Report of the NYSBA Committee on Legal Education and Admission to the Bar

Follow-Up Report to October 2014 Report on the Uniform Bar Exam

Introduction

On October 6, 2014, Chief Judge Lippman announced a proposal to replace the current New York Bar Exam with the Uniform Bar Exam. After a short thirty day comment period where many questions were raised, the Chief Judge decided to appoint a task force and extend the opportunity for comment. The task force was announced in November and they are expected to work until March when presumably a report will be issued. The task force is chaired by the Hon. Jenny Rivera. As part of the work of the task force, public hearings are being held throughout the State and smaller focus group meetings are being scheduled. Following the announcement of the proposed change in October 2014, the New York State Bar Association's Committee on Legal Education and Admissions to the Bar met and adopted a report for the State Bar leadership. The report, along with a resolution, was presented to and approved by the Executive Committee on October 31, 2014. The following day, on November 1, 2014, it was presented to the NYSBA House of Delegates (See Appendix A). Following a constructive discussion in the House, the Resolution was unanimously adopted.

On November 12, 2014 Judge Lippman released a Request for Public Comment extending the comment period to March 1, 2015, by which time a report from a study committee headed by Judge Jenny Rivera would issue. Upon appointment of the Task Force by Judge Lippman, NYSBA President Glenn Lau-Kee and

Committee on Legal Education and Admission to the Bar co-chairs Eileen Millett and Patricia Salkin, met with Judge Rivera to determine how NYSBA could be most helpful to the Task Force in terms of research and information gathering. The members of the Task Force are included in Appendix B, but it should be noted that two members of the Task Force are members of the NYSBA Committee on Legal Education (one a full voting member and one an ex officio member), and one member is a past president of the NYSBA.

Timeframes set by the Court have required quick action by the Committee on Legal Education and Admissions to the Bar. Since the Task Force was established the Committee met on December 15, 2014, at which point the notice of public hearings and accompanying request for feedback on certain issues (see Appendix C) had not been issued, and on January 20, 2015.. In between the Committee's last two meetings, one member of the Committee worked on an article for the State Bar Journal designed as a factual description of the current New York Bar Exam and the Uniform Bar Exam (see Appendix D). At its January 20th meeting, Sarah Valentine (who participated in a focus group convened in advance of the May 2014 Convocation on *Coming Changes in Legal Education)* led a discussion about the inadequacy of the Multi-State Practice Test (MPT) to truly test/assess skills. The Committee's meeting on January 20, 2015 was focused on input the Committee believes would be most appropriate to present to the Task Force in February if/when the State Bar testifies. Following the Committee meeting, Ms. Valentine agreed to develop a background piece about the MPT, and Members/Liaison/former co-chair and Co-Chairs Eileen Kaufman, Sharon Gerstman, Eileen Millett and Patricia Salkin met to discuss three distinct proposals raised by the Committee for State Bar adoption.

The Committee still believes for many reasons that there is inadequate information to make a judgment as to whether the UBE is a better bar exam for New York. The three areas of concern are: whether the proposal adequately tests knowledge of NY law requisite for practice in the state; whether the proposal adequately tests the professional skills required for practice; and whether the proposal threatens to worsen the disparate impact of the bar exam. Despite these concerns, the Committee applauds Chief Judge Lippman for providing an opportunity to discuss ways in which New York can exert a leadership role in reforming the bar exam to better reflect current realities of practice. Most notably in this regard, the Committee on Legal Education, as described more fully below, recommends that any new bar exam include an experiential learning component. What follows are the three main points the Committee believes are important factors in considering the implementation of the UBE in New York.

I. UBE is a test of uniform laws and rules

The UBE at its core is a test of uniform laws and rules. Like other states, half of the current New York bar exam tests on laws peculiar to the home state, New York. Thus, the current New York bar exam, test on peculiarities under New York law of wills, trust and estates, domestic relations, civil practice law and rules and criminal law and procedure. Under the current proposal to change the New York bar exam, the UBE would substitute for certain components of what New York now requires.

