Supreme Court
Ad Hoc Committee on the
Uniform Bar Examination

REPORT &
RECOMMENDATIONS

February 12, 2016

Chair: Justice Jaynee LaVecchia
Vice Chair: Justice John E. Wallace, Jr. (retired)

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REPORT OF THE AD HOC COMMITTEE ON THE UNIFORM BAR EXAMINATION

I. INTRODUCTION

In October 2015, the Supreme Court of New Jersey created the Ad Hoc Committee on the Uniform Bar Examination (the Committee) to review and recommend to the Court whether New Jersey should adopt the Uniform Bar Examination (UBE) as a replacement for the state's existing bar examination (bar exam) format. The UBE is a standardized test drafted by the National Conference of Bar Examiners (NCBE), and is uniformly administered, graded, and scored in participating jurisdictions. Applicants taking the UBE earn a portable score that can be transferred to other UBE jurisdictions for a set period of time for the purpose of applying for admission in those other jurisdictions.

When the Committee was formed, approximately seventeen jurisdictions had elected to adopt the UBE. Most significantly, in April 2015, following an extensive study and written report by a Court-appointed Committee, the New York Court of Appeals determined to implement the UBE beginning in July 2016. New York's transition to the UBE will have a significant impact on many New Jersey bar applicants, as approximately 50% of all New Jersey applicants also test in New York and seek concurrent admission in that jurisdiction. In addition, other states in the Northeast and Midwest are in the process of reviewing the UBE and soon may become UBE jurisdictions.

In light of those developments, the Supreme Court of New Jersey formed the Committee and charged its membership with "studying the available literature on the Uniform Bar Examination, with particular emphasis on the New York Advisory Committee's report, and, in addition, examining any issues that may be unique to New Jersey." The Court directed that, upon completion of its work, the Committee issue a report setting forth findings and recommendations to the Court on whether New Jersey should adopt the UBE.

The Chief Justice of the Supreme Court appointed Senior Associate Justice Jaynee LaVecchia as Chair of the Committee, named retired Justice John E. Wallace, Jr. as Vice-Chair, and selected other members of the profession whose insights and experience would inform the Committee's work. The membership included representatives of New Jersey's law schools, current and retired assignment judges, the Chair of the Board of Bar Examiners, the Statewide Chair of the Committee on Character, and distinguished practitioners from across the state, including representatives from the New Jersey State Bar Association, the Garden State Bar Association, the Hispanic Bar Association of New Jersey, and county bar associations.[1] The Executive Director and Assistant Secretary to the Board of Bar Examiners was designated to serve as senior staff to the Committee.

The instant report and the recommendations contained herein are presented to the Court in accordance with the Committee's charge. The report compares the formats of the New Jersey bar exam and the UBE, describes the Committee's deliberative process, recounts the substantive issues addressed by the Committee, and recommends that the Court adopt the UBE. The members of the Committee wish to thank the Court for the opportunity to serve in considering this interesting topic of great importance to the Court, the bar, the law schools, their law students, and the public.

[1] A complete list of Committee members and their respective associations is included on p. 45.

II. THE CURRENT NEW JERSEY BAR EXAMINATION

A. Purpose of the bar exam

Pursuant to Article VI, Section II, Para. 3, of New Jersey's Constitution, the Supreme Court has exclusive jurisdiction over the admission to practice law in the State of New Jersey. The authority to determine who is qualified to practice law and to set policy regarding the admission procedure rests solely with the Court. See generally R. 1:24-1 (Bar Examinations); R. 1:24-2 (Qualification for Admission to Examination); R. 1:27-1(a) (Qualification for Licensure).

The bar admission requirements further two important goals -- assessing competence to practice law and ensuring fitness of character among practitioners.[2] The former goal is advanced through educational requirements and, most notably, the passage of a rigorous exam that measures minimum competency and analytic skill. Other admission requirements, including certification by the Committee on Character, evaluate and reflect on an applicant's character and fitness "to promote the public interest and to protect the integrity of the legal profession."[3]

B. Components of the current New Jersey bar exam

To qualify for admission to the bar exam, an applicant must be more than 18 years of age and must have attained a Juris Doctor degree (or equivalent) from a law school approved by the American Bar Association (ABA). R. 1:24-2(a) & (b). In addition, the applicant must provide evidence that he or she is a member of the bar in good standing in every other jurisdiction that

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[2] See American Bar Association, Section of Legal Education and Admissions to the Bar, Bar Admissions Basic Overview, http://www.americanbar.org/groups/legal_education/resources/bar_admissions/basic_overview.html (last visited Feb. 12, 2016).

[3] Regulations Governing the Committee on Character 103:1. The Regulations Governing the Committee on Character, approved, as amended, by the Supreme Court, and effective October 1, 2002, are available at https://www.njbarexams.org/committee-on-character-regulations (last visited Feb. 12, 2016).

has ever admitted the applicant to practice. R. 1:24-2(c). To obtain plenary admission to the New Jersey bar, an applicant must (1) pass the bar exam, (2) earn a qualifying score on the Multi-State Professional Responsibility Examination (MPRE),[4] or pass an approved course on professional ethics given by an ABA-accredited law school, and (3) obtain a certification of good character by the Committee on Character. R. 1:27-1(a).

The New Jersey bar exam is administered twice annually over a two-day period (Wednesday and Thursday) during the last week in February and the last week in July. The exam is comprised of two components, both of which account for 50% of an applicant's bar exam score: (1) the Multistate Bar Examination (MBE), a multiple choice test prepared and graded by the NCBE; and (2) seven essay questions drafted by the Board of Bar Examiners.

The MBE is administered throughout the country[5] on the last Wednesday of a testing month. New Jersey then administers the essay portion of its bar exam on Thursday. Notably, all states other than New Jersey and Massachusetts give the essay portions of their exams on Tuesday, (*i.e.*, the day before the MBE). Because New Jersey administers its essays on Thursday, applicants are able to apply for admission to New Jersey and one other state (besides Massachusetts) in the same administration. The overwhelming majority of New Jersey's

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[4] The MPRE is a two-hour multiple-choice exam designed to measure an applicant's understanding of the standards governing professional conduct. It is drafted by the NCBE and administered three times annually, separately from the bar exam administrations. The MPRE, or substantial equivalent, is required for admission to the bars in all but three jurisdictions: Maryland, Wisconsin, and Puerto Rico. See National Conference of Bar Examiners, Multistate Professional Responsibility Examination, http://ncbex.org/exams/mpre/ (last visited Feb. 12, 2016).

[5] Forty-nine of the fifty states administer the MBE as a part of their bar examination process, with Louisiana being the sole exception. See National Conference of Bar Examiners & American Bar Association Section of Legal Education and Admissions to the Bar, Comprehensive Guide to Bar Admission Requirements 2015 at 25 (2015), http://www.ncbex.org/pubs/bar-admissions-guide/2015/index.html. New Jersey has been administering the MBE since its inaugural administration in 1972.

applicants (approximately 75%) take advantage of that opportunity, with most seeking concurrent admission in New York or Pennsylvania: Approximately 50% of New Jersey applicants test concurrently in New York; approximately 25% test concurrently in Pennsylvania. Applicants testing in New York and New Jersey may elect to take the MBE in either state and then transfer their MBE score toward admission in the other jurisdiction. The same is not true for applicants seeking concurrent admission in New Jersey and Pennsylvania because the Commonwealth requires that applicants sit for the MBE in Pennsylvania.

The MBE is prepared by the NCBE, and has been part of the New Jersey bar exam since 1972. "The purpose of the MBE is to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns."[6] The MBE consists of 200 multiple choice questions covering the subjects of civil procedure, constitutional law, contracts, criminal law and procedure, evidence, real property, and torts. The test is administered in two, three-hour sessions (*i.e.*, a morning and an afternoon session), with 100 questions in each session.[7]

The essay portion of the New Jersey bar exam is prepared by the New Jersey Board of Bar Examiners, and consists of seven essays designed to examine a candidate's ability to reason, analyze, and express himself or herself in a professional, analytically sound manner. The morning session consists of four questions over three hours, and, the afternoon session consists of three questions over two hours and fifteen minutes, for an average of forty-five minutes per essay. The essay portion of the New Jersey bar exam does not test on New Jersey-specific law.

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[6] National Conference of Bar Examiners, Multistate Bar Examination, http://www.ncbex.org/exams/mbe/ (last visited Feb. 12, 2016).

[7] National Conference of Bar Examiners, Preparing for the MBE: Test Format and Subject Matter, http://www.ncbex.org/exams/mbe/preparing/ (last visited Feb. 12, 2016).

Rather, like the MBE, the essays test in areas of general application, including questions on civil procedure, constitutional law, contracts, criminal law, evidence, real property, and torts.

An applicant's essay scores are based on his or her ability to identify and analyze issues embedded in a hypothetical fact pattern, and to present an organized, coherent, and well-written response within the prescribed format. On some questions, that may require the applicant to write a concise document that approximates the work product of a practicing lawyer. For example, an applicant may be asked to assume the role of an attorney, assistant prosecutor, or law clerk to a judge, and to draft a memorandum analyzing the relevant legal issues. Each of the applicant's seven essay responses are graded on a scale of one to six, for a total maximum raw score of forty-two.[8] The raw essay scores then are scaled to the MBE using a mathematical process that maintains the rank ordering of individuals' essay scores, but spreads the applicants' scores across the MBE scale so that the scores can be compared.[9]

Once the MBE and essay grades have been scaled, the Board of Bar Examiners looks to the average of an applicant's scaled MBE and essay scores to determine if the applicant meets New Jersey's "cut" score (*i.e.*, passing score) of 133. Applicants with an average score of 133 or higher pass the New Jersey bar exam.

C. Certification by Committee on Character

All applicants must demonstrate their character and fitness by showing honesty, integrity, fiscal responsibility, trustworthiness, and a professional commitment to the judicial process and

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[8] More information regarding the grading process for New Jersey's current bar exam is available on the Board of Bar Examiners' website, including a publication entitled Information for Bar Exam Applicants, https://www.njbarexams.org/appinfo.action?id=1 (last visited Feb. 12, 2016).

[9] Scaling is used in most states across the country, including those administering the UBE, and is the protocol recommended by the NCBE. That process has been derived by psychometricians (*i.e.*, highly trained experts in test administration and statistics) who validate standardized testing instruments that measure the knowledge, skills, and abilities required for the practice of law.

the administration of justice. Pursuant to Rule 1:25, the Committee on Character reviews the personal record and reputation of each applicant for admission to the bar to determine fitness to practice law. The Committee on Character's careful review and ultimate conclusion whether to certify a candidate for admission is critical in the licensure process.

D. New Jersey-specific education requirements for newly admitted attorneys

Although the New Jersey bar exam does not test applicants in their knowledge of New Jersey-specific law, the Supreme Court requires newly admitted attorneys to study New Jersey legal topics through dedicated coursework in areas of local law. At one time, newly admitted attorneys were required to complete a Skills and Methods course within three years of admission. However, in December 2009, the Court eliminated the Skills and Methods course, and replaced it with the requirement that newly admitted attorneys complete their continuing legal education (CLE) obligations in designated areas of New Jersey law. Thus, newly admitted lawyers must obtain fifteen credits in any five of the following nine subjects during the first full two-year compliance period:

> New Jersey basic estate administration; New Jersey basic estate planning; New Jersey civil or criminal trial preparation; New Jersey family law practice; New Jersey real estate closing procedures; New Jersey trust and business accounting; New Jersey landlord/tenant practice; New Jersey municipal court practice; and New Jersey law office management.
>
> [See BCLE Reg. 201:2.]

The requirements were designed to ensure that newly admitted attorneys are knowledgeable on current New Jersey law in important basic areas and possess the skills necessary to fulfill their professional obligations to New Jersey clients.

III. THE UNIFORM BAR EXAMINATION (UBE)

A. Overview of the UBE

The UBE is a standardized test of minimum competence for licensure to practice law. "The UBE is designed to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law."[10] The key anticipated benefit to applicants is that each receives a portable (*i.e.*, transferrable) score that can be used to apply for admission in other UBE jurisdictions for a period of time fixed by the receiving jurisdiction.

The UBE is prepared by the NCBE, and is uniformly administered, graded, and scored by each of the participating jurisdictions (*i.e.*, UBE jurisdictions). In addition to administering the NCBE's uniform exam, UBE jurisdictions must adhere to certain other conditions, including transferring and accepting the UBE score to and from other UBE jurisdictions. If the applicant's score meets the minimum passing score set by another UBE jurisdiction, the score can be accepted for the purpose of applying for admission in that other jurisdiction.

Although UBE scores are portable, applicants still must meet all of the admission requirements imposed by each jurisdiction, such as minimum passing score, educational requirements, and character and fitness certification. UBE jurisdictions also retain control over critical aspects of exam administration and bar admission, including the determination of who may sit for the bar exam, who will be admitted to practice, and for how long incoming UBE scores will be accepted. Importantly, it is only an applicant's UBE score, and not his or her status as an admitted attorney in another UBE jurisdiction,[11] that is transferrable.

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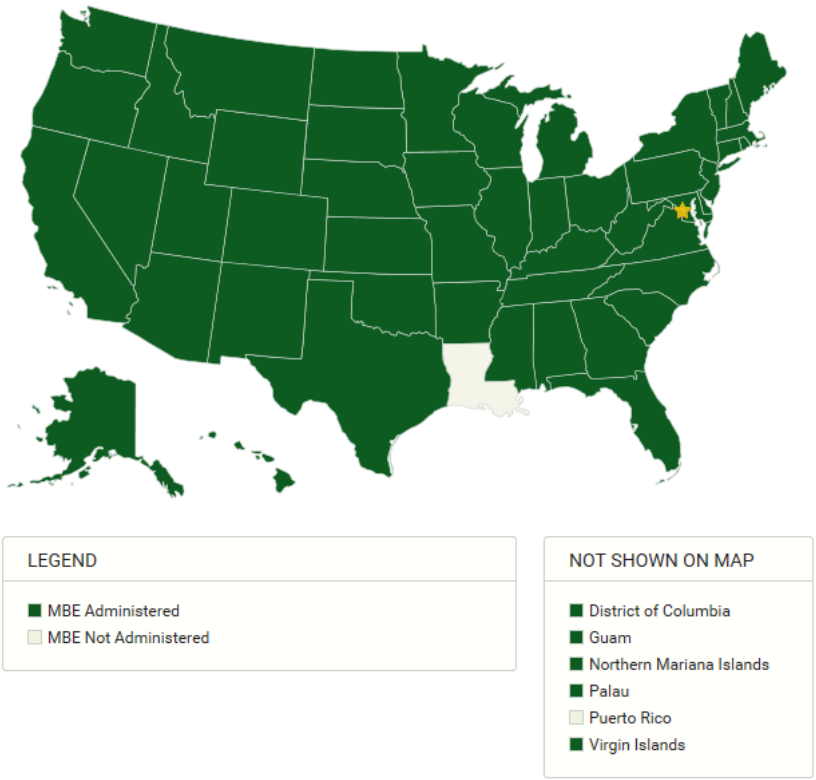
[10] National Conference of Bar Examiners, Uniform Bar Examination, http://www.ncbex.org/exams/ube/ (last visited Feb. 12, 2016).

