tasks. This is an important consideration because oral tasks are far more costly and difficult to develop, administer, and score than written tasks. For instance, the AC used four times as many oral task evaluators as written task evaluators and even then, it took longer to score the oral than the written tasks. Moreover, oral tasks pose special test security and logistics problems when large numbers of applicants have to take them. While these factors would argue against the general use of oral tasks, it was observed that Task 5, Closing Argument, had the highest average correlation with all of the other tasks. Moreover, Task 5 did not require the use of an actor and therefore its costs and associated administrative problems were substantially less than those of the other oral tasks.

In summary, the relatively low reliability, administrative difficulties, and high costs associated with most (but not necessarily all) standardized oral tasks probably precludes even considering them as possible components of a general bar examination. Written tests of clinical skills, on the other hand, are relatively easy to construct, administer, and score. Further, unlike oral tasks, the scores on written tasks are moderately correlated with one another. Thus, if a bar examination were to be expanded to include a clinical skills section, there would be less concern about which written tasks were used than there would be about the choice of oral tasks.

## RELATIONSHIPS AMONG AC AND GBX SCORES

When the observed correlations among tests and subtests are corrected for the reliabilities of these measures (see Tables 5.2 and 5.3), the pattern of relationships that emerges indicates that:

- o AC oral and written scores are generally more highly correlated with each other ( $r = .73$ ) than they are with total GBX scores.
- o The correlation between AC oral and written tasks is about as strong as the correlation between the Essay and MBE sections of the GBX.
- o The correlation between the total AC score and the total GBX score ( $r = .72$ ) is about as strong as the correlation between the Essay and MBE sections of the GBX ( $r = .78$ ).
- o While all of the foregoing relationships are strong, none of them approach unity ( $r = 1.00$ ). The corrected correlation between problems A and B ( $r = .93$ ), on other hand, is very close to unity. This implies that they are measuring the same skills.

Taken together, these findings suggest that the set of 11 AC tasks measure certain skills and abilities that are similar but not identical to those measured by the GBX. And, the degree of similarity is about as strong as it is between the Essay and MBE portions of the GBX. These findings along with those in Table 5.5 also indicate that the inclusion of AC type tasks on the GBX would make a small but noticeable change in who passed versus failed the examination; i.e., adding AC type tasks would result in some applicants going from a pass to a fail status while the reverse would be true for other applicants.

The percentage of applicants that would have their pass/fail status affected by adding AC tasks to the GBX would depend upon several factors, including: (1) how much weight was given to the practical skills section of the examination, (2) the reliability of scores in this section, (3) the correlation of AC and GBX scores, and (4) the policies adopted regarding combining scores across sections (e.g., whether an applicant had to pass both the regular and AC sections in order to pass or whether a high score on one section could offset a low score on the other). In general, the most change would occur if the AC replaced the GBX (i.e., the GBX was given no weight), if the AC scores were very unreliable and did not correlate well with the GBX (e.g., if they placed a heavy emphasis on oral skills), and if an applicant was not allowed to compensate for low scores on one section with high scores on the other section.

If an Assessment Center replaced the GBX and if the percentage passing did not change, less than 25% of the applicants would have their pass/fail status affected. Less than 15% would be affected if the AC, MBE, and essay were given equal weight because of the generally strong relationship among these measures. Equal weights also would have little or no effect on the current differences in passing rates among racial/ethnic groups (see Table 7.1). Allowing applicants to substitute an AC score for a GBX score (as was done in order to conduct this research) would increase the pass rate for all groups. The amount of increase would, of course, depend upon the particular substitution rules adopted.



Table 7.1

PERCENTAGE PASSING IN EACH RACIAL/ETHNIC GROUP IF THE AC CARRIED ALL, SOME, OR NONE OF THE WEIGHT IN DETERMINING WHO PASSED

<u>Pass/fail based on:</u>	<u>Anglo</u>	<u>Asian</u>	<u>Black</u>	<u>Hispanic</u>
AC only	45	27	21	18
AC + MBE + Essay	47	25	17	20
MBE + Essay	48	24	15	21

Another factor that could affect the impact of adding an AC section to a regular bar examination is the evaluator's judgment about the absolute (as distinct from relative) quality of performance on the AC tasks. Two methods for computing scores were used in this study. One method involved having the evaluators grade the relative quality of the applicants' responses and then scale these scores to their GBX scores. This procedure was used with all AC participants in order to combine their AC scores with their GBX scores (see Chapter 3). One consequence of this method is that the percentage passing the GBX would be about the same as the percentage passing the AC.

The second method involved having an expert panel make absolute judgments regarding how well 18 applicants performed in the AC; i.e., all 18 could have passed (or failed) the AC regardless of their GBX scores. The results with this second method indicated that:

- o The expert panel rank ordered the applicants in about the same way as did the AC evaluators ( $r = .82$ ).
- o The expert panel would pass about the same percentage as would be passed by the first method (scaling AC scores to the GBX).

The second of these two findings is particularly important because it suggests that the overall quality of performance in the AC was comparable to that on the GBX. In other words, as a group, AC participants were just as proficient in the skills measured by the AC as they were in the skills measured by the GBX (see Figure 6.1). However, California's standard for passing the GBX is much higher than the standard used by most other states. Thus, many of the applicants passing the bar in these other states probably have less than minimally acceptable clinical skills.

The stability of the findings with the expert panel are, of course, open to question. Only 18 applicants had their AC responses graded by this panel. Nevertheless, the data on the relationship between AC and GBX scores among all AC participants lends support to the policy option of expanding the bar examination to include the measurement of clinical skills. These skills are generally considered important by the legal profession, they are measurable, and while the essay and MBE sections of the GBX provide a fairly accurate estimates of an applicant's clinical skills, this prediction is far from perfect (even after correcting for the reliability of the measures).

## RELATIONSHIP OF AC SCORES TO APPLICANT CHARACTERISTICS

The results presented in Chapter 5 indicated that the relationship of AC scores to various background characteristics almost always paralleled the relationship between these characteristics and GBX scores. For instance, applicants who graduated from American Bar Association (ABA) approved law schools tended to do better on both the GBX and the AC than graduates of non-ABA approved schools.