The current NY Exam is a two-day written examination with four components. On Day 1, candidates are required to answer five essay questions, each presenting multiple issues and generally emphasizing New York specific law, answer 50 New

York State specific multiple choice questions (NYMC), and complete one Multistate Performance Test (MPT), an exercise that is designed to simulate a case file presented in a realistic setting and calls for candidates to demonstrate fundamental lawyering skills. The time allotted for Day 1 is 6 hours, 15 minutes. On Day 2, candidates take the Multistate Bar Examination (MBE), which is prepared by the Conference and used in most states as part of the bar exam, consisting of 200 multiple-choice questions. The time allotted for Day 2 is 6 hours.

On the current New York exam, each of the five essays requires 40-45 minutes to complete. Specifically, on the morning of Day one of the current exam, a student is given 3 hours and 15 minutes to complete three essays and 50 multiple choice questions; in the afternoon, a student is given 3 hours to complete two essays and the Multistate Performance Test.
The UBE proposal would substitute the Multistate Essay Exam (MEE) for the five New York essays. The MEE consists of six essays that test on uniform laws, rather than the laws particular to New York's jurisdiction, and they are not drafted by the New York Board of Law Examiners. Each of the six essays would require 30 minutes to complete.

Additionally, the proposal would add a one-hour multiple choice test on New York law, which would be the only part of the two day exam focused on New York law. We question whether reducing NY law to 50 multiple choice questions to be answered in an hour can adequately test the complexities and nuances of New York law. We also question whether analytical and deductive skills can be adequately tested via multiple choice questions. The experts in test design would answer no to both questions.

The current New York essays are longer and more complex than the proposed multistate essays for a reason. The current New York essays are multiple issue essays that are aimed at issue spotting, in particular, issue spotting of the peculiar nuances of several different areas of New York Law. Because New York's essays are more focused on issue spotting of the nuances of various areas of New York Law, an applicant is less reliant on rote memorization and more attentive to analytical thinking, and to the interplay of various legal concepts and theories. Are New York practitioners well served by a test that relies heavily on rote memorization, particularly as pertains to one area of law at a time, as opposed to the current New York essay format?

There is reason to be concerned about whether the UBE proposal lessens the significance of the distinctions of New York law, lessens New York peculiarities, and lessens the high esteem in which the New York exam is held. The preparation and the emphasis for the proposed UBE will be different. The proposed UBE change will not require the same rigorous attention to the study of the uniqueness of New York law distinctions as does the current exam.

The UBE is at its core a test of uniform laws and rules. One argument in favor of the UBE is that it is a move to a more nationalized standard, and with that nationalized standard comes more mobility. Indeed, proponents argue that portability will advance mobility in a nationwide marketplace. The fallacy in that argument is that NY has adopted few uniform rules. Justin L. Vigdor, a former NYSBA President and member of the Uniform Law Commission, speaking eloquently at the November 1, 2014 House of Delegates meeting said:

> I'm very concerned about the fact that the UBE is going to test uniform law. I have been one of New York's five uniform law commissioners for 26 years. Unfortunately, New York is not big on adopting and passing uniform laws. We have a terrible time getting uniform laws through the legislature . . .When we do get uniform laws passed, we have a New York version of those uniform laws, and it's questionable whether they're really uniform. This is an issue that must be addressed.[1]

Adoption of the UBE would require law schools to adapt curriculum to teach uniform laws, a proposition for which many would be ill-prepared assuming a July 2016 adoption. Doctrinal coverage of New York law would shrink with the UBE. Law schools would be required to teach general principles of law along with New York law in the same course. Courses would necessarily have to be re-worked.

