



Brooklyn Law School
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**Public Hearing before the Advisory Committee
on the Uniform Bar Exam
CUNY Law School
January 20, 2015**

“Can We Do Better?”

**Testimony by:
Nicholas W. Allard
President and Dean
Brooklyn Law School**

Good afternoon.

Thank you, Judge Rivera, and distinguished members of the Advisory Committee for the opportunity to testify on the proposed adoption of the Uniform Bar Exam (UBE) in New York.

Speaking for myself, I support an ongoing comprehensive effort to improve how new lawyers are licensed to practice, including moving to a more national bar exam in a way that enables New York to maintain its standards for admission, promotes further prudent innovations, and assures that methods for measuring the qualifications of a new lawyers are accurate, objective, and meaningful for practice in the 21st century world of law.

I applaud Chief Judge Lippman's decision to appoint this Advisory Committee to review New York's bar exam given the growing number of cross-state and multiple jurisdictional practices, and the radically changing nature of the job market all graduates face. And beyond consideration of the pros and cons of the UBE, the Chief Judge's proposal provides a much-needed and timely opportunity that, in my opinion, we should not miss: that is, to examine how best to rigorously and fairly license law school graduates. In other words, let's not get caught up arguing only over whether to paint or to wallpaper when the house is on fire.

Thanks to Chief Judge Lippman's leadership, and the quality of our exceptional State and City Bars, New York sets the standard nationally in legal innovation, in the quality of legal services we offer, and in serving New Yorkers' unmet legal needs. Once again, New York will lead the way, as the decisions you will make with regard to the bar exam will certainly have national impact as well.

My purpose today is not to argue for – or against – adoption of the UBE, but to raise questions about the entire process by which we license attorneys in New York, which in my view should be addressed, and should not be, and *cannot* be, separated from a decision about the UBE.

Also, I want to be clear, I am not talking about an easier path to obtaining a license to practice. At Brooklyn Law School, which has a deserved reputation for excellent preparation and high bar exam passage rates, we have never been about "giving everyone a ribbon on field day." We believe that every law graduate should be prepared and that their qualifications should be relevant to market needs, and thoroughly tested to the highest standards.

It is imperative that we ask ourselves: Is the bar exam, as it stands now, advancing our profession and attracting the next generation of smart, talented, committed students; or are we clinging to a licensing system that may be increasingly out of step with – and not altogether relevant to – 21st century legal education?

“Can we do better?”

This is, I’m sure, a worrisome question. Change is difficult. And to change the bar exam system means taking a hard look at a complex, ongoing system, which involves deeply embedded and interlocking interests, the logistical challenge of scheduling and administering tests to thousands of students across the country, the big business of bar exam preparation courses, and so on. You do not have the luxury of putting the ship in dry dock to scrape off the barnacles, or to build a new ship from scratch. Your only realistic option is to retrofit while underway in difficult waters.

I recall, for example, how difficult it was to completely fulfill Chief Judge Lippman’s vision of an army of early test-takers qualified to do pro bono work because of the practical problem of finding sufficient space to test large numbers each February. Change is incredibly daunting to even begin to consider. The danger is that we become complacent and accept the status quo, whether or not it is working. That is worse.

For example, the historic and unexpected nationwide drop in the passage rate for last July’s exam, due to a historic decline in scores on the multi-state component, demands that we take a hard look at what is not working. It reminds us that there are regularly unexplained fluctuations in passage rates from year to year that we have come to tolerate. We still need a thorough and adequate explanation for what happened last July. This is critical. We need to know why bar exam results would vary so much from 2013 to 2014. Shouldn’t we all collectively have a sense of urgency about getting this right? The July results affected real students all over the country. It’s not a theoretical or hypothetical problem.

We should question whether the established bar exam process imposes discriminatory barriers to entry to the profession for people who would be able and effective lawyers. It’s no secret that a law school education is expensive, and that many students graduate with significant debt – and that is on top of whatever loan burden they already carry from their undergraduate years. Then there is incredible pressure on these recent graduates to spend thousands more on bar exam preparation courses. Why isn’t their education at an ABA-accredited law school

sufficient for them to pass the exam? Of course, not every law school grad can afford the test-prep courses – and many cannot afford to take days or weeks away from a paying job to take these courses. In effect, we’ve built inequity into our system that I believe hurts the less-advantaged. How can we build a fairer system? Again, how can we do better?

If a law school education itself is not sufficient for most students to be admitted to practice without additional preparation, then should law schools change *what* and *how* they teach to help more students pass the bar exam? Or should the test itself and *how* and *when* the test is administered change? For example, why wait until after graduation for a student to take this high-stakes, all-or-nothing exam? Why not consider testing students for licensure incrementally to evaluate them more comprehensively over the course of their law school careers? Perhaps, for example, we can test after their first year on the core curriculum.

How does our established approach to licensing differ from other learned professions, and why? Moreover, there is widespread agreement within the profession that law schools need to teach more practical skills. All schools have incorporated this into their curricula, yet how do we evaluate and measure practical, clinical experience? Is a written test truly the best way to evaluate practical experience? It may be easier to administer and grade, but is it really the best way to measure practical learning and skills? Can we do better? There are many alternatives we could explore. But, the fact is the inertia propping up our “business as usual” system for licensing lawyers is not designed to accommodate such fundamental change.

We’re locked into a self-perpetuating state-by-state bar exam system – with components added for MBE and MPT designed and scored by the National Council of Bar Examiners (NCBE). Before we consider shifting to greater dependence upon the National Conference of Bar Examiners, we should examine carefully its track record in developing objective, reliable exams, its organizational mission, any conflicts of interest, and questions about accountability and transparency. In addition, the serious concerns voiced about NCBE-designed portions of the bar exam unless allayed will be used as a rationale to oppose moving to the Uniform Bar Exam.

Therefore, we must now look at whether the NCBE is an appropriate organization to have influence as it does over policy, legal education, law school admissions, the LSAT, and other areas that are properly the province of the ABA, the State Bar, the courts, and law school governing boards and faculty. Should bar

associations, states, and educators be telling NCBE what to test, or should the NCBE be telling us who to admit and what to teach in order to pass its test that is built on the NCBE's status quo vision of the profession? Should the developer and scorer of the test be setting policy?

This is no small thing. The fact is, we need good lawyers more than ever – lawyers who can respond to the rapid and fundamental changes in technology and our increasingly global society. And, more than ever, we need more good lawyers who can meet the needs of the underserved. But to do this, we need to overcome the persistent and discriminatory barriers to careers in the law. The legal profession should not be an exclusive club. We all have a responsibility to encourage entry to the profession of qualified individuals who can ably serve the legal needs of an increasing number of Americans who need their help. We need to make law school more affordable, offer a curriculum relevant to constantly changing legal practice, enhance the reputation of the legal profession, and prepare our students for a new marketplace for lawyers.

We are making inroads on these fronts, and now we have an opportunity to also make meaningful change in how we license lawyers. We can do better than our present system, which, as we know, is often onerous and expensive, and yields unpredictable results. If we do not seize this moment to start significant improvements, we will impose a serious self-inflicted wound on our profession and the country. We can do better.