An important exception to this trend was that applicants with some prior clinical experience tended to do better on the AC tasks than applicants that did not have any experience. This relationship was statistically significant even when the AC scores were adjusted for differences in their average GBX scores (see Table 5.8). The fact that varying amounts of experience were not systematically related to AC scores was probably a result of two factors: (1) self reports of the amount of time actually spent in performing legal tasks were apparently inflated (perhaps as a result of some applicants believing a large number of hours would help them get selected for the AC) and (2) the study had no way of assessing and controlling for differences in the appropriateness of the clinical training and experience the applicants may have received. This latter factor may have accounted for the failure to find a relationship between AC scores and prior experience among those applicants who obtained this experience on actual cases as part of law school program. Providing applicants with a detailed set of instructions and scoring criteria in advance of the AC also may have tended to reduce the advantage that applicants with prior experience may of otherwise had over those without such experience.

The significant relationship between AC scores and prior experience tends to support the validity of the AC tasks as measures of clinical skill. Additional support came from an analysis of the relationships between AC scores and scores on a clinical test of research skills. This 195 minute test was taken by a random sample of applicants as part of an experiment conducted during the July 1980 administration of the GBX. The Research Test (RT) had two parts, A and B. Part A involved evaluating the degree to which each of several cases supported various legal propositions that were relevant to a client's case. Part B asked applicants to use the Part A cases and other materials, such as copies of statutes, to prepare a memorandum about their client's case, such as its strengths and weaknesses. Since applicants were given copies of all the cases to be evaluated, the test emphasized analytic skills rather than legal knowledge (see Klein, 1981b for a more complete description of the RT).

Table 7.2 contains the observed and corrected correlations among GBX, AC, and RT scores in the sample of 117 applicants that had scores on all three measures. These data show that RT scores correlated higher with AC than with GBX scores, especially when the scores were corrected for reliability. AC tasks 4 and 6 were particularly highly correlated with both parts A and B of the RT. These findings suggest that the AC and RT are measuring similar skills and these skills are somewhat different than those assessed by the GBX.

Table 7.2

OBSERVED AND CORRECTED CORRELATIONS AMONG GBX, AC, AND RT SCORES

	GBX	AC	RT
General Bar Exam (GBX)	(.91)	.59	.46
Assessment Center (AC)	.76	(.67)	.55
Research Test (RT)	.55	.76	(.78)

Observed and corrected correlations appear above and below the main diagonal. The reliabilities appear on the main diagonal in parentheses.

RELATIONSHIP OF AC SCORES TO RACIAL/ETHNIC GROUP

An applicant's racial/ethnic group had a small and not statistically significant effect on the relationship between GBX and AC scores. Results suggested that the passing rate for Asian and Black applicants would increase slightly and the passing rate for Anglo and Hispanic applicants would decrease slightly if the AC replaced the GBX as the method for determining an applicant's pass/fail status (see Tables 5.4 and 7.1).

Differences in average oral scores among racial/ethnic groups were slightly smaller and less consistent with the pattern of differences among these groups on the written tasks and the GBX. Since the oral scores were not especially reliable, a substantial portion of their ability to reduce differences was probably due to chance. It is also possible that the oral scores may have been influenced by the evaluators of these tasks being able to observe an applicant's age, sex, and racial/ethnic group.

The interaction of racial/ethnic group with task type accounted for only 1% of the variance in AC scores. And, the relationships with AC scores in one racial/ethnic group generally paralleled the relationships among measures in the other groups. Restricting the sample to just ABA graduates did not change the pattern of relationships described above.

CONCLUSIONS AND RECOMMENDATIONS

The results presented in this report indicated that it is feasible to construct, administer, and reliably score certain types of clinical skills tests. It also was apparent that while scores on such tests are correlated with performance on the general bar examination, they still provide some unique information about an applicant's legal skills. And, while clinical skills tests would not substantially or even uniformly narrow the gap in passing rates between Anglo and minority groups, neither would they widen this gap. Thus, it is recommended that further consideration be given to the inclusion of clinical skills tests in a bar examination. If such tests are included, they probably should be limited to tasks that do not require oral performance because the oral tasks were far more costly to administer and score, but usually less reliable and objective, than the written tasks.

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APPENDIX A

DESCRIPTION OF THE MULTIPHASED GRADING PROCESS

The major steps in the multiphased grading process are listed below:

- 1) In Phase I, all three answers in one of the three essay sessions are graded (different applicants have different sessions read in this phase so that all reader teams can begin simultaneously). If the sum of an applicant's MBE and three essay scores is greater than 665, the applicant passes; i.e., there is no further reading of that applicant's answers. If the applicant's Phase I score is 665 or less, the applicant goes on to Phase II.
- 2) All the applicants in Phase II have their remaining six essay answers read once. Applicants with total scores (i.e., MBE + Essay) below 1010 are failed, those with scores above 1065 are passed, and those with scores between 1010 and 1065 are placed in Phase III.
- 3) All the applicants in Phase III have all nine of their essay answers read again. The second reader assigned to an answer is a different person than the first reader and the second reader does not know the grade given by the first reader. The Phase III applicants have their Phase II and III essay scores averaged. If the total of an applicant's MBE and average essay score is less than 1030, the applicant fails; if it is more than 1049, the applicant passes; and if it is between 1030 and 1049, the applicant is placed in Phase IV.
- 4) Phase IV is called "reappraisal." In this phase, all nine of an applicant's essay answers are evaluated as a set by a member of the Board of Reappraisers (i.e., a member of a panel of consultants who have extensive experience in developing and grading the essay portion of California's examination). The reappraiser is advised of all the grades assigned to the applicant (i.e., MBE and essay scores from Phases I - III) and is asked to review the essay answers again to see if enough points can be found to pass the applicant. If enough points cannot be found, the applicant fails.

A parallel procedure (but with different cutoff scores) is used to determine whether an applicant passed the essay section by itself.

Of the 7379 applicants who took the complete July 1980 GBX, 29% passed in Phase I. The percent passing as a result of Phases II, III, and IV were 11, 5, and 3, respectively. Another 1% passed as a result of having passed one portion of the GBX previously and having received in July 1980 a passing grade on the portion they had failed previously. Table A.1 shows how the 7379 applicants were distributed across pass/fail categories.