[11] For that reason, participating in the UBE is not the equivalent of admission on motion -- the process of admitting an out-of-state attorney to practice law based on admission in another jurisdiction, provided the attorney meets other prerequisites. New Jersey does not permit

B. Exam components

The UBE consists of three components: the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT).

As noted earlier in this Report, the MBE is a multiple-choice test covering a broad range of topics. The MBE currently is administered as part of the bar exam in New Jersey and all other states, with the exception of Louisiana (illustrated below). Jurisdictions that administer the UBE weight the MBE component 50% of an applicant's overall score.[12]



[Source: National Conference of Bar Examiners, Jurisdictions Administering the MBE, http://www.ncbex.org/exams/mbe/ (last visited Feb. 12, 2016).]

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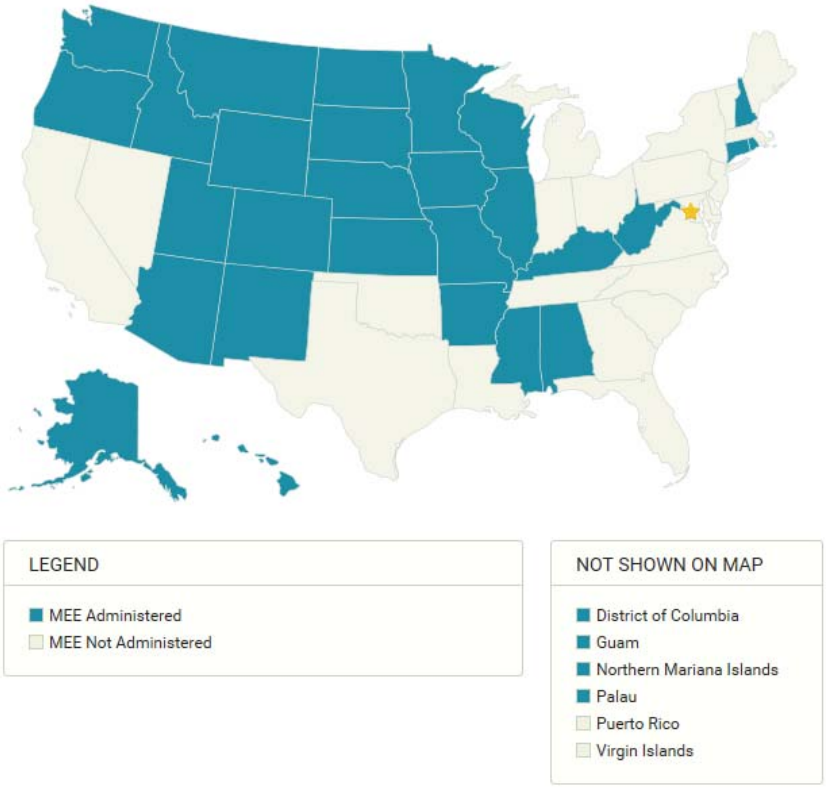
admission on motion, and the Committee's discussion of the UBE drew a careful distinction between the two concepts. It bears mentioning that another Supreme Court Committee -- the Special Committee on Attorney Ethics and Admissions -- prepared a report in May 2015 that addresses whether the Court should embrace admission on motion.

[12] National Conference of Bar Examiners, Multistate Bar Examination, http://www.ncbex.org/exams/mbe/ (last visited Feb. 12, 2016).

The MEE is a written exam comprised of six essay questions, each thirty minutes in length, testing law of general application. "The purpose of the MEE is to test the examinee's ability to (1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation."[13] The MEE is currently administered in twenty-eight states and the District of Columbia (illustrated below). Jurisdictions that administer the UBE weight the MEE component 30% of an applicant's overall score.



[Source: National Conference of Bar Examiners, Jurisdictions Administering the MEE, http://www.ncbex.org/exams/mee/ (last visited Feb. 12, 2016).]

[13] National Conference of Bar Examiners, Multistate Essay Examination, http://www.ncbex.org/exams/mee/ (last visited Feb. 12, 2016).

The MPT also is a written test that consists of two, ninety-minute tasks designed to test practical lawyering skills. "The MPT is designed to test an examinee's ability to use fundamental lawyering skills in a realistic situation and complete a task that a beginning lawyer should be able to accomplish."[14] Unlike the other exam components, the MPT is not a test of substantive knowledge, but rather "is designed to evaluate certain fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills arise."[15] The MPT requires examinees to "(1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for applicable principles of law; (3) apply the relevant law to the relevant facts in a manner likely to resolve a client's problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; and (6) complete a lawyering task within time constraints."[16]

The MPT is currently administered in thirty-eight states and the District of Columbia (illustrated below). Jurisdictions that administer the UBE weight the MPT component 20% of an applicant's overall score.

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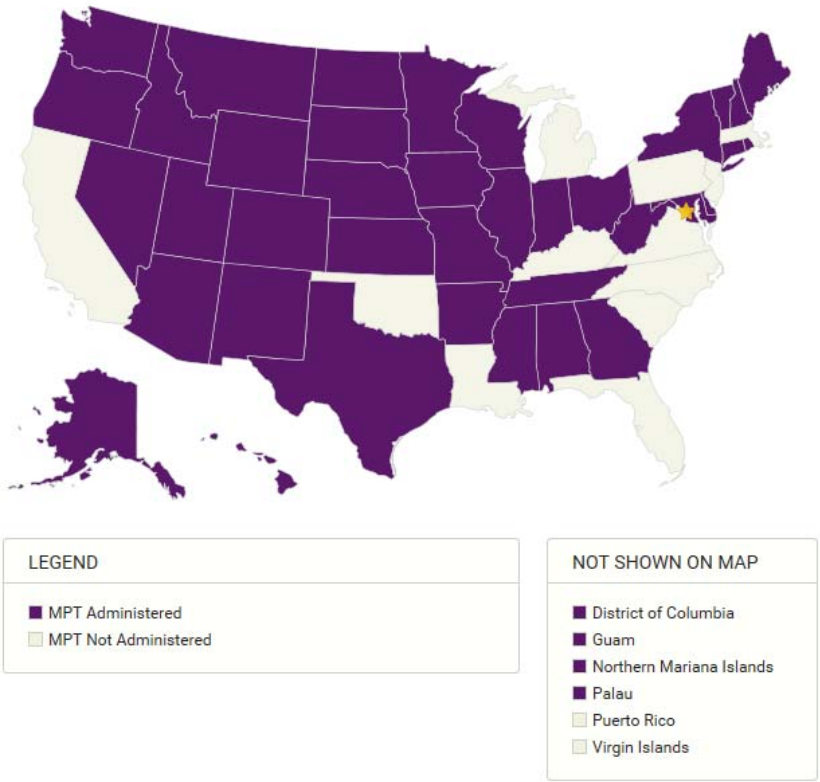
[14] National Conference of Bar Examiners, Multistate Performance Test, http://www.ncbex.org/exams/mpt/ (last visited Feb. 12, 2016).

[15] Ibid.

[16] Judith A. Gundersen, Bar Examiner, MEE and MPT Test Development: A Walk-Through from First Draft to Administration at 29 (June 2015).



[Source: National Conference of Bar Examiners, Jurisdictions Administering the MPT, http://www.ncbex.org/exams/mpt/ (last visited Feb. 12, 2016).]

If desired, jurisdictions also may add an assessment of candidate knowledge of jurisdiction-specific content through a separate test, course, or combination thereof, as an additional condition of bar admission.

As noted, New Jersey currently utilizes the MBE. However, New Jersey does not use the MEE or MPT. Instead, the New Jersey bar exam contains seven essays drafted by the Board of Bar Examiners to test an applicant's ability to present an organized, coherent, and well-written response within the prescribed format. The current New Jersey exam does not include a dedicated, task-based practical component. Importantly, the subject areas covered by the components of the UBE and the New Jersey bar exam are the same.

The UBE is administered over the course of two days. Unlike New Jersey's Wednesday/Thursday schedule, the UBE is given on Tuesday/Wednesday, with the MEE and

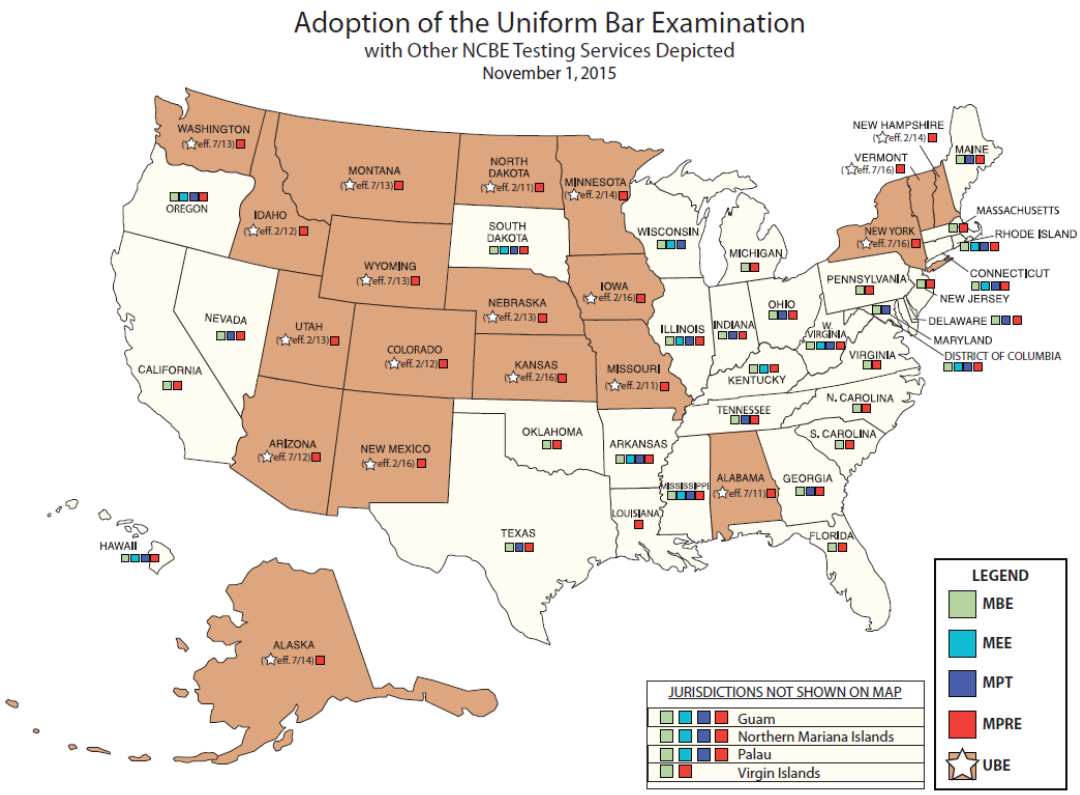
MPT administered on Tuesday, and the MBE administered on Wednesday. In order to earn a portable UBE score, applicants must sit for all portions of the UBE in the same UBE jurisdiction and in the same administration. Notably, UBE jurisdictions may elect to accept MBE scores earned in another jurisdiction (or in a prior administration) for the purpose of making local admission decisions. However, an applicant who relies on a transferred MBE score for admission cannot earn a portable UBE score.

C. Increasing acceptance of the UBE and/or its testing components

As of the date of this report, nineteen jurisdictions have adopted the UBE.[17] Although UBE jurisdictions initially were located predominantly in the Western regions of the country, New Hampshire became the first state in the Northeast to adopt the UBE commencing with the July 2014 exam administration. The New York Court of Appeals recently announced that it will administer the UBE beginning with the July 2016 exam. New York is the largest testing jurisdiction to adopt the UBE, and, following New York's announcement, several New England states have indicated that they are considering a transition to the UBE. However, at this time, there is no indication that Pennsylvania -- our other jurisdiction with significant overlapping applicants -- is among those jurisdictions contemplating adoption of the UBE.

We note that all states, with the unique exception of Louisiana, already use some or all of the components of the UBE, even if they have not made a formal transition to become UBE jurisdictions.

[17] Those jurisdictions include Alabama, Alaska, Arizona, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Dakota, Utah, Washington, Wyoming, and the District of Columbia. National Conference of Bar Examiners, Jurisdictions that Have Adopted the UBE, http://www.ncbex.org/exams/ube/ (last visited Feb. 12, 2016).



[Source: National Conference of Bar Examiners, Adoption of the Uniform Bar Examination with Other NCBE Testing Services Depicted, http://www.ncbex.org/assets/Uploads/UBE-and-Testing-Maps/2015-AdoptionoftheUBE-withotherNCBEtesting-110115.pdf (last visited Feb. 12, 2016).][18]

For example, on the East Coast, Rhode Island and Connecticut are using all components of the UBE, as is Illinois, another large testing state with which New Jersey shares applicants. The District of Columbia, which had been using the UBE components, recently announced its adoption of the UBE, beginning with the July 2016 exam administration.

[18] As of the date of this Report, the District of Columbia has adopted the UBE, but it is not reflected in the map's depiction of UBE jurisdictions. The map also depicts Vermont as having adopted the UBE, adding Vermont to the UBE jurisdictions recited above. The Vermont Supreme Court has conveyed to the Board of Bar Examiners its support for adopting the UBE, and has directed the Board to propose rule changes to enable the adoption of and transition to the UBE in Vermont. If the proposed rules are adopted, the Board expects to administer the UBE in Vermont beginning in July 2016.

IV. COMMITTEE REVIEW

A. The backdrop of New York's Report

In November 2014, the New York Court of Appeals appointed an Advisory Committee to study a proposal to adopt the UBE in New York and to administer a separate, New York-specific exam. In respect of the latter, it bears mention that New York's then-existing bar exam format tested on local New York law and had done so historically. Through an interactive process, New York's Advisory Committee gathered information from the legal and academic communities, and collected and reviewed data from various sources on the UBE, New York state bar processes, and general passage rates.

In April 2015, the Advisory Committee issued its "Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals,"[19] recommending the adoption of the UBE.[20] The Advisory Committee expressed its belief, based on its review and study, that the new testing paradigm "will fairly assess competency," "protect clients," and "adapt to the geographic and economic realities of 21st century practice."[21] Portability, the Advisory Committee stated, "is crucial in a legal marketplace that is increasingly mobile and requires more and more attorneys to engage in multi-jurisdictional practice."[22] The Advisory Committee determined that a portable score would be of "significant advantage" to bar applicants, who could then apply for

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[19] Advisory Committee on the Uniform Bar Examination, Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals (N.Y. April 2015), http://www.nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf.

[20] Because, as stated above, the New York State bar exam historically had tested applicants on their knowledge of local law, the Advisory Committee recommended that the Court of Appeals retain that aspect of its bar testing protocol by simultaneously implementing state-specific licensing components -- an online "New York Law Course" and a separate, online 50-question multiple choice exam -- along with the adoption of the UBE. Id. at 1.

[21] Ibid.