Many far more knowledgeable and experienced people than I have been asking these questions for years. And yet change has been slow to come. Now we can no longer afford to put aside these questions as we consider making changes around the edges that may not adequately address the larger flaws.

The work of this Committee matters. In New York City, when you travel on the number 4 subway train – which starts in Woodlawn in the Bronx, and goes through the East Side of Manhattan, past City Hall and Wall Street, onto Brooklyn Heights, before ending in Crown Heights – look at the hands holding on to the polls in each car, of the people getting on and off the subway. You see the hands of people across the spectrum of races and ethnicities – black, white, brown, the whole rainbow. You see the hands of the people from every walk of life, and from the rich to the struggling. Those are the hands of all the people of New York City and they are the hands of America. They are the hands of the people who need good lawyers. And they are the hands of many people who may be well-qualified to be lawyers who can serve society.

My worry, however, is that our outmoded, but improving, system of legal education and licensing still is unintentionally precluding many able and motivated people from becoming lawyers. We can do better.

I commend you all for taking on this very important issue for legal education and for our profession and for our country.

Thank you. I would be happy to answer any questions you may have.



The New York State Court of Appeals

Advisory Committee on the Uniform Bar Exam

Uniform Bar Exam Public Hearing

CUNY School of Law

20 January 2015

Testimony submitted by LatinoJustice PRLDEF

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statements, and financing a legal education, how to succeed in law school, and the different legal careers available to law graduates, as well as providing civil rights and corporate legal internships. The list of alumni who have benefitted from LatinoJustice's unique Education Division programming includes prominent Latino judges, members of the bar practicing in all sectors, including government service, public interest, and private practice, business and union leaders, and elected and appointed officials.

With the interests of these aspiring Latino lawyers in mind, we strongly urge the New York Court of Appeals to take adequate steps to thoroughly investigate and study the possible adverse consequences the UBE may have on Latino and other minority law graduates seeking admission to the New York Bar before adapting the use of the UBE in New York. We are very concerned that the UBE may have adverse effects on Latino law graduates seeking admission to the New York Bar without any prior comprehensive disparate impact study by NY on the impact of the adoption of both the Uniform Bar Exam and the New York Law Exam on minority law graduates of color indicating otherwise. This concern is further illuminated given that bar passage rates have been dropping nationwide, and particularly that the majority of the 14 jurisdictions currently utilizing the UBE reported declines from the 2013 to 2014 bar exam, with several states reporting dramatic double-digit declines (22% in Montana, 15.2% in Iowa, and 13% in North Dakota)¹. Given the foregoing, we respectfully submit that any review of such a gatekeeping mechanism as a professional credentialing license would clearly benefit from a racial equity analysis, including the bar examination.

The New York Bar Association has publicly emphasized its goal of diversity and inclusion in the legal profession. With the changing demographic of the U.S. population, it is

¹ Above the Law, "Declining Nationwide Bar Exam Pass Rates," October 27, 2014. <http://abovethelaw.com/2014/10/declining-nationwide-bar-exam-pass-rates/>

data on minority performance on the current exam, and especially after a previous Commission recommended regular review in this regard.⁶

The fact that Latinos generally score lower than non-minorities on the New York Bar when then coupled with the considerable decline in bar pass rates in the majority of states currently using the UBE - as much as 22% in one UBE state, i.e. Montana, puts Latino (as well as African-American) test-takers at a particularly high risk of failing an exam that will also be considerably more expensive than the current New York Bar Exam. The UBE could potentially cost three to four times as much as the \$250 required to take the current test, thus creating a formidable economic barrier to minority bar applicants. It is also important to consider that transferring UBE scores to other jurisdictions ranges from \$400-\$1240. As significantly fewer Latinos and African-Americans retake the test than non-minorities as of now,⁷ that number will only grow if these test-takers fail the first time and then cannot afford to retake the exam. Given that Latinos and African- Americans are substantially more likely to graduate from law school with debt than their white counterparts,⁸ this additional cost will be an additional financial burden that will be imposed upon these minority groups.

Given the existing racial disparity in law school to begin with,⁹ and the numbers of the applicant pool decreasing since 2011, there are serious challenges to ongoing efforts to improve

⁶ *Fordham Urban Law Journal*: Report of the New York Judicial Commission on Minorities, Volume 19, Issue 2: 1991.

<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1359&context=ulj>

⁷ LSAC National Longitudinal Bar Passage Study, pp. 15-16.

<http://www.unc.edu/edp/pdf/NLBPS.pdf>

⁸ *After the JD II: Second Results of National Study of Legal Careers*, Table 10.1: Educational Debt Remaining by Gender and Race, pp. 81.

<http://www.law.du.edu/documents/directory/publications/sterling/AJD2.pdf>

⁹ Law School Admission Council, LSAC Resources. Data on Ethnic--Gender applicants and matriculants <http://www.lsac.org/lsacresources/data/ethnic-gender-applicants> and <http://www.lsac.org/lsacresources/data/ethnic-gender-admits>

for themselves: underrepresented minorities routinely pass the bar at lower rates, and thus are barred from the legal profession at higher rates. If the Court of Appeals is willing to undertake the significant shift from the current exam to the UBE, it should also consider providing an alternative to the bar exam and address whether elimination of the examination warrants further study. Why not consider adopting an alternative that, like medical licensing exams, test the actual skills required to practice law, such as a clerkship period closely supervised and evaluated by a current practitioner? Law school graduates could then choose between the clerkship and the bar exam as a means of admission to practice, while allowing the bar exam to remain in existence and available for those who prefer to take it.

And anecdotally speaking, literature suggests that the essay portion of the current NY bar exam is better for Latinos and blacks than adapting New York-centric multiple choice under the UBE proposal. Clearly, more study analyzing all of these various suggestions warrants a more detailed study and analysis of the pros and cons of each proposal.

We make these comments not to engage in theoretical abstraction but more along the lines of the best thinking of the Commission we cited earlier. That is, when racial equity in licensing is clearly absent in any profession, we need to then pause, study and assess the outcomes of our entry points. Only then can a true assessment involving switching examination formats as the one contemplated by this Committee on whether New York should adopt the UBE, would then sufficiently address all of the concerns that LatinoJustice PRLDEF and other advocates for full minority inclusion into the legal profession have raised.

The logo for the New York City Bar, featuring the words "NEW YORK" and "CITY BAR" in a serif font, stacked vertically and centered between two thick horizontal black bars.

**NEW YORK
CITY BAR**

**STATEMENT OF MARK C. MORRIL,
CHAIR, NYC BAR ASSOCIATION COUNCIL ON THE PROFESSION
ON BEHALF OF THE NEW YORK CITY BAR ASSOCIATION**

BEFORE THE ADVISORY COMMITTEE ON THE UNIFORM BAR EXAM

I want to thank the Advisory Committee for the opportunity to testify on behalf of the New York City Bar Association. The City Bar, since its founding in 1870, has been dedicated to maintaining the high ethical standards of the legal profession, promoting reform of the law and access to justice, and providing service to the profession and the public. The Association, through its 24,000 members, continues to work for political, legal and social reform, while implementing innovative means to help the disadvantaged. Protecting the public's welfare remains one of the Association's highest priorities.

