
IN RE: UNIFORM BAR EXAMINATION

Proceedings of the Buffalo/Rochester
Focus Group, held in the law offices of GOLDBERG
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12:17 p.m., before JOAN M. METZGER-HUBBELL, CRR,
RMR, RPR, Notary Public.

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12:17:36 4

12:17:36 5 **MS. SARAN:** I want to thank everyone for
12:17:39 6 taking time out of your busy schedule to come today
12:17:42 7 to this Focus Group discussion on the Uniform Bar
12:17:47 8 Exam, and I wanted to just briefly talk about the
12:17:53 9 difference between the Uniform Bar Exam and the
12:17:57 10 current New York bar exam.

12:18:00 11 The big difference will be the Tuesday. The
12:18:05 12 Wednesday of both exams is the Multistate Bar Exam
12:18:10 13 which is the 200-question multiple-choice exam on
12:18:16 14 the six -- well, now seven subjects. They just
12:18:19 15 added Federal Civil Procedure.

12:18:22 16 Currently, the New York day has 50 New York
12:18:28 17 multiple choice, and this outline is in your
12:18:32 18 folder. It has five New York essays, which are
12:18:35 19 multiple issue essays, and one multistate
12:18:41 20 performance test, which is a closed universe test
12:18:46 21 that asks the applicant to draft a memo or some
12:18:53 22 other document, gives them cases and information
12:18:59 23 from the file. It might be parts of depositions,

12:19:03 1 regulations, statutes, some relevant, some not, and
12:19:07 2 asks them to perform this task.

12:19:10 3 The difference with the Uniform Bar Exam is
12:19:14 4 that the applicants will be required to do six of
12:19:18 5 the multistate essay exam essays which are single
12:19:22 6 issue essays, a little bit shorter than the
12:19:25 7 New York essays, and two MPTs, Multistate
12:19:32 8 Performance Tests. I guess the aspiration, and
12:19:34 9 Diane can correct me, is that one would be
12:19:36 10 objective and one would be persuasive.

12:19:39 11 **MS. BOSSE:** Right. It would be
12:19:42 12 complementary in that fashion.

12:19:43 13 **MS. SARAN:** Yes. In addition to the Uniform
12:19:46 14 Bar Exam, applicants would also take a New York law
12:19:51 15 exam which would be a separate exam, a one-hour
12:19:57 16 50-question multiple-choice exam on New York law,
12:20:01 17 and that exam would also be offered perhaps, I
12:20:07 18 guess it's proposed, two other times a year to
12:20:11 19 enable people who take the Uniform Bar Exam in
12:20:14 20 other jurisdictions to come -- and who have passed
12:20:17 21 it with a passing score to come to New York and
12:20:20 22 take that portion of the exam.

12:20:23 23 Is that pretty correct, Diane?

12:20:25 1 **MS. BOSSE:** Right. And then also the
12:20:29 2 additional opportunities are also if people didn't
12:20:32 3 pass it, they could also, instead of waiting for
12:20:34 4 the next administration of the entire Uniform Bar
12:20:37 5 Exam, they could take it on one of those alternate
12:20:41 6 days.

12:20:42 7 **MS. SARAN:** Yes. That would be the other
12:20:45 8 difference, in that now you have to pass the
12:20:46 9 New York bar exam with a score of at least 665 out
12:20:50 10 of a thousand. On the Uniform Bar Exam, I believe
12:20:53 11 the passing score is 266 out of 400. Is that
12:20:57 12 correct, Diane?

12:20:59 13 **MS. BOSSE:** Yes.

12:21:00 14 **MS. SARAN:** Yes, 266 out of 400, and then
12:21:03 15 you need to get a separate passing score on the
12:21:06 16 New York law exam of 30 out of 50.

12:21:11 17 **MR. FREEDMAN:** Andrew Freedman. If you did
12:21:14 18 not pass the UBE in New York, and this is just a
12:21:18 19 hypothetical, if New Jersey gave it, which I don't
12:21:21 20 think I believe I saw them on the list --

12:21:23 21 **MS. SARAN:** No.

12:21:24 22 **MR. FREEDMAN:** -- would you be able to take
12:21:25 23 it there?

12:21:28 1 **MS. BOSSE:** If you didn't pass the UBE in
12:21:31 2 New York, is that what you --

12:21:32 3 **MR. FREEDMAN:** Right, could you take it in
12:21:34 4 some different state.

12:21:35 5 **MS. BOSSE:** Sure, yes. You could take it
12:21:37 6 anywhere. Wherever you got a passing score, you
12:21:41 7 would then import that score into New York if that
12:21:44 8 score satisfies New York's passing.

12:21:48 9 **MR. FREEDMAN:** And then you just have to
12:21:49 10 pass the New York separate portion?

12:21:51 11 **MS. BOSSE:** Right.

12:21:53 12 **MR. HANNA:** So -- Joe Hanna. So in terms of
12:21:56 13 the ethics portion of the exam, every state has a
12:22:00 14 different number, quote/unquote, number that we
12:22:02 15 have to hit, and I absolutely do not recall the
12:22:08 16 numbers, but I know that New York State's number on
12:22:10 17 the ethics portion was higher than, I don't know,
12:22:14 18 probably Mississippi, let's say.

12:22:17 19 So if that's the case, does the MBE -- does
12:22:20 20 the UBE, I'm sorry, score like that as well, so if
12:22:24 21 in New York it's 160 and another state that's on
12:22:28 22 there could possibly be 140? Is that how it's
12:22:32 23 scored?

12:22:32 1 **MS. BOSSE:** That's right. It's on a
12:22:34 2 400-point scale, so we're talking about a score of
12:22:37 3 266, which is exactly the same as our current score
12:22:40 4 but on a different scale.

12:22:40 5 **MR. HANNA:** Okay.

12:22:42 6 **MS. BOSSE:** We currently have a 665 out of a
12:22:46 7 thousand, and it's based on the MBE, and the MBE
12:22:52 8 scale score equivalent in New York is 133. We
12:22:56 9 currently multiply it by five. It's on a 200-point
12:23:00 10 scale, the MBE, and we multiply it by five, because
12:23:01 11 we're on a thousand-point scale, so we get our 665.

12:23:05 12 If we convert to the UBE, we would have the
12:23:08 13 same 133, but we'd multiply it by two to get to 266
12:23:13 14 out of 400 points. But every state can set its own
12:23:18 15 passing score.

12:23:18 16 **MR. HANNA:** Okay.

12:23:19 17 **MS. BOSSE:** Ten states have higher passing
12:23:21 18 scores. Four states have lower passing scores than
12:23:24 19 New York on the UBE jurisdictions, and one that
12:23:28 20 just has announced they've adopted UBE, Kansas,
12:23:31 21 they are the same score as New York, as I
12:23:33 22 understand it.

12:23:35 23 **MR. HANNA:** So even before the UBE, in

12:23:38 1 today's day and age, how does New York State rank?

12:23:40 2 Are we middle of a pass -- well --

12:23:43 3 **MS. BOSSE:** Very low.

12:23:46 4 **MR. HANNA:** Okay. So we are very low
12:23:48 5 compared to everybody else?

12:23:49 6 **MS. BOSSE:** There are over 30 jurisdictions
12:23:51 7 that have a higher MBE scale score equivalent for
12:23:54 8 their passing scores than New York.

12:23:54 9 **MR. HANNA:** Okay.

12:23:54 10 **THE REPORTER:** I'm sorry, I'm having a
12:23:54 11 little trouble hearing.

12:23:59 12 **MS. SARAN:** There's 30 states that have a
12:24:01 13 higher MBE score than New York. We're on the lower
12:24:05 14 side.

12:24:07 15 (Discussion off the record.)

12:24:16 16 **MS. SARAN:** The other issue that may arise
12:24:21 17 is that right now for New York -- to take the exam
12:24:26 18 in New York is \$250. For the UBE, Judge Lippman
12:24:31 19 has said they'll remain at 250, but the actual cost
12:24:36 20 to take it and make it more portable to another
12:24:40 21 state will be higher because there's a cost to take
12:24:44 22 the score from one jurisdiction to another, and
12:24:46 23 then the jurisdiction itself may have a cost, which

12:24:49 1 is usually less than but it's similar to the
12:24:52 2 current state where you have reciprocity, where you
12:24:55 3 have to wait five years and waive in.

12:24:59 4 So I wanted to start the discussion with a
12:25:04 5 couple issues that have been raised by the State
12:25:08 6 bar and by other constituencies, which is people
12:25:16 7 feel that there needs to be more studies done of
12:25:21 8 not only the impact of changing the exam on the
12:25:26 9 people who take it. There's always been a concern
12:25:30 10 about the current bar exam even, about its
12:25:36 11 disparate impact on particularly minority
12:25:38 12 candidates, but also the fact that is there going
12:25:43 13 to be an impact, for example, of the scores on the
12:25:49 14 ability of individuals who are taking a totally
12:25:53 15 different exam than they're prepared for in law
12:25:57 16 school and should there be more studies done, or is
12:26:03 17 it a fact that this is a better exam and there's
12:26:05 18 more positives to having that portability factor
12:26:09 19 for the current candidates.

12:26:11 20 So I'm offering that as a point of
12:26:13 21 discussion for the members of the Focus Group.

12:26:17 22 **MR. FREEDMAN:** I guess I'll chime in.
12:26:20 23 Andrew Freedman. I would concur that there needs

12:26:24 1 to be substantially more study before an approach
12:26:29 2 like the Uniform Bar Exam is adopted. It appears
12:26:35 3 to me -- well, it's always been my belief that
12:26:39 4 New York is a bit tougher, and when I saw the
12:26:46 5 states that have joined into this, I wasn't quite
12:26:49 6 sure, you know, if that was the group that we
12:26:54 7 wanted to be aligned with or whether we want to
12:26:58 8 still keep ourselves separate and do something
12:27:01 9 separate in order to keep the quality of attorneys
12:27:04 10 that we have, you know, consistent.

12:27:08 11 And then also, as a school attorney, I feel
12:27:12 12 as if just like the common core has been introduced
12:27:17 13 into elementary and secondary schools and it was a
12:27:22 14 rush to do, that, you know, these changes really
12:27:27 15 need to be done over an extended period of time
12:27:32 16 with serious thought to implementation, and that to
12:27:38 17 say that we're going to adopt this for the July
12:27:43 18 2015 bar exam just sounds like, to me, that it is a
12:27:52 19 real rush for implementation for such a big
12:28:01 20 examination that has so many different
12:28:03 21 ramifications for so many different stakeholders.

12:28:10 22 **MS. BOSSE:** Can I just -- I mean, there are
12:28:12 23 a number of things -- can I just correct Andrew on

12:28:15 1 it's not going to be implemented for July 2015.

12:28:18 2 **MR. FREEDMAN:** Oh. I thought I read that
12:28:21 3 somewhere.

12:28:21 4 **MS. SARAN:** That was the initial proposal.

12:28:21 5 **MS. BOSSE:** That was the original proposal.

12:28:23 6 The chief judge just said, you know, we're having a
12:28:23 7 have a study.

12:28:23 8 **THE REPORTER:** I'm missing that.

12:28:26 9 **MS. SARAN:** It's not going to be implemented
12:28:28 10 for July 2015 because we're doing this process.

12:28:33 11 **MS. BOSSE:** I'm happy to answer any of the
12:28:34 12 points that anybody makes to help us all understand
12:28:39 13 the issues and implementation and so forth.

12:28:39 14 **MS. SARAN:** She's going to keep quiet, but
12:28:49 15 she's going to help answer any questions about
12:28:50 16 implementation and the process of implementation of
12:28:57 17 the UBE.

12:28:57 18 **MR. FREEDMAN:** Well, Diane, has there
12:28:59 19 been --

12:28:59 20 **MS. BOSSE:** I would like to address some of
12:29:01 21 what Andrew has said about the difference, because
12:29:03 22 it may not be as extensive as some people may
12:29:07 23 think. Go ahead.

12:29:09 1 **MR. FREEDMAN:** I mean, have there been
12:29:11 2 studies on -- on the -- you know, I think back to
12:29:19 3 the past and the quality of attorneys that we have
12:29:21 4 around us and around this table and people like my
12:29:25 5 father, and we all went through that similar bar
12:29:28 6 exam experience. And I just don't know, again,
12:29:36 7 sort of why would we want to change that given the
12:29:40 8 fact that we know that it's produced such very
12:29:44 9 successful results.

12:29:46 10 **MS. SARAN:** I think there's a -- Diane, you
12:29:49 11 can chime in, but I'll paraphrase what has been
12:29:52 12 said.

12:29:52 13 **MS. BOSSE:** Go ahead.

12:29:53 14 **MS. SARAN:** I think there's a couple reasons
12:29:57 15 people believe that it's a good choice. Number one
12:30:01 16 is the portability, and attorneys now practice
12:30:04 17 across state lines. For a younger attorney to be
12:30:11 18 able to do that, in most cases they have to either
12:30:13 19 choose initially to take two bar exams like
12:30:16 20 New York with New Jersey or Massachusetts, or they
12:30:20 21 would have to wait the five years and then practice
12:30:27 22 for five years and then apply for reciprocity.

12:30:30 23 Some states, like New Jersey, Delaware,

12:30:33 1 California, don't have reciprocity, so you'd always
12:30:38 2 have to take another bar exam, and so the idea
12:30:41 3 behind the UBE is to allow attorneys to be able to
12:30:45 4 be involved in multistate practice right from the
12:30:50 5 beginning and also to -- like the medical school
12:30:53 6 has, to have a national standard.

12:30:58 7 Diane, is that pretty much --

12:31:00 8 **MS. BOSSE:** Yes. You know what? Law is the
12:31:02 9 only professional discipline that doesn't have a
12:31:04 10 uniform exam for the entire country, and I know
12:31:09 11 when we first started talking about this some years
12:31:14 12 ago, there were comments made, well, you know, but
12:31:16 13 the human body is the same wherever you go, so it's
12:31:19 14 easy for the doctors.