[22] Id. at 2.

admission in other UBE states, subject to other jurisdiction-specific admission requirements. The Advisory Committee added that the increased mobility also might benefit legal employers, clients, and the public because a wider applicant pool likely would result in a more efficient delivery of legal services and increased representation of traditionally under-served groups.[23]

In placing a positive value on portability, the Advisory Committee acknowledged the concern of certain stakeholders, including some bar associations, that the New York market would "be flooded with out-of-state attorneys," and result in an increased competition for jobs.[24] However, the Advisory Committee noted that the benefit of portability would be limited to recent graduates, and that applicants' UBE scores are portable for only a short time.[25] Although the Advisory Committee acknowledged that adoption of the UBE might yield some additional applicants in New York, it determined that the feared "influx" likely will be offset by applicants who use a UBE score earned in New York to seek admission out of state.[26]

In the end, New York's Advisory Committee concluded that concerns based on fear of competition were "overstated," and further characterized the desire to exclude out-of-state applicants as "protectionist."[27] The Advisory Committee determined that such concerns were not appropriate considerations in assessing eligibility to practice law. Rather, the bar examination is "a consumer protection measure," designed to ensure that applicants demonstrate minimum competence to practice law before earning the ability to represent clients.[28]

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[23] Id. at 40.

[24] Id. at 42.

[25] Ibid.

[26] Id. at 42-43.

[27] Id. at 43.

[28] Ibid.

With regard to the exam itself, New York's Advisory Committee concluded that the UBE's inherent structure provided tremendous benefit because it includes two MPT questions, "which require applicants to use fundamental lawyering skills to perform a legal task."[29] The Advisory Committee stated that implementing two practical tasks, rather than the single MPT previously included in the New York State bar exam, "will help better assess whether applicants possess the skills that are necessary to enter practice."[30] As for the essay component of the bar exam, the Advisory Committee determined that administering the UBE "would not result in a substantial change in test administration," because New York simply would be replacing its five New York essays with six essay questions (*i.e.*, the MEE) on generally accepted legal topics.

Before recommending the adoption of the UBE, the New York Advisory Committee reviewed whether migrating to a new bar exam would impact disparately the bar passage rates for certain groups within the applicant population, a concern that had been of long-standing interest to the New York bar and Judiciary. The Committee observed no evidence to substantiate the concern that the UBE would either advantage or disadvantage any particular subgroup. Nevertheless, the Advisory Committee recommended that the Court of Appeals conduct a three-year study to monitor the transition to the UBE, with emphasis on bar passage trends.

B. Our Committee's review and investigative process

In compliance with the Supreme Court's direction, the Committee began its review of the UBE with a detailed study of the New York Report. The Committee observed that many of the issues relevant to New York's Advisory Committee also bear on our Committee's charge; others, such as New York's concern for the loss of state-specific testing, were not applicable.

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[29] Id. at 2.

[30] Ibid.

In addition, the Committee noted that unlike New York, New Jersey is not confronted with a purely abstract or theoretical question of whether to adopt the UBE. Because approximately 50% of New Jersey's applicants test concurrently in New York, New York's determination to administer the UBE beginning in 2016 will have unavoidable, real, practical implications for New Jersey applicants. As described further below, after the July 2016 exam, bar applicants may no longer be able to seek concurrent admission in New York and New Jersey. Thus, maintaining the status quo in New Jersey will have repercussions for our dual-state bar applicants that are different from, but no less disruptive than, those inherent in adopting the UBE. Adopting the UBE, however, would preclude bar applicants from seeking concurrent admission in New Jersey and Pennsylvania (roughly 25% of New Jersey's current applicant pool).

Whether or not Pennsylvania determines to embrace the UBE, a substantial impact necessarily will be visited upon New Jersey applicants due to New York's adoption of the uniform exam. That impact is imminent and unavoidable. In weighing those competing concerns, the Committee recognized that its charge is to recommend the best path for our applicants and for the protection of the public, looking not merely to the recent experiences and preferences of other jurisdictions, but also to the quality of the UBE and the potential to benefit New Jersey's stakeholders.

In carrying out its charge, the Committee met as a full Committee for five general session meetings at which the membership discussed the potential benefits and challenges attendant to adopting the UBE. Meetings were conducted on October 22, November 12, and December 16, 2015, as well as on January 13 and February 12, 2016. Against the backdrop of New York's thorough report, the Committee reviewed a substantial body of additional material to delve into

specific areas of concern for the Committee members and New Jersey stakeholders. The record included, among other items, academic literature on topics such as the drafting, administration, and scoring of the UBE; submissions from jurists in UBE jurisdictions providing the most current information available with regard to their experiences with the UBE; material gathered and prepared by staff to the Board of Bar Examiners regarding New Jersey's exam administration and testing processes; and state and national data compiled by staff in response to questions raised in the course of the Committee's review. The written material is discussed more precisely below in connection with the Committee's analysis on particular topics.

The Committee requested oral and written comments from the legal community and interested members of the public. By Notice to the Bar dated October 28, 2015, the Committee announced a public hearing, to be held at the Law Center in New Brunswick, New Jersey on November 18, 2015. (Appendix A). The Notice also requested written comments addressing the benefits and potential disadvantages of adopting the UBE in New Jersey. The Notice included an overview of New Jersey's current testing procedures, a detailed description of the UBE, and a summary of the possible benefits and disadvantages of adopting the UBE. The Notice was published on the Judiciary's website and in the *New Jersey Law Journal*. The closing date for written comments originally was set at November 30, 2015. Following requests from the New Jersey State Bar Association, the deadline for the submission of written comments was extended to December 30, 2015, and later, to January 22, 2016. The extensions were announced in Notices to the Bar dated November 20, 2015, and December 24, 2015, respectively, and were publicized on the Judiciary's website and in the *New Jersey Law Journal*.

The Committee received a small number of written comments from members of the legal and academic communities, as well as the public. (Appendix B). The comments expressed

individuals' views both in favor of and in opposition to the UBE, as well as group comments provided by the Student Bar Association of Rutgers Law School (Camden location), the Supreme Court Committee on Minority Concerns, and the New Jersey State Bar Association. The Committee thanks all of the contributors who took the time to submit comments to facilitate the Committee's work on this important topic.

As a group, the Student Bar Association of Rutgers Law School (Camden location) submitted a collaborative comment stating that adoption of the UBE generally is disfavored by those students who provided feedback to the student organization. The Association represented that students at Rutgers University's Camden location principally are concerned by the anticipated loss of ability to seek dual admission in Pennsylvania and New Jersey in a single exam administration.

The Supreme Court Committee on Minority Concerns (SCCMC) highlighted certain issues for the Committee's consideration, but declined to take a definitive position favorable or opposed to adoption of the UBE. The SCCMC urged the Committee to examine carefully the design and development of the UBE components, and emphasized the importance of maintaining a written component to the bar exam.

The individuals who submitted comments included law students, recent graduates, and seasoned practitioners. The majority of those individuals favored adoption of the UBE for various reasons, primarily the perceived benefits of score portability. The commenters who favored adoption of the UBE recognized that, at least temporarily, applicants would be unable to seek concurrent admission in New Jersey and Pennsylvania. However, they opined that, in time, particularly if New Jersey were to adopt the UBE, Pennsylvania might come to view the exam's merit and determine to adopt the uniform format.

At the public hearing, on November 18, 2015, representatives of the Committee heard testimony from two witnesses: (1) a representative of the New Jersey State Bar Association, and (2) a Juris Doctorate Candidate (2L) from New York Law School. (Appendix C).

The State Bar Association acknowledged the benefits of the UBE for applicants, and stated that, given the benefits of portability, "it may be time for New Jersey to adopt the UBE." However, the overall tone of the State Bar Association's message was cautionary and identified "areas of concern," including whether the UBE might impact the number of attorneys licensed in the state, whether the UBE ensures competency to practice law, and whether New Jersey law students are prepared to take the UBE. The State Bar Association provided preliminary charts and statistics from which it had drawn initial negative conclusions about the UBE's impact on other states' bar passage rates. (Appendix D). The Bar asked for an extension of time to analyze the meaning behind the figures, and represented that it would undertake that investigation and analysis.

Based in part on the initial concerns expressed by the leaders of the Bar, the Committee obtained additional data and shared that clarifying information with the Bar through its designated Committee representative. Ultimately, the Bar's final submission to the Committee concluded that New Jersey should continue to study the issue and make no change to its bar exam protocol at this time. The State Bar Association urged the Committee to reserve action on the UBE for at least one year, in the hope that additional information might be gleaned from the collective experiences of other states. The State Bar Association also preferred to know, prior to the adoption of the UBE, what accommodations would be made for applicants seeking dual admission in New Jersey and Pennsylvania.

The law student who testified recommended adopting the UBE, emphasizing that a portable score would increase applicants' access to jobs, among other benefits. He also brought to the attention of the Committee a draft resolution adopted by the ABA's Law Student Division, which encouraged adoption of the UBE. (Appendix E). The resolution was brought before the ABA's House of Delegates during the ABA Midyear meeting, and was adopted formally on February 8, 2016. The ABA's adopted resolution "urges the bar admission authorities in each state and territory to adopt expeditiously the Uniform Bar Examination."[31]

Separately, the Committee also reviewed resolutions adopted in 2010 by the Conference of Chief Justices and the ABA Section of Legal Education and Admissions to the Bar, which similarly urged the states to consider participating in the development and implementation of a uniform bar exam with scores that are transferrable among jurisdictions. (Appendix F, G). The resolutions noted that the modern practice of law includes greater multijurisdictional practice, and that "knowledge of local law can be addressed through a mandatory educational component, a separate state-specific assessment, or a combination thereof." (Appendix F, G).

Finally, the Committee reviewed material submitted from knowledgeable persons in bar testing generally, and UBE testing in particular. Those subject-matter experts included jurists from states that have adopted the UBE and experienced leaders of New Jersey's own Board of Bar Examiners.

Among those jurists was the Honorable Cynthia L. Martin of Missouri, President of the Missouri Board of Law Examiners when Missouri became the first state to adopt the UBE.

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[31] See American Bar Association, House of Delegates Resolution 109, http://www.americanbar.org/content/dam/aba/images/abanews/2016mymres/109.pdf (last visited Feb. 12, 2016).

Judge Martin provided testimony before New York's Advisory Committee in February 2015, and submitted a written statement to our Committee to expand on her testimony and reflect her state's recent experience with the UBE. (Appendix H). In her testimony before New York's Advisory Committee, Judge Martin defined the bar exam as a test of minimum competence to practice law, and rated the UBE as "a tried and true mechanism" for assessing applicants' abilities in that regard. (Appendix H, Attachment 1 at 127, 129). She shared that Missouri's experience with the UBE had been positive and had not ushered in the "parade of hypothetical horribles" that initially were feared by skeptics. (Id. at 128).

Judge Martin also addressed whether the UBE had caused a decline in the bar passage rate and whether the performance of minority applicants had been impacted by the UBE. According to Judge Martin, the overall passage rate did not decline in Missouri with the adoption of the UBE, but rather increased slightly and then stabilized. Similarly the passage rate for minority applicants increased slightly when Missouri adopted the uniform exam. Echoing her testimony before the New York Advisory Committee, Judge Martin conveyed to the Committee that Missouri has not seen any evidence that the UBE has a disparate impact on minority applicants.

The Honorable Rebecca Berch (retired) was Chief Justice of the Arizona Supreme Court when it adopted the UBE. Like Judge Martin, Chief Justice Berch testified before New York's Advisory Committee, and provided our Committee with an updated statement reflecting the most current information on the subject of the UBE's administration. (Appendix I). Chief Justice Berch reported that Arizona is pleased with the UBE, noting that applicants have been greatly benefitted by the advent of portable scores, and that passage rates have remained stable. According to Chief Justice Berch, the UBE initially was opposed by Arizona's organized bar,

which feared that portable scores would open “the floodgates” and that experienced lawyers would arrive to compete for clients. (Ibid.). However, those concerns dissipated after practitioners observed that scores may be transferred only for a short time.

The Committee also had the great benefit of input from Elizabeth Weiler, Esq., the Chair of the New Jersey Board of Bar Examiners. Ms. Weiler presented very valuable comments concerning the quality of the UBE, and, at the request of the Committee Chair, she reduced some of her commentary to memorandum format for inclusion in the public record. (Appendix J). In her statement assessing the UBE components, Ms. Weiler specifically addressed and explained her confidence in the quality of the MEE and MPT -- the two components of the UBE not presently administered in New Jersey. Ms. Weiler observed that both the New Jersey bar exam and the UBE test on law of general application, such that if an applicant is studying for the current New Jersey exam, he or she also is preparing for the material covered on the UBE. In Ms. Weiler’s view, the exams’ coverage and quality are aligned, and adoption of the UBE would not result in substantive alteration in New Jersey’s testing protocol. Pivoting from Ms. Weiler’s comments, the Committee’s law school representatives similarly reported that, in their view, New Jersey’s law school graduates would be prepared to take the UBE without any significant changes to the law schools’ existing curriculum.

V. COMMITTEE DISCUSSION AND ANALYSIS

A. Accurate measure of competence to practice law

In determining whether to recommend adoption of the UBE, the Committee first considered the purpose of professional licensing exams. Like the New York Advisory Committee, the Committee readily acknowledged that the purpose of the bar exam is to protect the public through a test of minimum competence. It is not an anti-competitive device. It is a tool to assure protection of the public served by attorneys licensed in New Jersey.

Therefore, before considering any potential benefits or drawbacks of adopting the UBE, the Committee viewed its task as first settling the threshold question of whether the UBE is a fair, accurate, and reliable means of measuring competence to practice law. To resolve that inquiry, the Committee undertook a detailed review of the processes by which the UBE exam questions are drafted, administered, and graded. As a result of that review, the Committee reports to the Court that it is fully satisfied that the UBE is an accurate measure of an applicant's competence to practice law, which, if adopted, will maintain New Jersey's steadfast commitment to protecting the public.

First, the Committee noted that New Jersey has been administering the NCBE's multiple-choice test (*i.e.*, the MBE) since 1972, and has cultivated ample confidence in the test as a measure of an applicant's general legal knowledge. In fact, the uniformly drafted and administered test accounts for 50% of an applicant's overall score on the current New Jersey bar exam. If New Jersey were to adopt the UBE, the MBE would continue to account for 50% of an applicant's score, with the remaining 50% allotted to the MEE and MPT, which comprise 30% and 20% of the overall UBE score, respectively. The Committee observed that such a transition would effectively replace New Jersey's seven essay questions, with the NCBE's six essay questions (*i.e.*, MEE) and two practical tasks (*i.e.*, MPT).

Because New Jersey's current essay questions test on general legal principles, rather than local, substantive law, the Committee concluded that a transition to the MEE would have a de minimis impact on applicants. The Committee further concluded that the introduction of the MPT would not harm New Jersey applicants because many already are exposed to that testing format in neighboring jurisdictions. Moreover, the Committee members representing New Jersey's law schools confirmed that the content and format of the MEE and MPT would not require a change in the schools' curricula. In addition to teaching the general legal topics covered on the MEE, the law schools already are training their students in the practical legal skills tested on the MPT. Increasingly, the schools have emphasized skills-based training, in part because so many of their graduates take bar exams involving practical questions, such as New York, Pennsylvania, and California.

