

PLAYING THE PERCENTAGES

Jake Stein's "Legal Spectator" column in the *Washington Lawyer* magazine recently featured a remarkable piece of interdisciplinary scholarship. Inspired by a comparison of the words "probable," "likely," and "possible" in *Webster's New Dictionary of Synonyms*, Stein and mathematician Liam Sarsfield developed a quantitative reliability scale for various kinds of evidence. Here it is:

100%	Religious truth Logically based scientific certainty subject to the Karl Popper/Thomas Kuhn tests
80%	DNA
70%	Beyond a reasonable doubt Blood tests and fingerprints
60%	Inductive reasoning (all swans are white, and then along comes a black swan) "Probable" or reasonably certain Preponderance of the evidence
50%	"Likely" or more likely than not Eyewitness identification Lie detector evidence
40%	Hunch or doubtful
30%	Hearsay or uncertain
20%	Admissions obtained by torture There is some basis
10%	"Possible" or perhaps
0%	Religious truth

We note that the traditional "preponderance of the evidence" standard requires 60% confidence, while the "beyond a reasonable doubt" standard requires 70%. But where is "clear and convincing"? Perhaps Stein and Sarsfield would answer that it is exactly where it belongs. What do you think?

• Jacob A. Stein, *The S&S Quantification Chart*, WASHINGTON LAWYER, Apr. 2008, at 48.