12:31:21 15 But it was explained to us by people who
12:31:24 16 were involved in the medical licensing process that
12:31:27 17 there are incidences of disease, there are clusters
12:31:31 18 of conditions and so forth that are different.
12:31:34 19 There's a standard of practice that's different
12:31:36 20 when you go across the country, so there was -- so
12:31:39 21 there were differences in medicine as we would say
12:31:42 22 there are in law.

12:31:44 23 And the portability is really the key

12:31:47 1 feature of it. It also adds additional testing
12:31:54 2 time and weight to clinical skills which is very
12:31:57 3 important in terms of the current concerns in the
12:31:59 4 profession, whether or not people are ready for
12:32:02 5 practice when they graduate from law school.

12:32:04 6 But I don't -- I don't want people to have
12:32:07 7 an impression that it's such a totally different
12:32:10 8 exam. We are already using a Multistate Bar Exam.
12:32:14 9 We are already using a Multistate Performance Test.
12:32:18 10 And the Multistate Essay Exam, while we're not
12:32:21 11 using it, it kept many of the same principles that
12:32:25 12 we kept. They're general principles.

12:32:29 13 And we've already agreed that we can test
12:32:33 14 the seven subjects that are tested on the New York
12:32:36 15 State bar exam by testing general principles.
12:32:39 16 We've all learned law from national casebooks, and
12:32:45 17 so in preparing for the bar exam, people are
12:32:48 18 already learning general principles, and New York
12:32:52 19 is right on those seven MBE subjects.

12:32:54 20 So there are only four subjects that are
12:32:56 21 tested on the UBE that are not tested on the MBE,
12:33:04 22 so that people are not currently preparing for them
12:33:07 23 as general principles with New York distinctions.

12:33:12 1 That's family law, wills and trusts, business
12:33:17 2 associations, and concepts. I think that's it.

12:33:21 3 So UCC Article 9 is also on the UBE, but
12:33:26 4 it's the adopted process. You would not be testing
12:33:30 5 that anymore in the New York part.

12:33:32 6 So I understand that there's a thought that
12:33:36 7 it's very different, but it's not all that
12:33:38 8 different from what we're currently doing, and
12:33:41 9 people are currently learning the law presumably
12:33:44 10 from national casebooks, and in New York law
12:33:46 11 schools they're learning New York distinctions.

12:33:49 12 In the bar review course everybody's
12:33:51 13 learning New York distinctions, and we test people
12:33:54 14 from almost every law school in the country. There
12:33:57 15 are I think 204 ABA-approved law schools. We had
12:34:00 16 193 law schools represented last July in our
12:34:04 17 candidate population.

12:34:06 18 Our passing score would be the same. In
12:34:09 19 many ways it's more rigorous than our current exam
12:34:13 20 because of the fact that people will now have to
12:34:15 21 demonstrate independently that they are competent
12:34:19 22 in New York law, in the important distinctions of
12:34:23 23 New York law that they need to know in order to

12:34:26 1 enter practice.

12:34:28 2 So I don't think it's that different from
12:34:30 3 our current exam. I think it's more rigorous with
12:34:34 4 respect to New York law, and the idea of -- of
12:34:37 5 portability is very important for new lawyers who
12:34:42 6 are -- you know, they have to sign up for a bar
12:34:45 7 exam before they know where they're going to get a
12:34:47 8 job. And then they get a job someplace other than
12:34:50 9 they've taken the bar exam. What do they have to
12:34:51 10 do? They have to pay money. They have to wait.
12:34:53 11 They have to take another bar exam. They have that
12:34:56 12 uncertainty and anxiety.

12:35:03 13 People are much more mobile now in addition
12:35:05 14 to practicing in multiple jurisdictions. And the
12:35:08 15 addition of more testing of clinical skills is very
12:35:11 16 important.

12:35:12 17 I don't want to monopolize this, but those
12:35:16 18 are a few points I wanted to make.

12:35:19 19 **MS. DINSMORE:** As someone who just took the
12:35:20 20 bar exam -- this is Emily Dinsmore -- I just want
12:35:22 21 to chime in about this.

12:35:24 22 I do think that it would be more difficult
12:35:26 23 to take the bar exam with the combination of the

12:35:29 1 UBE and New York State multiple choice. In my
12:35:32 2 experience, and I think I can speak for most of my
12:35:35 3 classmates, the most difficult part of the New York
12:35:38 4 State bar exam is the New York multiple choice.

12:35:41 5 My fear is that I would not have passed the
12:35:43 6 bar exam if there were a separate requirement for
12:35:47 7 the New York State multiple choice. The New York
12:35:49 8 State multiple choice as currently drafted, and I
12:35:52 9 understand that they may be different in the next,
12:35:53 10 and I would highly suggest that they are different,
12:35:56 11 they're so specific and cover such discrete topics
12:36:00 12 of the law that if you did not happen to study that
12:36:04 13 exact topic, the question is impossible. And --
12:36:06 14 which makes them sort of a Herculean task, because
12:36:10 15 there's no way that in that, you know, whatever,
12:36:12 16 two-month period, that someone could possibly study
12:36:14 17 every section of the CPLR, for example.

12:36:17 18 And so it ends up coming off as a bit
12:36:20 19 arbitrary, and I just think that that would be -- I
12:36:26 20 don't -- I think that making a separate requirement
12:36:29 21 for New York State -- New York State multiple
12:36:31 22 choice would only be fair if the questions were
12:36:34 23 drafted differently.

12:36:36 1 **MS. BOSSE:** Well, we plan to draft the
12:36:37 2 questions differently. The questions now are
12:36:43 3 offset in a factual scenario, and people have to
12:36:46 4 analyze the facts and figure out what the law is
12:36:48 5 and apply it.

12:36:49 6 These will be direct questions of knowledge
12:36:50 7 of New York law with the idea that we're already
12:36:53 8 testing people's skills of legal analysis in other
12:36:57 9 formats on the MBE and also on the MEE, so there
12:37:01 10 really isn't a need to test anything other than
12:37:04 11 specific knowledge of New York law.

12:37:05 12 The content outline that you probably looked
12:37:08 13 at, Emily, when you were preparing for the bar
12:37:10 14 exam, we have cut that down. It's less than half
12:37:14 15 as long now, but it includes annotations for every
12:37:18 16 rule that's in there with a case cite or a statute,
12:37:23 17 and the idea would be that we would have a detailed
12:37:28 18 annotated content outline that we would publish a
12:37:33 19 bank of questions, that the exam would be offered
12:37:35 20 multiple times a year, and that hopefully that
12:37:38 21 would take away some -- I think that would
12:37:43 22 ameliorate some of the difficulty. And we do see
12:37:45 23 it as somewhat more difficult, I understand, to

12:37:48 1 have to pass a separate test of New York law, but
12:37:50 2 it does make New York distinct. Nobody else is
12:37:53 3 doing it among the UBE jurisdiction.

12:37:59 4 **MS. DINSMORE:** Okay. Well, that's
12:38:01 5 definitely reassuring, and also just hearing that
12:38:03 6 it's definitely not going to be implemented in July
12:38:05 7 2015.

12:38:06 8 **MS. BOSSE:** Right.

12:38:07 9 **MS. DINSMORE:** That there is going to be
12:38:09 10 that modification, because my other concern, we
12:38:12 11 were taking about a disparate impact. There are a
12:38:14 12 lot of people who take the bar exam who make
12:38:17 13 excellent lawyers who do not happen to be good at
12:38:20 14 multiple-choice questions.

12:38:21 15 And so to take a full-day MBE and then do
12:38:24 16 the New York State law multiple-choice questions is
12:38:28 17 really a test of stamina, also. I remember
12:38:33 18 finishing the MBE and feeling like I had died, and
12:38:39 19 so clearly -- so my concern is that for students
12:38:49 20 who are weaker at multiple-choice questions, it
12:38:53 21 would be especially prohibitive.

12:38:54 22 And so, I don't know, just in terms of
12:38:55 23 testing different modalities, I think that can be

12:38:58 1 offset some by having two MPTs, but I do worry that
12:39:03 2 that extra requirement to pass the New York State
12:39:07 3 might lead to a further disparate impact.

12:39:11 4 **MS. BOSSE:** When you say "disparate impact,"
12:39:13 5 what do you mean?

12:39:14 6 **MS. DINSMORE:** I mean, in terms of how --
12:39:16 7 okay. Maybe I'm not describing it well. I know
12:39:19 8 that the thought was with minority candidates, but
12:39:22 9 I'm also just talking about in terms of, I don't
12:39:25 10 know -- this is my education background coming into
12:39:28 11 trouble, causing trouble, but I just -- I guess I'm
12:39:32 12 using the term disparate impact incorrectly, I
12:39:36 13 apologize, but just how it might impact with people
12:39:38 14 who have different learning modalities but who
12:39:41 15 still could be excellent lawyers so --

12:39:43 16 **MS. BOSSE:** Well, I really want to hear from
12:39:49 17 everybody there, but let me just address Emily's
12:39:52 18 point. We still have 250 multiple-choice questions
12:39:57 19 in terms of the number. In terms of the stamina
12:40:00 20 issue, the idea is to put it on the morning of the
12:40:02 21 MBE. You know, we're open to talking about that,
12:40:06 22 and there would be these other opportunities during
12:40:08 23 other times in the year. And maybe while people

12:40:13 1 are still in law school they worry about when are
12:40:15 2 they going to prepare for it, if that's the case,
12:40:18 3 but that's certainly on the table.

12:40:19 4 It's not our experience that minority group
12:40:22 5 candidates perform differently on multiple-choice
12:40:26 6 questions than on essay questions as a group.
12:40:31 7 Every subgroup of our candidates --

12:40:31 8 **THE REPORTER:** I can't hear it.

12:40:31 9 **MS. SARAN:** I'll repeat it for you.

12:40:45 10 **MS. BOSSE:** As we look at that component,
12:40:45 11 component doesn't matter. People who do well on
12:40:48 12 multiple-choice questions in our experience, well,
12:40:50 13 the groups that do -- that perform consistently
12:40:53 14 across the format of the exam, so the New York
12:40:56 15 multiple choice, the essays, the MBE, the
12:41:02 16 performance is consistent.

12:41:02 17 Now, I think you're probably right, there's
12:41:04 18 some individuals who find multiple-choice questions
12:41:09 19 more challenging, but as a group --

12:41:12 20 **MS. SARAN:** I'm just going to repeat it.

12:41:14 21 Across the different minority groups, they don't
12:41:16 22 see a difference in performance on the multiple
12:41:21 23 choice versus the essay exams. People perform very

12:41:25 1 consistently on both.

12:43:44 2 (Discussion off the record.)

12:43:44 3 **MS. SARAN:** Matthew Eldred who's a

12:44:13 4 third-year law student.

12:44:13 5 **MR. ELDRED:** I'd like to go back to this

12:44:17 6 issue of portability which I understand is driven

12:44:20 7 by the economic problems that we're having now and

12:44:23 8 the students need to cast a wider net to find a

12:44:26 9 job, but it seems that New York is one of the, if

12:44:29 10 not the, biggest legal market in the United States.

12:44:33 11 For students within New York, we would want

12:44:36 12 to keep that door closed, and while we might be

12:44:40 13 opening up the doors for our students from New York

12:44:42 14 to go elsewhere, I feel that it's much more likely

12:44:46 15 that students would be coming in at a higher rate

12:44:48 16 than they would be going out.

12:44:50 17 So I feel that economically, on balance,

12:44:54 18 this would hurt the students in New York and would

12:44:58 19 probably hurt the law firms economically in

12:45:00 20 New York as well because it would also open a lot

12:45:03 21 more firms around the country to practicing

12:45:05 22 New York law if they had New York-licensed

12:45:08 23 attorneys.

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12:45:08 1 So I really don't understand -- we're saying
12:45:11 2 on the one side -- Judge Lippman in his article
12:45:14 3 said on the one side, you know, we want to open up
12:45:17 4 the doors and make it easier for students to go,
12:45:19 5 but then at the same time they're saying, we want
12:45:21 6 law firms to be able to bring in students from
12:45:24 7 around the country as well.

12:45:26 8 Well, those two things at best offset into
12:45:29 9 the wash, but my gut tells me that with New York's
12:45:33 10 legal market the way it is, it would probably go
12:45:35 11 against the firms and the students from New York.

12:45:38 12 **MR. HANNA:** I'll chime in on that. I'm
12:45:40 13 fortunate enough that I run our firm's clerkship
12:45:44 14 program, I run our firm's associate hiring and the
12:45:47 15 associate program here, and from an administrative
12:45:50 16 point of view, I would love this.

12:45:52 17 And no offense to my alma mater, which I
12:45:56 18 think is the greatest law school in the world, but
12:45:58 19 if we're able to get more applicants from Chicago
12:46:00 20 and Northwestern and various other schools,
12:46:04 21 Stanford and other schools that are going to come
12:46:06 22 out here, well -- and I take that back, Diane. I
12:46:09 23 don't want you to hit me with a ruler. Those

12:46:11 1 schools aren't necessarily UBE schools yet, so I
12:46:15 2 guess it would all be dependent on which schools
12:46:17 3 are in the -- no, is that true? I'm sorry.

12:46:20 4 **MS. SARAN:** Stanford in California is not --

12:46:22 5 **MR. HANNA:** So it's not going to translate
12:46:24 6 over. So it would have to be one of those schools
12:46:26 7 in those 20 states or 15 states or 16 states,
12:46:29 8 right? Okay. So -- but if there's top-ranked
12:46:32 9 schools in there and they're a part of the game,
12:46:35 10 does it help a student out? Probably not. Is it
12:46:37 11 great for the law firm? We'd love it. I think
12:46:40 12 that would be absolutely phenomenal.