The City Bar supports Chief Judge Lippman's recommendation that New York State adopt the Uniform Bar Examination (UBE), effective July 2016. We believe that adoption of the UBE is an important reform that will significantly enhance opportunities for new lawyers to find employment wherever it is available. We believe that the UBE is correctly focused on testing the competence of the candidate on fundamental legal principles and lawyering skills that are important to entry-level practice. We also believe that adoption of the UBE by New York State will motivate other states to follow suit, thereby further advancing the goal of a more nationwide standard for admission to the bar and increased employment mobility for lawyers.

We recognize that moving to the UBE is a major step for New York State and, as with any major reform, there is a need to be alert for unforeseen consequences. We recommend that the New York State Bar Examiners compile rigorous performance data relating to the UBE as implemented in the State. The Bar Examiners should review the data annually to discern any demographic trends regarding bar passage rates, particularly whether the UBE has any disparate impact on historically disadvantaged groups, or any other area of potential concern. We urge that the State Bar Examiners be charged with conducting a formal review of New York's

experience in the first three years of its use of the UBE and issue a public report shortly after the end of the three-year period stating its conclusions as to whether the UBE has advanced the purpose of facilitating new lawyer mobility and improving testing techniques, whether there has been any disparate impact on underrepresented groups and analyzing any negative trends that have emerged that may require further attention or the consideration of new alternatives.

The City Bar has a long history of involvement and concern with the New York State Bar Exam. In May 1992, the City Bar's Committee on Legal Education and Admission to the Bar issued a report on Admission to the Bar in the Twenty-First Century expressing concern that the New York State bar examination did not adequately or effectively test minimal competency to practice law in New York and that the exam disproportionately excluded minority applicants. More recently, I was honored to Chair the City Bar Task Force on New Lawyers in a Changing Profession. The Task Force was appointed by then-City Bar President Carey Dunne in the fall of 2012 to address changes in the legal profession, with a focus on the "plight of new lawyers." Our mandate was to examine whether new lawyers are being given relevant development opportunities in law school and in their early careers so that they are employable, able to realize their aspirations in a reasonable time frame and ready to serve clients effectively. The City Bar Council on the Profession continues some of the work of the Task Force which issued its report "Developing Legal Careers and Delivering Justice in the 21st Century" in November 2013.¹

Our Task Force focused on the fact that many of the nation's new law graduates are facing diminished job prospects, unprecedented debt and limited opportunities to achieve the experience and training necessary for a professionally rewarding and financially sustainable career. We raised particular concerns with impediments to innovation that we believe have operated to artificially and unnecessarily limit professional opportunities for new lawyers.

Our Task Force found specifically that the requirement for lawyers to pass a state-specific bar examination has significantly limited lawyer mobility at a time when the practice of law is increasingly national and global. We noted the important influence of globalization on career opportunities and that opportunities may exist in parts of the nation where there are relatively few lawyers competing for available positions. A law student may take the bar exam in one state and then find that the

¹ The report is available at <http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf>

best employment opportunity is in a different state, but an additional bar exam will be required to practice there. Students and new lawyers may find it necessary to relocate because a spouse or life partner finds an important opportunity in a different state.

We recognized that a bar exam may advance the important consumer protection interest of weeding out those who are not minimally competent to serve clients. A bar exam also requires applicants to focus and learn a breadth of law. But we found that in many instances state by state bar exams test skills that are of decreasing and marginal relevance to contemporary legal practice and fail to test relevant problem-solving skills.

We believe that adoption of the UBE, with its portable scores, will significantly advance the important interest of lawyer mobility in the nationwide marketplace. Also, the UBE, with its principles-based approach, will test more practical problem-solving skills than the current exam.

We agree with the Board of Law Examiners that the New York exam should continue to have a New York component. All lawyers admitted in New York should have a basic grounding in New York law and procedure. The New York component should focus on areas where New York Law or procedure differs significantly from general principles or procedures common in other states. It should be available on more dates than the current exam, including potentially on dates other than those when the UBE is administered. We believe that passage of the New York State component should be reasonably achievable by new lawyers who can demonstrate baseline competency in New York specific areas of law.

The City Bar believes that the benefits of the UBE will increase as more states follow New York and students can seek out employment opportunities nationwide with confidence that success on the New York State Bar Exam will provide most of what is needed to become licensed in another state. Conversely, adoption of the UBE also will enable New York employers to more readily draw on a talent pool of new lawyers who have taken the exam elsewhere and can become licensed in New York by successfully completing a readily accessible New York module.

I have noted that the City Bar previously has expressed concern about the impact on historically disadvantaged groups of standardized testing in contrast to other mechanisms for demonstrating a high level of competency. New York State must maintain its commitment to ensure that the bar licensing process advances the goal of setting reasonable competency standards without impeding ongoing efforts to increase

diversity in the profession. To that end, as I have stated, the City Bar urges that the New York State Bar Examiners be charged to compile and analyze data sufficient to monitor any disparate impact trends. New York State should be vocal in ensuring that any issues that are identified are addressed promptly and effectively.

Finally, we are aware that some have expressed concern about the timing of implementation of the UBE in New York. Our own earlier comments expressed the concern that a July 2015 implementation date might have upset the settled expectations of current third-year law students. We believe that a July 2016 adoption date provides a reasonable time frame for law schools to make any adjustments to their curriculum they deem advisable and for potential test takers to set their expectations. We firmly believe that there should be no further delay beyond 2016 in the implementation of this important reform.

On behalf of the New York City Bar, I thank the Committee for the opportunity to testify today.

January 20, 2015

The City University of New York
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January 16, 2015

Advisory Committee on the Uniform Bar Examination
c/o The Honorable Jenny Rivera, Associate Judge
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20 Eagle Street Albany, N.Y. 12207

By email to:

Margaret Nyland Wood
Court Attorney for Professional Matters
New York State Court of Appeals
[REDACTED]

Re: Outline of Proposed Testimony at UBE Public Hearing
January 20, 2015, CUNY School of Law

1. Introduction and Summary of Testimony.

- a. Passing the New York Bar Exam: a time-honored tradition in our profession.
- b. Forces of change in law schools and the legal profession.
- c. Advantages and disadvantages of the current NY bar exam and the proposed UBE.
- d. Impact of UBE on law school curricula and bar exam preparation.
- e. Recommendations.

2. Forces of Change in Law Schools.

- a. Need to prepare students for clients, practice, and the profession in a rapidly changing environment and economy.
- b. Challenges of employment prospects for law graduates, which although improving, remains difficult at best.

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- c. Impact of student debt, shrinking job market, and decline of law school enrollment, and continued lack of diversity in the legal profession.
- d. Access to Justice gap: Chief Judge Jonathan Lippman has been singularly effective in bringing attention to, and raising awareness of, the need for lawyers to represent the poor and middle class in matters relating to the essentials of life.
- e. Jim Silkenat, former President of the American Bar Association, speaks eloquently about the “great disconnect”—a surplus of law graduates and lawyers relative to the job market, and the escalating unmet legal needs of people who are poor or middle class, a large percentage of whom do not have access to lawyers or the courts.