Table A.1

DISTRIBUTION OF JULY 1980 APPLICANTS ACROSS PASS/FAIL CATEGORIES

Final Status	Basis for Pass/Fail Status	Number of Applicants	Percent of Applicants
Pass	Phase I Pass	2141	29.0
Pass	Phase II Pass	783	10.6
Pass	Phase III Pass	380	5.1
Pass	Phase IV (Reappraisal) Pass	234	3.2
Pass	Previous MBE Pass + Phase II Essay Pass	34	0.5
Pass	Previous MBE Pass + Phase III Essay Pass	29	0.4
Pass	Previous MBE Pass + Phase IV Essay Pass	12	0.2
Pass	Previous Essay Pass + Current MBE Pass	10	0.1
Fail	Phase II Fail	1932	26.2
Fail	Phase III Fail	1476	20.0
Fail	Phase IV Fail	348	4.7
Total		7379	100.0

APPENDIX B

ANNOUNCEMENT TO APPLICANTS REGARDING ASSESSMENT CENTER

Between August 4 and August 24, 1980, the Committee of Bar Examiners will conduct an "Assessment Center" designed to examine the appropriateness and feasibility of non-traditional measurement devices to assess relevant qualities and skills of applicants for admissions to practice law. The Assessment Center will be conducted only in the Los Angeles and San Francisco areas. Participation in the Assessment Center will be limited to approximately 500 applicants and, as indicated below, those wishing to participate must file a special application to do so.

1. Eligibility for Assessment Center.

To be eligible to participate in the Assessment Center, an applicant must have taken all other parts of the applicable July 1980 examination (including the Special Session to which assigned) and completed and filed a timely application for the "Assessment Center." Applicants who apply to take the general examination in a location other than Los Angeles or San Francisco are eligible to apply for the Assessment Center but, if selected, must provide for their own transportation to the Assessment Center location to which assigned and their own "housing" while there.

2. Assessment Center Format.

The Assessment Center will require the participation of each selected applicant for two days during each of which each applicant will take a single problem. The problems will be designed to simulate actual cases with professional actors and actresses playing the parts of clients and witnesses.

Each problem case will require the applicant to accomplish several tasks each of which might be encountered in the handling of an actual case. Some of the tasks will be oral such as interviewing or consulting a client, preparing to examine or examining or cross-examining a witness, making an opening statement and making an oral argument. Some tasks will require participants to produce written materials or documents such as a file memoranda, a trial brief, a memorandum of points and authorities, and interrogatories.

Applicants' performances on the oral tasks will be videotaped for subsequent evaluation and their written work will be evaluated by readers.

3. Use of Assessment Center Scores.

The scoring of the materials produced by each applicant on the various Assessment Center tasks will be used to reach a scaled score for that applicant's performance in the Assessment Center. The Committee has determined that, for each applicant who has not otherwise passed the examination, the applicant's Assessment Center score will be substituted for the lower of the applicant's grades on either the MBE or Essay part of the examination in determining whether the applicant has passed the entire

examination at the July 1980 administration, provided that the applicant achieved a passing grade in the Assessment Center and a score of not less than 60% on each of the regular parts (MBE and Essay) of the July 1980 examination (Bar or Attorneys') which that applicant was taking. Thus, an applicant's performance in the Assessment Center can substantially increase but cannot decrease the likelihood that the applicant will pass the examination.

#### 4. Applications for Assessment Center.

Applicants may apply to participate in the Assessment Center by completing the accompanying questionnaire and application (separate from the usual application for the General Bar or Attorneys' Examination) and returning it to reach either office of the Committee of Bar Examiners not later than June 16, 1980.



APPENDIX C

PRE-EXAMINATION QUESTIONNAIRE

Your answers to the questions below will assist the Committee of Bar Examiners in its efforts to improve the bar examination. Your responses will be kept strictly confidential and used solely for research purposes. We are most appreciative of your cooperation.

1. Birthdate (   /   /   )

2. Which of the following jobs, if any, have you held for one or more months? Check all that apply:

- |  |   |
|--|---|
| <input type="checkbox"/> Attorney                | <input type="checkbox"/> Legal Investigator           |
| <input type="checkbox"/> Court Reporter          | <input type="checkbox"/> Legal Secretary              |
| <input type="checkbox"/> Law Clerk               | <input type="checkbox"/> Paralegal assistant          |
| <input type="checkbox"/> Law Enforcement Officer | <input type="checkbox"/> Other Law Related Employment |

3. About what percentage of the time was English spoken in your home during your childhood? Please put your answer in the box below.

[   ] Percent of time English spoken.

4. Circle the box corresponding to the language other than English that was spoken most often.

- |              |                       |                          |
|--------------|-----------------------|--------------------------|
| [1] Chinese  | [3] Spanish           | [5] None of these or no  |
| [2] Japanese | [4] Taglog/Phillipino | language besides English |

5. Circle the box corresponding to the highest grade in school completed by your MOTHER or female guardian. Leave blank if you do not know.

- |                 |   |
|-----------------|---|
| [1] 1st to 5th  | [4] High School Graduate                |
| [2] 6th to 8th  | [5] College Graduate                    |
| [3] 9th to 11th | [6] Graduate/Professional School Degree |

6. Circle the box corresponding to the highest grade in school completed by your FATHER or male guardian. Leave blank if you do not know.

- |                 |   |
|-----------------|---|
| [1] 1st to 5th  | [4] High School Graduate                |
| [2] 6th to 8th  | [5] College Graduate                    |
| [3] 9th to 11th | [6] Graduate/Professional School Degree |

7. Circle the box below that best describes your undergraduate major:

- [1] Economics, Business, Accounting
- [2] Physical Science, Engineering, Mathematics, Biology
- [3] Social Science (Anthropology, Psychology, Sociology)
- [4] History, Government, Political Science
- [5] English, Journalism, Classical Studies, Philosophy
- [6] Fine Arts
- [7] Education
- [8] Other

8. For each of the activities below, indicate the number of hours, if any, you have spent doing them for: SIMULATED cases, ACTUAL cases associated with supervised law school programs, and ACTUAL cases as part of paid and/or volunteer employment. Insert the number 99 in a box if you spent more than 100 hours doing the activity.