12:46:43 13 **MR. ELDRED:** You don't think that it being
12:46:46 14 easier for other firms to have access to
12:46:49 15 New York-licensed lawyers would hurt your firm?

12:46:51 16 **MR. HANNA:** No, not at all. We're a
12:46:52 17 national firm. We do work in all 50 states, so it
12:46:55 18 doesn't affect us. Might it affect a smaller
12:46:58 19 New York firm, a Western New York firm somewhere?
12:47:01 20 Maybe. But somebody like Hodgson, Russ who
12:47:03 21 practices all throughout the U.S. and big firms
12:47:07 22 that have the capabilities and lawyers who are
12:47:11 23 licensed in other states, I don't think it affects

12:47:14 1 the Phillips and the Damons, at least even locally,
12:47:17 2 the Hodgsons.

12:47:19 3 So I think if we have the opportunity to
12:47:20 4 broaden our pool of candidates for associate
12:47:24 5 positions and partners and all that stuff, I think
12:47:26 6 it's great.

12:47:28 7 **MR. ELDRED:** Who's our small to medium firm
12:47:31 8 representative here?

12:47:32 9 **MS. SARAN:** They're from Rochester and,
12:47:33 10 unfortunately, they couldn't get here. But I will
12:47:36 11 at this point -- and I guess you don't have a
12:47:39 12 rebuttal because he's stuck in the snow, but Gary
12:47:43 13 Muldoon was supposed to be here, was concerned
12:47:47 14 because -- he was concerned -- first he had a
12:47:51 15 question.

12:47:52 16 And, Diane, I'm not sure you can answer
12:47:53 17 this, but he wanted to know that the states that
12:47:56 18 currently have the Uniform Bar Exam, are they
12:47:59 19 following -- their state law, does it follow the
12:48:03 20 Federal Rules of Civil Procedure and Evidence
12:48:07 21 rather than New York with the CPLR?

12:48:11 22 **MS. BOSSE:** Well, the states that are
12:48:12 23 currently in the UBE, on the MBE as well as on the

12:48:18 1 MEE, they are testing the Federal Rules of Civil
12:48:21 2 Procedure and the Federal Rules of Evidence. On
12:48:24 3 the other subjects they're testing general legal
12:48:27 4 principles, you know, fundamental legal principles
12:48:30 5 that are generally accepted with sources such as
12:48:34 6 Restatements of the Law, legal encyclopedias like
12:48:38 7 Am Jur, casebooks, uniform laws, things like that.

12:48:43 8 So -- but they also, some of them have a
12:48:46 9 state law component where they test their own law
12:48:49 10 in addition to that, but the only two that actually
12:48:53 11 test their state law do it in an online exam, and
12:48:59 12 some other jurisdictions have a particular course
12:49:02 13 or kind of like a CLE requirement that people might
12:49:10 14 take. So does he mean people grade according to
12:49:14 15 their state law, is that the question?

12:49:16 16 **MS. SARAN:** No, he was -- it was getting to
12:49:18 17 that point, because he said that what New York --
12:49:22 18 I'm just reading what he said, that New York
12:49:25 19 lawyers need to know the CPLR and need to have the
12:49:29 20 skills to be able to use it. And if it wouldn't
12:49:35 21 test the CPLR in the essays and only in multiple
12:49:41 22 choice, that's not showing them what skills they
12:49:43 23 need to have to be a good lawyer in New York.

12:49:47 1 And he also said something that is outside
12:49:49 2 this discussion, but I'll just offer it. He said
12:49:52 3 that the bar exam doesn't test -- do well at
12:49:57 4 testing the soft skills such as negotiation,
12:50:00 5 mediation and ADR, and interpersonal skills that
12:50:04 6 attorneys need to succeed in practice.

12:50:07 7 So, I mean, that's kind of a given. We all
12:50:10 8 know that it's hard to -- to test those skills.

12:50:13 9 **MS. BOSSE:** Yes, I mean, that's true. The
12:50:15 10 current bar exam doesn't test that. You know,
12:50:17 11 they're just not the kinds of things that can be
12:50:20 12 tested in a paper-and-pencil setting. And, you
12:50:22 13 know, we're partners with the law schools, in terms
12:50:24 14 of the law schools offering courses in those kinds
12:50:31 15 of skills and people learning those things. We --
12:50:33 16 limitations of time and resources don't allow us to
12:50:37 17 do that.

12:50:37 18 But to Gary's point on the CPLR, of course
12:50:40 19 that would be heavily tested on the New York law
12:50:42 20 exam. And on essays, the thing that distinguishes
12:50:45 21 essays is, you know, issue identification and
12:50:50 22 analysis, reasoning, written communication, and
12:50:54 23 those skills are tested on the MEE and on the MPT.

12:51:01 1 So there's really no reason to repeat the testing
12:51:04 2 of them in our test of New York law.

12:51:09 3 The testing kind of precept is anything you
12:51:14 4 can test in a multiple-choice format, you should do
12:51:17 5 in that way, because it's more reliable. It's more
12:51:20 6 objective. It's less subject to bias. It can be
12:51:22 7 graded quickly. And you get more knowledge about a
12:51:27 8 person's mastery of the subject in fewer testing --
12:51:35 9 fewer units of testing time.

12:51:37 10 So that's why, you know, we -- and because
12:51:39 11 of administrative and cost issues, we really can't
12:51:42 12 have an essay test on New York law, but it was our
12:51:47 13 judgment that it really wasn't necessary, that we
12:51:49 14 could test the principles that need to be tested in
12:51:52 15 a multiple-choice format so -- I'll be happy to
12:51:56 16 talk to Gary about that.

12:51:57 17 **MR. FREEDMAN:** Can I chime in just quickly?
12:51:59 18 Diane, on the portability issue, again, I just sort
12:52:04 19 of think back to tradition, and the fact that
12:52:08 20 probably no one at this table has had the sort
12:52:13 21 of -- the, quote/unquote, portability, but, you
12:52:16 22 know, people tend to do fine.

12:52:19 23 I mean, where did this notion of

12:52:20 1 portability -- I mean, did it come from students?
12:52:23 2 You know, who was raising it at such a level of
12:52:27 3 concern that we should actually change our bar
12:52:31 4 procedures to enhance that opportunity?

12:52:34 5 **MS. BOSSE:** Well, I think it's come from a
12:52:37 6 number of sources. Law firms that are national law
12:52:41 7 firms. Law schools that want to be able to place
12:52:44 8 their students in a broader market.

12:52:49 9 It -- I think it was originally talked about
12:52:52 10 at the National Conference of Bar Examiners when it
12:52:56 11 was sort of realized that we're all testing the
12:52:58 12 same things, and yet when someone wants to go to
12:53:01 13 another jurisdiction, we're subjecting them to
12:53:05 14 another bar exam when they've already demonstrated
12:53:11 15 competence on the test that they took that was very
12:53:14 16 similar to what they might take in the next
12:53:17 17 jurisdiction. So it sort of came from that.

12:53:17 18 The Young Lawyers Division of the ABA passed
12:53:20 19 a resolution just this weekend endorsing it so --
12:53:23 20 and I know the student division has also passed a
12:53:27 21 resolution endorsing the Uniform Bar Exam.

12:53:31 22 The council of the Section of Legal
12:53:34 23 Education and Admission to the Bar of the ABA

12:53:36 1 passed a resolution some years ago. The Conference
12:53:38 2 of Chief Justices passed a resolution encouraging
12:53:42 3 states to study adopting the Uniform Bar Exam so
12:53:46 4 that we don't have this patchwork system of bar
12:53:52 5 admission -- not admission, because this isn't
12:53:56 6 national admission. This is a uniform test that
12:53:58 7 only satisfies part of what you need to get into --
12:54:01 8 to be admitted to practice in the jurisdiction.
12:54:03 9 You still have character and fitness and
12:54:06 10 educational eligibility and other requirements in
12:54:08 11 jurisdiction but, you know, it came from a
12:54:10 12 multitude of sources I guess is the answer.

12:54:12 13 **MR. FREEDMAN:** Okay. The other question I
12:54:14 14 had was, when I was doing the reading, it seemed
12:54:17 15 like on the essays, that New York weaves in
12:54:22 16 multiple issues, whereas on the UBE, it's a
12:54:26 17 single-issue essay.

12:54:29 18 **MS. BOSSE:** Yes, I can speak to that just a
12:54:32 19 little bit. I know that -- I know that we do, but
12:54:35 20 it's -- it's sort of a "so what?" I mean, we do it
12:54:39 21 so that we can test those principles in a different
12:54:41 22 way, but we could just as easily put the same issue
12:54:44 23 on a multiple-choice test.

12:54:44 1 **MR. FREEDMAN:** Okay. Gotcha.

12:54:46 2 **MS. BOSSE:** The MEE has as part of its
12:54:53 3 description of the test that the questions can
12:54:56 4 cross content areas, and I think this sort of --
12:54:59 5 and I've heard this a couple times. I mean, I
12:55:01 6 originally said it, and it was sort of my
12:55:04 7 observation, that I haven't seen a lot of crossover
12:55:06 8 questions on the MEE, but there's no reason that
12:55:09 9 they can't.

12:55:09 10 And I'm not sure what difference it makes in
12:55:13 11 the sense that whatever the questions are, they're
12:55:16 12 testing rules that presumably the new lawyer needs
12:55:21 13 to know in order to enter practice, and they're
12:55:23 14 testing skills of issue identification, legal
12:55:26 15 analysis and reasoning, written communication,
12:55:30 16 where those skills it doesn't matter what content
12:55:33 17 it's in. So that sort of issue.

12:55:38 18 **MR. FREEDMAN:** Well, you know, when I draft
12:55:41 19 my law school exams, you know, they have multiple
12:55:44 20 issues in there, and I just tend to think that if
12:55:48 21 you just had an essay with one issue, it would --

12:55:53 22 **MS. BOSSE:** It's not one issue, I'm sorry.
12:55:55 23 It's not one issue. They have multiple issues, but

12:55:58 1 they're in the same content area.

12:56:00 2 **MR. FREEDMAN:** Okay. Gotcha, gotcha.

12:56:01 3 **MS. BOSSE:** Okay? Yes, I think that was
12:56:03 4 what -- when Melinda said that there were multiple
12:56:07 5 issues, you know, we often will have a practice
12:56:11 6 point or a professional responsibility point in one
12:56:13 7 of our New York drafted essays, but the MEE will be
12:56:22 8 restricted to generally, I mean, that's been my
12:56:25 9 observation, although I know that, you know, that's
12:56:27 10 something that they think about and they're talking
12:56:30 11 about, too.

12:56:31 12 They don't generally combine contracts in
12:56:33 13 civil procedure or torts and, you know, something
12:56:38 14 else. They do add conflicts of law into other
12:56:42 15 topic areas, but -- but they are multiple issues.
12:56:47 16 There are fewer issues. Like our exams, our essays
12:56:52 17 typically can be four or five, sometimes six
12:56:54 18 sub-parts, and theirs are typically two, three,
12:56:59 19 four, but they are multiple issues.

12:57:01 20 **MR. FREEDMAN:** Does that reduction, though,
12:57:02 21 concern you?

12:57:03 22 **MS. BOSSE:** No, it doesn't, because there's
12:57:05 23 six of them, and there's more -- there's more time

12:57:09 1 devoted to essays. There are overall, I'm sure,
12:57:13 2 about as many issues as we have, and they're
12:57:18 3 getting -- they're getting an adequate coverage in
12:57:21 4 terms of sampling the domains of knowledge that are
12:57:23 5 covered by the license.

12:57:24 6 So, no, that doesn't concern me. There are
12:57:28 7 more of them. They're a little bit shorter, and
12:57:30 8 they cover the content that we would want to be
12:57:33 9 covered.

12:57:34 10 **MS. SARAN:** All right. We have one more
12:57:36 11 question from Joe Hanna, and then we're going to
12:57:38 12 move on to just a little bit different topic.

12:57:40 13 **MR. HANNA:** I have another portability
12:57:42 14 question. So for the attorneys who are already
12:57:45 15 practicing in various jurisdictions, so I'm
12:57:47 16 obviously in New York State, and I had to fill out
12:57:49 17 a crazy application and get endorsements from a
12:57:55 18 number of attorneys and letters of recommendation
12:57:57 19 to go into Illinois and PA.

12:57:59 20 So the students who would be currently
12:58:01 21 taking the bar exam in New York, they just would
12:58:06 22 apply for those other respective states in terms of
12:58:10 23 the portability and be able to move their score

12:58:14 1 around and get admitted there? Is that how it
12:58:15 2 would work?

12:58:15 3 **MS. BOSSE:** They move their score around,
12:58:17 4 but they have to go through whatever process the
12:58:19 5 state requires for admission.

12:58:22 6 For example -- this just eliminates the test
12:58:24 7 part of it.

12:58:24 8 **MR. HANNA:** Okay.

12:58:24 9 **MS. BOSSE:** The character and fitness
12:58:26 10 process, whatever that is, if they have some --
12:58:28 11 like, for example, New York, the pro bono 50-hour
12:58:33 12 requirement. Whatever those other admission
12:58:36 13 requirements are and whatever that process is, that
12:58:40 14 stays the same in the state.

12:58:42 15 All this is is a score. It's a score on a
12:58:46 16 uniform test. This says, I have proved my
12:58:49 17 competence to your degree of requirement, your
12:58:53 18 required score on a test I took in another
12:58:56 19 jurisdiction, so I want to bring that score in and
12:58:58 20 then do whatever it is I have to do to get
12:59:01 21 admitted.

12:59:01 22 **MS. SARAN:** And there's a period of time the
12:59:03 23 score is valid. So I looked up a couple states

12:59:06 1 that have it, and one of the states, if you're an
12:59:09 2 admitted attorney, the fee's different, plus you
12:59:12 3 need to do all the endorsements that you're -- you
12:59:16 4 know, you practiced. You need a certificate of
12:59:19 5 good standing from -- here it would be the
12:59:22 6 Appellate Division -- that you're an attorney in
12:59:25 7 good standing, and you need to go through their
12:59:27 8 character and fitness.