To confirm the perceived validity of the MEE and MPT components, the Committee reviewed academic and professional organizations' articles describing how the test materials are drafted and vetted by the NCBE. The literature described a rigorous development process for the MEE and MPT.[32] It begins with Drafting Committees, comprised of professors, attorneys, and judges from various jurisdictions, who draft, review, and edit proposed questions. The proposed questions and their grading materials are then reviewed by outside content experts to evaluate their "thoroughness, accuracy, and clarity."[33] They also are pretested by newly licensed attorneys, who provide detailed feedback on the test material. Approximately fifteen months prior to administration, the MEE/MPT Policy Committee reviews the material and discusses any items of concerns. The material is further cite-checked and proofread by lawyer-editors and

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[32] See, e.g., Gundersen, supra at 30.

[33] Ibid.

editorial assistants to ensure the accuracy of the material and to confirm that the legal principles remain sound law. Having reviewed the NCBE's meticulous preparation and vetting of MEE and MPT test components, the Committee is confident that the broad scope of review and input from learned contributors support the perceived quality of the test materials.

To assist its discussion of the background material, the Committee's experienced test administrator, the Chair of the Board of Bar Examiners, reviewed in detail the MEE and MPT testing formats. Bringing to bear her twenty-six years of experience in the area of bar exam administration, Ms. Weiler reported that she found tremendous consistency between the New Jersey essay component and the MEE. Specifically, Ms. Weiler found similarity in several important areas, including, in her considered opinion, that

- the questions appear fair, well-researched, and well-worded;
- there are no extra or unnecessary words employed in the questions;
- there are no "tricks or aha-s," "runway lights," or obvious hints embedded in the questions; candidates must themselves identify the subject matter of the question, *e.g.*, torts, constitutional law, real property, contracts;
- the questions are neutral and devoid of any potentially offensive references from the standpoint of race, sex, religion, politics, gender, or diverse cultures;
- the questions also are devoid of pop-culture references or terminology common among certain geographic regions or cultures, such that it might not be familiar to all candidates and might therefore disadvantage some subset of candidates;
- the questions appear to be written so that candidates can distinguish themselves based on their knowledge of applicable general law and their abilities to reason, to apply the facts to the law, to organize, and to communicate coherently; and
- the questions appear to include enough issues so that grading can be done on the six-point scale currently employed by New Jersey graders.

  [(Appendix J)].

Ms. Weiler similarly expressed confidence that the MPT questions are "well-written and well-presented, and provide a fair opportunity for the candidates to demonstrate practical lawyering

skills." In sum, Ms. Weiler represented to the Committee that the UBE tests on the same legal topics as the current New Jersey bar exam, utilizes the same general testing stratagem, and requires applicants to demonstrate the same lawyering skills.

Notably, some of Ms. Weiler's impressions, particularly with regard to the fairness of the test materials, were aligned with views that had been exchanged among some Committee members. In particular, Felipe Chavana, Esq., Executive Director of Essex-Newark Legal Services and designee of the Hispanic Bar Association of New Jersey, expressed the view that as a uniformly drafted and administered exam, the UBE's essay component (the MEE) would be prone to eliminate any perceived racial, ethnic, or regional advantage or disadvantage.

Following an in-depth discussion of the material, the Committee found that the MEE and MPT are fair, well-written, and well-researched testing instruments. The Committee concluded that the MEE and MPT are licensure exam materials of high quality sufficient to gauge competence to practice law with reliability and accuracy. In so concluding, the Committee noted that those testing mechanisms are being utilized in the overwhelming majority of jurisdictions: Thirty-one jurisdictions administer the MEE, and forty-one jurisdictions administer the MPT.[34] The prevalence of the UBE test components was additional convincing evidence of the exam's effectiveness as a measure of minimum competence and weighed heavily in the Committee's evaluation of the UBE's testing components' soundness and quality. The Committee also considered the collective assurances of the law school representatives that New Jersey's law

[34] See Gundersen, supra at 30. In 2016, two additional jurisdictions will administer the MEE, and one will add the MPT. Kansas will add the MEE and the MPT in February 2016 with its first administration of the UBE. Similarly, New York will add the MEE in July 2016 with its first administration of the UBE.

school graduates are equipped to handle a switch to the UBE format, recognizing that many applicants already take the UBE (or some of its components) in other jurisdictions.

B. Consistency in scoring practices and passage rates

After concluding that the UBE components are accurate testing tools, the Committee investigated the grading processes and scoring metrics to ensure reliability and freedom from bias. In response to questions and concerns raised by its members and by the public, the Committee delved deeply into that topic, and, based on its review, is satisfied that the UBE is scored fairly.

Given that each state grades the MEE and MPT questions for its own applicants, the Committee initially had questions about accuracy and consistency in that process, particularly because applicants will be permitted to apply for admission to the New Jersey bar based on a UBE score earned in another jurisdiction. Stated differently, the Committee was concerned that there might be an inherent unreliability in yielding partial control of the grading process to entities other than the New Jersey Board of Bar Examiners. In discussing that topic, Ms. Weiler, Chair of the Board of Bar Examiners, explained that other large jurisdictions, including New York and Pennsylvania, currently use similar grading and regrading processes to those utilized in New Jersey, and that our grading and regrading processes would not be changed if New Jersey were to adopt the UBE. Ms. Weiler and Ms. Susanne Johnson, the Executive Director of the Board of Bar Examiners, detailed the exhaustive processes by which the NCBE trains graders across all UBE jurisdictions to ensure uniformity, consistency, and accuracy on the MEE and MPT. Based on their collective experience and familiarity with test administrators across the country, Ms. Weiler and Ms. Johnson expressed the view that New Jersey can be very comfortable with other states' grading abilities and their seriousness of purpose.

For completeness, the Committee explored the hypothetical scenario in which graders in another jurisdiction might grade more leniently than graders in New Jersey. The Committee specifically sought to confirm that New Jersey applicants would not be harmed by grading anomalies. To explore that topic, the Committee reviewed articles and other materials that explained the mathematical process that accounts for grading discrepancies, namely "scaling." Through the process of scaling, any theoretical subjectivity in applicants' MEE and MPT scores is mitigated by plotting the scores against the MBE scores for the same administration. Because the MBE is not subjective and is evaluated for consistency from year to year, it serves currently as a demonstrably effective quality-control mechanism. Ms. Johnson expanded on the information conveyed in the articles and clarified the concept of scaling through an in-depth explanation and illustrative examples. (Appendix K). Following its deliberation, the Committee was satisfied that the UBE's scoring processes are fair, accurate, and consistent.

Similarly, the Committee is satisfied that adoption of the UBE is unlikely, in and of itself, to have any impact on the passage rate in New Jersey. To the extent that the State Bar Association raised that as a specific concern, staff to the Committee investigated the states that were asserted to have a significant passage rate change, negative or positive, due to the adoption of the UBE. From that review, the Committee determined that the passage rate changes identified as worrisome by the State Bar Association instead were aligned to state-specific alterations made to the states' exam protocol, and could not fairly be attributed to UBE implementation. (Appendix L). For example, the State Bar Association noted that Montana experienced an overall drop in its passage rate following adoption of the UBE. However, the Committee learned that, with the adoption of the UBE, Montana also raised its passing score from 260 to 270, which unsurprisingly corresponded with a decrease in its passage rate.

Similarly, the perceived drop in Nebraska's passage rate coincided with a lengthening of its exam session (from one-and-one-half days to two full days) and, by extension, a likely increase in the familiar phenomenon of test-taker fatigue. In addition, the Committee noted that many of the states cited by the State Bar Association as experiencing a change in their passage rates have extremely small testing populations, *e.g.*, Montana (180) and Wyoming (83),[35] such that a difference of one or two more applicants passing or failing results in the appearance of a significant percentage change.

In sum, the Committee concluded that the data relied on by the State Bar Association did not support the generalized conclusions reached by the Bar. Further, the Committee noted the downward national trend in recent bar exam scores overall, including in jurisdictions that do not administer the UBE. (Appendix M). The downward trend impacted UBE and non-UBE jurisdictions alike, demonstrating no special link between bar passage rates and the UBE and dispelling any such inference advanced by the State Bar Association. Thus, the Committee found no evidence to suggest that there would be any purported change in passage rates that would be attributable to New Jersey's adoption of the UBE. If the Court chooses to adopt the UBE, the Court may wish to reexamine the issue after three years' experience with the uniform exam, in order to assess whether there has been any impact on the passage rate that is attributable to the UBE.

Although the Committee found no evidence of bias in the UBE or its grading policies, the Committee sought reassurance that the UBE would not have a disparate impact on any particular subgroup of the test-taking population. On that point, the Committee drew support from the

[35] See National Conference of Bar Examiners, The Bar Examiner: 2014 Statistics at 10-11 (Mar. 2015), http://www.ncbex.org/dmsdocument/164.

detailed analysis and review conducted by the New York Advisory Committee.[36] Following its comprehensive analysis, the New York Advisory Committee determined, "[t]here is simply no available evidence suggesting that the UBE would negatively affect (or, for that matter, positively affect) any particular demographic group."[37]

On that issue, the Committee was informed further by the experiences of other jurisdictions that have adopted the UBE. Ms. Johnson, the Executive Director of the Board of Bar Examiners, reported to the Committee that New Mexico, which recently began administering the MEE and MBE exams in anticipation of its transition to the UBE, reported no observable impact on the passage rates for minority test takers when it introduced the uniform tests. That issue was of particular concern to the bar exam administrators in New Mexico, given the state's significant minority population, including three major racial and ethnic subgroups. The Committee was informed that staff to the New Mexico Board of Bar Examiners had carefully monitored test results for any impact on minority subgroups and found none.

Similarly, Judge Martin, who testified before New York's Advisory Committee, provided our Committee with current information on the issue. Judge Martin informed the Committee that the Board of Law Examiners in Missouri has not received complaints that the UBE has had a disparate impact on minority applicants. In fact, statistical data collected by the University of Missouri at Kansas City Law School indicates a slight increase in the passage rates for minority demographic groups. Judge Martin's experience is consistent with the testimony provided by the NCBE before New York's Advisory Committee, wherein the NCBE affirmed that "no

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[36] Advisory Committee on the Uniform Bar Examination, Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals at 53-63 (N.Y. April 2015).

[37] Id. at 61.

jurisdiction that has adopted the UBE has reported any adverse impacts on the bar passage rates of any particular group."[38]

In light of that body of evidence, and based on first-hand accounts from states that have implemented the UBE, the Committee is satisfied that the adoption of the uniform exam should not have a disparate impact on any testing population.[39] In fact, some members of the Committee opined that the adoption of a uniform exam -- drafted, vetted, and graded with all the resources of a nationally organized entity -- only would advance the precepts of fairness and consistency, to which the New Jersey Board of Bar Examiners long has been committed.

To the extent that some stakeholders and members of the public may yet have reservations about the UBE, the Committee took comfort in the fact that New Jersey will retain control over its admission requirements, and that all other licensing prerequisites established by the Supreme Court remain intact. Applicants still must

- earn a bar exam score that meets the minimum cut score established by the Court;
- earn a qualifying score on the MPRE, or pass an approved course on professional ethics given by an ABA-accredited law school;
- attain certification from New Jersey's Committee on Character, further safeguarding the public; and
- complete continuing education course work in important areas of New Jersey law, following admission to the practice of law.

[38] Id. at 60.

[39] If the Court is inclined to adopt the UBE, the Committee's law school representatives noted that, were the Court to conduct a post-adoption review of the UBE, New Jersey's law schools could be helpful in providing data to inform the Court's analysis with regard to applicant subgroups.

The Committee is confident that if New Jersey transitions to the UBE as its metric for measuring competence, the exacting admission standards will continue to protect the public and uphold New Jersey's reputation for excellence.

C. Score portability

Having determined that the UBE is an effective measure of competency, the Committee turned to consider whether New Jersey should embrace the exam in lieu of the current testing paradigm. Throughout the course of its deliberations, the Committee members discussed portability as a considerable advantage to adopting the UBE. Applicants in UBE jurisdictions earn a score that is transferrable to other UBE jurisdictions for a period of time established by each UBE jurisdiction and can be used to gain admission in those other jurisdictions, provided the score meets the jurisdictions' established cut scores and the applicant meets other admission requirements. In addition to other benefits, portability recognizes that the modern practice of law increasingly calls for geographic flexibility and multijurisdictional practice. Yet it is not a subterfuge for eliminating state-based geographic limits to attorney licensure. A candidate has a limited time to exercise UBE score portability and remains subject to each state's individual cut score and admission requirements.

Like the New York Advisory Committee, our Committee members placed significant positive value on score portability, candidate autonomy, and professional mobility, particularly in this time when law students are graduating into a difficult job market. The Committee reasoned that portable UBE scores will benefit applicants and their families by allowing greater mobility among recent law graduates and will benefit the public through the provision of increased legal resources in currently under-served areas. The Committee noted, as did the New York Advisory Committee, that portability might be of particular assistance to military families, which often are called on to relocate.

As a practical matter, UBE score transfers are not restricted to semiannual exam administrations, but rather can be transferred on request. That means that, rather than waiting for the next bar exam administration, an applicant seeking admission in a UBE jurisdiction can begin the process of applying at any point during the year, provided the applicant complies with the processes established by that jurisdiction.

In addition to enhanced mobility, score portability also will help alleviate the considerable financial strain facing applicants who currently sit for multiple bar exams. That concern was raised by members of the public, in comments and through testimony, and was a recurrent theme throughout the Committee's discussions. In particular, members of the Committee representing New Jersey's law schools spoke on behalf of their student communities, and urged the Committee to consider the financial impact of preparing for and sitting for multiple bar exams in different jurisdictions, all the while many students have significant student debt and mounting living expenses. The academic members relayed that, currently, students take multiple bar exams out of necessity to enhance their marketability; the members opined that if New Jersey were to adopt the UBE, applicants would have the opportunity to gain employment before expending additional funds on potentially superfluous bar applications.

Those concerns were echoed and expanded on by Ms. Johnson, the Executive Director to the Board of Bar Examiners, who addressed an issue that impacts the approximately 75% of applicants who seek admission concurrently in New Jersey and another jurisdiction. Ms. Johnson explained that, in her experience, many applicants decide to take two bar exams to increase their marketability following graduation because they are not sure where they ultimately will practice. However, inherent in that two-test model is an added financial and mental fatigue cost. Dual-state applicants must test for three consecutive days. Those applicants, some of

whom come from non-neighboring states such as Florida or Texas, take the first portion(s) of the exam out-of-state, and then travel on Tuesday or Wednesday night to take the remaining portion(s) of the exam in New Jersey. The three-day testing model is grueling and increases costs and fatigue for New Jersey candidates.