	SIMULATED CASES	ACTUAL CASES Supervised Law School Programs	Paid or Volunteer Employment
a. Conduct legal research	[ ]	[ ]	[ ]
b. Prepare briefs, petitions, or motions	[ ]	[ ]	[ ]
c. Conduct direct examinations	[ ]	[ ]	[ ]
d. Conduct cross examinations	[ ]	[ ]	[ ]
e. Interview a client or witness for a hearing	[ ]	[ ]	[ ]
f. Interview a client on general legal matters; e.g., landlord-tenant dispute	[ ]	[ ]	[ ]
g. Present an oral argument in a legal proceeding	[ ]	[ ]	[ ]

9. In the box next to each choice below, indicate the number of courses, if any, you have taken in:

- [ ] Evidence
- [ ] Clinical or Trial Practice involving your participation in simulated or actual hearings
- [ ] Trial Practice NOT involving your participation in simulated or actual hearings; i.e., lecture only

10. If you have secured employment in California in a law related job commencing by September 15, please circle the box corresponding to how you will be employed.

- [1] Attorney General's Office
- [2] Public office, criminal prosecution (e.g., District Attorney)
- [3] Public office, criminal defense (e.g., Public Defender)
- [4] Legal aid office (e.g., neighborhood legal assistance)
- [5] Public interest law firm
- [6] Law clerk for a judge
- [7] Private law firm, criminal defense
- [8] Private law firm, general practice
- [9] Law department of a corporation
- [0] Other

11. Do you hereby apply to participate in the two day Assessment Center?

- (1) No    (2) Yes

If selected as a participant in the Assessment Center, I will be available to participate in the location circled below on any date between August 4 and 24 (inclusive) except for the dates circled below.

<u>Circle one</u>	Mon	Tue	Wed	Thu	Fri	Sat	Sun
in (1) Los Angeles only	4	5	6	7	8	9	10
in (2) San Francisco only	11	12	13	14	15	16	17
in (3) either LA or SF	18	19	20	21	22	23	24

(The likelihood of being selected may be improved by increased availability.)

APPENDIX G

GENERAL DIRECTIONS FOR EACH TASK

TASK: A-1  
TITLE: Initial Client Interview  
TIME: 35 minutes (5 preparation & 30 meeting)  
MATERIALS: Memo from Legal Secretary

In this task, you will meet with your client for the first time. The objectives of this interview are to:

- (1) Obtain basic facts about your client's problem and information on where to obtain additional information.
- (2) Obtain client's objectives and reasons for seeking legal advice.
- (3) Establish a harmonious relationship with your client.

A meeting that elicits facts but fails to respond to your client's concerns will not be satisfactory. Similarly, a meeting that does little more than establish rapport will not be sufficient.

Thus, in conducting the interview, you should:

- (1) Have client tell story in client's own words.
- (2) Be sensitive to ethical issues that may arise.
- (3) Communicate in terms that are likely to be understood by your client.
- (4) Discuss next steps to be taken by you and/or your client.

Assume that your law firm has agreed to represent the client and that arrangements for fees have been made. You should not discuss your fees with your client.

TASK: A-2  
TITLE: Discovery Plan and Interrogatories  
TIME: 2 hours  
MATERIALS: Copy of the Complaint and the Answer  
Notes from client interview  
Case related materials  
Mini-library

In this task, you will prepare two documents, namely: a discovery plan for internal office use and a set of up to 20 interrogatories which will be propounded to the defendant. You will need to use the materials listed above in this task.

The purpose of the discovery plan is to identify and discuss the ultimate facts needed to establish the cause(s) of action alleged in the Complaint. The discussion of each ultimate fact should include:

- (1) Specification of the ultimate fact.
- (2) Evidence by which the fact may be established.
- (3) Potential sources of this evidence.
- (4) Formal and/or informal method(s) by which this evidence can be obtained; e.g., requests for admissions and interviews.

Please note that your discovery plan should not discuss any issues raised by the Affirmative Defense in the Answer.

The second part of this task is to draft up to 20 interrogatories that probe issues raised by the Affirmative Defense in the Answer. These interrogatories should seek information that is calculated to lead to the discovery of admissible evidence. This would include questions whose answers were likely to help prove or disprove a vital fact (directly or circumstantially) or lead to the discovery of other important information. The questions should be phrased in a way that will lead to information that is useful. Thus, your interrogatories should be clear, precise, and difficult to evade.

For the purposes of this task, an interrogatory can include up to three subparts so long as these subparts are directly related to the thrust of the interrogatory. For example, one interrogatory might be phrased as follows: "Did you talk to the plaintiff on March 3, 1980? If so, please state (a) where the conversation occurred, (b) was it by telephone or in person, and (c) who else, if anyone, was present during this conversation?" Your interrogatories should not be accompanied by any preamble, caption, definitions, or directions.

TASK: A-3  
TITLE: Preparation of Client for Direct Examination  
TIME: 75 minutes (45 planning & 30 meeting)  
MATERIALS: Special Instruction Sheet  
Summary of client's deposition  
Case related materials

In this task, you are to prepare your client for direct examination. You may assume that you have had ongoing contact with your client since the initial interview. Such contact included your representing the client at a deposition taken at opposing counsel's office.

The primary purpose of this session is to prepare your client for direct examination on an aspect of the case specified on the Special Instruction Sheet and on one or more other aspects of your own choosing. This preparation session is designed to enhance the likelihood of your client providing effective testimony at trial.

The major portion of this office visit should, therefore, be spent in simulating the direct examination you plan to conduct at trial. In this simulated examination you should:

- (1) Ask questions that allow the client to testify in client's own words.
- (2) Ask questions in a systematic fashion (e.g., by case component, chronologically, etc.).
- (3) Ask questions about material aspects of the case.
- (4) If appropriate, ask questions about aspects of the case that may prove troublesome.
- (5) Ask questions in a manner that is readily understandable to the client and to the factfinder.
- (6) Respond to your client's concerns.

A small portion of your time should be spent in alerting your client to what might occur during cross-examination, including aspects of the case that may prove troublesome. Do not spend time preparing your client to respond to simple biographical questions unless the answers have particular importance to your case. Similarly, do not instruct your client on general aspects of courtroom procedures and witness demeanor.

If during the simulation, the client responds in a manner that detracts from the client's effectiveness as a witness, then you should advise your client on how to testify more effectively (while still keeping within the bounds of professional responsibility).

TASK: A-4  
TITLE: Trial Brief  
TIME: 90 minutes  
MATERIALS: Special Instruction Sheet  
Pleadings  
Deposition Summary  
Client interview notes  
Mini-library

In this task, you are to prepare a trial brief for submission prior to trial. This brief should be limited to the two issues specified on the Special Instruction Sheet.