12:59:28 9 **MR. HANNA:** So the five-year rule for all of
12:59:30 10 the rest of the attorneys in New York State, that
12:59:32 11 still would hold to waive into another state within
12:59:34 12 our -- that we have reciprocity with, right?

12:59:37 13 **MS. BOSSE:** Right. Admission -- this
12:59:39 14 doesn't affect admission on motion.

12:59:41 15 **MR. HANNA:** Okay. And last question. So if
12:59:44 16 a student from Alabama wanted to come to New York
12:59:50 17 and their score was valid, what else would they
12:59:53 18 have to do to become a member of the New York State
12:59:56 19 bar?

12:59:58 20 **MS. BOSSE:** First, their educational program
13:00:00 21 would have to satisfy our Court of Appeals rules,
13:00:04 22 520.3, on the educational eligibility requirements
13:00:08 23 for a domestically educated candidate, okay? So

13:00:11 1 assuming they satisfy that, they have to perform
13:00:13 2 their 50 hours of pro bono work if they didn't do
13:00:16 3 it in law school or in Alabama or anywhere else.
13:00:19 4 They'd have to do that. They have to file a
13:00:21 5 character and fitness application, go through the
13:00:24 6 interview process, and be admitted.

13:00:27 7 **MS. SARAN:** And take the New York -- the
13:00:28 8 New York law exam, too.

13:00:30 9 **MS. BOSSE:** And take the New York component,
13:00:32 10 of course, I'm sorry. Yes, take the New York
13:00:34 11 component.

13:00:34 12 **MR. HANNA:** Okay.

13:00:35 13 **MS. SARAN:** All right. I wanted to switch
13:00:36 14 gears a little bit to the academics in the room.
13:00:39 15 I'm going to exclude myself at this point. And how
13:00:42 16 would this affect what goes on in law school?

13:00:49 17 There are concerns -- there were concerns
13:00:50 18 for July. I had all kinds of panicked e-mails, and
13:00:55 19 then I found out it wasn't going to be in July and
13:00:58 20 told them to take a deep breath, but what changes
13:01:02 21 would you see? Would it be positive changes?
13:01:05 22 Would it be negative changes in course selection,
13:01:11 23 in terms of students preparing to take the bar

13:01:16 1 exam?

13:01:33 2 **MR. CHIESA:** I don't think it makes -- I
13:01:36 3 don't think it makes that much of a difference,
13:01:39 4 frankly, in terms of how you're preparing the kind
13:01:42 5 of courses that you take in law school.

13:01:44 6 And also, I mean, in faculty, in our law
13:01:49 7 school and in law schools across the country, we
13:01:51 8 had a long-standing conversation as to what the
13:01:53 9 point of law school is in the first place, okay?
13:01:57 10 Is the point of law school to prepare students to
13:01:59 11 pass the bar primarily? Obviously law school has a
13:02:03 12 myriad of objectives, but is it to prepare
13:02:05 13 primarily students to pass the bar, or is it to
13:02:07 14 give them the critical tools to think like lawyers
13:02:09 15 and be citizens of society in a way?

13:02:11 16 You know, there are so many different goals
13:02:12 17 to law school, and we're having that conversation
13:02:14 18 and we've had that conversation for decades now,
13:02:16 19 and we'll continue to have it regardless of this
13:02:19 20 change which, frankly, in terms of how -- the
13:02:22 21 courses you take is sort of -- I think it's not --
13:02:27 22 I don't think it changes dramatically. What we're
13:02:30 23 offering, for sure, but I don't think it will

13:02:32 1 change dramatically what students are taking either
13:02:36 2 but --

13:02:38 3 **MR. BROWN:** You know -- this is Todd Brown.
13:02:40 4 When I was looking over the materials, the thing
13:02:42 5 that struck me was the UBE seems to take the bar
13:02:45 6 exam and make it more like watch your tone in law
13:02:50 7 school than the other way around.

13:02:51 8 You know, recently we've been hearing about,
13:02:55 9 as Luis was saying, law school needs to really
13:02:58 10 focus more on getting people ready for practice and
13:02:59 11 specific nuts and bolts, things that they need to
13:03:02 12 know about the law in specific jurisdictions, and
13:03:05 13 UBE seems to take us the other direction on testing
13:03:09 14 on general principles and your ability to apply
13:03:12 15 those, which I think is a good thing, especially if
13:03:16 16 you then have it supplemented with a component that
13:03:18 17 does test that nuts and bolts.

13:03:20 18 And if you're -- so if you're mixing it
13:03:21 19 around, I'm not sure that it ultimately changes, as
13:03:25 20 Luis was saying, changes what we teach or
13:03:28 21 necessarily how we teach it.

13:03:29 22 As far as students signing up for classes,
13:03:32 23 maybe we don't -- it's possible that we don't have

13:03:34 1 two-thirds of the class signing up for gratuitous
13:03:37 2 transfers.

13:03:39 3 **MS. SARAN:** Although, trusts and estates is
13:03:41 4 one of the MEEs on the exam.

13:03:44 5 **MR. BROWN:** It is, it is, but, I mean, I
13:03:46 6 think it winds up being a different --

13:03:48 7 **MS. SARAN:** Proportion.

13:03:49 8 **MR. BROWN:** Yes. I think that might have
13:03:51 9 some impact, but as far as what's taught, students
13:03:54 10 are still going to try to take classes -- certainly
13:03:58 11 a subset of students are going to be trying to take
13:04:01 12 classes that target them toward being ready for the
13:04:03 13 bar exam, whatever that bar exam is.

13:04:07 14 **MS. SARAN:** And the other thing I would add
13:04:08 15 to that discussion is that looking at our New York
13:04:12 16 practice, professors now, two of them actually do
13:04:17 17 have multiple-choice exams. And I wonder, although
13:04:21 18 one of them you'll never get to see his exam
13:04:24 19 because he -- he doesn't allow anyone but the
13:04:27 20 students taking it to see it but -- and his
13:04:32 21 secretary, but I wonder how close those are to what
13:04:36 22 the New York law exam will look like, Diane, so --

13:04:38 23 **MS. BOSSE:** I don't know. I'd love to see

13:04:40 1 it. You know, we're drafting questions now. You
13:04:46 2 know, we plan to post questions, and they really
13:04:48 3 are very specific questions, about -- about
13:04:52 4 New York law. Like things that people would need
13:04:55 5 to know to practice that would really get out their
13:05:00 6 knowledge of things that would be -- you know,
13:05:04 7 would be unsafe for people to practice if they
13:05:06 8 didn't know these things in New York law.

13:05:08 9 And I think there's probably a pretty
13:05:10 10 limited universe of that, but we are writing those
13:05:14 11 questions now, and we do plan to post a bank of
13:05:16 12 them so that people can get a sense of what they
13:05:19 13 look like, what the content would be. And, you
13:05:23 14 know, as I said, we have this content outline, and
13:05:25 15 we invite comment on that content outline.

13:05:25 16 **MR. BROWN:** The one thing I would --

13:05:28 17 **MS. BOSSE:** That's available -- I'm sorry,
13:05:28 18 that's available on the website of the advisory
13:05:31 19 committee.

13:05:33 20 **MR. BROWN:** Diane, the one thing I would --
13:05:35 21 one question I would have is, once a decision is
13:05:39 22 made, I mean, how much time are we going to give
13:05:42 23 students to adapt the way that they're preparing

13:05:44 1 for the bar? I mean, if we -- if a decision is
13:05:47 2 made in January of next year, are we looking at the
13:05:51 3 July bar of next year? I mean, how much lead time
13:05:55 4 will they have? Because that seems to me to be one
13:05:58 5 source of anxiety about a switch, is even if it
13:06:02 6 isn't a big transformation, there's the perception
13:06:04 7 that it's going to be a big change.

13:06:06 8 **MS. BOSSE:** Sure. And how much lead time do
13:06:10 9 you think people need from an announcement to an
13:06:16 10 administration?

13:06:19 11 **MS. SARAN:** My -- being the one that has to
13:06:21 12 listen to the crying when people don't pass in
13:06:25 13 addition to the cheering when they do, I would say
13:06:29 14 that the most safe version of it would be to say
13:06:35 15 that the first year class that's going through at
13:06:39 16 the time it changes is the first class that takes
13:06:41 17 the new exam, because they would have the time once
13:06:45 18 they begin registering for second year to register
13:06:49 19 with the understanding that they're taking the UBE.

13:06:56 20 **MR. ELDRED:** I'll add as well -- this is
13:06:58 21 Matt Eldred -- I remember this fall getting an
13:07:02 22 e-mail from BARBRI when the change was proposed
13:07:04 23 saying, don't worry, we've got you covered, no

13:07:06 1 matter what happens, we'll have the content that
13:07:09 2 you need to pass the bar.

13:07:10 3 So because this is not a change to a
13:07:12 4 different New York test but a change to the Uniform
13:07:16 5 Bar Exam, then at least the major bar examination
13:07:19 6 companies or bar review companies would have the
13:07:24 7 study aspect, where I think the majority of
13:07:26 8 students get their content knowledge from, covered
13:07:30 9 on pretty short notice.

13:07:31 10 **MS. SARAN:** And Barbara Sherk has said also
13:07:34 11 that she could conform her course pretty quickly
13:07:38 12 with like a semester's notice to the UBE. She
13:07:42 13 teaches the pre-bar course at the law school.

13:07:47 14 **MS. BOSSE:** That's consistent with what I've
13:07:49 15 heard from the bar review courses. I mean, for
13:07:52 16 example, these bar review courses, the major
13:07:56 17 national commercial bar preparation courses, are
13:07:59 18 already preparing people for the UBE in other
13:08:01 19 jurisdictions. They're already preparing people
13:08:03 20 for the New York bar exam in New York. So they're
13:08:07 21 already preparing people for learning general
13:08:13 22 principles in New York law so they can take the MBE
13:08:16 23 and they can take the New York bar exam, and

13:08:18 1 they're already preparing people for New York law
13:08:20 2 in the other subjects that aren't on the MBE.

13:08:22 3 And so there just -- it seems to me the only
13:08:25 4 real addition is what are general principles where
13:08:27 5 New York law might vary in a few small areas. And
13:08:31 6 so I would -- to the extent that there is a
13:08:33 7 perceived benefit, I don't know what the Court's
13:08:40 8 plan would be, assuming they adopted, how long they
13:08:44 9 would delay it, but it seems to me that once it's
13:08:47 10 clear you can do it, the questions are -- well, the
13:08:52 11 questions are implementation and preparation.

13:08:55 12 And implementation, assuming we get by that,
13:08:58 13 how much preparation do you need, and it seems to
13:09:01 14 me that bar review courses can get up to speed
13:09:04 15 pretty quickly.

13:09:06 16 **MR. BROWN:** Do we know what percentage of
13:09:08 17 takers do not take a bar prep course?

13:09:13 18 **MS. BOSSE:** I don't know. I don't think
13:09:15 19 it's very high, but I don't know. Barbara might
13:09:20 20 know that.

13:09:20 21 **MS. SARAN:** We'd probably say it's a
13:09:21 22 handful. And most of them will say they don't take
13:09:24 23 a course but they do, or they -- or they, you know,

13:09:28 1 get the books on eBay or something, so while
13:09:32 2 they're not taking the formal course, they're still
13:09:35 3 studying through the materials.

13:09:37 4 **MR. HANNA:** And I guess going to Professor
13:09:40 5 Brown's point and going to Dean Saran's original
13:09:43 6 question, with all due respect to the bar exam, at
13:09:47 7 least the way it was in 2005, which was ten years
13:09:52 8 ago, I -- I never took any of the -- and I've never
13:09:56 9 been accused of being Learned Hand or being "wicked
13:10:01 10 Schlegel-smart" or something like that, but I did
13:10:03 11 not take any of the, quote/unquote, bar prep
13:10:07 12 courses, not BARBRI or those, but gratuitous
13:10:12 13 transactions in tax law and family law are the ones
13:10:16 14 that everyone forces down your throat and says, you
13:10:19 15 have to take this because that's how you're going
13:10:21 16 to learn for the bar.

13:10:21 17 I didn't take any of those, and guess what?
13:10:23 18 I'm a partner at Goldberg Segalla today, and I
13:10:25 19 passed the bar exam on my first try. So I don't
13:10:28 20 know if there's a difference between having to take
13:10:30 21 those classes in law school and passing the bar
13:10:32 22 exam.

13:10:32 23 Maybe I'm lucky, but everything, as far as

13:10:35 1 I'm concerned -- and I've had this conversation a
13:10:38 2 thousand times with Schlegel, because everyone gets
13:10:43 3 all crazy because of his contracts class.
13:10:45 4 Everything that you need to know to pass the bar
13:10:48 5 exam BARBRI generally teaches you, and I would
13:10:51 6 assume with this new -- and BARBRI should pay me
13:10:55 7 money for saying this, but I would assume for this
13:10:57 8 new UBE and the new methods and all that stuff, I'm
13:11:01 9 sure they already have this down to a T. They're
13:11:04 10 ready to teach it, and they're raring and ready to
13:11:06 11 go.

13:11:06 12 So I -- in terms of the classes and who's
13:11:09 13 going to take what and that stuff, I would hope
13:11:11 14 that would open it up and allow students to take
13:11:15 15 classes they really want to take, to take a class
13:11:18 16 with Sugarman even though -- a mediation class or
13:11:19 17 an ADR class that you're going to use every single
13:11:21 18 day in your real life practicing law or take an
13:11:24 19 education law class even though it might not show
13:11:26 20 up on the bar exam but it's something you're going
13:11:29 21 to learn and use in your life, or take a Helen Drew
13:11:32 22 sports law class or things of that nature as
13:11:34 23 opposed to saying, I absolutely, positively have to

13:11:36 1 take gratuitous transactions because that's going
13:11:39 2 to be on the bar exam, even though I'm going to go
13:11:42 3 become a criminal defense attorney and I will
13:11:44 4 never, ever use this in my entire life.