*See e.g., A Joint Convocation Convened by The Judicial Institute on Professionalism in the Law and The New York State Bar Association and its Committee on Legal Education and Admission to the Bar, **The Coming Changes to Legal Education: Ensuring Professional Values** (New York State Judicial Institute, White Plains, New York, May 22, 2014); **Developing Legal Careers and Delivering Justice in the 21st Century: A Report by the New York City Bar Association Task on New Lawyers in A Changing Profession** (Fall 2013), available at <http://www2.nycbar.org/pdf/task-force-report-executive-summary-developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf>; New York State Bar Association, **Report of the Task Force on the Future of the Legal Profession** (April 2011), available at <http://www.nysba.org/futurereport/>.*

3. The Bar Exam and the Law School Curricula: A Missing Link in Legal Education Reform.

- a. Developments in legal education based on goals and outcomes, criteria based assessment, and need to prepare students for clients, practice, and the profession.
- b. Advantages and disadvantages of current NY bar exam and the proposed UBE.
- c. Impact of UBE on law school curricula and bar exam preparation.
- d. Criteria based assessment in law school can be linked with bar admission.
- e. Opportunity to maintain NY role as pioneer in legal education as part of partnership among law schools, the bar, and the judiciary.

*See e.g., **The Future of Legal Education and Admission to the Bar**, Eileen D. Millett and Eileen R. Kaufman, Ed., 85 NYSBA Journal (September 2013); ROY STUCKEY AND OTHERS, **BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP** (CLEA*

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2007)(available at <http://cleaweb.org/best-practices>); WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Jossey-Boss 2007); AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (July 1992), REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (the McCrate Report).

4. Access to Justice and the Bar Exam: an Impetus for Reform.

- a. Access to Justice and Chief Judge Jonathan Lippman's Task Force to Expand Access to Civil Legal Services in New York.
- b. BOLE nascent effort to integrate Access to Justice topics on the NY bar exam.
- c. Goal of BOLE's Access to Justice initiative: raise awareness of the justice gap and the vast unmet legal needs of the poor and middle class.
- d. Including Access to Justice issues and fact patterns on the bar exam may encourage law schools to address access to justice issues more systematically and reinforce importance of public service as a core value of our profession.
- e. Impact of UBE on Access to Justice and the bar exam.

See e.g., 2014 Report to Chief Judge Jonathan Lippman from Task Force to Expand Access to Civil Legal Services in New York, available at <http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS%20TaskForce%20Report%202014.pdf>

2014 Report of the Law School Involvement Working Group on the Third Annual Law School Conference
Task Force Report:
<http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS%20TaskForce%20Report%202014.pdf>

Law School Report in Appendix 15:
<http://www.nycourts.gov/ip/access-civil-legal-services/PDF/2014%20CLS%20Report%20Appendices%20Vol%202.pdf>

5. Recommendations.

- a. Maintain the NY Bar Exam and explore ways to integrate Access to Justice on the exam and award bar exam "credit" for students who successfully complete a law school clinic or supervised externship.

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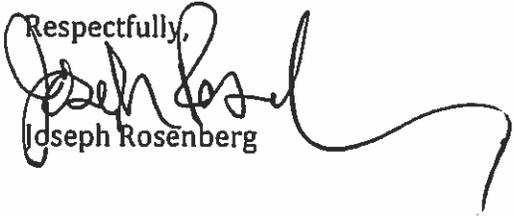
- b. Pilot an Access to Justice practice path to bar admission, similar in structure to the Daniel Webster Scholars program at the University of New Hampshire Law School, but adapted for NY.
- c. NY law schools already offer a sequence of courses, practicums, externships, and clinics that could serve as the sequence of required courses for a practice path to bar admission.
- d. This sequenced curriculum could be unified around one or more themes or principles: for example, a focus on public interest and social justice, particular areas of practice, the realities of sustaining a solo or small firm practice, or hybrid combinations. As with the Pro Bono Scholars, it could culminate in a final semester immersion into practice.
- e. Assessment. Link legal education with assessment for professional knowledge, skills, and values. Students would demonstrate that they meet performance criteria and successfully complete a prescribed sequence of courses to qualify for bar admission.

*See e.g., ABA Standards and Rules of Procedure for Approval of Law Schools 2014-2015, Ch. 3, available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf; New York State Bar Association Committee on Legal Education and Admission to the Bar, *Recommendations for Implementation of the Report of the Special Committee to Study the Bar Examination and Other Means for Measuring Lawyering Competence* (February 2012), available at <https://nysba.org/WorkArea/DownloadAsset.aspx?id=51614>; Daniel Webster Scholars Honors Program, University of New Hampshire School of Law <http://law.unh.edu/academics/jd-degree/daniel-webster-scholars>*

Thank you for considering this testimony.

Respectfully,

Joseph Rosenberg



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January 20, 2015

Good afternoon. My name is Allie Robbins and I am the Assistant Dean for Academic Affairs here at CUNY School of Law. I also serve as co-director of our bar support programs. I want to begin by saying welcome to CUNY Law and thank you for the opportunity to testify. We are glad you are hosting this historic hearing at our school.

I also want to start out by stating that I do not endorse the bar exam as an appropriate measure of the variety of skills that individuals need to possess in order to be good lawyers. However, the question at hand is whether to move from the current NY bar exam, to the Uniform Bar Exam. While I do not believe that the UBE is a better measure of lawyering skills than the NY bar exam, and in fact I worry that the increased weight afforded to the MBE and MPT will be detrimental to the development of a diverse bar, I know that others are testifying to those issues. My primary concerns in this testimony are to ask for lead time for whatever change to the bar exam the committee may decide upon, to raise the importance of access to resources when preparing for the bar, and to encourage the committee to recommend a streamlining of the material to be covered by the proposed New York Law Exam.

Law schools spend considerable energy and resources preparing students for the bar exam. At CUNY, as at many other schools in the state, we do so beginning in the first semester. Many of our first year professors utilize bar-type questions and work with students on writing bar essays.

Students spend 3-4 years in law school learning how to answer bar exam questions. Being taught one way and then unexpectedly having to learn a new way for a new exam is likely to be quite destabilizing. It is difficult to break out of old habits. Students currently in law school should take the exam that they have been preparing for, or should at least have the option to do so.

There are a myriad of components that go into preparing students for the bar exam. It is not simply an 8 or 10 week post-law school experience. For students, it begins from day one of law school. Yet, before a student even steps foot in the classroom, it requires considerable training and study by faculty members to understand how the bar exam tests, and how to teach students to succeed on it.

We regularly hold workshops for the faculty to train them in how and what the bar exam tests. Our bar support coordinators consult with faculty individually and provide them with information about how their specific subjects are tested on the bar. We review practice questions and exams and advise on doctrinal coverage.

Doctrinal coverage would shift significantly were NY to adopt the UBE. As a public school in New York City, while our students are prepared to practice in many jurisdictions, we place a special emphasis on preparing our students to practice law in New York. Many of our courses focus on NY law. I imagine many faculty members would want to continue this coverage of NY law. Thus they would have to simultaneously teach the general principles of law tested by the NCBE and New York law, and would need to make sure that students understood and were comfortable with those distinctions. It is going to be quite difficult for faculty to fit this double coverage into their already packed semesters.

