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?