13:11:45 5 So I think that if the classes aren't going
13:11:48 6 to change in law school, I think that's a good
13:11:50 7 thing. I don't think that you necessarily have to
13:11:52 8 do that to pass the bar exam. I think it's a great
13:11:55 9 thing that you could go and kind of open up and
13:11:57 10 take more classes and get a better variety of
13:12:00 11 Melville and the law. Is that still taught?

13:12:06 12 **MS. DINSMORE:** Yes.

13:12:06 13 **MR. HANNA:** There you go.

13:12:09 14 **MR. CHIESA:** Well, I agree, I agree with
13:12:13 15 Joe. I think that -- I remember at this last
13:12:16 16 orientation, I told you that most of you -- I mean,
13:12:19 17 most people who are going to pass the bar would
13:12:21 18 pass the bar if they just spent the three years,
13:12:26 19 instead of taking courses, just reading BARBRI
13:12:27 20 materials and memorizing them but -- and I told
13:12:30 21 students, you should think about the kind of person
13:12:34 22 that you are and whether you want to take the
13:12:35 23 courses that will prep you for the bar or whether

13:12:38 1 you want to take courses that specialize in a
13:12:41 2 particular subject matter that you're interested in
13:12:43 3 or that you just find interesting, like Melville
13:12:46 4 and law, because you now have the luxury of time.
13:12:48 5 You have three years to just do what you want to
13:12:51 6 do, and once you graduate and you pass that bar,
13:12:53 7 you won't have that luxury again.

13:12:55 8 But, that being said, students still flock
13:12:57 9 to the same -- as vice dean, I see the enrollment
13:13:02 10 numbers in students. They're told exactly what you
13:13:04 11 just said. I tell them in orientation, and they
13:13:07 12 take the same bar courses anyway, and it is
13:13:10 13 proportionately so. Even though it may not be
13:13:13 14 necessary statistically, I don't think it is, maybe
13:13:16 15 for a small subset of students that really does
13:13:19 16 move the needle, but I think for the vast majority
13:13:21 17 of students it doesn't, and still the anxiety is
13:13:24 18 there, right?

13:13:25 19 So I think there's two questions here. How
13:13:28 20 much lead time do students really need, and I think
13:13:31 21 the question -- I think the answer is not a lot. I
13:13:34 22 think a semester with BARBRI, et cetera, would
13:13:36 23 probably be enough. You would probably get similar

13:13:38 1 passing rates.

13:13:40 2 How much -- how much time do students think
13:13:42 3 they need? Different question, right? I think
13:13:45 4 they're probably going to say more than they
13:13:46 5 actually need.

13:13:52 6 **MS. DINSMORE:** I -- this is Emily Dinsmore,
13:13:53 7 and I agree completely with that. As a recent
13:13:56 8 graduate, so many of my friends are doing exactly
13:13:59 9 the sort of things that Joe was taking about, that
13:14:01 10 he avoided but -- by taking all these classes. I
13:14:03 11 think the really interesting one will be, as Dean
13:14:05 12 Saran mentioned, because a lot of people take that
13:14:09 13 and whether -- that might be one course that
13:14:11 14 changes slightly.

13:14:12 15 The others, right, will not be affected.
13:14:16 16 But, I mean, I took gratuitous transfers, but that
13:14:20 17 was because I figured wills, that's something
13:14:22 18 everyone needs to know at some point or another.
13:14:24 19 But yes.

13:14:25 20 **MS. SARAN:** And that's not because we tell
13:14:27 21 them -- because I tell them that, you know, wills
13:14:29 22 could be one part of one question, so if you don't
13:14:32 23 take it, it's not tragic. Same thing with

13:14:36 1 corporations. But some people are interested in
13:14:38 2 that area, then you ought to take it if you're
13:14:41 3 interested in that area or it's helpful to have if
13:14:43 4 you're going into firm life, that type thing, but
13:14:47 5 they still take them no matter what.

13:14:49 6 I mean, we do recommend for certain people
13:14:51 7 that are not -- don't perform well in law school to
13:14:54 8 take those courses, but that's for a different
13:14:57 9 reason.

13:15:03 10 **MR. HANNA:** Diane, will the rules against
13:15:05 11 perpetuity be on the UBE, or are they just going to
13:15:11 12 can that altogether and not waste our time and
13:15:14 13 lives with that?

13:15:14 14 **MS. BOSSE:** No, I think it's still going to
13:15:17 15 be there.

13:15:18 16 **MR. HANNA:** Okay.

13:15:18 17 **MS. DINSMORE:** It's the uniform rules so --

13:15:20 18 **MS. BOSSE:** There is some activity in the
13:15:23 19 Uniform Probate Code I think right now. I think
13:15:26 20 there's a proposal on the rule against perpetuity.
13:15:26 21 I haven't read it, but I did see some announcement
13:15:29 22 about some -- of course, we have the statute in
13:15:32 23 New York but --

13:15:34 1 **MS. SARAN:** Is Kenny Joyce still working on
13:15:36 2 stuff? That's scary.

13:15:42 3 **MR. ELDRED:** Dean Saran, could I introduce a
13:15:45 4 topic?

13:15:45 5 **MS. SARAN:** Yes, go ahead.

13:15:45 6 **MR. ELDRED:** Because I'm kind of getting
13:15:48 7 down there. So I think one thing that I hadn't
13:15:51 8 seen noticed in any of the materials but I think is
13:15:53 9 really important, and maybe to some degree isn't
13:15:55 10 even represented here at the table, is the fact
13:15:58 11 that New York State is a world economic leader.

13:16:03 12 New York City alone accounts for one and a
13:16:06 13 half trillion dollars of world GDP, 2 percent of
13:16:10 14 the world's GDP. And I believe in some of the
13:16:14 15 reading here it says that as much as 90 percent of
13:16:17 16 cross-border transactions are drafted in the
13:16:19 17 English language, and the vast majority of those
13:16:22 18 use New York law, and that's actually in this
13:16:24 19 article that I found from the New York Bar Journal
13:16:26 20 in 2011.

13:16:31 21 If -- clearly business loves New York law,
13:16:37 22 and that works out great for New York and the
13:16:39 23 country. One of the reasons that I'm sure they

13:16:43 1 love New York law is because it is applied
13:16:46 2 consistently. If we test less on New York law, you
13:16:56 3 can bet over time, maybe not quickly but over time,
13:17:00 4 the application of that law will become less
13:17:03 5 consistent and possibly lead to businesses going
13:17:09 6 elsewhere for their legal dealings.

13:17:12 7 And this article points out how much
13:17:14 8 competition there is for the use of one particular
13:17:17 9 country's law in business, and I think -- it may be
13:17:25 10 tempting to understate, you know, this as just some
13:17:29 11 potential impact, but I think it's a very real
13:17:32 12 long-term impact that we should think about,
13:17:34 13 particularly given the president of the
13:17:41 14 international section's message here in this
13:17:44 15 article.

13:17:45 16 You know, business doesn't have a seat at
13:17:47 17 this table outside of the fact that there's a law
13:17:49 18 firm here, but I think that it's a very important
13:17:53 19 consideration, that as we've already heard about
13:17:56 20 how the UBE would affect education could have a
13:18:00 21 real impact.

13:18:03 22 **MR. FREEDMAN:** Are you saying negative?

13:18:07 23 **MR. ELDRED:** Yes. I think that ultimately

13:18:09 1 this could lead to the erosion of New York law
13:18:11 2 which is something that business around the world
13:18:13 3 clearly places value in, and as that erodes, they
13:18:17 4 would go elsewhere with the law which would have a
13:18:21 5 clear negative impact on businesses doing work in
13:18:26 6 New York State and then, thus, law firms and
13:18:31 7 everyone else in the New York State economy and the
13:18:32 8 country's economy.

13:18:34 9 **MR. FREEDMAN:** Diane, this is Andrew
13:18:37 10 Freedman. Have we -- has the steering committee or
13:18:41 11 whoever they are, have they looked into that aspect
13:18:43 12 and studied, you know, the effect that a change to
13:18:49 13 the UBE could have on issues such as business, you
13:18:57 14 know, on, quote/unquote, you know, New York
13:18:59 15 preeminence in law and those surrounding issues?

13:19:06 16 **MS. BOSSE:** How would you study that?

13:19:07 17 **MS. SARAN:** Well, I guess I have a more
13:19:09 18 concrete question, and the problem is that most of
13:19:14 19 the states that have adopted the UBE are not sort
13:19:18 20 of the epicenters for the international applicants
13:19:21 21 who want to take the bar exam.

13:19:23 22 Is there any concern that the -- because
13:19:26 23 we're not -- it's not really the New York bar exam

13:19:30 1 anymore, that the number of applicants,
13:19:34 2 international applicants, may go down and the
13:19:37 3 applicants may turn to another state such as
13:19:40 4 California or Delaware, Illinois, that they feel is
13:19:45 5 prestigious to international trade or international
13:19:51 6 business and abandon New York?

13:19:55 7 **MS. BOSSE:** First may I say, don't I wish.

13:19:58 8 **MS. SARAN:** Well, I was going to say, you
13:19:59 9 probably would like that, but I didn't want to say
13:20:01 10 that out loud.

13:20:03 11 **MS. BOSSE:** I mean, people come here because
13:20:06 12 of the power of New York, because of the wealth of
13:20:09 13 New York, because of the preeminence of New York in
13:20:12 14 the global marketplace, and they take the New York
13:20:15 15 bar exam because there are very few other places in
13:20:18 16 the country where they can sit for a bar exam,
13:20:20 17 although I think there were 28 jurisdictions that
13:20:24 18 tested at some point educated applicants in the
13:20:26 19 last year or so, they -- for the most part they
13:20:32 20 want to come to New York.

13:20:33 21 And it isn't New York law. I mean, it isn't
13:20:38 22 the New York bar exam, and I don't -- I don't see a
13:20:41 23 connection between the position of New York in the

13:20:45 1 global marketplace and the bar exam.

13:20:48 2 The kinds of things that New York is seen as
13:20:52 3 having some preeminence in are not the stuff of
13:20:56 4 minimum competence that's tested on the bar exam,
13:20:59 5 and I cannot -- I don't know how you would study
13:21:03 6 it, but I just don't see why it would have that
13:21:07 7 impact of international contracts no longer
13:21:12 8 selecting New York law in a choice of law
13:21:16 9 provision. They select it because of New York's
13:21:19 10 presumed -- you know, their banking laws and
13:21:21 11 because of their, you know, intellectual property
13:21:24 12 laws, because of insurance laws, because of things
13:21:27 13 that aren't tested.

13:21:28 14 I'm not -- I don't see how that would
13:21:32 15 matter, and it's also a -- you know, a law of
13:21:35 16 choice in the sense of people can agree on -- they
13:21:38 17 have to agree on someplace, and I know it's --
13:21:42 18 New York and Great Britain or England are also --
13:21:45 19 are often, you know, kind of competing for that
13:21:50 20 position as the chosen law in international
13:21:54 21 contracts, but I -- I don't -- I don't see the
13:22:00 22 connection between that and the bar exam.

13:22:04 23 And I think that people who come here, the

13:22:07 1 foreign educated people who come here, come because
13:22:10 2 of the fact that being admitted to the New York bar
13:22:13 3 is viewed as a commodity that has employment
13:22:18 4 credential value in other jurisdictions, in other
13:22:22 5 countries, and there are international law firms
13:22:26 6 where they can practice where they might not be
13:22:30 7 able to be admitted in their home country because
13:22:32 8 there are very low passing rates on their own bar
13:22:32 9 exam, and so they can be admitted in New York and
13:22:32 10 then practice in an international law firm.

13:22:38 11 I don't -- I don't see that changing, but
13:22:42 12 even if it did, I don't think that that's a bad
13:22:45 13 thing, because of the fact that it is a global
13:22:48 14 marketplace and we are through trade negotiations
13:22:54 15 becoming more open in terms of people practicing
13:23:00 16 around the world.

13:23:02 17 So I'm not quite sure how you'd study it. I
13:23:05 18 don't know what difference it would make. I can't
13:23:07 19 see that it would make a difference, and so I -- I
13:23:13 20 don't know. I mean, that's -- I don't know. I'm
13:23:15 21 open to hearing people's ideas about that.

13:23:18 22 **MR. HANNA:** And, Matthew, I guess, and I
13:23:20 23 hate to put you on the spot, but can you just try

13:23:23 1 to flush it out a little more? In kind of
13:23:27 2 following up on what Diane said, I just -- and let
13:23:29 3 me just think out loud, which is never probably a
13:23:33 4 very good thing, but just because we changed the
13:23:37 5 bar exam from this current state to adding the UBE
13:23:37 6 and kind of the big thing that everyone keeps
13:23:41 7 pointing to is portability and maybe people coming
13:23:43 8 in from other states and so on and so forth, they
13:23:45 9 still have to take the New York State portion,
13:23:48 10 though. That's going to change the way New York
13:23:51 11 law is administered?

13:23:54 12 **MR. ELDRED:** Well, I think that at the very
13:23:56 13 least, applicants would have a lower quality
13:24:01 14 understanding of the New York law because the
13:24:04 15 portion of New York -- or the portion of the exam
13:24:07 16 that would depend on New York law would go down,
13:24:10 17 particularly if we don't have New York-based
13:24:12 18 essays, which it's my understanding is apparently
13:24:15 19 where a lot of the interaction of New York law and
13:24:19 20 the CPLR is tested, then those admitted would just
13:24:24 21 generally have not such a great understanding of
13:24:27 22 New York law as they did before.