Thus, adoption of the proposed UBE, with the dramatically diminished significance afforded to New York law, has the potential to diminish the value and prestige of being admitted to the bar in New York State.

a) The Proposed Format for the Proposed New NYLE is Inadequate

In concert with the proposal to adopt the UBE in New York, is the proposal to add a new "New York Law Exam" (NYLE). The Committee does not believe that the proposed 50 question multiple choice NYLE is adequate to appropriately test New York law. The Committee concludes that a multiple choice format for NYLE is inadequate for three reasons: 1) the length of time necessary to cover significant

[1] Meeting of the NYSBA House of Delegates, November 1, 2014. http://www.totalwebcasting.com/view/?id=nysbar at 160:00-160:25.

areas of law practice in NY, such as EPTL and CPLR is insufficient using this format; 2) the proposed format of these multiple choice questions which does not utilize fact patterns but simply tests rules of law, emphasizes rote memorization over analytical thinking; and 3) essay questions or quasi-essay questions or questions designed to assess drafting skills in the context of New York law are preferable and such assessment needs to be longer than the one hour currently proposed for the NYLE add-on.

To the Committee's knowledge, no sample questions that would constitute the new NYLE have been drafted and/or made public. Therefore, we cannot address specifically the substance of the testing. However, the practitioners on the Committee have advanced the concern of the practicing bar that the conceptual NYLE is inadequate to demonstrate an acceptable minimal level of proficiency in New York law prior to admission.

II. New York has an Opportunity to Lead Bar Exam Reform by Linking Experiential Learning to Licensing

The purpose of the New York Bar Exam is to protect the citizens of New York from incompetent attorneys through the licensing sorting process. A timed written bar exam may indicate whether or not someone has doctrinal knowledge and legal analysis and reasoning skills. However it is an extremely limited vehicle for determining whether someone has grounding in the breadth of legal skills necessary to practice.

The organized bar in New York has long called for bar exam reform that would tie licensing to more of the skills required for the practice of law. By using this opportunity to create a better bar exam that incorporates the skills students learn

and perform in clinical settings, New York could truly be a national leader. The Committee thus recommends that the New York State of Law Examiners, which possesses unparalleled expertise regarding standardized tests, along with clinicians and others, study whether and how a clinical component could be a part of licensing in New York.

One of the reasons advanced for adopting the UBE in New York is the idea that it would add additional skills testing to the New York state bar exam, because it includes two MPT questions. The Committee suggests it is misguided to rely on the MPT as a vehicle to test lawyering skills. We believe that the MPT's ability to test skills different than those already tested in the essay exams is extremely limited. We also believe that it is essential that law students graduate having had multiple opportunities to practice and perform lawyering skills under supervision with opportunities for feedback and reflection. This sort of guided experiential learning is how law students become law graduates most able to practice and it is this type of learning that teaches the skills the MPT cannot test.

Currently during the first day of the bar exam a candidate must answer three New York essay questions and 50 New York multiple choice questions in the morning and then answer two New York essay questions and one Multistate Performance Test (MPT) question in the afternoon. The essays and multiple-choice questions on the first day all test New York law and are written by the New York Board of Law Examiners. The MPT however, is a generic exam written by the National Conference of Bar Examiners (NCBE) and does not address New York law.

Today the MPT is worth 10% of the New York bar exam. If the UBE were adopted, the candidate would have to answer two MPT questions.. The MPT gives

the applicant a library consisting of various documents and the applicant is asked to use the library to complete a task such as writing a memo to the file or a letter to a client. The Board of Law Examiners recommends that candidates allot no more than 90 minutes to the task based on the NCBE recommendations. Thus, the format of the MPT places the candidate in a position that is antithetical to thoughtful careful lawyering – drafting a document as fast as possible - as the clock is ticking.

Reading speed is a primary factor in success on the MPT because a candidate must read through the material as fast as possible, finding the applicable law in the library, and drafting the assigned document as quickly as time permits. This is similar to what a candidate does when answering an essay question with the largest difference being the amount of material that must be read and sorted through. The Committee does not think the attorney who is the fastest reader or even the attorney who writes the quickest is necessarily the attorney who provides the most correct and thoughtful advice. The emphasis on reading speed on the MPT also places excellent attorneys whose first language may not be English as a distinct disadvantage.