Of course, it is possible to teach both general principles of law and state law in the same course, and many teachers do it already — though not to the extent they would have to if the UBE were adopted. If the UBE were adopted, faculty would need to be retrained and would have to rework their teaching and assessment methodologies. To do so effectively would take considerable time.

Access to resources is another issue that law schools would face if NY moves to the Uniform Bar Exam. Presently, the NY Board of Law Examiners provides previously used essays for free on its website, along with two sample answers for each question. Unlike NY however, the NCBE charges for its multistate essays and MPTs. Purchasing these materials for use by all students and faculty members would be quite expensive for law schools. This cost is likely to be prohibitive and will have a significant detrimental impact on bar support programs as we would not have access to a wide variety of materials from which to work with students. Ultimately it is the students who would suffer from this lack of freely available materials.

A similar problem exists with the NY multiple-choice questions. The NY Board of Law Examiners has never released to the public a single NY multiple-choice question. If the separate NY Law Examination were adopted, students would not have practice exams from which to study and law schools would be unable to adequately assist law students in their preparation. This is difficult on the current NY bar exam with the NY multiple-choice questions worth 10% of the bar, but would be even worse if they comprised a stand-alone exam.

I also want to take a moment to address the content of the proposed New York Law Exam. Florence Kerner, who is the co-director of CUNY Law's bar support programs, and I have begun a comprehensive review of the subject matter of the proposed content outline dated January 14th. We understand that it is important for individuals admitted to the bar in NY to have the knowledge and skills necessary to practice in New York courts. To do so competently, of course, requires an understanding of the CPLR. In order to practice ethically, an attorney must be familiar with the NY Rules of Professional Conduct.

There is a considerable amount of doctrinal overlap between the proposed NY Law Exam content outline and the MBE and MEE outlines. Most of the variances between the multistate law and NY law, however, are minute. If the proposal were adopted as stated, applicants would be forced to learn a tremendous amount of law in a very short period of time. Most of this law could not possibly be tested in one administration of a 50-question multiple-choice exam. Thus applicants would be left to spend weeks studying the intricate details of NY law when only a small fraction of that material would appear on their exam.

As these questions would not require any level of legal analysis, but simply rote memorization, applicants are likely to forget this information almost completely, the minute the exam is over.

Thus in truth they will end up learning the details of NY law in practice, and perhaps in law school, but not in bar study.

I also noticed that the proposed questions may include answer choices such as “none of the above” and “all of the above.” These types of questions were eliminated in the MBE by the NCBE several years ago, and I am happy to provide the committee with research that details the negative pedagogical value of these types of answer choices.

I am mindful of the time, and am happy to provide the committee with a more detailed recommendation of how to streamline the NY Law Exam at a later date if you feel it would be helpful. My suggestion at this time, however, is that only the CPLR and Rules of Professional Conduct should be tested on the New York Law Exam.

In sum, any major change to the bar exam should be phased in only after all students now enrolled have graduated, as students need most of law school to prepare for a bar exam. Additionally, faculty need time to rethink their courses - and deans to rethink the entire curriculum.

The resources available to help students study for the bar exam are too few and too expensive. Access to resources is critical to passing the bar, and the committee must consider this issue.

Finally, the committee should consider what really needs to be tested in the New York Law Exam in order to accomplish the goal of having practice ready New York lawyers.

I hope that if a decision is made to move to the UBE, it is done with considerable lead time and with open access to prior exam questions, in recognition of all of the preparation that goes into passing the bar, on the part of both applicants and the faculty who teach them.

Thank you very much for your time.

The City University of New York
CUNY SCHOOL OF LAW

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Long Island City, NY 11101



January 14, 2015

Advisory Committee on the Uniform Bar Examination
c/o The Honorable Jenny Rivera, Associate Judge
New York State Court of Appeals
20 Eagle Street
Albany, N.Y. 12207
Re: Notice of Public Hearings: Uniform Bar Exam

Via electronic submission to:
UniformBarExam@nycourts.gov

Dear Judge Rivera and Advisory Committee Members,

My name is Sarah Valentine and I am currently Senior Associate Dean of Academic Affairs and Professor of Law at CUNY School of Law. Prior to joining the law school I practiced for ten years in civil legal services offices. I apologize for the lateness of this request. I would ask to speak to the committee at its public hearing at CUNY School of Law on Tuesday January 20th, 2015 if time affords.

I wish to address the limitations of the Multistate Performance Test (MPT) as an assessment mechanism allowing the Board of Law Examiners to evaluate the competence of a candidate to practice law. The MPT is a part of the current New York bar exam and would be a larger part of the Uniform Bar Exam. I suggest that the MPT provides much of the same type of information as the essay exams provide. The MPT is graded using methodologies similar to those used in grading the essay exams and tests much the same skill set.

While the MPT requires engagement with materials in a "library of information," the candidate is still challenged to read and apply law to a fact pattern in a timed setting. Thus the MPT is really only one more assessment of a candidate's speed in reading, identifying issues, reasoning by analogy, and applying doctrine. While the MPT claims to evaluate factual analysis, management of legal tasks and recognizing and resolving ethical dilemmas, it does so in a manner similar to the essays and the Multistate Professional Responsibility exam, which is a function of the assessment mechanism used – a timed written exam format. This format also is one that is antithetical to a thoughtful approach to solving client problems.

The MPT does not provide any indicia of the lawyering competencies the bench and bar have clearly indicated are necessary to practice law (*e.g.* cultural competency, problem solving, practical judgment, interviewing and counseling, listening, strategic planning, negotiation, conflict resolution, professionalism, etc.). These are skills that cannot really be assessed or evaluated in timed writing settings.

However, these are the skills and traits that law schools teach and assess through clinical and experiential lawyering programs. In the past ten years, in response to concerted calls to increase the practice capacity

Law in the Service of Human Needs

of law graduates, several state courts in collaboration with law schools have established programs to provide more practical skills training. These are New York's Pro Bono Scholars program, Arizona's early bar initiative, the New Hampshire Daniel Webster Scholar's program and California's move to require 15 credits of experiential learning prior to sitting for the California bar. New York has the opportunity establish an even more comprehensive link between legal education and admission to practice.

I respectfully request that the committee consider establishing a program that would allow applicants who take a specified number of credits in a clinic or guided externship have that experience substitute for the MPT. The New York Courts could establish the number of credits and any other criteria they think necessary to allow this substitution (*e.g.* require direct client contact, engagement with professional or ethical reflections, require a specific amount of document drafting, etc.). Such a program would have several benefits. It would increase the likelihood that law students would be better prepared for practice upon graduation. It would encourage law schools to provide tailored experiential learning opportunities to their students and it would increase the ethics and professionalism training law graduates receive.

This would not create an added burden on law schools, as it would not be mandatory. More importantly the recent ABA Standards revisions now require the kinds of data collection that would be necessary to demonstrate that the schools have designed programs that meet any requirements the New York Courts would delineate to allow specific experiential learning credits to substitute for the MPT.