13:24:29 23 I think these -- then, say, once my

13:24:32 1 generation became judges and we were much more
13:24:35 2 uniform to -- excuse me, we were much more used to
13:24:38 3 the idea of the uniform laws and the principles
13:24:41 4 there, then over time you might find an erosion of
13:24:47 5 the specific benefits that apparently business sees
13:24:52 6 coming from New York law into a trend more like the
13:24:55 7 uniform law, and business would no longer find
13:25:01 8 those benefits available from New York because
13:25:03 9 our -- the unique aspects of the New York legal
13:25:08 10 system would slowly disappear, and with that, our
13:25:12 11 position as an economic center.

13:25:16 12 **MR. HANNA:** And slowly disappearing why?
13:25:18 13 Because we're not taking essays on the New York
13:25:20 14 State bar exam versus --

13:25:22 15 **MR. ELDRED:** Because I think there would
13:25:23 16 be -- you would -- you could consistently see a
13:25:25 17 drop in understanding of the -- of New York law,
13:25:29 18 because it's just not tested as heavily and because
13:25:31 19 instead you're testing the uniform codes and legal
13:25:36 20 systems.

13:25:38 21 **MR. HANNA:** Diane, the New York State law is
13:25:40 22 still going to be tested the same as it was in 2005
13:25:43 23 as it will be in 2016, right, 2017?

13:25:47 1 **MS. BOSSE:** First of all, you can pass the
13:25:49 2 New York bar exam today without knowing any
13:25:51 3 New York law, because you can do very well on the
13:25:55 4 MBE. You can apply general principles on the
13:25:57 5 essays and get credit for, you know, your legal
13:26:00 6 analysis, and maybe the rule's the same in New York
13:26:04 7 as it is in other jurisdictions of the general
13:26:08 8 principles.

13:26:08 9 A lot of it is on things like -- a lot of
13:26:11 10 things that we've been testing on, we've been
13:26:12 11 testing on Federal Civil Procedure. We've been
13:26:14 12 testing on U.S. constitutional law. We test on the
13:26:17 13 UCC pretty much the same wherever you go to.
13:26:20 14 There's a lot of what we test that's just like any
13:26:22 15 other place. And people coming in here from all
13:26:25 16 around the country, all around the world, don't
13:26:27 17 know a lot of New York law but do quite well on the
13:26:31 18 bar exam.

13:26:32 19 Certain people from other ABA-approved law
13:26:36 20 schools do quite well on the bar exam, and we will
13:26:40 21 still be testing New York law just as much as we do
13:26:43 22 now. I mean, I don't think there's really -- I
13:26:47 23 think I might be hard-pressed to find that there

13:26:51 1 are 50 unique aspects of New York law that are
13:26:54 2 currently tested on the bar exam.

13:26:55 3 I know we have 50 multiple-choice questions,
13:26:58 4 but those multiple choice questions in many
13:27:00 5 respects, the answer would be the same no matter
13:27:03 6 where you are. CPLR we would be testing heavily on
13:27:09 7 the New York law exam, so that wouldn't be a
13:27:11 8 distinction.

13:27:11 9 So I'm not sure I'm understanding why we
13:27:16 10 would see this erosion in the preeminence of
13:27:21 11 New York law. I'm sorry, I'm not understanding how
13:27:24 12 that would happen, but I'm interested in --

13:27:27 13 **MR. ELDRED:** Okay. Could I just -- could I
13:27:29 14 ask if -- what other groups within the New York Bar
13:27:33 15 Association have been consulted with this change,
13:27:38 16 as far as this change goes?

13:27:41 17 **MS. BOSSE:** I missed the first -- I'm sorry,
13:27:42 18 I didn't hear that.

13:27:44 19 **MR. ELDRED:** Yes. What other groups
13:27:45 20 within -- you know, subgroups within the New York
13:27:48 21 Bar Association have been consulted as to this
13:27:51 22 change?

13:27:53 23 **MS. BOSSE:** The New York Bar Association has

13:27:55 1 been consulted, and, in fact, just today I asked
13:27:58 2 the president and the president elect of the Bar
13:28:02 3 Association to take that content outline, give it
13:28:04 4 to their substantive law committees, and just say,
13:28:08 5 what are the important things of New York law
13:28:10 6 that's not covered here on what we're proposing to
13:28:12 7 test, because if there are unique aspects of
13:28:15 8 New York law that are the stuff of minimum
13:28:17 9 competence that every new lawyer needs to know
13:28:19 10 that's different from other places, I want to test
13:28:22 11 it.

13:28:23 12 And so, you know, we've asked for help. We
13:28:26 13 have a working group of law professors who are
13:28:29 14 working on that as well. I've reached out to
13:28:32 15 several law professors, our board has, and asked
13:28:34 16 them to comment on that so we can get down to what
13:28:37 17 is really important about New York law that's
13:28:39 18 different and every new lawyer needs to know, and
13:28:42 19 that's what we hope to test.

13:28:45 20 But much of New York law is -- you know,
13:28:47 21 people are learning law from national casebooks no
13:28:51 22 matter where they go to law school and, you know,
13:28:54 23 the law is essentially the same. And Schlegel, who

13:28:57 1 was quoted earlier, he told me, you know, I'm
13:29:00 2 trying to teach judgment. You know, I'm not trying
13:29:02 3 to teach some picky rule. I'm trying to teach
13:29:05 4 people how to analyze problems, how to problem
13:29:10 5 solve, things like that.

13:29:11 6 So, I mean, that's really -- we're trying to
13:29:14 7 get to, what is it that's really important for the
13:29:17 8 lawyer to know.

13:29:20 9 And part of getting to that, the National
13:29:23 10 Conference of Bar Examiners a few years ago did a
13:29:25 11 job analysis study. We did this national survey to
13:29:28 12 see what is it that new lawyers do in an effort to
13:29:31 13 try and figure out what it is they need to know.

13:29:35 14 And that's kind of guiding the development
13:29:38 15 of the bar exam of the future, and I cochair
13:29:38 16 long-range planning for the National Conference of
13:29:44 17 Bar Examiners, and that's kind of where we're
13:29:45 18 headed, where we're thinking.

13:29:47 19 But that's -- that's what we want our new
13:29:50 20 lawyers to know. We want them to know what -- what
13:29:56 21 are the principles that they need to know in order
13:29:59 22 to enter practice and to be able to understand what
13:30:02 23 the issues are. We want them to know how to find

13:30:05 1 the answers, the statutes in a particular
13:30:09 2 jurisdiction, the case law in a particular
13:30:11 3 jurisdiction that might apply to solve the problem,
13:30:13 4 and we want them to have the skills.

13:30:16 5 **MS. SARAN:** We've been joined by Judge
13:30:20 6 Feroletto.

13:30:20 7 **MS. BOSSE:** Go ahead.

13:30:21 8 **MS. SARAN:** We've been joined by Judge
13:30:23 9 Feroletto who's the administrative judge from the
13:30:25 10 8th judicial district and also the parent of two
13:30:32 11 actually recent graduates.

13:30:34 12 **MS. BOSSE:** Hi, Judge.

13:30:36 13 **JUDGE FEROLETO:** Hi, Diane.

13:30:39 14 **MS. SARAN:** And I don't know, Judge, if you
13:30:41 15 have any comments about what you want to see when
13:30:43 16 you have new attorneys appearing in front of you
13:30:45 17 and what you feel they might benefit from having
13:30:51 18 the UBE as opposed to New York bar exam or
13:30:54 19 portability from people who've come from other
13:30:57 20 jurisdictions on reciprocity and that, whether that
13:31:00 21 makes any difference.

13:31:01 22 **JUDGE FEROLETO:** I recently had somebody
13:31:03 23 from New Jersey in front of me. I haven't seen

13:31:06 1 much difference in competence of the folks that are
13:31:11 2 in front of me, if they've come from someplace
13:31:14 3 outside.

13:31:16 4 I think professionalism is more what I'm
13:31:18 5 looking forward to seeing from young attorneys.
13:31:20 6 They seem to know the law, but it seems to be the
13:31:24 7 professionalism aspect that I seem to be lacking a
13:31:28 8 little bit of. Like, stand up when you address the
13:31:33 9 Court. Stand up when you have an objection.
13:31:37 10 Addressing your peers courteously even. Really,
13:31:43 11 that's more of the issues I see.

13:31:47 12 **MS. SARAN:** I don't know if you wanted to
13:31:48 13 make any other comments. We've talked a bit about
13:31:52 14 portability to other states, how much time people
13:31:58 15 feel that they would need to gear up, which is more
13:32:03 16 of a law school question, to take a new exam, a
13:32:08 17 little bit about would there be a disparate impact
13:32:11 18 on it.

13:32:11 19 And then also Matthew brought up the issue
13:32:15 20 of international law and would we be losing some
13:32:19 21 identity of New York by having a Uniform Bar Exam
13:32:23 22 even if we have a New York component to it, but
13:32:26 23 it's much smaller.

13:32:28 1 **JUDGE FEROLETO:** Well, is there a goal to
13:32:30 2 have fewer people tested here? I was wondering
13:32:32 3 about that, Diane, when I was reading about how
13:32:35 4 many foreign students take it in New York, so if we
13:32:38 5 had a UBE, they wouldn't all have to come to
13:32:42 6 New York to pass it to be able to practice in
13:32:45 7 New York would be the New York component, so I'm
13:32:46 8 sure it must be commercial law that we're looking
13:32:49 9 at so they could take the exam someplace else so we
13:32:52 10 wouldn't have so many people taking it here. Is
13:32:54 11 that --

13:32:55 12 **MS. BOSSE:** You know, that is such a hard
13:32:57 13 thing to predict, and we've thought a lot about
13:32:59 14 that, would that make people more likely to come to
13:33:01 15 New York to take the exam, or would they sit at
13:33:05 16 home and take the exam there and then seek to
13:33:08 17 transfer their score here, and it's really an
13:33:10 18 unknown.

13:33:11 19 And I think that it will be a changing thing
13:33:14 20 as -- as states adopt the UBE because there is a
13:33:18 21 lot of discussion all around the country about this
13:33:22 22 in a lot of different states, and so I think that
13:33:25 23 the story will be different as we move forward.

13:33:28 1 Like people in -- in some jurisdictions may
13:33:33 2 be more likely -- like maybe in the northeast they,
13:33:37 3 you know, figure they can get to New York pretty
13:33:40 4 easily, and so they might want to come here.

13:33:45 5 New York, they have to take the New York law
13:33:48 6 exam, so they might want to come here, too, because
13:33:50 7 the New York law exam is -- to the extent that it's
13:33:54 8 administered at the same time, maybe they feel that
13:33:56 9 they want to get it all over with.

13:33:57 10 There are some who might feel, I'd rather
13:34:00 11 take that at another time and not put that burden
13:34:03 12 on me at the same time, and so they might want to
13:34:05 13 take it at a different time. I think the story
13:34:08 14 will be different for different people.

13:34:09 15 I mean, some people said, well, New York is
13:34:12 16 a very cheap bar exam. Our bar exam's only \$250
13:34:19 17 for domestically educated people with a statutorily
13:34:19 18 set fee, but, you know, are a lot of people from,
13:34:24 19 you know, Minnesota going to want to come here when
13:34:27 20 they have to travel here, they have the expense of
13:34:29 21 staying in a hotel and so forth? So they may tend
13:34:32 22 to stay home rather than have the expense of coming
13:34:35 23 to New York and taking it here.

13:34:38 1 So I don't know. I think it's going to be
13:34:41 2 something that's going to be very hard to figure
13:34:43 3 out how many seats to rent for a while so --

13:34:49 4 **MS. SARAN:** Do we see -- even though it's a
13:34:53 5 statutorily determined fee, will there be another
13:34:57 6 fee for the National Conference exam on top of it
13:35:00 7 like there is for the laptop? Will it --

13:35:05 8 **MS. BOSSE:** Well, we pay the National
13:35:08 9 Conference now for the MBE and MPT, and presumably
13:35:13 10 we would continue to do that, although it may
13:35:16 11 transition at some point. I don't know. I mean,
13:35:18 12 our fee for the exam is, as I said, set by statute.
13:35:21 13 It's \$250 right now. So how the fee changes in the
13:35:24 14 future, I don't know.

13:35:30 15 **MR. CHIESA:** So, Diane, it's Luis. You all
13:35:34 16 seem very confident about the benefits of
13:35:36 17 portability. I'm assuming those benefits will
13:35:38 18 accrue if, as you all seem to be predicting, this
13:35:44 19 is kind of like a tipping point. The way New York
13:35:46 20 goes, so will a bunch of other states go.

13:35:49 21 If it happens to be the case for whatever
13:35:51 22 reason that it doesn't happen, suddenly this is not
13:35:54 23 all attractive, right? You have Colorado,

13:35:56 1 Washington, what have you, 14 states, but really
13:35:57 2 that's -- I mean, not what Joe was talking about,
13:35:59 3 right? He was talking about Illinois,
13:36:01 4 Pennsylvania, what have you, New Jersey, around
13:36:05 5 here.

13:36:05 6 So what -- other than New York is New York,
13:36:08 7 or maybe that's the only reason, what makes you so
13:36:09 8 confident that this will -- that this will take us
13:36:12 9 over the hump, one; and, two, do you know formally
13:36:15 10 or informally from conversations with other people
13:36:18 11 about other states that might be coming down the
13:36:21 12 pike that are right now looking intently on what
13:36:24 13 we're doing to figure out if they're going to go
13:36:27 14 the same route?

13:36:28 15 **MR. FREEDMAN:** And actually, before you
13:36:29 16 answer that -- Andrew Freedman -- that was really,
13:36:32 17 you know, my thought, was that, you know, we have
13:36:35 18 14 states. And no disrespect to them, but it just
13:36:40 19 doesn't seem like, you know, states that -- you
13:36:44 20 know, it's not an overwhelmingly populous movement
13:36:48 21 here.