Indeed, a report commissioned by the New York State Court of Appeals many years ago questioned the importance of "speeded" exams where the results are dependent on the rate at which the work is performed as well as on the correctness of the response. The report concluded that "speed in reading fact patterns, selecting

answers, and writing essay responses [is] not the kind of speed needed to be a competent lawyer."[2]

The MPT questions also test many of the same lawyering skills as the essay questions. The essay questions on the Multistate Essay Exam test a candidate's ability to identify issues, separate relevant material from non-relevant material, present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. While there is no description of the purpose of the New York State essay exam, it is likely that it is very similar, with the addition of determining knowledge of New York doctrine and ethical rules.

The NCBE says that the MPT tests six fundamental lawyering skills: sorting detailed factual materials and separating relevant from irrelevant facts; analyzing statutory, case, and administrative materials for applicable principles of law; applying relevant law to the relevant facts in a manner likely to resolve a client's problem, identifying and resolving ethical dilemmas, when present, communicating effectively in writing and completing a lawyering task within time constraints. The Committee wishes to make clear that these skills are what the NCBE describes as "fundamental lawyering skills" but they do not necessarily comport with the fundamental lawyering skills and professional values described in, for example, the MacCrate Report (ABA Section Of Legal Education and Admissions to the Bar, Legal Education and Professional Development – An

[2] JASON MILLMAN, ET AL, AN EVALUATION OF THE NEW YORK STATE BAR EXAMINATION (May 1993), at 9-8 & n. 11.

Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing The Gap) (1992)).

However, even if one compares the skills tested on the essay questions to those tested by the MPT using the descriptions provided by the NCBE itself, it becomes clear that there is only a small set of skills the MPT tests that essay exams do not. For example, the MPT requires a student to manage their time, but so do the essay questions. The MPT may require a student to write in a specific format but the essay questions are also designed to evaluate a candidate's ability to communicate effectively in writing. The MPT allows candidates to show their capacity to reason by analogy but the essay exam tests legal reasoning and analysis as well. The MPT may, if the question includes it, require a candidate to spot an ethical issue but the New York essay exams routinely require students to address New York professional responsibility issues. The MPT requires a student to sift through and organize a library of materials but that shows how fast someone reads not how thoughtfully they attend to the task at hand. In addition, the MPT is treated much like an essay exam when it is graded[1] and is included in the number of questions an exam grader must grade within an allotted time.

If the MPT is to be offered as a mechanism for assessing a candidate's competency in foundational legal skills, it is important to understand what the MPT does not do.

The MPT does not test a candidate's ability to do legal research or fact investigation. It does not assess whether a candidate can interview a client, negotiate a lease, make an objection in court, or integrate non-legal issues into problem solving. It does not tell the grader how well the candidate is at working

collaboratively, understanding and communicating across differences, or handling indeterminacy. It also does not show how well the candidate understands his or her professional role and whether the candidate understands the importance of ethical and respectful behavior.

The MPT does not assess these lawyering skills and professional traits because it cannot - these skills cannot be assessed by a timed written exam. However these skills and traits are taught, practiced, reflected upon and assessed in law school clinics, guided externships, and simulated practice classes. One way of building lawyering skills into licensing would be to allow a set number of credits of experiential skills training to substitute for a candidate's MPT score, or for another component of the exam. Adopting this proposal would provide an essential link between legal education and admission to practice, a link that has long been advocated by, inter alia, the lead author of the Carnegie Report and the Founding Director of Educating Tomorrow's Lawyers -William Sullivan. Mr. Sullivan served as the keynote speaker at the NYSBA Presidential Summit in January 2014 and talked about the need to link a practice-based curriculum to licensing. He notes the need "to move students more effectively across the arc of professional development from novice to competent beginning practitioner and . . . to assess the readiness of such developing lawyers."[3]