Under the new ABA Standards Law schools are required to establish learning outcomes that provide specific lawyering competencies other than legal reasoning and analysis. Law schools must evaluate their programs and report to the ABA data that proves compliance with these outcomes. Thus the data collection and reporting processes will already be in place that would allow schools to show they are providing the educational experience the New York Court of Appeals determines most important for competent practice upon graduation.

I look forward to speaking to the committee if time allows. Thank you in advance for considering this request.

Sincerely,



Sarah Valentine

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January 16, 2015

Advisory Committee on the Uniform Bar Examination
c/o The Honorable Jenny Rivera, Associate Judge
New York State Court of Appeals
20 Eagle Street Albany, NY 12207

Dear Judge Rivera:

This statement is submitted on behalf of the Society of American Law Teachers (SALT) in response to a call for comments on a proposal that New York adopt the Uniform Bar Exam [UBE]. SALT is a national organization of law professors and law school administrators committed to advancing teaching excellence, social justice, and diversity. That commitment prompts this statement in which we address concerns that New York's adoption of the UBE would have negative impacts on efforts to diversify the profession and hamper law schools' ability to adequately equip tomorrow's lawyers for law practice.

I. New York Has Long Critiqued Both the Bar Exam Format and the Exam's Disparate Impact

Over the course of more than two decades, a wide range of New York lawyers and judges have questioned whether the existing bar exam format and its narrow focus accurately reflect the skills new lawyers should possess, and they have expressed grave concerns about the bar exam's disproportionate impact on minority applicants. In numerous studies and reports, New York lawyers and judges have advocated for an exam that relies less on memorization and tests a wider range of lawyering skills and that avoids the unjustified disparate impact seen of the existing exam. New York's long-standing concerns about the problems provide ample reason for New York to reject adoption of the UBE at this time.

In 1992, the Committee on Legal Education of the New York City Bar Association raised concerns that the bar exam failed to adequately test minimal competence to practice law and that it creates a disparate impact

on minority bar applicants.¹ In 1993 and again in 1996, the exam was studied and questions were raised about its content and format and its disparate impact.² In 2002, the Committee of Legal Education and Admissions to the Bar of the State Bar Association and the Bar of the City of New York issued a joint report criticizing the bar exam for testing only a few of the skills lawyers need and for its significant and serious disparate racial impact.³ In 2005, a special committee was formed to study the exam and after five years of study and debate, the committee issued a report recommending the exam shift from a focus on rote memorization so that it could include assessments of a wider range of lawyering skills.⁴ In 2012, yet another report was issued recommending the exam be linked to more skills lawyers need.⁵ Most recently, a 2013 report by the New York City Bar Association Task Force again recommended the exam be re-vamped to include a wider range of the skills new lawyers need and suggested that the exam move toward a more innovative practice-oriented testing format.⁶

This long history illustrates New York's concern about both the breadth and depth of the exam and its disparate impact. Adopting the UBE does nothing to address either of those concerns. Rather than adopting the UBE, another version of the same highly criticized exam, New York should take the lead in pressuring the National Council of Bar Examiners to devise a better exam, as further described below.

II. Study Is Necessary to Determine the Impact of Adopting the UBE on Bar Passage for All Applicants and for Particular Subgroups of Applicants.

While it is presently unclear what impact adoption of the UBE will have on overall bar pass rates and whether it will result in exacerbating the existing disparate impact, there are reasons for concern. First, the July 2014 bar exam saw a significant drop in MBE scores nationwide. Should this trend in MBE scores continue, overall pass rates in New York could be negatively affected by adoption of the UBE. As SALT noted in its November 3 letter to Diane Bosse, commenting on the proposal to adopt the UBE: "Since the entire bar exam is scaled to the MBE, it is not surprising that many states, including New York, saw a decline in passing scores. Adopting the UBE would only exacerbate this problem since the MBE would count for 50% of the exam instead of the present 40%."⁷ The overall decline in pass rates may have a more significant impact on certain subgroups of test-takers. While we don't have statistics for New York, in California the impact of declining pass rates had a

¹ Ass'n Of The Bar Of The City Of N.Y., Report On Admission To The Bar In New York In The Twenty First Century: A Blueprint For Reform 467 (1992).

² Jason Millman Et Al., An Evaluation Of The New York State Bar Examination (May 1993); Prof'l Educ. Project, Legal Education And Professional Development in New York State (1996). This study was commissioned by Chief Court of Appeals Judge, Judith Kaye.

³ See Comms. On Legal Educ. & Admission To The Bar Of The Ass'n Of The Bar Of The City Of N.Y. & The N.Y. State Bar Ass'n, Public Service Alternative Bar Exam (June 14, 2002), available at <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26667>

⁴ Report of the Special Committee to Study the Bar Examination and other Means of Measuring Lawyer Competence, New York State Bar Association, September 13, 2010.

⁵ N.Y. State Bar Ass'n Comm. On Legal Education And Admissions To The Bar, Recommendations For Implementation Of The Report Of The Special Committee To Study The Bar Examination And Other Means Of Measuring Lawyer Competence (Feb. 12, 2013).

⁶ New York City Bar, Developing Legal Careers And Delivering Justice In The 21st Century, New York City Bar Association Task Force On New Lawyers In A Changing Profession (Fall 2013)

⁷ Letter from Olympia Duhart and Ruben Garcia, SALT Co-Presidents, to Dianne Bosse, Nov. 3, 2014.

disproportionate effect on African American and Latino/a test takers.⁸

We also do not have statistics available to compare the decline in pass rates in UBE states with the decline in pass rates in non-UBE states and how those respective declines impacted various subgroups of test-takers. That data is available to the NCBE and should be made public so that those considering adopting the UBE can study it to determine the impact of the UBE on pass rates generally, and whether the UBE increases test score disparities. The study should be done over multiple exam administrations to ensure reliability, and New York should not adopt the UBE until those consequences are better understood.⁹

One often-touted advantage of the UBE is that it allows for portability of scores. Mobility of lawyers is an important concern, especially for new lawyers, but that portability is limited¹⁰ and depends upon achieving a score set by the admitting state. New York's passing score is lower than ten of the fourteen states currently using the UBE. To achieve true portability, adoption of the UBE would inevitably result in an effort to standardize the passing score, which in all likelihood would mean increasing New York's passing score. On that issue, we do have hard data that tells us that increasing the passing score has a disproportionately harsh impact on racial and ethnic minorities.¹¹

As early as 1992, New York lawyers and judges studying the bar exam noted that any changes to the bar exam should be made with an eye toward reducing test score disparities while enforcing reasonable standards of attorney competence, a concern echoed by numerous commissions and reports. We urge New York to proceed slowly and cautiously to ensure adoption of the UBE will not undermine New York's commitment to developing a diverse bench and bar.

III. Rather than Adopt the UBE, New York Should Work With the NCBE To Develop A Better Licensing Exam

The New York bench and bar has studied the bar exam and issued report after report advocating it be

⁸ Vikram David Amar, *Additional Thoughts (and Concerns) About Low Bar Pass Rates in California and Elsewhere in 2014*, Verdict, Legal Analysis and Commentary from Justia, available at <http://verdict.justia.com/2015/01/02/additional-thoughts-concerns-low-bar-pass-rates-california-elsewhere-2014>.