13:36:49 22 What is the attraction to moving to the
13:36:51 23 standard when, quite frankly, only 14 states have,

13:36:56 1 and they're not the biggest states. It's not
13:36:59 2 California, it's not Florida, it's not Illinois,
13:37:02 3 it's not New Jersey. What is the attraction to
13:37:06 4 this?

13:37:08 5 **MS. BOSSE:** Well, in terms of other
13:37:10 6 jurisdictions that are looking at it, I can tell
13:37:12 7 you that I've had conversations with a number of
13:37:16 8 people, and I can't really -- you know, I mean,
13:37:20 9 some of them, you know, they're looking at it
13:37:22 10 within their jurisdiction and they, you know,
13:37:25 11 sought out some information and so forth, but I
13:37:27 12 couldn't say.

13:37:28 13 I can tell you that Kansas adopted it last
13:37:30 14 week. I can tell you within the last two weeks
13:37:33 15 another jurisdiction has, but they haven't made a
13:37:36 16 public announcement yet. I know that Florida is
13:37:38 17 looking at it, and that's public. I know that
13:37:41 18 Iowa, their Supreme Court has asked them to look at
13:37:43 19 it and they're looking at it.

13:37:44 20 And I don't -- I don't denigrate the states
13:37:47 21 that are in there. I mean, I think that there's a
13:37:50 22 lot of -- even though they're smaller
13:37:51 23 jurisdictions, there's a lot of major metropolitan

13:37:54 1 areas. There's, you know, Minneapolis and Denver
13:37:55 2 and Phoenix, and Seattle, Salt Lake City. There's
13:37:57 3 a lot of major metropolitan areas.

13:38:01 4 I do think that there's been so much
13:38:03 5 conversation about it and so much emphasis on it in
13:38:11 6 national meetings and discussions that I think that
13:38:16 7 it's getting a lot of attention in a lot of places.
13:38:19 8 I think that the Conference of Chief Justices has
13:38:22 9 had programs on it regularly. I think that they
13:38:25 10 had some discussion on it at their last meeting.
13:38:28 11 The ABA, there was a panel on it last summer.

13:38:35 12 So I think that there's so much discussion
13:38:36 13 going on, I think that that's one of the reasons
13:38:39 14 why I think that it would -- it's likely that if
13:38:44 15 New York adopts it, other jurisdictions will.

13:38:47 16 And one more thing about portability, and
13:38:50 17 then I want to address Luis's point. The other
13:38:54 18 thing about portability, some people have said,
13:38:56 19 well, you know, New York has a low passing score,
13:38:58 20 there's not that many places you can go because not
13:38:59 21 that many places are lower, but people taking the
13:39:01 22 bar exam in New York perform much higher than the
13:39:03 23 minimum passing score, so they can go someplace.

13:39:05 1 But even if people fail to get our passing
13:39:08 2 score, they may satisfy the passing score in
13:39:11 3 another jurisdiction, and that means they can get
13:39:15 4 federal employment, maybe even in New York. That
13:39:18 5 means they can go to another jurisdiction and get a
13:39:20 6 job and so -- and there are -- even in just a
13:39:23 7 handful of states, and the first state gave the
13:39:26 8 first UBE in 2011, and already there's been 257
13:39:31 9 people who wouldn't be lawyers who are lawyers
13:39:33 10 because they didn't get a passing score where they
13:39:36 11 took the bar exam, but they got a score that was
13:39:38 12 good enough to get them into practice someplace
13:39:41 13 else.

13:39:41 14 Even aside from the portability aspect of
13:39:44 15 it, though, I think it's a better way for us to
13:39:47 16 test, because we're testing to the things that
13:39:51 17 people learn in law school. We're testing the
13:39:54 18 things that are the general principles and their
13:39:57 19 ability to analyze a set of facts and apply those
13:40:00 20 general principles to it.

13:40:01 21 And then those picky, important New York
13:40:04 22 things you ought to know, then we're going to test
13:40:07 23 those in a separate test. So I think -- and we

13:40:10 1 will be testing more skills. So I think that
13:40:13 2 that's a very important component of the whole
13:40:16 3 package.

13:40:16 4 So I do think the portability is going to
13:40:19 5 become more portable as we move ahead. I think
13:40:25 6 that's going to happen, and -- and I think even if
13:40:29 7 it didn't happen, which I think it's highly
13:40:32 8 unlikely, I think it would be a better exam for us.

13:40:38 9 **MR. HANNA:** I have two questions and a
13:40:40 10 comment. In terms of the New York State part --
13:40:47 11 and, Diane, I already asked this earlier -- but
13:40:50 12 between the way the exam was a number of years ago,
13:40:53 13 even last year's exam, versus the way the New York
13:40:56 14 State portion is going to be taught in the future,
13:40:59 15 the -- the level of, quote/unquote, expertise
13:41:04 16 needed and the things you have to study and what is
13:41:07 17 going to go in the New York portion is not going to
13:41:10 18 get easier. It's not going to be a walkover. It
13:41:12 19 will be as difficult -- it will be the same or as
13:41:15 20 difficult, correct?

13:41:16 21 **MS. BOSSE:** I think so.

13:41:18 22 **MR. HANNA:** Okay. So it's not -- and I
13:41:23 23 guess kind of going back to -- and Matthew's left

13:41:26 1 us, but kind of going back to one of his points
13:41:29 2 earlier, this is not going to be like, oh, just
13:41:31 3 because we've turned to the UBE, New York is like
13:41:35 4 going to Passachusetts. This isn't going to be
13:41:38 5 some easy New York State bar exam thing that you
13:41:42 6 just shrug and you're going to pass and that's
13:41:45 7 that.

13:41:45 8 This is -- the level that's still needed,
13:41:48 9 just because the essays are gone -- and I don't
13:41:50 10 remember, did we take essays? We did essays,
13:41:53 11 right?

13:41:53 12 **MS. SARAN:** Yes, five essays.

13:41:55 13 **MR. HANNA:** Okay. I obviously did okay on
13:41:57 14 them. So the -- so the New York -- other than the
13:42:00 15 essays, it's still difficult.

13:42:04 16 **MS. SARAN:** Won't it be more difficult?
13:42:06 17 Because isn't the current multiple-choice passing
13:42:10 18 score average about 27, so we're going up to 30?

13:42:14 19 **MS. BOSSE:** Well, you know, that varies,
13:42:17 20 but, you know, our July first-time takers, we see a
13:42:22 21 higher passing number than that, but these are
13:42:25 22 going to be different questions. They're going to
13:42:26 23 be direct questions of specific aspects of New York

13:42:30 1 law, and they're not going to be embedded in this
13:42:33 2 factual scenario where you have to figure out the
13:42:38 3 facts. They're going to be quicker, and they're
13:42:40 4 going to be more direct. So I think they should be
13:42:42 5 easier. But I think it's actually a little higher
13:42:47 6 than that, Melinda.

13:42:48 7 **MR. HANNA:** I was in Houston for the ABA
13:42:50 8 Young Lawyer Division discussions on this, and
13:42:55 9 there was enthusiasm across the board from both the
13:42:59 10 law students and the young lawyers about the
13:43:02 11 opportunity to not only -- and New York State
13:43:04 12 obviously is a big fish, but even the other
13:43:08 13 jurisdictions and the other states that have had it
13:43:11 14 in the south that are more clustered than us,
13:43:14 15 because if I'm correct, no -- other than Alabama
13:43:17 16 and either was it New Hampshire, no other states
13:43:21 17 above the Mississippi, I guess north of the
13:43:24 18 Mississippi, those are the only two that are --
13:43:28 19 that are a part of the UBE. Is that right?

13:43:30 20 **MS. BOSSE:** East.

13:43:31 21 **MR. HANNA:** East, whatever.

13:43:33 22 **MS. BOSSE:** Yes, right.

13:43:36 23 **MS. SARAN:** I gave you Diane's PowerPoint.

13:43:39 1 **MR. HANNA:** Yes, I'm sorry.

13:43:40 2 **MS. SARAN:** And you have the map in there.

13:43:42 3 **MR. HANNA:** But there's been -- the
13:43:44 4 conversation on it was for several hours, and a
13:43:49 5 number of points were brought up, but in terms of
13:43:53 6 the -- the enthusiasm and this kind of going
13:43:55 7 national was very positive.

13:43:58 8 And I think that, Diane, you've brought up a
13:44:00 9 point a number of times, and I think this was
13:44:02 10 discussed the most, is we should all be uniformly
13:44:05 11 tested across the board. Whether you're from
13:44:07 12 Nevada or if you're from Florida or you're from
13:44:10 13 Ohio, we should all be tested the same way, and
13:44:13 14 we're the only profession that doesn't do that, and
13:44:16 15 that was kind of the theme of the conversation
13:44:18 16 there.

13:44:18 17 **MS. BOSSE:** We're the same profession, and
13:44:20 18 we share the same general fund of knowledge and
13:44:25 19 skills, and that's what we ought to be assessing.

13:44:27 20 **MS. SARAN:** Diane, has the National
13:44:29 21 Conference done any studies on the UBE takers in
13:44:32 22 terms of the impact on minorities?

13:44:37 23 **MS. BOSSE:** Well, the National Conference

13:44:38 1 doesn't have that information. That was a
13:44:41 2 state-by-state decision, but they collect, you
13:44:44 3 know, what information they collect, and no state
13:44:50 4 apparently of the UBE has done it, but no state has
13:44:55 5 recorded any impact, and, you know, that question
13:44:59 6 was raised, and I knew that the UBE jurisdictions,
13:45:02 7 and there is a committee of the UBE jurisdictions
13:45:05 8 that get together and talk about issues and
13:45:08 9 concerns and policies and conditions of use and
13:45:11 10 things like that, and they -- I knew they were
13:45:14 11 going to be meeting. So I asked that they be asked
13:45:16 12 that question, and nobody has seen anything that
13:45:20 13 suggests that there is -- that there was an impact.

13:45:22 14 And, you know, the thing is that it's not
13:45:25 15 that different from the current exam when you
13:45:27 16 figure out how the exam is scored. You know, the
13:45:32 17 anchor is the MBE, and everything else is scaled to
13:45:36 18 the MBE. And, you know, we're still going to be
13:45:38 19 using the MBE. It's still going to be the anchor.
13:45:40 20 We're still going to have the same passing score.

13:45:43 21 Now, it's going to be a little greater
13:45:45 22 weight on the MBE, but I've talked to
13:45:50 23 psychometricians at NCBE, and they don't see that

13:45:51 1 that should affect to any degree our passing rate
13:45:54 2 overall or in substance, so I don't know.

13:45:58 3 I mean, it's a -- it's a concern obviously,
13:46:00 4 diversity in the profession. We're all concerned
13:46:02 5 about that, and it's -- it's a change which, to me,
13:46:07 6 means we ought to study it. We ought to analyze it
13:46:10 7 going forward. There's no way -- you know, we
13:46:12 8 can't given the UBE and the New York bar exam to
13:46:16 9 the same group of people. You know, that will
13:46:18 10 never happen, so we can't -- we can't know how it
13:46:20 11 would -- how different people would have done on
13:46:23 12 each of those two exams. That can't be done.

13:46:25 13 So I think it's something that we will
13:46:27 14 definitely, if this is adopted, be studying going
13:46:29 15 forward, but we don't have reason to think it would
13:46:33 16 have an impact.

13:46:33 17 **MS. SARAN:** Is there any thought to
13:46:35 18 embedding some of the proposed New York law exam
13:46:39 19 questions in the current or upcoming
13:46:42 20 administrations of the bar exam to look at how they
13:46:47 21 perform?

13:46:48 22 **MS. BOSSE:** Yes, we do have a couple of them
13:46:50 23 that will be in there. There's not a lot. They

13:46:53 1 won't look that much different in the sense of I
13:46:57 2 don't -- I don't think people will necessarily
13:46:58 3 notice, but they will be just, you know, straight
13:47:01 4 law questions.

13:47:01 5 I think in the midst of taking an exam, I
13:47:04 6 don't know the focus on that, but, yes, there will
13:47:05 7 be some and we'll see. But we have a whole lot of
13:47:09 8 information about a lot of questions, and we can
13:47:11 9 take a look at how those questions performed and
13:47:14 10 figure out if we scrubbed off the facts, would it
13:47:19 11 matter.

13:47:20 12 **MS. DINSMORE:** Diane, I can tell you that I
13:47:23 13 do not remember a single New York State
13:47:25 14 multiple-choice question from the exam in July.

13:47:27 15 **MR. HANNA:** Or, in the alternative, the
13:47:28 16 students, after they take it, they're not going to
13:47:30 17 sleep for like the next week discussing which ones
13:47:32 18 they thought were or weren't, and then they'll have
13:47:35 19 to go to the bars and talk about it over and over
13:47:38 20 and over again. And then they'll say, oh, number
13:47:40 21 43 I think, and then they'll start with the
13:47:42 22 question and they won't have any idea.

13:47:44 23 **MS. BOSSE:** Yes.

13:47:45 1 **MR. HANNA:** Diane, I have a question for
13:47:47 2 you. You've been doing this a very, very long
13:47:49 3 time, and obviously you would be my expert witness
13:47:51 4 on the bar exam. What concerns you? What's your
13:47:54 5 red flag?

13:47:55 6 **MS. BOSSE:** You know, what concerns me is
13:47:58 7 the administration. That's the thing that concerns
13:48:01 8 me, what's the impact going to be on our candidate
13:48:04 9 pool, who's going to come here. The question that
13:48:06 10 Judge Feroletto had, who's going to come here, how
13:48:09 11 many people are we going to have, how many seats do
13:48:09 12 we have to get, how will we get the people in the
13:48:14 13 room to take the New York law exam, then get the
13:48:16 14 Multistate Bar Exam distributed and have them take
13:48:19 15 that.