This proposal would not create any additional burdens for the law schools. First the proposal would be an optional, not a mandatory program. Thus a law school would not have to create a program of legal education that would support a student

[3] William M Sullivan, *Align Preparation and Assessment with Practice: A New Direction for the Bar Examination,* 85 N.Y. St. B. J. 41 (2013).

being able to substitute 15 credits of experiential lawyering skills training for taking the MPT. Second, the ABA Accreditation Standards were recently amended to require six credits of experiential instruction, which means that law schools have already expanded their clinical offerings. Third, the new ABA Outcomes Standards creates a structure the Court of Appeals could use to determine if a school's clinics, guided externships, and simulation courses would satisfy the program criteria. The ABA now mandates that law schools collect data that would show whether or not a school's students are meeting the lawyering competencies the ABA has set. These same structures can be used to allow the Court of Appeals to determine which law schools have put in place a program that provides the depth and breadth of lawyering skills training that would allow a graduate to substitute that training for the MPT.

The new ABA Outcomes and Assessment requirements explicitly link continuing ABA accreditation not on what law schools say they teach but on what they can show their students are learning. The ABA also promulgated additional standards that connect learning outcomes to accreditation. Pursuant to Standard 315, law schools are required to conduct ongoing evaluations of whether or not students are attaining competency in the school's learning outcomes and report to the ABA data that proves compliance with the mandated outcomes. ABA Standard 315 suggests potential mechanisms for this evaluation including among others, the maintenance and review of student portfolios, having the bench and bar assess the school's students, and student performance in a capstone course.

In addition to creating better trained law graduates, this program would also encourage law schools to create programs that would allow students to be able to substitute 15 credits of experiential learning for the MPT.

Swapping a set number of clinical credits for a component of the exam is just one possible way to build experiential learning into licensing. Other proposals that have been advanced in New York include a Practice Readiness Evaluation Program that would award points on the bar exam for successful completion of a duly certified clinical course in law school, creation of a pilot project to test a Public Service Alternative to the Bar Exam, and studying the widely respected New Hampshire Daniel Webster program, a two year performance-based bar exam that takes place within law schools, to see whether any portion could be replicated in New York.[4]

If New York were to use this opportunity to bring experts, including psychometricians, clinicians and others, to study realistic mechanisms for building experiential learning into licensing, New York would be setting a new standard for the rest of the country to follow. It would also be addressing the decades-old critique of the bar exam, most notably voiced by the NYSBA, which has long questioned whether the current format adequately tests minimal competence to practice law and whether it produces a disparate impact, a concern addressed in the point below.

III. A Study on Disparate Impact Must Be Conducted Prior to Adoption of the UBE

[4] NEW YORK STATE BAR ASS'N COMM. ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, RECOMMENDATIONS FOR IMPLEMENTATION OF THE REPORT OF THE SPECIAL COMMITTEE TO STUDY THE BAR EXAMINATION AND OTHER MEANS OF MEASURING LAWYER COMPETENCE (Feb. 12, 2013).

The Committee continues to be concerned about the potential disparate impact that could exist should the UBE be adopted. A comprehensive letter from the Society of American Law Teachers (SALT) has been submitted to the Task Force and more fully addresses this issue. The letter is attached as Appendix E.

The Committee disagrees with those who call for a disparate impact study post-implementation since should a disparate impact be identified, it will have been too late for countless numbers of bar takers. Equity and fairness suggest that such a study should precede the adoption of a new exam to provide an opportunity to address any potential disparate impact. Like the UBE proponents, the Committee does not know whether it would produce a disparate impact, but we do believe that it is possible to retain the services of a testing expert to provide a comprehensive study and report to the New York Board of Law Examiners and to the Court of Appeals. While the Committee does not have the expertise to design a disparate impact study, we believe that pre-testing of questions over the next 3 or 4 administrations of the Bar Exam is one vehicle.