Your brief should:

- (1) Contain concise headings that relate the law and the facts to each other.
- (2) Contain persuasive arguments that relate legal principles and factual circumstances in a way that supports your position on each issue.
- (3) Resolve conflicts, if any, between legal authorities.
- (4) Draw analogies and make distinctions, as appropriate, between materials in the mini-library and the circumstances of your case.
- (5) Point out weaknesses in opposing counsel's likely positions.
- (6) Discuss policy and other implications, if any, of your and/or opposing counsel's positions.
- (7) Present ideas clearly and persuasively; be well organized and concise; and employ lawyer-like terms and style.

TASK: A-5

TITLE: Closing Argument

TIME: 90 minutes (60 preparation, 15 presentation, 10 observation, and 5 reply presentation)

MATERIALS: Special Instruction Sheet  
Summary of evidence  
Agreed upon jury instructions

In this task, you will prepare and present a closing argument on the issue stated on the Special Instruction Sheet and on one other issue of your own choosing. You will then observe a videotape of a portion of opposing counsel's closing argument. Finally, you will present a reply to this portion of opposing counsel's closing argument.

An effective closing argument in this task might include some of the following (listed below in no particular order):

- (1) Stating the ultimate fact(s) that the court must find for your client to prevail.
- (2) Marshalling (organizing) the evidence in support of the ultimate fact(s).
- (3) Incorporating into your argument relevant portions of the jury instructions.
- (4) Discussing the sufficiency of the evidence.
- (5) Discussing the credibility of the evidence; e.g., truthfulness of witnesses.
- (6) Drawing reasonable inferences from the evidence to support the positions you have taken.
- (7) Pointing out weaknesses in opposing counsel's case.
- (8) Indicating considerations, if any, that merit a finding in support of your client; e.g., equities and policies.

The issue you choose should be one that is important and likely to be contested by opposing counsel.

Your reply should answer opposing counsel's contentions and correct any misstatements.

Your argument and reply will be evaluated in terms of the above as well as the extent to which you:

- (1) Manifest sincerity and fairness.
- (2) Do not rely excessively on notes.
- (3) Stay within the permissible confines of a closing argument; e.g., do not assert personal knowledge of the facts.
- (4) Present persuasive arguments.

CONTINUE ON NEXT PAGE

Assume for the purposes of this task that you and opposing counsel submitted agreed-upon jury instructions to the court. Although no one else will be in the room with you when you make your presentations, assume they are addressed to a jury.

You will have 60 minutes to prepare your closing argument. You will then have up to 15 minutes to present your argument.

Please note that you are not expected to argue all the issues you might have discussed in a complete closing argument. Discuss only the one issue on the Special Instruction Sheet and the one issue of your choice.

Opposing counsel's closing argument will last up to 10 minutes. Immediately upon the conclusion of that argument, you will have up to five minutes to reply.



TASK: B-1  
TITLE: Memorandum for the File  
TIME: 2 Hours  
MATERIALS: Mini-library  
Summary of the facts  
Complaint  
Other case-specific materials

You are an attorney employed in a law office. Your task is to prepare a memorandum for the file, as is customary in your firm, prior to meeting with a new client. The purpose of this memo is to help you organize your ideas about the case as it now appears and to provide a guide and rationale for subsequent activities.

Your memo should contain:

- (1) an analysis of the relative strengths and weaknesses of each side of the case as revealed by the materials supplied (including the mini-library for the case).
- (2) a discussion of legal issues, factual matters, and other areas that need further exploration.

Your memo also may contain:

- (1) a discussion of alternatives (and their possible consequences), if any, that should be discussed with the client.
- (2) an indication of other significant factors, if any, which might help in planning and/or carrying out subsequent activities.

In preparing this memo, you should devote most of your attention to the legal and factual issues that are likely to be in dispute. A memo that discusses issues without relating them to the evidence and circumstances will not be very useful. Your memo should be well organized, clear, and concise.

TASK: B-2

TITLE: Client Interview and Counseling

TIME: 45 minutes (15 preparation & 30 meeting)

MATERIALS: Memo of legal and factual issues

In this task, you will meet with your client for the first time. The purpose of this meeting is to interview and counsel your client. Thus, you should:

- (1) obtain essential information regarding the case, including your client's version of the story, explore apparent inconsistencies, and obtain leads to other sources of information.
- (2) ascertain your client's objectives in this matter.
- (3) discuss with your client the advantages and disadvantages of the alternatives which have been suggested during your meeting with the client.
- (4) respond to your client's concerns.
- (5) review what you and your client will do prior to your next meeting.
- (6) be sensitive to ethical issues that may arise.

A meeting which elicits facts but fails to respond to your client's concerns will not be satisfactory. Similarly, a meeting that does little more than establish rapport will not be sufficient.

Assume that arrangements for your fee have been made. This matter should not be discussed with your client during this session.

TASK: B-3

TITLE: Draft of Counter Proposal and Letter to Client

TIME: 60 minutes

MATERIALS: Settlement offer  
Other case related information

In this task, you are to prepare two documents: (1) a draft of a counter proposal in response to the offer of settlement sent to you by opposing counsel and (2) a letter to your client explaining the reasons for your draft counter proposal. You will be given opposing counsel's proposed settlement, and some additional information about the case that has been gathered since your last interview.

The goal of your draft counter proposal is to advance your client's case in anticipation of further negotiations and/or trial. The draft counter proposal should include, but need not be limited to:

- (1) your response to opposing counsel's offer.
- (2) potentially viable alternatives to that offer.
- (3) a rationale for your response to the offer of opposing counsel and for your proposed alternatives.

The letter to your client should:

- (1) set forth the reasons for including in the draft counter proposal those offers and arguments you made and for excluding those offers and arguments you considered, but chose not to make. A number of these reasons may not have been expressed in your draft counter proposal; e.g, how your offers and arguments relate to your overall strategy in the case.
- (2) attempt to explain to your client why you advise that the client accept the draft counter proposal, in the event that it differs from your client's stated wishes.

Your draft counter proposal and letter to client should be well organized, clear, and persuasive.