⁹ We do know that the UBE is likely to increase costs for bar applicants. Although New York has said it initially will not raise costs, New York currently charges \$250 but UBE jurisdictions typically charge three or four times that amount and there is a significant cost to transfer UBE scores to other jurisdictions (\$400-\$1240). These increased costs will be felt by all applicants, but those most significantly affected likely will be lower income applicants, a disproportionate number of whom may be people of color.

¹⁰ Of the 14 states that use the UBE, five require state-specific assessment prior to admission. All limit portability to between 2 and 5 years after taking the exam and most limit it to 2-3 years. With no uniform cut score and only 4 of 14 states having a cut score lower than New York, a lawyer passing the UBE in New York would not be guaranteed admission in 10 other states unless the students achieved a score that met or exceeded the required score in that jurisdiction. Even that limited portability comes at a price. States administering the UBE often charge three to four times what New York charges and the cost of transferring UBE scores to other jurisdictions ranges from \$400 to \$1240.

¹¹ *Impact of the Increase in the Passing Score on the New York Bar Examination*, Report Prepared for the New York Board of Law Examiners, October 4, 2006.

changed to better reflect the skills lawyers need.¹² Law schools have recognized the need to expand skills taught and assessed, and have begun to integrate a wider range of skills development into their curricula. However, since the introduction of the Multi-State Performance Test decades ago, the bar exam has not made any significant changes in how potential licensees are tested. SALT believes New York is in a unique position to encourage changes that have been suggested by its bench and bar for decades and that now is the time to do so.

Historically, the bar exam has driven both law school curricula and assessment methods. Schools have offered courses because they are tested on the bar, whether or not they believe those subjects are important for new lawyers to know, and have advised students to take those courses. Schools also have modified their testing to parallel bar-exam testing, whether or not they view those tests as appropriate assessments of student achievement. Despite those pressures, law schools have begun integrating more skills development and training into their curriculum, partly in response to suggestions from students and the bench and bar. While the academy moves forward, the bar exam is mired in the past. Especially in light of the recent drop in bar pass rates, schools may begin to re-think innovations designed to better prepare students for practice and revert to courses that focus mainly on doctrine tested via multiple choice and bar-exam style essay questions in order to “teach to the test.” Students, fearful of bar exam failure, may choose to take more traditional courses in lieu of clinics, externships, and other courses that engage students in a wider range of skills development and in more “real world” application of legal doctrine and analysis.

Joining the UBE states simply entrenches the existing exam and its over-emphasis on memorization of large bodies of doctrinal knowledge tested via multiple choice questions. The NCBE recognizes that New York is influential and a leader in legal education reform, including such innovations as the 50 hour pro bono requirement. The New York imprimatur would go a long way toward legitimizing the UBE. SALT respectfully suggests that instead of endorsing the status quo, New York is in a unique position to push for a better test that encompasses a wider range of skills and testing methodologies. Much of the background work has already been done via the numerous New York studies and reports already in existence.

Bar exam reforms are possible, as evidenced by the Daniel Webster Scholars Program in New Hampshire. Students who successfully complete a two-year, practice-based, and client-oriented program at the University of New Hampshire School of Law are certified by the Board of Law Examiners and are admitted to the N.H bar upon graduation. The Institute for the Advancement of the American Legal System at the University of Denver has found that students who graduated from the program outperformed lawyers who had been admitted to practice in the state within the past two years who had not participated in the program but who had taken the traditional bar exam. While the Daniel Webster Scholars Program may not be a model for all bar admissions in all states, it illustrates the potential for modifying the bar admissions process, and the need to invite rather than discourage such reforms.¹³

¹² The NCBE itself has conducted a significant study about the skills new lawyers need, many of which are not tested. Steven Nettles & James Hellrung, *A Study of the Newly Licensed Lawyer*, available at http://www.ncbex.org/assets/media_files/Research/AMP-Final-2012-NCBE-Newly-Licensed-Lawyer-JAR.pdf.

¹³ For a discussion of some potential reforms, see, e.g., Andrea A. Curcio, Carol L. Chomsky and Eileen

IV. The new New York Law Exam Requires Additional Study

The proposal under consideration raises other concerns as well. It calls for a new New York Law Exam that would consist of 50 multiple-choice questions. This exam would be graded separately from the UBE and bar applicants would not be eligible for licensing in New York if they scored less than 30 out of the 50 questions on the New York Law Exam. Ordinarily, multiple-choice questions are not used on high stakes testing unless they have been pre-tested. The questions that would appear on the NY exam, which we understand will utilize a completely different format from the multiple choice questions used on the current NY bar exam, have not yet been written or reviewed, much less pre-tested. No study has been conducted to assess the impact that the requirement of passing both the UBE and the New York Law Exam will have on overall pass rates and whether it will increase test score disparities. It has been reported that the average score on the current New York multiple-choice section is roughly 50% (25 out of 50 questions correct), not the 60% (30 out of 50 questions correct) that will now be required as a stand-alone measure. If that is accurate and if it persists with the administration of the new exam, the result will disqualify candidates who previously would have been admitted. This too requires further study.

V. Conclusion

For the reasons stated above, SALT respectfully suggests that rather than jump on the UBE bandwagon and entrench the status quo, New York should use its considerable influence to encourage changes to the bar exam so it better reflects skills needed in practice. If the UBE tested a wider range of skills and values and tested applicants in ways more reflective of practice, it would be a better bar exam and potentially worth adopting.

We thank the Committee for the opportunity to present these views and we offer our assistance should New York seek to work with the NCBE to explore better ways to assess bar applicants and ensure that the bar exam does not further exacerbate test score disparities that negatively affect our ability to develop a diverse bench and bar.

Sincerely,



Olympia Duhart and Ruben Garcia

SALT Co-Presidents

Kaufman, Testing Diversity and Merit: A Reply to Dan Subotnik and Others, 9 U. Mass. L. Rev. 206, 244-51 (2014) (discussing the New Hampshire licensing program and other alternatives to the bar exam); Andrea A Curcio, A Better Bar: Why and How the Existing Bar Exam Should Change, 81 Neb. L. Rev. 363, 393- (2002) (discussing testing via computer simulations and other methods that encompass a wider range of skills); Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 Colum. L. Rev. 1696 (2002) (discussing an experientially based bar exam, the public service bar exam).

[REDACTED]

From: amy christianson <[REDACTED]>
Sent: Thursday, January 15, 2015 4:40 PM
To: Uniform Bar

1/15/15

Please see below an outline submitted representing intended discussion by Kevin McMullen, Esq. at the January 20, 2015 public meeting at CUNY School of Law regarding the bar exam. I will just write this directly as submitted to me by Mr. McMullen, and I apologize for any typographical errors on my part.

Re: Uniform Bar Examination

Introduction

Plea: Please save me from making a lot of money drafting bar review materials for the U.B.E. and for organizing a private New York bar exam.

Thesis: The State of New York should not adopt the Uniform Bar Examination because a generic examination cannot certify that a candidate is competent to practice law in New York.