In addition to the testing the disparate impact of the actual exam questions, the Committee is also concerned about the proposed change in the weighting of the various sections of the exam. For example, changing the value of the MBE to 50% of the score as opposed to the current 40% could be studies to determine whether that change would produce a disparate impact.

IV. Conclusion

Based on the foregoing concerns and recommendations, the Committee is not in favor of the proposal at this time. The Committee requests that the New York State

Bar Association convey the concerns and recommendations contained in this report to the Task Force appointed by Chief Judge Lippman to study the UBE.

Based on the foregoing, the Committee on Legal Education and Admission to the Bar approves this report and recommends approval of the report by the New York State Bar Association's Executive Committee and/or the House of Delegates.

Votes of the Committee Members

Members voting in favor:	13
Members dissenting:	02
Abstentions:	06

Dissenting Comments by Committee Member James Beha

I dissent from the recommendation that there be a Bar Examination "credit" for "experiential learning" coursework that would substitute for taking a portion of the Bar Exam, however that Bar Exam may be constituted. This proposal (in a slightly different form, namely as a "point boost" for Bar Exam scores for those who have taken "experiential courses") was discussed at the Committee level extensively some years ago; in that form it was included in a prior report of this Committee even though it never mustered widespread support, but the report which included it set forth the views of the substantial minority opposing the idea. The proposal in its present form was never mentioned at any Committee meeting prior to the last one.

I therefore dissent on both substantive and procedural grounds.

As a matter of substance, I dissent because I do not think the "experiential coursework" credit is a sound idea. As Committee members know, I strongly favor "experiential coursework" (clinics and similar supervised practice work) as part of law school education. Indeed, I have worked on the Committee's proposal that the requirements for admission to the Bar of this State should include a requirement that every candidate have completed substantial "practice preparation" coursework, including a significant number of course hours in a clinical or other supervised practice setting. That said, I think this need for better practice-preparation for new lawyers is a bull to be grabbed by the horns(to use an old and perhaps too-tired metaphor) and not something to be brought in by the back door of fiddling with how the Bar Exam is administered.

I do see inclusion of the MPT as part of the Bar Exam as a significant improvement over the former form of the Bar Exam, and notwithstanding the negative comments about the MPT's limitations contained in this Report, I believe that at one time or another over the years I have heard almost all members of this Committee express a similar view. However, I do not disagree with the argument that adding a second segment of the MPT as part of the Exam is not a step forward insofar as it means reducing the number -- and most important, the complexity -- of the essay questions. That said, I believe that there should be one Bar Exam for all candidates, and I do not think that some candidates should be "advantaged" in the scoring of the examination (which is what this proposal amounts to even if it is no longer stated as a "point boost") because of their coursework choices. I also think the proposal carries with it a variety of administrative headaches and faces almost certain legal challenges from candidates who cannot claim the "credit" and must take the full examination.

As a matter of procedure, I dissent from this aspect of the Report for two reasons, both relating to the fact that in its present form this proposal is a new topic for the Committee (even though in a different form it has a long, if checkered, history). First, this proposal in this form has not been adequately discussed at the Committee level by the current membership of this Committee -- it was never mentioned before the last Committee meeting. While I appreciate that the timetable for commenting on the Chief Judge's UBE proposal is a tight one, that is not an adequate excuse for a "rush job" in making a separate proposal about how to change the Bar Exam. Indeed, it is ironic that a Committee that expressed distress (which I shared) at a proposal that the UBE be adopted in New York with too little discussion and analysis preceding it should now be making a proposal to change

the Bar Exam in a very significant way (a way implemented nowhere else in this country) with so little discussion and analysis of its own.