TASK: B-4

TITLE: Opening Statement

TIME: 85 minutes (60 preparation, 10 observation, 15 presentation)

MATERIALS: Summary of expected testimony of potential defense witnesses  
Videotape of opposing counsel's opening statement

In this task, you will prepare to make an opening statement, observe a videotape of opposing counsel's statement, and then present your own opening statement.

This case is being tried before a jury. You and opposing counsel have agreed to make your opening statements prior to the introduction of any evidence.

You and your senior partner have decided to present an opening statement that provides a cohesive overview of the defendant's case.

Your opening statement should:

- (1) prepare the jury to understand your theory of the case and to evaluate the evidence in a way that is favorable to your client.
- (2) set forth the key points upon which your theory of the case rests.
- (3) organize material systematically and in language that is understandable to a jury.
- (4) create a positive impression of yourself and your case by using a style that is personally comfortable and effective.
- (5) not be argumentative or otherwise go beyond the permissible confines of an opening statement.
- (6) state the potential evidence accurately.

In the context of this task, the phrase "theory of the case" refers to your characterization of the evidence, which if accepted by the factfinder, will result in an outcome favorable to your client, in whole or in part.

You will have one hour to review the summaries and prepare your opening statement. At the end of one hour, you will have up to 10 minutes to observe opposing counsel's opening, and then you will have up to 15 minutes to present your statement. Although no one will be in the room with you when your opening statement is videotaped, you should present the statement as if you were speaking to a jury.

TASK: B-5

TITLE: Reply to a Points and Authorities Memorandum

TIME: 90 minutes

MATERIALS: Summaries of plaintiff's case in chief and oral motion  
Opposing counsel's memo of Points and Authorities

During trial, you made a motion orally to the court. Following opposing counsel's oral opposition to your motion, the court asked opposing counsel to write a memo of Points and Authorities in opposition to your motion. You have now received that memo and you must prepare a memo in reply.

Your memorandum should:

- (1) identify and discuss relevant legal authorities and principles.
- (2) draw analogies and/or make distinctions as appropriate that support your position.
- (3) if appropriate, discuss weaknesses and errors in opposing counsel's memo.
- (4) if appropriate, point out policy and other implications of your position and/or opposing counsel's position.
- (5) present a coherent, well organized, and persuasive reply designed to convince the judge to rule favorably on your motion.

In preparing your memorandum, you should use the mini-library, the materials listed above, other relevant case materials.

TASK: B-6

TITLE: Cross-Examination

TIME: 60 minutes (30 preparation & 30 examination)

MATERIALS: Partial transcript of witness' testimony  
Other case related materials  
Special Instruction Sheet

In this task, you will prepare and conduct a cross-examination of opposing counsel's key witness.

Your performance in this task will be evaluated in terms of whether:

- (1) the areas explored in your cross-examination helped to develop your theory of the case and afforded reasonable opportunities for success.
- (2) effective technique and style were used in examining the witness.
- (3) the case against your client was discredited and/or favorable testimony was obtained.
- (4) you adhered to rules of evidence and standards of professional conduct.

In the context of this task, the phrase "theory of the case" refers to your characterization of the evidence, which if accepted by the factfinder, will result in an outcome favorable to your client, in whole or in part.

You may cross examine on as many areas and in whatever order you deem to be most effective. However, you must cover the area indicated on the Special Instruction Sheet attached to the other materials provided for this task.

Although only you and the witness will participate in this task, you should conduct the cross-examination as if you were in an actual jury trial. Thus, you should adhere to standards of professional conduct. For example, it is recognized that at times it is acceptable to ask questions on cross that are technically objectionable; however, this should not be done to excess.

APPENDIX H

ASSESSMENT CENTER

1980

GENERAL INSTRUCTIONS

1. Time

There are four starting times for the Assessment Center, 8:00 a.m., 8:45 a.m., 9:30 a.m. and 10:15 a.m. You are being or will be notified of your starting time. It is suggested that you be at the Assessment Center 15 minutes prior to your assigned time to begin the examination. If you are not at the Center and ready to begin the examination at your assigned time you will not be allowed to participate at all, and an alternate will take the examination in your place. Persons who do not take the examination on the first day will not be allowed to take the examination on the second day.

You must plan to spend nine hours at the assessment center for each of the two days that you take the examination. This includes a 45-minute break for lunch (see below).

2. Smoking

Participants may not leave the school premises or use the telephones for any reason during the examination. Smoking is not permitted in any of the examination rooms, but participants may smoke in a designated area.

3. Location

Northern California:

The Northern California Assessment Center will be administered at Claremont Middle School, 5750 College Avenue, Oakland. Claremont Middle School is approximately three blocks south of the intersection of Claremont and College Avenues and right next to the Rockridge BART station. A.C. Transit stops one-half block from the school. There is ample parking in the area. The Claremont Hotel is less than one mile from the school. Participants should enter the school at the main entrance on College Avenue.

Southern California:

The Southern California Assessment Center will be administered at Fairfax High School, 7850 Melrose Avenue, Los Angeles, at the intersection of Fairfax and Melrose. Fairfax is on or near a Metro bus line. Participants who drive to the school may park in the school parking lot. Participants should enter the school at the main entrance on Melrose.

#### 4. Typists

If you are typing the written part of the examination, you will be required to pick up materials for each such problem task from the room set aside for those writing the examination. This room may be some distance from the room designated for those typing the examination. However, those typing the exam will not be allowed any extra time to obtain materials. Please bear in mind that more than half of the tasks in this examination are oral and will be videotaped (See separate instructions regarding videotaping).

#### 5. Lunch

Lunch will be 45 minutes long and may begin as early as 11:45 or as late as 2:00 depending upon, among other things, your starting time. In general you can expect that if you start early (e.g., 8:00 a.m.) you will have an early lunch break and if you start late (e.g., 10:15 a.m.) you will have a late lunch break. Since you will not have completed the examination at the time of your lunch break we require that you eat lunch on the premises. If you wish you may bring your own lunch. If you require a special diet you must provide your own food. There will not be a refrigerator available.

There will be a catering truck available at each site for those who wish to purchase lunch. Lunches must be eaten in the designated lunch room. Participants will not be allowed to discuss the examination during the lunch break.

#### 6. Examination Materials

The answer books for the written tasks must be turned in at the end of each task. All other material including your videotape, problem materials and notes must be turned in at the end of each day.