13:48:19 16 That's the thing that concerns me. The test
13:48:21 17 doesn't concern me at all. Drafting the New York
13:48:24 18 law exam, you know, I have every confidence that we
13:48:27 19 can do it. We will put a bank of questions up.

13:48:30 20 I will be concerned about how are people
13:48:32 21 going to perform on that because it is an
13:48:34 22 independent hurdle, so that will be something I'll
13:48:36 23 be very interested in seeing how they do. But we

13:48:39 1 want to make it as -- I don't want to say that we
13:48:41 2 want to, you know, make it less burdensome, but we
13:48:45 3 do want to get the information out there as much as
13:48:49 4 we can about what's going to be tested, how it's
13:48:51 5 going to be tested, what the scope of the exam
13:48:53 6 would be, and so forth, so that people can prepare
13:48:57 7 in a proper way for that.

13:48:59 8 But those are the two things, you know, kind
13:49:02 9 of the unknowns about the New York law exam,
13:49:05 10 because it will be a new test, and how are people
13:49:07 11 going to do on that when we separate it out,
13:49:10 12 because now, as I said, you can know very little
13:49:11 13 New York law or virtually none, depending on how
13:49:13 14 well you do on other parts of the exam, you can
13:49:13 15 just do just fine, do great on the MPT, do great on
13:49:16 16 the MBE, answer general principles on the others,
13:49:19 17 guess on the multiple choice, it's only worth 10
13:49:22 18 percent. Now you've got a whole independent exam
13:49:25 19 you've got to pass, so that and kind of the
13:49:27 20 administrative issues.

13:49:28 21 **MR. HANNA:** So would the law schools and
13:49:30 22 companies like BARBRI and the various other
13:49:33 23 companies that are out there, would they be your

13:49:35 1 partner on this for the first couple years to make
13:49:37 2 sure it gets off the ground?

13:49:39 3 **MS. BOSSE:** In what way?

13:49:41 4 **MR. HANNA:** In terms of educating the
13:49:44 5 students and kind of letting them know what's
13:49:46 6 changed and things that they have to be aware of
13:49:49 7 and for them, at least, potential red flags.

13:49:52 8 **MS. BOSSE:** Sure. Well, you know, we
13:49:54 9 certainly would give them access to everything that
13:49:57 10 we have in terms of an outline, the bank of
13:50:01 11 questions and so forth and, you know, welcome their
13:50:04 12 comments and so forth as we do for other groups,
13:50:08 13 ALI, we're asking for Uniform Law Commissioners.
13:50:14 14 We'll take all the input we can get and share
13:50:17 15 whatever information we can.

13:50:19 16 **MR. CAHER:** Diane, John Caher. Just one
13:50:22 17 question. We've spoken a little bit about how much
13:50:24 18 lead time the law schools need to prepare, how much
13:50:27 19 lead time the law students need to prepare, but I
13:50:30 20 don't know if I've heard how much lead time you
13:50:33 21 need both in terms of creating the new test and
13:50:36 22 the -- you know, the unknown logistics that you
13:50:38 23 mentioned. How much -- how much lead do you need

13:50:40 1 do you think?

13:50:41 2 **MS. BOSSE:** Well, I could tell you that the
13:50:43 3 chief judge asked me that question when we were
13:50:45 4 talking about this originally last fall. I guess
13:50:51 5 it was fall, wasn't it? It was October when it was
13:50:54 6 announced and, you know, the weeks leading up to
13:50:56 7 that when we were talking about it, and when the
13:50:58 8 chief judge said, could you do it in July of 2015,
13:51:02 9 I said we could, and so I think we could do it. We
13:51:06 10 can't do it in July 2015 now. We could do it
13:51:10 11 whenever. I mean, if the Court makes a judgment
13:51:13 12 about this in the spring, we could do it next year.

13:51:16 13 **MR. CAHER:** So a matter of months basically.

13:51:19 14 **MS. BOSSE:** Yes, because -- because we don't
13:51:21 15 have to do anything about the UBE other than
13:51:24 16 creating the test. We have to create the New York
13:51:26 17 law exam. We've already written, you know, a
13:51:28 18 couple hundred questions on that that we're
13:51:31 19 reviewing now, so that -- and then it's just a
13:51:34 20 question of organizing our implementation of it
13:51:41 21 administratively.

13:51:42 22 We've drafted proposed rules. You know,
13:51:44 23 we're going both ways for the moment. We're riding

13:51:47 1 parallel tracks, but, you know, we have proposed
13:51:50 2 rules in the event we have to adopt them, and we've
13:51:55 3 got our -- you know, we've got kind of thinking
13:52:00 4 done about how we would administer the alternative
13:52:03 5 dates of the New York law exam, where we would do
13:52:06 6 that and so forth.

13:52:10 7 **JUDGE FEROLETO:** I'm just wondering, was
13:52:12 8 there any thought that -- in terms of the New York
13:52:14 9 portion of the exam, where you're talking 30 out of
13:52:16 10 50, if the first time you give it and you're
13:52:19 11 looking at the results and you say, oh, my gosh,
13:52:21 12 the average score is 20, could there be a sliding
13:52:26 13 scale or a curve, or are you firm on it must be 30,
13:52:29 14 or would you say, well, we're going to have to
13:52:32 15 lower this to 25 just to even get a whatever?

13:52:36 16 **MS. BOSSE:** Well, I think that, you know, if
13:52:38 17 that were to happen, I'd be very surprised, but I
13:52:41 18 think we'd look hard at our questions, and we look
13:52:44 19 hard at our questions every time. We look at who
13:52:46 20 picked each of these alternatives, what percentage
13:52:49 21 of people picked each of these alternatives,
13:52:51 22 whether or not the people who picked a particular
13:52:54 23 alternative fell in the top group, the middle

13:52:57 1 group, or the bottom group, and we analyze that
13:53:00 2 with every exam.

13:53:01 3 We do kind of a discrimination index to
13:53:04 4 figure out how each question performs, and I think
13:53:07 5 we would do a hard analysis of how the questions
13:53:10 6 performed. And, you know, if there were some lousy
13:53:12 7 questions that nobody got right because something
13:53:14 8 in the question they didn't see or we led them
13:53:17 9 astray or something like that, we'd probably give
13:53:20 10 credit to everybody for whatever answer they
13:53:24 11 picked, or maybe if there was one that was, you
13:53:29 12 know, close enough, if we saw some mistake in a
13:53:32 13 question, we might -- or something that could lead
13:53:34 14 people to pick another alternative, we might give
13:53:38 15 everybody credit.

13:53:39 16 Whether or not we'd say, okay, if you got 25
13:53:41 17 or you got 20, that's going to be good enough, I
13:53:41 18 think that would be something that the board would
13:53:43 19 have to discuss, but it would really depend on the
13:53:45 20 results of the exam and the performance of the
13:53:47 21 individual questions on the exam, why did that
13:53:50 22 happen.

13:53:51 23 **MS. SARAN:** Are you thinking of changing the

13:53:52 1 registration dates in order to have more lead time?

13:53:57 2 **MS. BOSSE:** Yes.

13:54:01 3 **MS. SARAN:** And when would we find that out?

13:54:04 4 **MS. BOSSE:** Well, whether or not it's going

13:54:10 5 to adopt the UBE and if it is, when it's going to

13:54:13 6 adopt the UBE, we'll have our rules out, you know,

13:54:17 7 shortly after that.

13:54:19 8 **MR. HANNA:** Diane, where do we go from here?

13:54:20 9 What would the timeline be?

13:54:21 10 **MS. BOSSE:** I'm sorry, I missed that, Joe.

13:54:23 11 **MR. HANNA:** Where do we go from here? What

13:54:25 12 would the timeline be? Who presents it to whom,

13:54:28 13 and who decides where and when and how and what?

13:54:30 14 **MS. BOSSE:** Okay. The chief judge appointed

13:54:33 15 an advisory committee. There's a comment period

13:54:35 16 that closes on the 1st of March. The committee has

13:54:38 17 one more public hearing that's scheduled on

13:54:40 18 February 26th in Rochester, and after that, the

13:54:44 19 committee will be meeting a couple of times and

13:54:47 20 making a determination as to what it will

13:54:52 21 recommend, what it will not recommend, what it

13:54:56 22 thinks ought to be done, and then the Court will

13:54:58 23 decide.

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13:54:59 1 Now, you know, presumably the Court could
13:55:00 2 take it up in the spring. Maybe they don't take it
13:55:03 3 up in the spring. I don't know. But the
13:55:05 4 committee's work will presumably be finished in
13:55:08 5 March, and then it's up to the Court.

13:55:11 6 **MR. HANNA:** Very interesting.

13:55:12 7 **MS. SARAN:** Anyone want to make any last
13:55:15 8 comments on the record?

13:55:17 9 **MS. DINSMORE:** Sure. It's Emily Dinsmore
13:55:19 10 again. I just want to say, earlier the concerns
13:55:22 11 that I had about the UBE that I voiced about in
13:55:26 12 here, I'm glad to hear that you've had a lot more
13:55:28 13 development since reading. The comments that I had
13:55:31 14 were based on the materials that we were provided,
13:55:33 15 and it sounds like there's been a lot more
13:55:36 16 development since then when you were talking about
13:55:39 17 drafting the new questions and making sure they
13:55:41 18 were different from the ones before so that they --
13:55:43 19 and that you have a specific study guide available
13:55:47 20 or outline that really addresses those
13:55:50 21 specifically, and that it's not in June 2015.

13:55:53 22 A lot of the comments that I made about
13:55:55 23 that, after hearing your responses, I feel much

13:55:58 1 more confident about the adoption of the UBE with
13:56:01 2 the specific New York law test.

13:56:03 3 **MS. BOSSE:** Thank you.

13:56:04 4 **MS. DINSMORE:** I think, as Judge Feroletto
13:56:07 5 mentioned, it will be interesting to see sort of
13:56:09 6 whether that 30 out of 50 benchmark is met, but I
13:56:12 7 think also by changing study strategies that, as
13:56:17 8 Joe mentioned, you know, BARBRI, Kaplan, whoever,
13:56:21 9 will be changing their curriculum based upon this,
13:56:24 10 because basically when I was studying, we were
13:56:26 11 told, try to get half the New York State
13:56:29 12 multiple-choice questions right. If you do, great.
13:56:31 13 If not, don't worry about it and make up for it on
13:56:34 14 the MBE.

13:56:35 15 Like it was really not made a focus of our
13:56:37 16 studies, and I think by making it the separate
13:56:40 17 requirement, that the bar prep companies will have
13:56:41 18 to change. So that, in effect, might end up
13:56:45 19 leading to a greater percentage getting -- of
13:56:49 20 people getting above a 30 just because now it's a
13:56:52 21 requirement, so the bar prep companies will change
13:56:54 22 their tactics accordingly.

13:56:56 23 **MS. BOSSE:** Interesting. Thanks, Emily.

13:56:58 1 **MS. SARAN:** Any other comments?

13:57:01 2 **MR. FREEDMAN:** I think, Diane, I think you
13:57:02 3 did a fantastic job at answering concerns.

13:57:07 4 **MS. BOSSE:** Great. Thank you.

13:57:08 5 **MS. SARAN:** I want to thank you everyone
13:57:11 6 for --

13:57:12 7 **MS. BOSSE:** Is that Andrew?

13:57:13 8 **MR. FREEDMAN:** Yes.

13:57:13 9 **MS. BOSSE:** Thank you.

13:57:13 10 **MS. SARAN:** I want to thank everyone for
13:57:16 11 participating. I want to thank you, Diane. I
13:57:18 12 think you had participated a little more than you
13:57:20 13 planned to but --

13:57:21 14 **MS. BOSSE:** Yes. I was here to listen.

13:57:23 15 **MS. SARAN:** I know, but I think that by
13:57:25 16 answering the questions, you got a lot more
13:57:27 17 constructive feedback than you would have otherwise
13:57:30 18 so --

13:57:31 19 **MS. BOSSE:** I did get a lot, and I
13:57:33 20 appreciate it.

13:57:33 21 **MS. SARAN:** So -- and I thank the New York
13:57:37 22 State Bar Association Committee on Legal Education
13:57:40 23 and the Judicial Institute on Professionalism for

13:57:45 1 sponsoring this, and there will be a transcript
13:57:47 2 that will be sent to the State Bar which will be
13:57:52 3 shared with the committee that's studying this, so
13:57:56 4 that's coming out of all the different focus groups
13:57:59 5 that are being held across the state. There are at
13:58:03 6 least three of them. There's one in Albany, and
13:58:05 7 there's one downstate New York City. I believe
13:58:07 8 there's also one on the island, so -- and I
13:58:10 9 appreciate you all taking time from your very busy
13:58:13 10 schedules to come out, and I thank Joseph Hanna for
13:58:16 11 hosting us here at Goldberg Segalla.

13:58:20 12 **MR. FREEDMAN:** Thank you very much, Joe.

13:58:21 13 **MS. SARAN:** Thank you.

14 (Proceedings concluded at 1:58 p.m.)

15 * * *

16 (The following correction was made to the
17 record after conclusion of the proceedings.)

18 **MS. BOSSE:** I realized yesterday after the
19 Focus Group session that I said something that
20 wasn't accurate, and I wanted to correct the
21 record. A 15th state, Kansas, has now adopted the
22 UBE. I believe I said another state has adopted
23 the UBE but hasn't made a public announcement. In

1 fact, the Board of Law Examiners in that other
2 state has voted to adopt the UBE, but that
3 recommendation is pending before the Supreme Court.
4 No public announcement has been made. I was
5 thinking of it as an adoption of the UBE rather
6 than a recommendation. I am sorry, I misspoke.

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

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5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
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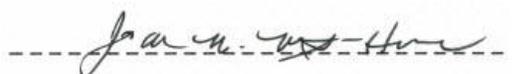
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