Second, the “rush” presents particular problems here because so many Committee members are abstaining from this Report (typically because they are submitting their own comments on the UBE proposal). It is not at all clear that a majority of the Committee would support this proposal, which certainly could have been discussed and voted upon separate from commenting on the UBE proposal that is the immediate topic before us. I would suspect that those submitting comments of their own on the UBE proposal are not making a separate proposal like this (this is a guess, but it seems like a good one). What we might prefer to see instead of the current Bar Exam can certainly be de-coupled from the topic of whether New York should adopt the UBE (with or without a separate NYLE), but so far as I know there has not been a canvas of the views of the current Committee as a whole on this proposal as a separate topic. Certainly there has not been the extensive comment and debate of the sort that every other proposal of this Committee has received, including gathering the views of both voting and non-voting members. When the "point boost" version of this proposal was presented some years ago (in a different context and to a Committee with a noticeably different membership), there was a bare -- very bare -- majority of those then eligible to vote on the proposal who favored it, and the Report so stated and contained a full statement of the views of those who opposed the “point boost” proposal, something lacking here precisely because the proposal has not been adequately discussed among the Committee as a whole.

Finally, I would offer a separate comment about the NYLE multiple choice test (“NYLE”) that is part of the UBE proposal. I strongly agree with those who

believe that the New York Bar Exam should extensively test on New York law and, importantly, that because it does candidates should spend a large portion of their preparation time studying New York law. I would endorse any proposal that was aimed at improving the "New York multiple choice" questions on the current examination or the testing of New York law in the essays. But this proposal would make "passing" the one hour NYLE a separate component of passing the examination. I believe that testing New York law as part of the "blend" of the total examination, the present approach, is the better way to proceed, and I think the requirement that candidates pass a separate NYLE is a mistake, especially when it is accompanied by discarding the current essay questions drafted by the New York Board of Law Examiners in favor of the generic and simplistic essays about "uniform" law used in the UBE.

It may be that the establishment of this multiple choice barrier will have a "disparate" impact on minorities, the topic which quite properly worries the authors of this Report. But disparate or not, the impact will be a bad one. It is a matter of simple arithmetic to figure out that a noticeable number of those who currently pass the Bar Exam as a totality would fail if also passing the multiple choice section was an independent requirement. Without doubt, if it so chose, the BOLE could inform us about what portion of those currently passing the Bar Exam did not answer the majority of the "New York multiple choice" questions correctly, and thus give us some insight into what adding this as a separate requirement might mean for the "pass rate". I appreciate that the NYLE is expected to be a new-and-improved version of the NY multiple choice segment (though I have yet to understand why if this segment can be improved in a meaningful way this is not being done in all events), but the arithmetic will still apply, and revealing how it might work under the present regime would be illustrative.

I do not think that a one hour multiple choice examination should be set up as a separate barrier to entry to the New York Bar. I understand that there are plans to allow those who fail this one section to re-take it without re-taking the entire examination, but that simply means more heartache, expense and delay for candidates who would pass the current examination, as well as more headaches for the BOLE which must administer these "re-takes". I believe that candidates for the New York Bar should be motivated ("incentivized," to use an ugly term) in their preparation for the Bar Exam to study New York law and to be ready to apply it (a goal which I believe the current "blended" approach serves well); I do not believe that the candidates or the Bar are well served by adding a second "hurdle" to passing the Bar Examination. I think that if this second hurdle is inserted into the examination process the profession, including the candidates, is going to be very unhappy with the results.

James A. Beha II
Allegaert Berger & Vogel LLP

Appendix A- October 2014 Report of the Committee on Legal Education and Admission to the Bar as approved by the House of Delegates in November 2014

Appendix B

Advisory Committee on the Uniform Bar Examination
ADVISORY COMMITTEE MEMBERS

Hon. Jenny Rivera
Associate Judge, New York State Court of Appeals

Hon. A. Gail Prudenti
Chief Administrative Judge of the State of New York

Michelle Anderson
Dean, CUNY School of Law

Hannah Arterian
Dean, Syracuse University College of Law

Diane Bosse
Chair, New York State Board of Law Examiners

Nitza Escalera
Assistant Dean of Student Affairs, Fordham University School of Law