In response to concerns raised by some members, and, in particular, the State Bar Association, the Committee considered whether adopting the UBE might impact the number of applicants seeking admission to the bar of New Jersey. Although the potential impact is difficult to quantify prospectively, the Committee attempted to gauge such impact by canvassing other jurisdictions that have adopted the UBE. As a result, the Committee's discussions were informed by the experiences of UBE jurisdictions, which found no material change in their overall annual admission numbers post-UBE. Ms. Johnson explained that, generally, the same relative population of applicants applies for admission after a state adopts the UBE; the only change is that some of the applicants are no longer sitting for the exam in that state, and are relying on a UBE score earned in another jurisdiction. To the extent that some commenters expressed concern about an influx of UBE transfers that might amount to a significant increase in overall bar admissions, the commenters' speculation did not account for the corollary decrease in applicants actually sitting for the exam in New Jersey. On closer examination, the applicant pools in the existing UBE jurisdictions appear to be in equipoise once one accounts for both testers and transfer applicants.[40]

[40] Because the applicant pool is expected to be relatively unaffected by adoption of the UBE, the impact on the budget for the Board of Bar Examiners is projected by the Executive Director to be minimal at most. Adopting the UBE would increase certain costs, such as the added expense of purchasing MEE and MPT test materials from the NCBE (an additional cost of $50 per applicant); however, other costs are projected to decrease. Less space for applicant testing likely would be required, thereby decreasing its expenditure for test centers and other applicant-driven

In further attempting to estimate the impact that the UBE might have on overall attorney admissions, some members of the Committee expressed the view that New Jersey might experience a slight increase in applicants, despite the negligible change that other UBE jurisdictions experienced. Members noted that the New Jersey, New York, and Pennsylvania legal markets are attractive to prospective attorneys, and, consequently, New Jersey may experience a slight rise in the number of applicants with the advent of score portability. Other members posited that there may be a slight decline in the number of applicants. For reasons similar to those stated above, the members believed that many applicants who would have sought dual admission under the current testing model will wait, if the UBE is adopted in New Jersey, until they secure employment, rather than applying to the New Jersey bar as a matter of course.

Relatedly, some members of the Committee initially expressed concern that portable scores might increase local competition for New Jersey law school graduates and practicing attorneys because it will permit out-of-state applicants to seek jobs, and ultimately clients, in New Jersey. The Committee therefore considered whether New Jersey attorneys, particularly solo practitioners and those in small firms, likely would be impacted by adoption of the UBE. Ultimately, the Committee concluded that the impact, if any, would not be substantial: Score transfers are only available for a defined period of time, and, thus, they would not operate as a means for seasoned and experienced attorneys to gain admission to the New Jersey bar. Based on other states' experiences, there is no indication that portable scores will result in the feared "influx" of new applicants; in fact, some members of the Committee projected that New Jersey

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costs. Adopting the UBE in New Jersey likely would have a negligible financial impact for the Board of Bar Examiners, which experience has been borne out in other UBE jurisdictions.

may experience a small decline in admissions as students take a wait-and-see approach to their employment and consequently bar admission applications.

Finally, members of the Committee observed that the availability of score transfers does not equate to automatic admission. Applicants still must pay the application fee (currently $575), and comply with all admission and licensing requirements, including certification by the Committee on Character and CLE course work following admission. The Committee found that those safeguards are likely to restrict the applicant pool to law school graduates who have a sincere and invested interest in practicing law in New Jersey.

The Committee was mindful that its charge was to determine the best course forward to ensure that New Jersey applicants are adequately and fairly tested on their competence to practice law. Although the members were sensitive to any perceived impact on practicing attorneys, the Committee, like the New York Advisory Committee, determined that protectionist barriers and parochial interests could not drive its ultimate recommendation on this attorney-licensing issue. Having found that the UBE is an effective and accurate means of measuring minimum competence, and that score portability is a considerable and desirable advantage that will inure to the benefit of New Jersey applicants, the Committee recommends that the Court adopt the UBE as its testing mechanism.

D. Practical implications for dual-admission applicants

In recommending adoption of the UBE, the Committee recognized the plight of those New Jersey bar applicants who wish to gain admission concurrently in a non-UBE jurisdiction. Presently, by administering its essays on Thursday, New Jersey accommodates applicants who seek dual admission in a single exam administration. As a result, approximately 50% of New Jersey's bar applicants seek concurrent admission in New York, and approximately 25% seek admission in Pennsylvania. The Committee was mindful of the significance that the opportunity

for dual admission plays when students select a law school and, ultimately, determine where they will begin their legal practice. In large part, it is the Committee's desire to maximize employment opportunities and facilitate admission in multiple states that has led to its conclusion that the UBE presents the best path forward for New Jersey-based applicants.

Due to the tremendous overlap in testing populations, New York's adoption of the UBE raises real and practical concerns for New Jersey's applicants. However New Jersey determines to react, two distinct populations will be most affected and, consequently, are deserving of particular mention: (1) applicants who are seeking concurrent admission in New York and New Jersey, and (2) applicants seeking admission in Pennsylvania and New Jersey. The potential impact on those applicant subgroups was the subject of several public comments and was a topic of much Committee discussion.

As described previously, applicants seeking concurrent admission in New Jersey and New York under the existing schedule take New York's essays on Tuesday and New Jersey's essays on Thursday; applicants may choose to take the MBE in either jurisdiction on Wednesday. That said, New York will begin administering the UBE exam in July 2016. At that time, the Committee anticipates that all applicants seeking admission in New York and New Jersey will elect to sit for the MBE in New York, in order to earn a portable UBE score. That shift may well result in additional travel costs and burdens on New Jersey applicants seeking dual admission in the July 2016 administration.[41]

[41] Historically, out-of-state applicants to the New York bar were assigned to sit for the exam in Albany. In peak years, out-of-state applicants, including many from New Jersey, have been assigned to the overflow exam location in Buffalo. The Committee anticipates that, with the increase in applicants taking the MBE in New York, more New Jersey applicants may be assigned to sit for the exam in Buffalo, a significant distance for those returning for New Jersey's essays on Thursday.

The impact on dual New York and New Jersey applicants is anticipated to be even more consequential beyond July 2016. Although New York's Board of Law Examiners has agreed to transfer applicants' MBE scores for the July 2016 administration, we cannot expect that New York will continue the practice beyond that date. If that occurs, applicants will no longer be able to test in New York and New Jersey concurrently. Instead, applicants who wish to be admitted in New York and New Jersey will be required to sit and pay for multiple exam administrations (*e.g.*, New York in July 2017 and New Jersey in February 2018). Thus, an additional benefit from New Jersey's adoption of the UBE would be avoidance of that undesirable result, which otherwise <u>will</u> impact approximately 50% of New Jersey's testing population.

That said, the Committee was sympathetic to the unfortunate circumstance that, all other circumstances remaining the same, would be imposed on dual New Jersey and Pennsylvania applicants were New Jersey to adopt the UBE. Although adoption of the UBE would enable applicants to seek admission in New York and New Jersey, it would prevent applicants from seeking admission in New Jersey and Pennsylvania in the same exam administration. The potential conflict for New Jersey and Pennsylvania test takers is two-fold. First, Pennsylvania requires applicants to sit for the MBE in Pennsylvania, and will not accept an MBE score earned in New Jersey. Because applicants must take all components of the UBE in the UBE testing jurisdiction to receive a transferrable score, applicants would be required to take the MBE in New Jersey and, under Pennsylvania's current policy, would not be permitted to transfer that score to Pennsylvania. Second, Pennsylvania administers its essays on Tuesday, which is the same day that New Jersey would be administering the written components of the UBE (*i.e.*, MEE and MPT). Because applicants could not take the essay portions of both states' exams, and because they could not transfer their MBE scores to Pennsylvania, applicants would not be able

to seek admission in New Jersey and Pennsylvania concurrently. The Committee noted that the scheduling conflict would impact approximately 25% of its current testing population, and that the burden likely would fall more heavily on Pennsylvania residents: According to the most recently updated information, of the roughly 950 applicants who sought dual admission in Pennsylvania and New Jersey in 2015, approximately 650 of them registered from Pennsylvania, approximately 200 registered from New Jersey, and the remainder registered from other jurisdictions.

Ultimately, the Committee weighed the significant benefits of adopting the UBE against the anticipated challenges, and determined that continuing to accommodate dual Pennsylvania and New Jersey applicants -- although desirable -- is not a sufficient reason to decline adoption of the UBE. The Committee noted that communication between Pennsylvania and New Jersey concerning this issue has begun, and, so long as Pennsylvania remains a non-UBE state, the Committee is hopeful that those discussions will continue in order to determine whether some form of accommodation can be reached for dual New Jersey-Pennsylvania applicants.

E. Administrative considerations

In light of its recommendation to adopt the UBE, the Committee also considered two administrative considerations that the Court would have to address in transitioning to the uniform exam: (1) setting a passing score for the UBE, and (2) establishing a transfer period for scores earned in other jurisdictions.

In response to concerns raised by the State Bar Association, the Committee discussed what the Court might establish as a passing score (*i.e.*, "cut" score) for the UBE. The Executive Director of the Board of Bar Examiners explained that based on New Jersey's current "cut" score of 133 (on a 200-point scale), an equivalent passing score for an applicant taking the UBE would be a 266 (on a 400-point scale). The Committee discussed that there does not appear to be any

reason to question the current standard for passing the bar exam, and that changing the standard would make comparison of historic passage rates and UBE passage rates impossible in the future.

With regard to transfer periods, the Committee noted that each UBE jurisdiction may set its own period for the acceptance of scores earned in other testing jurisdictions. The Committee observed that transfer periods range from twenty-four months up to sixty months, with the most common limitations period being thirty-six months. (Appendix N).

In discussing an appropriate transfer period for New Jersey, the Committee observed that score portability was most likely to benefit applicants in the first three years of practice, as they look for and secure employment and determine where they will establish their legal practice. Based on its discussion, the Committee endeavored to recommend a transfer period that would maximize the benefits of portability for recent graduates, without making admission through UBE portability the means of expanding the practices of attorneys who were more established in their careers. That policy determination seemed to the Committee better suited for the Court's consideration in a setting other than that which was our Committee's charge. The Committee weighed the possible benefits of a shorter transfer period, such a twenty-four month period, but determined that a brief transfer window likely would encourage applicants to perpetuate the existing practice of seeking admission in multiple jurisdictions unnecessarily. The Committee found that such circumstances would cut against the cost-savings of portable scores for recent graduates. Ultimately, the Committee found a thirty-six month period to be a reasonable transfer period that strikes an appropriate balance between the various stakeholder interests. Therefore, the Committee determined to recommend the period of time most frequently selected by states adopting the UBE -- three years.

VI. RECOMMENDATIONS

In light of the above findings, the Committee, by overwhelming majority vote,[42] respectfully recommends that New Jersey adopt the UBE as a replacement for its existing bar exam format. The Committee has concluded that the UBE is a well-written exam that fairly assesses minimum competency to practice law, and that transitioning to the UBE would bestow considerable benefits on New Jersey stakeholders, while also upholding New Jersey's high standards for attorney licensure. To assure continued satisfaction with the UBE, and to monitor general concerns voiced during the Committee's discussions, the Committee recommends that the Court evaluate the UBE after three years of experience with its administration.

In taking this step, the Committee notes that it does not view adoption of the UBE as eliminating state-line barriers to attorney licensure or ceding local control over professional standards. The portability inherent in administering the UBE does not diminish the Supreme Court's supervisory role over attorney admissions or the standards required of New Jersey attorneys. Nor does it eliminate new attorneys' existing obligation to attain familiarity with areas of local law through completion of Court-approved course work. The Committee's recommendation is simply to replace the current protocol for assessing minimum competence to practice law with another format that similarly requires applicants to demonstrate competency.

The Committee emphasizes that the content covered by the UBE and the current New Jersey bar exam is aligned, and, more particularly, that the current New Jersey exam does not contain a state-specific component that would be lost by adopting the UBE. With regard to assuring knowledge of local law, the Committee does not perceive a need to administer a separate examination that would measure knowledge of New Jersey law as a new requirement

[42] The Committee's vote was sixteen to one in favor of adopting the UBE, with the State Bar Association's representative casting the sole vote in opposition.

for admission to the bar. Rather, the Committee recommends that the Court maintain the CLE obligations required for newly admitted attorneys, including mandatory New Jersey coursework.

If the Court is inclined to adopt the Committee's recommendation, it will have to address certain corollary issues regarding New Jersey's transition to the UBE, such as setting New Jersey's passing UBE score and establishing the duration for which applicants may transfer UBE scores to New Jersey. In respect of the former, the Committee unanimously recommends that the Court establish a cut score of 266 -- the mathematical equivalent to New Jersey's current cut score of 133 -- in order to maintain New Jersey's high standard of competency, and to allow for direct comparison of the UBE results against prior exam administrations. The Committee also unanimously recommends that the Court allow three years for the transfer of UBE scores, which would permit applicants to reap the benefit of score portability as they settle into their practice.

Finally, the Committee notes that if the Court adopts the UBE, New Jersey likely will be entitled to a seat on the NCBE's UBE Committee, where New Jersey will have input into UBE administration, regulations, and content. We note that all other UBE jurisdictions currently are members of that Committee. The Court may wish to see New Jersey's representatives play an even more active role in connection with NCBE activities to make certain that our views are heard and valued and to ensure that New Jersey remains a leader among testing jurisdictions.

In sum, the Committee recommends that the Court

- adopt the UBE;
- establish a cut score of 266;
- monitor the impact on bar passage rates and admission data, either in its own capacity or with the assistance of outside groups, such as New Jersey's law schools; and
- allow UBE scores to be transferred for a period of three years.

The Committee is confident that this course will benefit New Jersey's legal community, while upholding the Court's commitment to the service and protection of the public.