#### 7. Confidentiality

In keeping with professional standards, it is your responsibility not to discuss with anyone any aspect of the cases used in the Assessment Center.

#### 8. Assessment Center Procedures

It is very important that you carefully read and become familiar with the information set forth in the enclosure entitled "Assessment Center Procedures."



## THE ASSESSMENT CENTER PROCEDURES

### 1. Materials

On arrival at the Assessment Center you must identify yourself then you will be directed to a room where you will be given general instructions. Among other things you will be given a case file folder. In that folder you will find the following materials:

#### a. A floor plan

The floor plan will assist you in locating the rooms you will use during the day. Refer to the floor plan to locate the "writing room". You will use this room for all written tasks and for preparing for video tasks. This is the first room you will use after receiving general instructions.

The next room you should locate on the plan is the control room. When you are ready to begin a video task you must first go to the control room and hand in your video tape before you can proceed to the video taping room

Video taping rooms are also shown on the floor plan. Your badge (see below) indicates which video room you must use for video tasks. Locate that room on the floor plan.

Other rooms you should make note of are the viewing room, the lunch room and the restrooms.

#### b. Your Schedule

Review your schedule carefully. It sets out the tasks you will perform, where you must be for each task, the start time and the length of time allocated for each task. You must follow your schedule. Because different groups of participants are going through the center at different times all schedules must be adhered to. No one will be given extra time for any reason.

It is suggested that you wear and consult a watch to stay on schedule.

#### c. Your Video Tape

Each participant will use one video tape for all of his or her video tasks for each day at the center. Each folder will contain a prelabelled video tape. You must immediately check the video tape label and see if it is properly labeled with your registration or application number and your video room number. The video room number is the same number which appears on your badge. If the video tape is not properly labeled notify the proctor immediately so that the tape can be relabeled.

You will use the video tape during your entire day at the center. You must hand your tape to the technician in the control room just before you begin a video task. You must pick up your video tape from the control room immediately upon full completion of a video task; at all other times you must keep your video tape with you.

Other materials supplied include scratch paper on which you may make notes during the day. Paper clips, staplers and staple removers will be provided so that you can organize your materials in any fashion convenient to you. You must provide your own pens.

The case folder can be used by you to hold the materials you obtain during the day. No materials may be taken into rest rooms or the lunch room. When you do not have your materials with you they must be left at your place in the writing room.

## 2. Video taping

As stated above, immediately before entering your assigned video room you must hand your video tape to the control room technician. If you arrive at the control room before the technician is ready to take your tape please wait until you can hand the tape to the technician. This is the only way to assure that the video equipment for your room is operating when you begin the video task. After you have handed the technician the tape you should proceed directly to your video taping room (or viewing room, see below). The equipment will be operating when you enter the room. Take a seat at the table provided. There will be a microphone taped to the table at which you are to sit. Do not attempt to move or adjust the microphone. The chair and table you will be using have been positioned to be properly picked up by the video camera. There should be masking tape on the floor which indicates where your chair should be positioned. To stay in camera range your chair must stay within the taped area. Due to equipment limitations you must remain seated while delivering your opening statement or closing argument.

If for some reason it becomes necessary to adjust the equipment in the video room a technician will enter the room quietly, make the adjustment quickly and leave. You should continue the task.

For those tasks involving a client or a witness, the client or witness will knock on the video room door and enter. You should greet the client or witness in any fashion you feel appropriate and begin the task.

If for some reason the client or witness is in the video room when you arrive you should greet him or her in any fashion you feel appropriate and begin the task. Remember

the video equipment is already operating when you enter the video room.

At the end of your interview, preparation, closing argument task, counselling session, opening statement task, or cross examining or the time allotted for each of these tasks, whichever occurs first, you should leave the video room and return to the control room to pick up your tape. Make sure that the tape that you pick up has your number and video room number on it.

Please note: since each video room is being used by more than one participant you must leave the video room when your time is up. The video technician will stop the video tape recorder when the time for the task is over whether or not you have completed the task.

If you lose track of time and go over your allotted time a proctor will knock on the door and notify you that your time is up. Please leave the room and proceed as indicated above.

DO NOT FEEL COMPELLED TO FILL ALL OF THE TIME ALLOTTED FOR VIDEO TASKS.

If you complete a video task in less time than that allotted, go to the control room, notify the technician that you have completed the task and retrieve your tape.

Video taping and viewing opening statement and closing arguments.

Opening statements:

After preparing your opening statement but before you deliver it you must observe your opponent's opening.

To do so proceed from the writing room, taking with you your video tape and any materials you feel you need to make your opening statement.

Then go to the viewing room (see floor plan). In the viewing room take a seat at your viewing station (as designated on your schedule); put on the head phones supplied. When all participants at your station are ready to view opponents opening the proctor will start the tape of opponent's opening. You may make notes during opponent's opening. When opponent's tape is finished, remove the head phones and then take your video tape to the control room. You may have to wait at the control room for a few minutes until the technician takes your tape. This is to insure that everyone starts his or her opening statement at the same time. When the technician takes your video tape you should go

immediately to your video taping room. The video equipment will be operating when you enter. You should make your opening and return to the control room to pick up your tape. Remember - when your time is up - the technician will stop the video tape recorder whether or not you have completed your opening.

Closing argument:

After preparing your closing argument you should go to the control room with your video tape. You should also have with you all materials you will need to deliver your closing argument and rebuttal. When the technician takes your tape you should go to your video room and deliver your first closing. When you finish your first closing proceed directly to your viewing room and station to observe opponents closing argument. Take a seat at your station, and put on the headphones provided. The proctor at the viewing station will start the tape of opponents closing as soon as all participants are assembled at their respective viewing stations. You may wish to make notes during opponent's closing. When your opponent has completed his or her closing, remove your headphones and proceed immediately to your video room to make your rebuttal.

DO NOT GO TO THE CONTROL ROOM AFTER VIEWING OPPONENTS CLOSING AND BEFORE MAKING YOUR REBUTTAL.

The video equipment will be operating when you enter the video room. When you complete your rebuttal go to the control room and pick up your video tape.

ALWAYS MAKE SURE THAT THE TAPE YOU PICK UP AT THE CONTROL ROOM IS YOURS.