Outline:

- I. To practice law competently in the State of New York, an attorney must have a precise knowledge of the law of New York.
- II. The competent practice of law in an interstate or a global setting requires a precise knowledge of local law including New York law.
- III. A bar examination in New York law is superior to a generic examination in determining a candidate's competence to practice law in New York.
- IV. The adoption of the Uniform Bar Examination will give rise to an additional but private bar examination.

I. To practice law competently in the State of New York, an attorney must have a precise knowledge of the law of New York.

A. Law is a discipline which can only be known precisely or not at all competently.

1. Examples of matters requiring precise knowledge
 - a. the grounds for divorce,
 - b. the procedure for foreclosing on a mortgage on residential property,
 - c. the different statutes of limitation for personal injury, medical malpractice, and wrongful death,
 - d. the necessary order and documents for pressing and resisting a claim,
 1. notice of claim,
 2. current method of service,
 3. the proper municipal defendant,
 4. when defenses must be raised,

5. discovery devices and their enforcement,
6. discovery and subpoena of non-party witnesses,
7. timing of motions for summary judgment,
8. with which clerk to file papers,
9. obtaining a stay on appeal.

2. Even when the concepts are the same among jurisdictions, the forms, terminology, and timing are different.

B. A generic bar examination cannot test such matters,

1. Instead, it can test common law marriage, which New York abolished in the 1930s.

II. The competent practice of law in an interstate or a global setting requires a precise knowledge of local law including New York law.

A. An attorney cannot competently represent clients across boundaries until he knows his own jurisdiction's law well.

B. Examples demonstrating this principle:

1. Law firms engaged in out-of-town litigation will hire local counsel -- even inside the same state -- to ensure that the firm handles all matters in accord with local practice.

2. Attorneys admitted pro hac vice are required to associate themselves with local attorneys,

a. subsequently, their papers must comport with local practice, or the foreign attorneys will be removed from the case.

3. The foreign office of a U.S. law firm may be supervised by a U.S. attorney, but the bulk of the staff will consist of local attorneys with a knowledge of local law.

4. Foreign firms are registered in New York and staffed by their nationals to practice the law of their home countries.

5. In the LL.M. program at N.Y.U. Law School, the course in international decedent estate administration pre-supposed a prior knowledge of the law of decedent estate administration in New York.

C. Thus, as a prerequisite to admitting a candidate to the practice of law in a state, e.g., New York, that state should require him to pass an examination in the law of the state.

III. A bar examination in New York law is superior to a generic examination in determining a candidate's competence to practice law in New York.

A. The grotesque volume of law in New York makes it more important than ever that a candidate for the bar demonstrate his competence in the law of New York.

B. Although no examination can provide absolute certainty that a candidate is competent to practice law in New York, a bar examination in the law of New York both tests and enhances such competence.

1. Obviously, the more questions on New York law, the better the test,

a. Thus, the traditional bar exam which tested New York law for two days was superior to the current exam.

2. In ADDITION, when the candidate is preparing for the bar examination, a bar review course will organize and make sense of the disconnected notions which the candidate acquired in law school.

a. At the end of the bar review course, I knew twice as much as I had known at graduation.

C. Even with an additional test of only fifty questions in the law of New York, the U.B.E. cannot test the competence of the candidate to practice law in New York.

1. Preparing for the U.B.E. will direct the candidate's attention and time away from the law of New York.

a. As Dean Patricia ^SFalkin of Touro observed, "You have an entire crop of graduating law students this year and you're basically telling them that the bar exam you thought you were preparing for is going to change just before you graduate."

1. In other words, the students were paying too much attention to the law of New York.

2. A one-hour test consisting of fifty multiple choice questions -- of which the candidate need answer only thirty correctly -- is no substitute for a thorough test of the law of New York. In fact, such a test would be an embarrassment to the profession.

D. Thus, if I were hiring an associate or engaging an attorney to represent me, I would not consider that someone who had passed the U.B.E. had demonstrated his competence to practice law in New York.

1. This would be especially true if, in addition, he had not attended law school in New York.

IV. The adoption of the Uniform Bar Examination will give rise to an additional but private bar examination.

A. Private companies, such as bar review courses, could draft, administer, and grade such an examination as well as teach preparatory courses.

B. The logistics of such an operation are both obvious and manageable.

1. To formulate questions, a company could draw on previous questions used on bar examinations in New York, recent cases, and recent amendments to statutes.

2. A company could recruit personnel it had used in the past to draft questions and model answers, to give lectures, and to grade the examination.

3. The obvious initial format would be twelve essay questions administered over two days. Later, multiple choice questions could be added.

4. The candidates would be told to bring pens and pencils to a particular location on particular days.
5. The first venues could be law firms, but the examination can expand into large halls.
6. The grading would be strict, not "equilibration".

SUBMITTED ON BEHALF OF KEVIN McMULLEN, 631-261-6679

Thank you for consideration - please reply to above e-mail address or call Mr. McMullen regarding any matters related to his intended contribution at the public hearing, his time to appear, etc.

Amy Christianson, Esq.


I. Introduction

- A. Jeremy Miller— Second Year Law Student at Touro Law School.
- B. Student Assistant for the New York State Bar Association Committee on Legal Education and Admission to the Bar.

II. Portability

A. Advantages

- 1. New York could be at the forefront in changing how law school students earn a license to practice law.
- 2. Students could broaden their job search to other states.

B. Disadvantages

- 1. The states that currently offer the Uniform Bar Exam, with the exceptions of New Hampshire and Alabama, are west of the Mississippi River and might not be of much interest to current and future New York law school students.
- 2. Adopting the Uniform Bar Exam on the theory that other northeastern states will adopt it as well is a risky proposition.
- 3. A passing score in New York may not be a passing score in other jurisdictions because there is no uniform grading scale.
- 4. The current Uniform Bar Exam jurisdictions only accept scores from between 2-5 years from administering the exam.

III. Law School Curricula and Bar Exam Preparation

- A. Local bar review courses may not have much experience with the Uniform Bar Exam, leaving the current students at a disadvantage when it comes time to study for the exam.
- B. Students have already signed up for a bar review course in their first year of law school to lock in a reduced price.
- C. Students who have anticipated taking the New York Bar Exam should not have to deal with the stress associated with a rapid change to licensure.

D. Law schools have taught either New York law or New York distinctions that may not be relevant for the Uniform Bar Exam, but is for practice in New York.

E. Specifically, the Estates, Powers and Trusts Laws govern New York trusts and estates, but the Uniform Bar Exam tests the Uniform Probate Code.

IV. Recommendation

A. I recommend that New York does not adopt the Uniform Bar Exam.

B. If New York does adopt the Uniform Bar Exam, I believe that it should be implemented for the incoming class of 2017 so all current students do not have the extra burden of changing their coursework or stressing about the content differences.

V. Other Topics

A. The advantages and disadvantages of the New York Bar Exam, in general.

B. The advantages and disadvantages of the Uniform Bar Exam, in general.

C. The potential disparate impact on minorities.

D. The potential for a rise in costs associated with the Uniform Bar Exam, and the fear that such costs might be allocated to the students.

E. The New York Law Exam.

F. The declining passing rates in Uniform Bar Exam jurisdictions, such as Montana and Idaho.