COMMITTEE MEMBERSHIP

Chair:

Justice Jaynee LaVecchia

Vice-Chair:

Justice John E. Wallace, Jr. (retired)

Members:

Mark C. Alexander – Professor & Associate Dean for Academics, Seton Hall School of Law

Angela V. Baker – Associate Dean of Students and Diversity Affairs, Rutgers Law School (Camden location)

Joseph A. Bottitta, Esq. (Newark)

Douglas S. Brierley, Esq. (Morristown) – Morris County Bar Association Representative

Felipe Chavana, Esq., – Executive Director of Essex-Newark Legal Services, and Hispanic Bar Association of New Jersey Representative

Stuart L. Deutsch – Dean Emeritus & Sr. Associate Dean, Rutgers Law School (Newark location)

Hon. Sallyanne Floria, A.J.S.C. (Essex)

Jenifer Fowler, Esq. (Haddonfield) – Camden County Bar Association President & Representative

Lauren D. Fraser, Esq. (Sparta) –New Jersey State Bar Association Representative

Steve G. Hockaday, Esq. (Elizabeth) –Garden State Bar Association Representative

Stuart M. Lederman, Esq. (Morristown) – Statewide Chair of the Committee on Character

Hon. Julio L. Mendez, A.J.S.C. (Atlantic/Cape May)

Lisa J. Rodriguez, Esq. (Cherry Hill)

Hon. Donald J. Volkert, Jr., A.J.S.C. (retired) (Passaic)

Elizabeth A. Weiler, Esq. (Cranford) – Chair of the Board of Bar Examiners

Staff:

Susanne K. Johnson, Executive Director & Assistant Secretary, Board of Bar Examiners

Heather Joy Baker, Esq., Supervising Attorney, Supreme Court Clerk's Office

APPENDICES

Appendix A: Notice to the Bar dated October 28, 2015

(Requesting public comments & announcing public hearing)

Appendix B: List of Commenters

Appendix C: Transcript of public hearing, November 18, 2015

Appendix D: Written testimony and charts prepared by the State Bar Association and submitted as part of public testimony

Appendix E: Draft Resolution of the ABA's Law Student Division, submitted by Secretary-Treasurer as part of public testimony

Appendix F: Resolution by the Conference of Chief Justices Endorsing Consideration of a Uniform Bar Examination (July 2010)

Appendix G: Resolution by the ABA Section of Legal Education and Admissions to the Bar Endorsing Consideration of a Uniform Bar Examination (August 2010)

Appendix H: Submission by the Honorable Cynthia L. Martin of Missouri, with attachments

Attachment 1: Transcript of testimony before the New York Advisory Committee

Attachment 2: Supplemental testimony before the New York Advisory Committee

Appendix I: Submission by the Honorable Rebecca Berch (retired), Chief Justice of the Arizona Supreme Court, with attachments

Attachment 1: Request to provide testimony before the New York Advisory Committee

Attachment 2: Transcript of testimony before the New York Advisory Committee

Appendix J: Memorandum by Elizabeth A. Weiler, Esq., Chair of the New Jersey Board of Bar Examiners

Appendix K: Explanation of Scaling Methodology with Examples, prepared by Board of Bar Examiners Staff

Appendix L: Annotations addressing State Bar Association's concern that change in bar passage rates was attributable to UBE adoption, annotations to State Bar Association's chart prepared by Board of Bar Examiners Staff

Appendix M: Chart depicting national passage rates and MBE scores, prepared by Board of Bar Examiners Staff

Appendix N: Chart depicting transfer periods for UBE jurisdictions, prepared by Board of Bar Examiners Staff

APPENDIX

APPENDIX A

NOTICE TO THE BAR

SUPREME COURT AD HOC COMMITTEE ON THE UNIFORM BAR EXAMINATION

CHAIR: JUSTICE JAYNEE LAVECCHIA

VICE CHAIR: JUSTICE JOHN E. WALLACE, JR. (RETIRED)

The New Jersey Supreme Court created the Ad Hoc Committee on the Uniform Bar Examination to review and recommend to the Court whether New Jersey should adopt the Uniform Bar Examination (UBE) as a replacement for the state's existing bar examination format. Recently, following an extensive study and written report, the New York Court of Appeals determined to implement the UBE beginning with the July 2016 administration, which will impact significantly applicants for the New Jersey bar examination. In light of this development, the Supreme Court has charged the Ad Hoc Committee with studying the available literature on the UBE, with particular emphasis on the report authored by the New York Advisory Committee, and examining any issues unique to New Jersey.

With that as its charge, the Ad Hoc Committee hereby requests oral and/or written comment from the legal community and interested members of the public. The Ad Hoc Committee will hold a public hearing for oral comments on Wednesday, November 18, 2015, from 6:00 p.m. to 8:00 p.m., at the New Jersey Law Center in New Brunswick, New Jersey. If you would like to make a short presentation at the hearing, please notify Committee Staff Susanne Johnson by telephone (609-984-3073) or email (susanne.johnson@judiciary.state.nj.us). If time permits, other attendees may speak during this public hearing.

Written comments may be sent by November 30, 2015, to the Ad Hoc Committee on the Uniform Bar Examination, Attention: Committee Staff Susanne Johnson, Supreme Court Clerk's Office, Richard J. Hughes Justice Complex, P.O. Box 973, Trenton, New Jersey, 08625-0973. Comments may also be submitted via e-mail to the following address: Comments.Mailbox@judiciary.state.nj.us. Those submitting comments by mail should include their name and address, and those submitting comments by e-mail should include their name and e-mail address. The Ad Hoc Committee will not consider comments submitted anonymously. Comments are subject to public disclosure.

After the Ad Hoc Committee has received and considered the comments and completed its review of the subject matter, it will issue a report setting forth its specific findings and recommending to the Court whether New Jersey should adopt the UBE. This report is expected for the Court's review in early 2016.

Jaynee LaVecchia

Justice Jaynee LaVecchia, Chair
Ad Hoc Committee on the
Uniform Bar Examination

Dated: October 28, 2015
Attachment

SUPREME COURT AD HOC COMMITTEE ON THE UNIFORM BAR EXAMINATION

TO THE LEGAL COMMUNITY AND INTERESTED MEMBERS OF THE PUBLIC: REQUEST FOR COMMENT

The Supreme Court Ad Hoc Committee on the Uniform Bar Examination requests comments to inform its findings and recommendation as to whether New Jersey should adopt the Uniform Bar Exam (UBE).

The UBE is a standardized test consisting of three exam components authored by the National Conference of Bar Examiners (NCBE): the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT). The MBE is a multiple choice test consisting of 200 questions covering a broad range of topics and is currently administered in all states except Louisiana. The MEE is comprised of six essay questions testing law of general application, and is currently administered in 28 states and the District of Columbia. The MPT includes two tasks designed to test practical lawyering skills, and is currently administered in 38 states and the District of Columbia. Although New Jersey currently utilizes the MBE, it does not use the MEE or MPT. Instead, the New Jersey exam contains seven essays drafted by the Board of Bar Examiners and does not include a task-based practical component. In addition to administering the NCBE's uniform exam, UBE jurisdictions must adhere to certain other conditions, including transferring and accepting the UBE score to and from other UBE jurisdictions. Jurisdictions may add local components to the UBE if desired. New Jersey does not test on local law.

At this time, 17 jurisdictions have elected to adopt the UBE. Applicants in UBE states receive a score that is portable (*i.e.*, transferrable) to other UBE jurisdictions for a fixed period of time. If the applicant's score meets the minimum passing score set by another UBE jurisdiction, the score can be accepted for the purpose of applying for admission in that other jurisdiction. Note that although UBE scores are portable, applicants still must meet all of the admission requirements imposed by each state, including, for example, minimum passing score, educational requirements, and character and fitness certification, among other considerations.

Recently, following an extensive study and comprehensive written report, New York determined to implement the UBE beginning with the July 2016 examination.[1] It is expected that New York's transition to the UBE will have a significant impact on New Jersey, as approximately 50% of all New Jersey bar applicants also test in New York. In addition, it is anticipated that other states in the region soon may become UBE states, following New York's lead.

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[1] See Advisory Committee on the Uniform Bar Examination, Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals (Apr. 2015), http://nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf.

In light of these developments, the Supreme Court has charged the Special Committee with studying the available literature on the Uniform Bar Examination, with particular emphasis on the New York Advisory Committee's report, and, in addition, examining any issues that may be unique to New Jersey. Upon completion of the charges, the Committee will issue a report setting forth its findings and recommending to the Court whether New Jersey should adopt the UBE. This report is expected for the Court's review in early 2016.

How will New Jersey applicants be affected by the adoption of the UBE in other states?

As stated above, the current New Jersey bar examination consists of the Multistate Bar Examination (MBE) on Wednesday and seven essays, prepared by the Board of Bar Examiners, on Thursday. That schedule allows applicants to seek admission in New Jersey and in neighboring states in a single examination administration. For example, in New York and Pennsylvania, the two states in which the majority of New Jersey applicants also test,[2] the essays are given on Tuesday. Applicants who test in New Jersey and another jurisdiction take that state's essays on Tuesday, the MBE on Wednesday, and New Jersey's essays on Thursday.

Critically, however, UBE states are not required to transfer MBE scores to non-UBE states, and we cannot expect that they will. Transferring MBE scores for all dual-state applicants increases the administrative burden on UBE jurisdictions. Therefore, as nearby jurisdictions transition to the UBE (*e.g.*, New York and potentially Vermont, July 2016), we can no longer expect that those states will continue to share applicants' MBE scores with New Jersey past that date. It is anticipated that UBE jurisdictions will end the practice, thereby preventing applicants from seeking admission in New Jersey and certain other jurisdictions (*e.g.*, New York) concurrently.

What are the possible benefits and disadvantages of adopting the UBE?

When considering whether to recommend the adoption of the UBE, the Ad Hoc Committee will review a number of factors, including the anticipated benefits and potential challenges inherent in moving to participate in the uniform examination. The factors below, while not exhaustive, illustrate some of the advantages and concerns considered by jurisdictions exploring a transition to the UBE, or which have recently opted to participate in the uniform examination.

Score portability and applicant autonomy are among the principle benefits of administering the UBE. The portability of an applicant's UBE score fosters mobility among recent law graduates, which may be of particular benefit in a difficult job market. Portability of one's UBE score also recognizes the prevalence of multijurisdictional practice in the modern legal community, as many of our attorneys are practicing across state lines, particularly in Pennsylvania and New York.

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[2] For context, approximately 50% of New Jersey's applicants also seek admission in New York; 25% of New Jersey's applicants also seek admission in Pennsylvania.

As a practical matter, UBE scores can be transferred upon request among participating states. This means that rather than waiting for the next bar examination administration, an applicant seeking admission in a UBE jurisdiction immediately can begin the process of applying for admission, provided the applicant complies with the processes established by that jurisdiction.

Along the same lines, score portability removes the need for applicants seeking admission in two jurisdictions (*e.g.*, New York and New Jersey) to test for three days in a row as they currently must. Alternatively, applicants who seek admission in multiple jurisdictions currently must prepare for and sit for multiple bar examinations in successive administrations (*e.g.*, taking one exam in July and another in February). If New Jersey were to adopt the UBE, its applicants could take the single two-day examination and transfer their scores to any UBE jurisdiction without sitting for an additional day of testing or taking a subsequent exam.

However, adopting the UBE would impact certain dual-state applicants differently. Although adoption of the UBE would permit applicants to easily seek admission in New York and New Jersey, it would prevent applicants from seeking admission in New Jersey and Pennsylvania in the same examination administration. If New Jersey were to adopt the UBE, New Jersey would be required to administer its essays on Tuesday, instead of Thursday, thereby conflicting with Pennsylvania's essay examination, which also is administered on Tuesday. Further, Pennsylvania requires its applicants to sit for the MBE in Pennsylvania, and will not accept an MBE score transferred from another jurisdiction. This requirement would conflict with New Jersey's administration of the UBE because, in order for a UBE score to be transferrable, applicants must take all parts of the test (including the MBE) in the UBE state. Therefore, if New Jersey were to adopt the UBE, an applicant could not fulfill the requirements of New Jersey's and Pennsylvania's bar examinations in a single administration.

Another potential concern of adopting the UBE might be the loss of control over the drafting of the written components of the exam, specifically the transition to the NCBE's essays (MEE) and practical writing tasks (MPT). Like the UBE, the New Jersey bar examination currently tests on multi-state subjects only and does not contain a New Jersey-specific component. In addition, even if New Jersey were to adopt the UBE, the Board of Bar Examiners still would retain local control over admission requirements, including the minimum passing score, education requirements, and character and fitness certification for admission in New Jersey.

Submission of Public Comment

Against that backdrop, the Ad Hoc Committee hereby requests oral and/or written comment from the legal community and interested members of the public addressing the benefits and potential disadvantages of adopting the UBE in New Jersey. Those seeking to submit a comment should follow the procedure set forth in the Notice to the Bar, published above.

APPENDIX B

LIST OF COMMENTERS

1. Alec D. Whalen, J.D., Ph.D. (October 28, 2015)
2. Barbara Strauss, J.D. Candidate (November 14, 215)
3. Sheena Shah, J.D. Candidate (November 18, 2015)
4. Mark M. Tallmadge, Esq. (November 20, 2015)
5. Rutgers Law School – Camden, Student Bar Association (November 30, 2015)
6. Allison Nickels, Esq. (Dec. 2, 2015)
7. Edward Hanratty, Esq. (December 4, 2015)
8. Timothy Gaskill, Law Clerk (December 10, 2015)
9. Supreme Court Committee on Minority Concerns (January 22, 2016)
10. New Jersey State Bar Association (January 22, 2016)

APPENDIX C

SUPREME COURT OF NEW JERSEY
AD HOC COMMITTEE ON THE UNIFORM BAR EXAMINATION

PUBLIC HEARING

TRANSCRIPT
OF
HEARING

Place: Law Center
1 Constitution Square
New Brunswick, NJ 08901

Date: November 18, 2015

PRESENT:

JUSTICE JAYNEE LaVECCHIA
JOSEPH A. BOTTITTA, ESQ.
DOUGLAS S. BRIERLEY, ESQ.
STUART M. LEDERMAN, ESQ.
ELIZABETH A. WEILER, ESQ.

SPEAKERS:

HAEKYOUNG SUH, Esq., Hunterdon County Trustee
JOHN LOUROS, JD Candidate, Treasurer of the American Bar Association's Law Student Division

Transcriber, Andrea Foy
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Audio Recorded

1 JUSTICE LaVECCHIA: All right. I think we'll
2 start tonight's public hearing. Good evening,
3 everyone. I am Associate Justice Jaynee LaVecchia.
4 And I'd like to welcome everyone to the public hearing
5 of the Supreme Court AD Hoc Committee on the Uniform
6 Bar Examination. I have some opening remarks I'd just
7 like to read into the record because we're going to
8 make a transcript from tonight's proceeding.
9 The New Jersey Supreme Court created the Ad
10 Hoc Committee to review and recommend to the Court
11 whether New Jersey should adopt the Uniform Bar
12 Examination commonly referred to as the UBE. And that
13 would be as a replacement for the State's existing Bar
14 Examination format. As I mentioned, I'm an associate
15 justice of the court, and I'm honored to serve as chair
16 of the Committee. And present today are
17 representatives of the Committee who I am pleased to
18 have in attendance today. I'm going to ask them to
19 please just identify themselves for our record starting
20 with former president of the State Bar Mr. Bottitta.
21 MR. BOTTITTA: Thank you, Justice. Joseph A.
22 Bottitta.
23 MR. BRIERLEY: Douglas S. Brierley.
24 MR. LEDERMAN: Stuart M. Lederman.
25 MS. WEILER: Elizabeth Weiler.