### 3. Tasks

You have already received a copy of the task instructions for your review. At the center you will be given instructions and the materials for each task at the beginning of that task. All task material will be distributed in the writing room. For written tasks you will also be given an answer book. If for some reason you do not have an answer book for a written task, please notify the proctor immediately. He or she will supply you with the proper answer book. All written answers must be written in the answer books provided. At the completion of each written task you must turn in the answer book for that task.

All other materials used and notes made during the day must be turned in at the end of the day.

4. Writing Room

All participants will use the same room for the written part of the examination. Since the participants are on different schedules some participants will be entering or leaving the room while others are working on other parts of the examination. Thus, those entering or leaving the room must do so as quietly as possible in order not to disturb others. If you have questions you should ask those questions of a proctor in the hall not in the writing room.

5. Breaks

It is expected that you will have time during your day at the Assessment Center for breaks. If you wish you may take these breaks in the lunch room. While in the lunch room you are not to discuss the examination with others. It is your responsibility to return from a break in enough time to receive your materials for the next task. It is also your responsibility to return to the writing room after your lunch break in enough time to begin the next task. If you do not take all of the tasks for the problem your examination may not be evaluated. Please do not stand around the control room or in the halls unnecessarily.

EVEN THOUGH THIS MATERIAL WILL BE GIVEN TO YOU AT THE ASSESSMENT CENTER YOU SHOULD BE THOROUGHLY FAMILIAR WITH THE MATERIAL BEFORE YOU COME TO THE CENTER. There will not be enough time for you to read all of this material before you begin your first task.

REMEMBER - YOU MUST COME TO THE CENTER ON TWO CONSECUTIVE DAYS. Although the examination procedure will be more familiar to you on the second day it is suggested that you refer to these materials from time to time to insure that your day goes smoothly.

APPENDIX K

TECHNICAL DISCUSSION OF FACTOR ANALYSIS RESULTS

Two principal axis factor analyses were conducted to determine whether there were tasks that tended to correlate more highly with each other than with other tasks. In the context of this report, a cluster of tasks that tended to correlate with each other would be called a factor. The degree to which a task belonged to a particular factor is indicated by its "loading" on that factor (i.e., the correlation between the task and the factor).

The first analysis had unities on the main diagonal while the second analysis had squared multiple correlations on the diagonal. The results of both analyses suggested that there were no more than two clusters of tasks. The factor loadings in each analysis after varimax rotation are presented in Table K.1. The pattern of these loadings generally corresponds to task type; i.e. one factor for the written (even numbered) tasks and a second factor for the oral (odd numbered) tasks. Tasks 4, 6, and 10 had the highest loadings on the first factor while Tasks 1, 3, and 11 had the highest loadings on the second factor. Task 9 was the only oral task that had a higher loading on Factor 1 than on Factor 2. Task 8 had almost equal loadings on the two factors.

Table K.1

FACTOR LOADINGS AFTER VARIMAX ROTATION

Task Number	1's on Diagonal		Squared Multiple R's on Diagonal	
	Factor 1	Factor 2	Factor 1	Factor 2
1	.03	.62	.10	.39
2	.55	.12	.39	.18
3	.20	.61	.19	.46
4	.67	.08	.49	.16
5	.35	.54	.30	.44
6	.63	.11	.47	.18
7	.08	.38	.12	.21
8	.39	.33	.30	.29
9	.40	.20	.29	.20
10	.69	-.03	.49	.10
11	.00	.62	.09	.36
Eigen Values	2.68	1.17	1.83	.32
% of variance	24	11	80	14

% of variance = eigen value divided by the sum of the eigen values greater than zero.

APPENDIX L

POST ASSESSMENT CENTER QUESTIONNAIRE AND  
THE PERCENTAGE SELECTING EACH CHOICE

1. In what ways, if any, did you prepare for the Assessment Center? Circle the number next to each choice that applies:

43% Read a book on clinical practice.  
13% Observed trial proceedings.  
13% Practiced interviewing and/or oral presentation skills.  
23% Obtained the advice of a practicing attorney.  
00% Obtained the advice of someone who had already been through the Center  
19% Reviewed materials used to prepare for the regular bar examination.  
20% Other  
27% None of the above.

2. How helpful was it to have a copy of the directions for each Assessment Center task in advance of your participation in the Center? Circle one choice below:

3% No help at all  
47% Somewhat helpful  
42% Very helpful  
9% Did not receive a copy in advance

3. In terms of clarity and specificity, the directions for the Assessment Center tasks were generally (circle one choice below):

1% Very poor  
4% Poor  
29% Fair  
47% Good  
19% Very Good

4. Circle the number on the line for each task to indicate the adequacy of the time limits for that task:

	Too Short	About Right	More than enough
Written Tasks	79%	20%	1%
Interviewing/Counseling	8%	83%	9%
Oral Presentations (Opening statement & Closing argument)	16%	59%	25%
Direct and Cross-examination of witnesses	13%	64%	23%

5. How good a measure of your legal skills and abilities were each of the tests listed below? Circle one number for each test.

	Very Poor	Poor	Fair	Good	Very Good
Multistate Bar Examination (MBE)	29%	30%	29%	9%	2%
Essay Examination	7%	16%	47%	28%	3%
Assessment Center - Day #1	4%	12%	44%	28%	12%
Assessment Center - Day #2	3%	9%	40%	35%	14%

6. In your opinion, how well did each task in the cases you were assigned measure the type of skill it was designed to assess? In other words, did the nature of the problem, actors, materials, etc. give you the opportunity to do the things you were instructed to do by the directions? Circle one number for each task: (see Table 5.11 for results)

	Poor Measure	Adequate Measure	Good Measure
<u>Attorney for Plaintiff Tasks</u>			
Client Interview	2%	39%	59%
Discovery Plan & Interrogatories	35%	45%	20%
Preparation of Client for Direct Examination	9%	49%	42%
Trial Brief	46%	37%	17%
Closing Argument	13%	53%	34%
<u>Attorney for Defendant Tasks</u>			
Memorandum for the File	26%	54%	20%
Client Interview & Counseling	4%	49%	47%
Draft of Counter Proposal & Letter to Client	17%	52%	31%
Opening Statement	15%	52%	34%
Reply to Points and Authorities Memorandum	30%	45%	24%
Cross-Examination	24%	48%	28%

7. How well did the actors play their roles? Circle one number for each type of role:

	Poor	Fair	Good
Your Client	1%	9%	90%
Other Witness	2%	21%	77%