David J. Hernandez
Founder, David J. Hernandez & Associates

Seymour James, Jr.
Attorney-in-Chief, The Legal Aid Society of New York City

E. Leo Milonas
Partner, Pillsbury Winthrop Shaw Pittman, LLP
Member, New York State Board of Law Examiners

Appendix C

Notice of Public Hearings: Uniform Bar Exam

In November 2014, Chief Judge Jonathan Lippman appointed an Advisory Committee to study the proposed adoption of the Uniform Bar Examination (UBE) in New York. The Committee, which is chaired by the Honorable Jenny Rivera, Associate Judge of the New York Court of Appeals, and includes representatives of law schools, the judiciary, the State Board of Law Examiners, and the bar, is charged with studying the potential implementation of the UBE in New York.

In connection with that responsibility, the Committee will hold public hearings throughout New York in early 2015. The purpose of the public hearings is to receive the views of interested individuals, organizations and entities on the possible transition to the UBE. After the public hearings, the Advisory Committee will make a recommendation to the Court of Appeals whether to adopt the UBE as part of the New York State Bar Examination.

The hearings will take place as follows:
• CUNY Law School
Tuesday, January 20, 2015, at 2 p.m.
2 Court Square, Long Island City, N.Y. 11101
• New York State Court of Appeals
Tuesday, February 3, 2015, at 11 a.m.
20 Eagle Street, Albany, N.Y. 12207
• Appellate Division, Fourth Department
Thursday, February 26, 2015, at 2 p.m.
50 East Avenue, Rochester, N.Y. 14604

The current New York bar exam consists of five essays and 50 multiple-choice questions testing on New York State law, one Multistate Performance Test (MPT) question developed by the National Conference of Bar Examiners (NCBE), and the 200 multiple-choice question Multistate Bar Examination, also developed by NCBE. In contrast, the UBE, which has been adopted in 14 other states, consists of six essays developed by NCBE that test the law of general application, two MPT

questions, and the 200-question MBE. Unlike the current New York bar exam, the UBE produces a portable score that can be used to gain admission in other states that accept the UBE, provided the applicant satisfies other jurisdiction-specific admission requirements.

The State Board of Law Examiners has proposed that if the UBE is adopted in New York, bar applicants also should be required to pass a separate state law-specific component, the New York Law Exam (NYLE), which would consist of 50-multiple choice questions.

The Advisory Committee seeks testimony on the following issues (the list is not exhaustive):
• The advantages and/or disadvantages of the current New York bar examination and the proposed UBE
• The extent to which adoption of the UBE would result in changes to law school curricula and bar exam preparation
• How UBE score portability would impact New York law graduates and graduates of law schools in other jurisdictions, and the law profession as a whole
• The importance of requiring bar applicants to separately pass a New York-law specific component
• Whether the NYLE should be administered in conjunction with the UBE and/or on additional dates.

The Advisory Committee's hearing panel will consider both oral testimony and written submissions. All testimony is by invitation only. If you are interested in being invited to testify at the hearing, please send an e-mail to UniformBarExam@nycourts.gov no later than 14 days in advance of the scheduled hearing at which you propose to testify. Proposed testimony should not exceed 10 minutes in length, unless otherwise instructed by a panel member.

If requesting an invitation, please (1) identify yourself and your affiliation; (2) attach a prepared statement or a detailed outline of the proposed testimony, and specify which, if any, of the topics described above will be addressed, and; (3) indicate at which of the hearings you would like to deliver the testimony. In advance of the hearing, invitations to testify will be issued and will include an approximate time for each presenter's testimony. For those not invited to present oral testimony, the proposed testimony will be deemed a written submission for consideration by the Advisory Committee.

Persons unable to attend a hearing or interested in only making a written submission may submit their remarks by e-mail to UniformBarExam@nycourts.gov at least seven days in advance of the hearing, or by mailing the submission to the Advisory Committee at:

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

For further information, please visit the Advisory Committee's webpage at www.nycourts.gov/ip/bar-exam

Appendix D – Gallagher Article

Appendix E – SALT Letter