1 JUSTICE LaVECCHIA: Thank you very much. A
2 transcript of today's hearing will be made available to
3 all of the distinguished members of the legal community
4 who have volunteered their time and have agreed to
5 serve as members of this important Committee, but who
6 are not present to actually be here to receive your
7 comments in person. As you are likely aware, the New
8 York Court of Appeals recently determined to implement
9 the UBE beginning with the July 2016 administration.
10 The transition will directly impact
11 applicants for the New Jersey Bar Examination. In
12 light of the recent development in New York our Supreme
13 Court has charged the Ad Hoc Committee to study the
14 available literature on the UBE with particular
15 emphasis on the report authored by the New York
16 Advisory Committee, and for our Committee to examine
17 any issues unique to New Jersey.
18 With that as our charge the Committee issued
19 a notice to the Bar in request for comment seeking
20 input from the legal community to inform our findings
21 and our ultimate recommendation as to whether New
22 Jersey should adopt the UBE. We thank those who are in
23 attendance tonight for answering that call for public
24 comment.
25 After the Ad Hoc Committee has received and

1 considered the comments and has completed its review on
2 the subject matter it will issue a report setting forth
3 its specific findings and recommendations to the court
4 as to whether New Jersey should adopt the UBE. This
5 report is expected for the court's review in early
6 2016. So, allow me to just set out some general
7 background to today's public hearing. The UBE is a
8 standardized test consisting of three components
9 authored by the National Conference of Bar Examiners.
10 The Multi-state Bar Examination, called the
11 MBE, the Multi-state Essay Examination, the MEE, and
12 the Multi-state Performance Test, the MPT. The MBE is
13 a multiple choice test consisting of 200 questions
14 covering a broad range of topics. The MEE is comprised
15 of six essay questions testing law of general
16 application. The MPT includes two tasks designed to
17 test practical lawyering skills.
18 The New Jersey Bar Exam currently includes
19 the MBE, but does not use the MEE or the MPT. Instead,
20 the New Jersey Exam contains seven essays drafted by
21 the Board of Bar Examiners led by Ms. Weiler, and does
22 not include a task-based practical component. At this
23 time 18 jurisdictions across the Nation have elected to
24 adopt the UBE.
25 In addition to administering the National --

1 the NCBE's Uniform Exam, UBE jurisdictions are required
2 to adhere to certain other conditions including
3 transferring and accepting UBE scores to and from other
4 UBE jurisdictions. Specifically, applicants in the UBE
5 states require a score that is portable to other UBE
6 jurisdictions for a fixed period of time. If the
7 applicant's score meets the minimum passing score set
8 by another UBE jurisdiction, the score can be accepted
9 for the purpose of applying for admission in that other
10 jurisdiction.
11 Notably, although UBE scores are portable
12 applicants still must meet all of the admission
13 requirements imposed by each state including, for
14 example, minimum passing score, educational
15 requirements and character and fitness certification
16 among other considerations. UBE jurisdictions may also
17 add local components to the uniform exam if required.
18 New Jersey at present does not have a local law-
19 specific test.
20 With that background I would like to invite
21 our first speaker, Ms. Suh, to address the Committee
22 and to provide comments. And if you would, Ms. Suh,
23 when you go up to the podium would you please say and
24 spell your name for the record. Thank you very much.
25 MS. SUH: Do you prefer me to sit in my

1 chair, or --

2 JUSTICE LaVECCHIA: Well, it's better for you

3 to be with the microphone --

4 MS. SUH: Okay.

5 JUSTICE LaVECCHIA: -- I suppose, but please

6 make yourself as comfortable as possible.

7 MS. SUH: Okay.

8 JUSTICE LaVECCHIA: We can all see you.

9 MS. SUH: Good evening, Justice LaVecchia and

10 esteemed members of the Committee. My name is

11 Haekyoung Suh, it's spelled H-a-e-k-y-o-u-n-g, the last

12 name is Suh, S-u-h. I'm a Trustee of the New Jersey

13 State Bar Association, and I'm honored to testify

14 tonight on behalf of the State's largest professional

15 organization of lawyers, judges and other legal

16 professionals.

17 Thank you for affording the opportunity for

18 members of the profession and the public to discuss

19 adoption of the Uniform Bar Exam in New Jersey. In

20 considering the value of the UBE, as with any

21 substantive change to the professional, a compass is

22 whether the proposed change or reform ultimately

23 protects members of the public who seek assistance from

24 lawyers.

25 We believe the UBE has obvious benefits for

1 test takers such as having the ability to sit for one
2 test that would be considered in the admission process
3 in several states. Because of the portability benefits
4 it may be time for New Jersey to adopt the UBE. But,
5 before we take that leap toward uniformity we ask the
6 Committee to extend the comment period by at least 30
7 days so additional information can be obtained about
8 the UBE's potential impact on law students, newly
9 admitted attorneys, employers and the profession
10 generally.
11 Data needs to be called and examined to
12 determine whether the adoption of the UBE adequately
13 ensures competency to practice law in New Jersey. Our
14 paramount concern is the ensure the quality of New
15 Jersey lawyers who serve the public. We have several
16 initial areas of concern. First, we do not know the
17 impact of the UBE on the number of attorneys passing
18 the Bar Exam or becoming licensed in each state.
19 And in particular if there's any disparate
20 impact on specific demographic and minority groups.
21 Before adoption of the UBE data from other UBE states
22 regarding passage rates and UBE admissions needs to be
23 analyzed. In particular we urge a close analysis of
24 UBE scores on different demographics so we can be
25 confident that adoption of the UBE would not adversely

1 affect any particular demographic or minority group.
2 I have provided graphic illustrations of data
3 from the National Conference of Bar Examiners that
4 shows some fluctuation in passage rates and some
5 increases in UBE admissions in certain states. But,
6 without further information it is difficult to
7 determine what those statistics actually mean for the
8 practice of law in those states and how that translates
9 to what we can expect in New Jersey.
10 Second, we do not know whether the UBE
11 ensures competency to practice law in New Jersey.
12 Consideration should be given to whether a separate
13 state-specific test on New Jersey laws is necessary to
14 ensure the applicants seeking to practice law in New
15 Jersey are sufficiently familiar with our rules of
16 professional conduct. Other states have done this, and
17 we need time to consider whether New Jersey should
18 adopt similar tests.
19 Third, are law students in New Jersey
20 adequately prepared to take the UBE? It's critical to
21 examine whether New Jersey's law schools need to adjust
22 their curricula to ensure graduates are adequately
23 prepared for the multi-state performance test, which is
24 a new exam component of the UBE that tests practical
25 skills as opposed substantive legal knowledge.

1 Finally, there are logistical questions we
2 need to have answered. First, would it ease the
3 appropriate passing score under the Uniform Bar Exam?
4 What is the appropriate time frame to transfer a score
5 to New Jersey? Since Pennsylvania rejected the UBE and
6 Pennsylvania administers its exam on the same UBE
7 Tuesday testing day how do we handle applicants who
8 wish to take the Pennsylvania Bar Exam and the New
9 Jersey Bar Exam in the same testing administration
10 cycle?
11 Are there any additional costs that test
12 takers or the judiciary will have to absorb as a result
13 of adopting the UBE? And finally, should New Jersey
14 reject the UBE what will happen to New Jersey
15 applicants who wish to take the New Jersey and the New
16 York Bar Exams in the same testing administration? We
17 need to ensure that New Jersey applicants can sit for
18 the UBE in New York and still take the New Jersey Bar
19 Exam in the same testing cycle.
20 We need sound answers to these questions
21 before we abandon the current exam format in favor of
22 the UBE. I thank you for the opportunity to share the
23 concerns of the New Jersey State Bar Association. And
24 I prepared to answer any questions you may have at this
25 time.

1 JUSTICE LaVECCHIA: Your request for the 30
2 additional days of time to comment would allow for the
3 State Bar to collect some of the data that you suggest
4 is important for us to consider?
5 MS. SUH: Yes, Your Honor. Right now we have
6 statistics from the National Conference of Board
7 Examiners, but they only show numbers. You look at one
8 of the charts it shows that the passage rates in
9 certain states that have adopted the UBE have actually
10 gone down. And we do not know whether that's a result
11 of the UBE or some other factor, or within those --
12 within that subset of people who did pass the UBE did
13 that adversely affect certain populations or not. We
14 need further information to delve into those states to
15 figure out whether there's any correlation.
16 JUSTICE LaVECCHIA: You're telling me the
17 State Bar plans to do that?
18 MS. SUH: Yes, Your Honor.
19 JUSTICE LaVECCHIA: Helpful information. We
20 do have the New York report doing some of that
21 evaluation. And some of these questions are things
22 that our staff will be looking into for us as well.
23 But, I believe that your president of the State Bar has
24 also sent a letter to me and to the chief justice
25 requesting 30 additional days to allow the State Bar to

1 collect some additional information and provide it to
2 the Committee. And the chief justice has indicated to
3 the State Bar President that that will be acceptable.
4 MS. SUH: Thank you, Your Honor.
5 JUSTICE LaVECCHIA: So, we will be looking
6 forward to those comments within 30 days.
7 MS. SUH: Very good.
8 JUSTICE LaVECCHIA: Okay. Thank you.
9 MS. SUH: Thank you.
10 JUSTICE LaVECCHIA: Do the members of the
11 Committee have any questions you'd like to ask at this
12 time?
13 MR. BOTTITTA: I do not.
14 MR. LEDERMAN: Nothing.
15 JUSTICE LaVECCHIA: Thank you very much for
16 the thoughtful comments. We appreciate your time.
17 MS. SUH: Thank you.
18 MS. WEILER: Thank you. Thank you very much.
19 MR. BOTTITTA: Thank you.
20 JUSTICE LaVECCHIA: Our next commenter, John
21 Louros?
22 MR. LOUROS: Yes.
23 JUSTICE LaVECCHIA: Please come up to the
24 podium. If you could just please for the record state
25 your name and tell us where you come from?

1 MR. LOUROS: Sure. My name is John, J-o-h-n
2 L-o-u-r-o-s. Good evening. Thank you for allowing me
3 to speak tonight. Adopting the Uniform Bar Exam is
4 important for the State of New Jersey, and carefully
5 studying the impact of the adoption is essential. My
6 name is John Louros. I am a second year law student at
7 a New York law school.
8 While I'm not reflecting official policy of
9 the American Bar Association and I am speaking in my
10 own capacity, I would like to note that I am on the
11 Governing Board of the Law Student Division of the ABA
12 who represents upwards of 60,000 law students from
13 across the country. Many of these members attend law
14 school in New Jersey and neighboring states and have a
15 strong interest in practicing law in New Jersey.
16 The Law Student Division is tasked with
17 suggesting and creating policy on behalf of these law
18 students. In my experience with the Law Student
19 Division I have helped craft a resolution that the
20 Division is bringing forward in February to the ABA
21 House of Delegates, the ABA's governing body, to take a
22 stance in favor of the State's adoption of the Uniform
23 Bar Exam.
24 Our members have asked us to do such, and
25 we've continuously been advocating amongst ABA members

1 and legal policy makers alike. I am here to urge New
2 Jersey to adopt the Uniform Bar Exam as soon as
3 possible. Given the growing trend towards the Uniform
4 Bar Exam exemplified by states like New York, New
5 Jersey's preeminence in the legal field depends on its
6 adoption.
7 As you are already aware, New York's
8 implementation of the UBE puts at risk half of the
9 applicants to the New Jersey Bar who applied to both
10 New York and New Jersey Bars. The decision to adopt
11 the exam is a balance of interest. The compatibility
12 of New Jersey's Bar Exam with that of New York, a UBE
13 jurisdiction to which 50 percent of New Jersey Bar
14 applicants apply, or Pennsylvania, a non-UBE
15 jurisdiction facing the same influence, the same
16 growing pressure to adopt the UBE and to which 25
17 percent of New Jersey Bar applicants apply.
18 It is important for New Jersey to remain a
19 leader in the legal profession. This means adopting a
20 Uniform Bar Exam that allows a portable score
21 increasing legal graduates' access to jobs, helping
22 graduates to deal with their overwhelming student debt
23 and ensuring adequate access to legal services in New
24 Jersey communities. The UBE reflects the current
25 nature of the legal profession, a multi-jurisdictional

1 practice.

2 As far back as 2002 the ABA's commission on
3 multi-jurisdictional practice found that geography no
4 longer dictates the subset of law a lawyer practices,
5 nor the location in which that practice takes place.
6 Though I currently attend law school in New York over
7 the summer I interned in Philadelphia, and I am seeking
8 both clerkships and jobs in New Jersey. For students
9 like myself who are seeking employment in both New York
10 and New Jersey taking a separate bar exam, which
11 includes the MBE, which includes the same multi-state
12 subject matter, is a huge obstacle to finding
13 employment and paying off loans.

14 As Chief Judge Jonathan Lippman of the New
15 York Court of Appeals noted, law students in my
16 situation must study for, pay for and wait for and take
17 multiple bar exams with uncertain results. This is an
18 environment where the employment rate of fresh law
19 graduates has fallen for the sixth year in a row. And
20 dependable avenues of post-graduate employment have
21 continued to erode in the face of economic pressures.

22 In sum, administrating duplicative exams
23 serves to increase the expense of a test taken mostly
24 by recent law school graduates already saddled with
25 student laws and face poor hiring prospects. Finally,

1 because the UBE has been scheduled for adoption in 18
2 states more resources can be pooled and devoted to
3 constructing UBE questions that result in high quality,
4 consistent bar exams.
5 The test prepared by the NCBE consists -- I'm
6 sorry. The test prepared by the NCBE use diverse
7 committees of practicing attorneys, law professors and
8 judges to draft the questions. They take outside
9 subject matter experts to review and pretest these
10 questions. The NCBE sponsors training for graders
11 after the test is implemented and before the test is
12 officially graded to ensure accuracy and reliability in
13 grading.
14 This is not so much losing control over the
15 drafting of the exam. It is combining resources with
16 the growing number of states to ensure both high
17 caliber examinations and legal competency. For the
18 reasons stated I urge the Committee to recommend New
19 Jersey's adoption of the Uniform Bar Exam. Thank you.
20 Do you have any questions?
21 JUSTICE LaVECCHIA: This resolution that
22 you've provided us on behalf of the Division that
23 you're part of, this has been adopted by that Division,
24 or it's under consideration?
25 MR. LOUROS: This has been adopted by the Law

1 Student Division, and we are putting it forward in
2 February at our ABA's midyear meeting in front of the
3 House of Delegates.
4 JUSTICE LaVECCHIA: Thank you. Questions of
5 this young man?
6 MR. BOTTITTA: I do.
7 JUSTICE LaVECCHIA: Sure.
8 MR. BOTTITTA: John, I'm sorry, I haven't had
9 time -- I haven't seen your resolution before, so I
10 don't know what it addresses. But, is there something
11 in here that speaks to time limits? Is there a
12 recommendation by your group as to time limits for the
13 transfer of the UBE?
14 MR. LOUROS: There is no recommended -- no
15 recommendation on time limits. That's up to the
16 State's discretion.
17 MR. BOTTITTA: Okay. New York has a state-
18 specific test.
19 MR. LOUROS: Mm-mm.
20 MR. BOTTITTA: Do you address that at all in
21 your report?
22 MR. LOUROS: No, but I am knowledgeable on
23 the topic. I know that New York has an online course
24 and exam that you have to pass. Other states have done
25 different things. In Missouri they have it -- they do

1 something similar, except all the resources that go
2 into the exam is an online database that their lawyers
3 can access at any time. So, they have access to the
4 materials, and then they give a test.
5 So, it's almost like an open-book test. They
6 have to fill out -- they have to answer questions on
7 state-specific nuances, and then look online for the
8 answers. And now, they have -- this database is
9 accessible at any time. So, it's a constantly updated
10 resource for these attorneys to use at the same time
11 testing their competency in local law.
12 JUSTICE LaVECCHIA: Those states -- if I may
13 just ask a followup?
14 MR. BOTTITTA: No, go ahead, please.
15 JUSTICE LaVECCHIA: Do those states also have
16 any kind of bridge-the-gap program to deal with local
17 law knowledge that is required of newly admitted
18 attorneys or --
19 MR. LOUROS: Could you speak --
20 JUSTICE LaVECCHIA: -- CLE requirements that
21 address specific course requirements for newly admitted
22 attorneys, if you know?
23 MR. LOUROS: I'm not sure about CLE
24 requirements. But again, it's up to the State's
25 discretion in terms of the Bar exam and state-specific

1 examination and courses, whether either/or.

2 MR. BOTTITTA: Did your group at all look at

3 the impact the UBE has on the existing Bar in the

4 states?

5 MR. LOUROS: On the existing Bar, well, it --

6 out of the 18 states that have adopted it there hasn't

7 been as much of an influx of lawyers. That was one of

8 the concerns for newly admitted attorneys, that lawyers

9 would flood the legal market, but it's -- it hasn't

10 shown to. If anything, I think that would go towards

11 increasing access to legal services to communities, but

12 there has not been any significant -- or I haven't

13 found -- or my Division hasn't found any significant

14 impact on the Bars from these.

15 MR. BOTTITTA: But, you have recognized that

16 the UBE states are not New York and New Jersey? Or

17 those two states are fairly unique, and you really

18 don't have a -- we don't have a history for New York

19 yet since they haven't (indiscernible) New Jersey.

20 MR. LOUROS: Correct.

21 MR. BOTTITTA: So, we really can't comment on

22 the impact of the sitting Bar because those two states

23 (indiscernible) compared to Montana and some of the

24 other states.

25 MR. LOUROS: Correct. But still, if they

1 were -- if someone from Montana was to transfer to New
2 Jersey or New York, they would have to still apply to
3 the Bar, and then have that -- take whatever state-
4 specific exam to learn the nuances of the law. So, in
5 terms of legal competency I -- it would somewhat
6 address the issue of legal competency regarding state-
7 specific nuances in law.
8 MR. BOTTITTA: Thank you.
9 MR. LEDERMAN: Questions first, was there any
10 dissent from the Division regarding the resolution?
11 MR. LOUROS: There -- it's --
12 MR. LEDERMAN: And if so, what were the
13 dissenting voices?
14 MR. LOUROS: I don't know. There were --
15 there was not much dissenting voices when -- at a vote
16 at our assembly in August. So, we put forth about --
17 something like what I said, and then a majority was in
18 favor of it. To my knowledge no one spoke out against
19 it. I know there were some no-votes, there was some
20 abstentions, but I can't say as to why they rejected
21 it. But, by a very good majority it passed.
22 MR. LEDERMAN: No, I'm good.
23 JUSTICE LaVECCHIA: Thank you very much for
24 your presentation.
25 MR. BOTTITTA: Thanks.

1 MS. WEILER: Thank you.
2 JUSTICE LaVECCHIA: We appreciate your
3 remarks.
4 MR. LOUROS: Thank you.
5 JUSTICE LaVECCHIA: Is there anyone else
6 present tonight that would like to address the
7 Committee?
8 (No audible response)
9 JUSTICE LaVECCHIA: Well, okay. We may have
10 a short evening. I just would like to thank all of the
11 members of the community, the legal community and the
12 general public who took their time today to come and
13 speak to us about this very important subject. Your
14 comments were thoughtful. They'll be valuable to us as
15 we engage in our review.
16 We look forward to any additional material
17 that's provided by the State Bar. And we'll be
18 incorporating our reaction to your comments in whatever
19 report that is ultimately generated by the Committee.
20 With that I guess we will conclude for now our public
21 hearing. Thank you very much for your time.
22 * * * * *
23
24
25

C E R T I F I C A T I O N

I, ANDREA FOY, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on compact disk, playback number from 14:12:04 to 14:37:50, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings as recorded, and to the best of my ability.

/s/ Andrea Foy

ANDREA FOY AOC #671

J&J COURT TRANSCRIBERS, INC. DATE: December 9, 2015

APPENDIX D

Testimony of the New Jersey State Bar Association before the Supreme Court Ad Hoc Committee on the Uniform Bar Examination

Public Hearing, Nov. 18, 2015, New Jersey Law Center

Good evening, Justices LaVecchia and Wallace, your honors and esteemed members of the Committee.

My name is Haekyoung Suh. I am a trustee of the New Jersey State Bar Association and am honored to testify tonight on behalf of the state's largest professional organization of lawyers, judges and other legal professionals.

Thank you for affording the opportunity for members of the profession and public to discuss adoption of the Uniform Bar Exam in New Jersey.

In considering the value of the UBE, as with any substantive change to the profession, our compass is whether the proposed change or reform ultimately protects the members of the public who seek assistance from lawyers.

We believe the UBE has obvious benefits for test takers, such as having the ability to sit for one bar exam that would be considered in the admission process in several states.

Because of the portability benefits, it may be time for New Jersey to adopt the UBE. But before we take that leap toward uniformity, we ask the Committee to extend the comment period by 30 days so additional information can be obtained about the UBE's potential impact on law students, newly admitted attorneys, employers, and the profession, generally. Data needs to be culled and examined to determine whether adoption of the UBE adequately ensures competency to practice law in New Jersey. Our paramount concern is to ensure the quality of New Jersey attorneys who serve the public.

There are several initial areas of concern.

- **First, we do not know the impact of the UBE on the number of attorneys passing the bar exam or becoming licensed in each state, and in particular, if there is any disparate impact on specific demographic and minority groups**

  Before adoption of the UBE, data from other UBE states regarding passage rates and UBE admissions needs to be analyzed. In particular, we urge a close analysis of UBE scores on different demographics so we can be confident that adoption of the UBE would not adversely affect any particular demographic or minority group. I have provided some graphic illustrations of data from the National Conference of Bar Examiners that shows some fluctuations in passage rates and some increases in UBE admissions in certain states, but without more information, it is difficult to determine what those statistics actually mean for the practice of law in those states and how that translates to what we can expect in New Jersey.

- **Second, we do not know whether the UBE ensures competency to practice law in New Jersey.**

  Consideration should be given to whether a separate state-specific test on New Jersey laws and procedures is necessary to ensure that applicants seeking to practice law in New Jersey are sufficiently familiar with our rules of professional conduct. Other states have done this, and we need time to consider whether New Jersey should adopt similar tests.

- **Third, are law students in New Jersey adequately prepared to take the UBE?**

  It is critical to examine whether New Jersey's law schools need to adjust their curricula to ensure graduates are adequately prepared for the Multistate Performance Test, a new exam component of the UBE that tests practical skills as opposed to substantive legal knowledge.

- **Finally, there are logistical questions.**

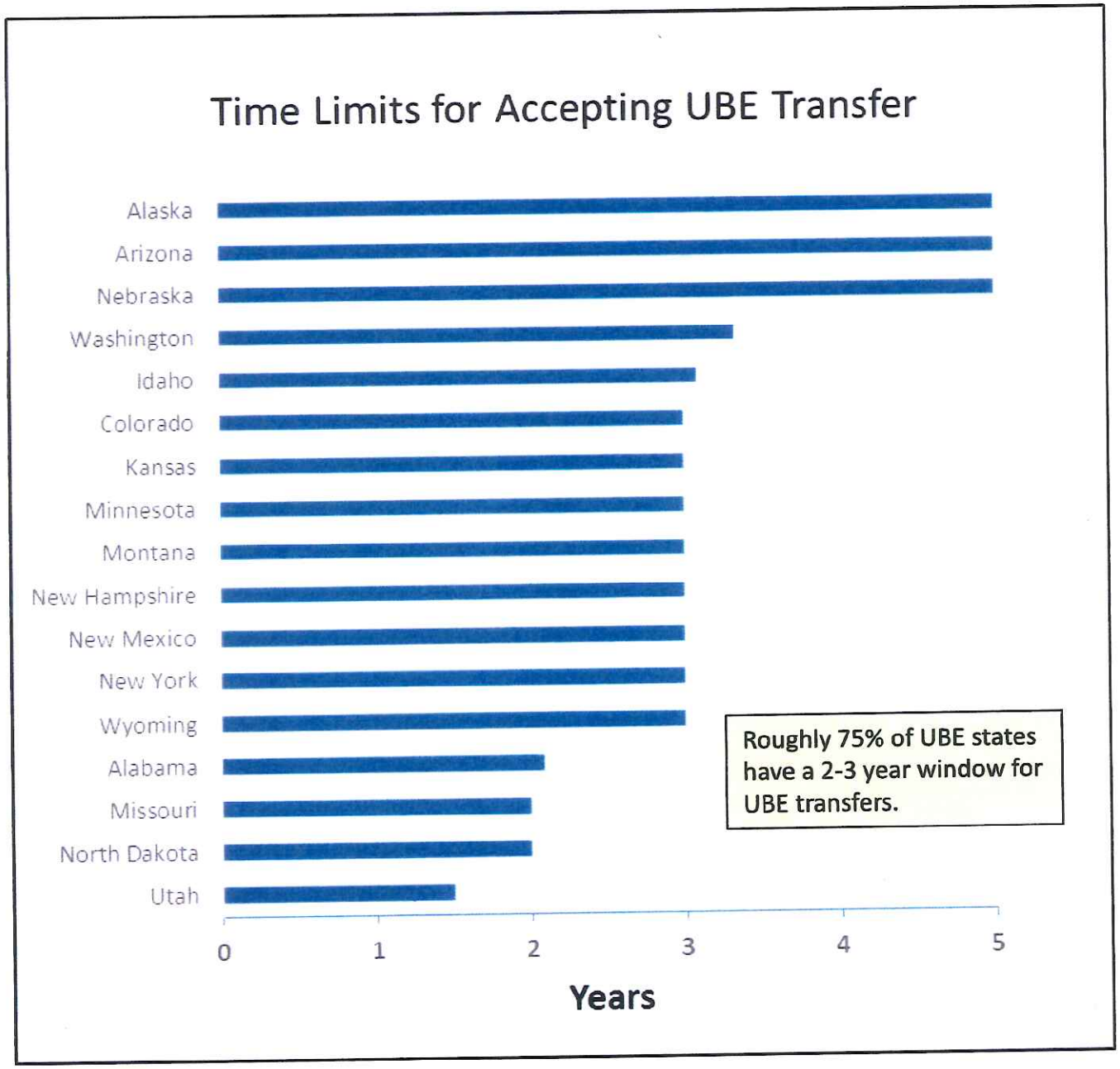
1. What is an appropriate passing score under the uniform bar exam?
2. What is the appropriate time frame to transfer a score to New Jersey?
3. Since Pennsylvania rejected the UBE and Pennsylvania administers its exam on the same UBE Tuesday testing date, how do we handle applicants who wish to take the

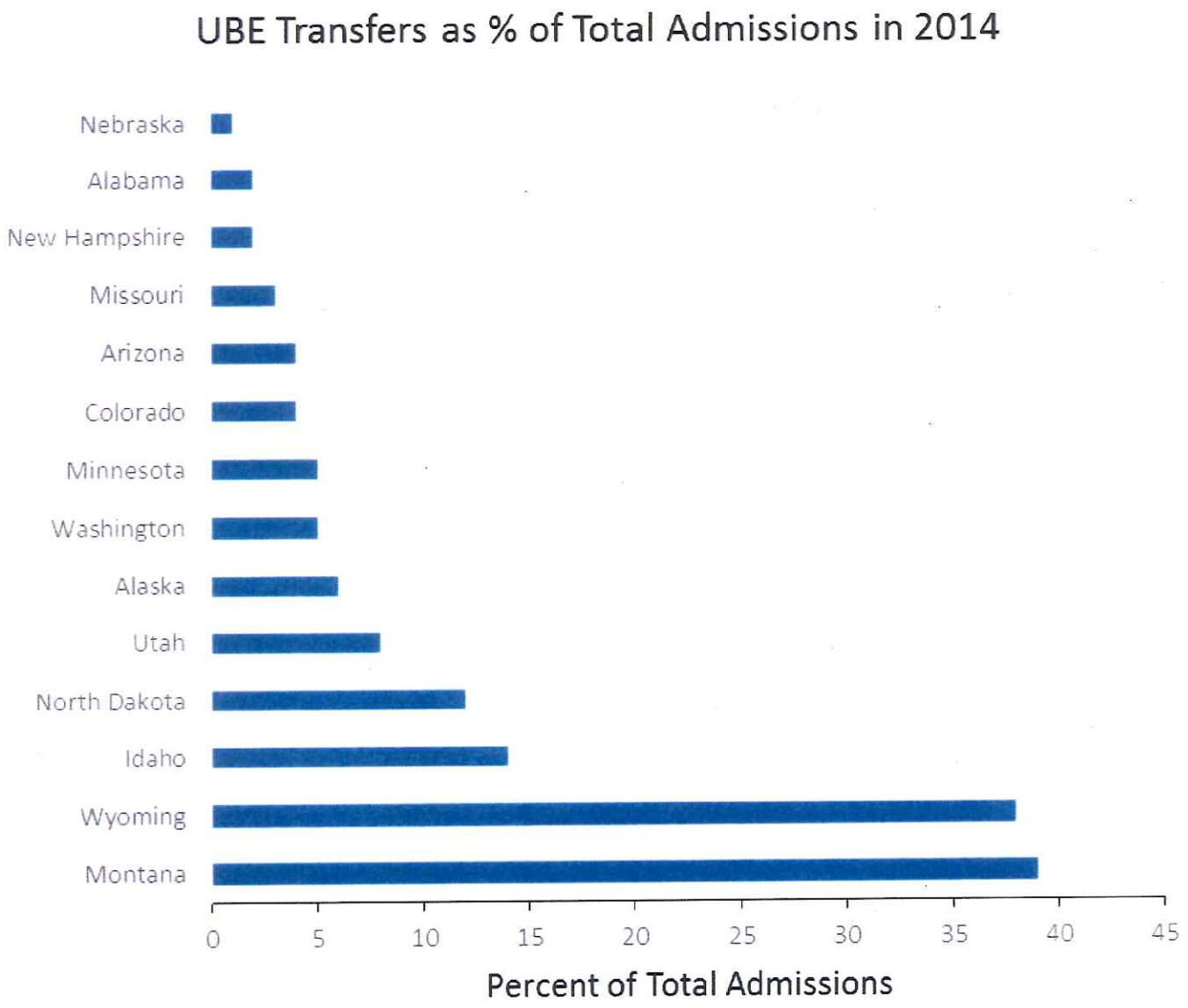
Pennsylvania bar exam and the New Jersey Bar exam in the same testing administration cycle?

4. Are there any additional costs that test takers, or the Judiciary will have to absorb as a result of adopting the UBE?
5. And finally, should New Jersey reject the UBE, what will happen to New Jersey applicants who still wish to take the New York and New Jersey bar exams in the same testing administration? Can New Jersey applicants sit for the UBE in New York and still take the New Jersey Bar Exam in the same testing cycle?

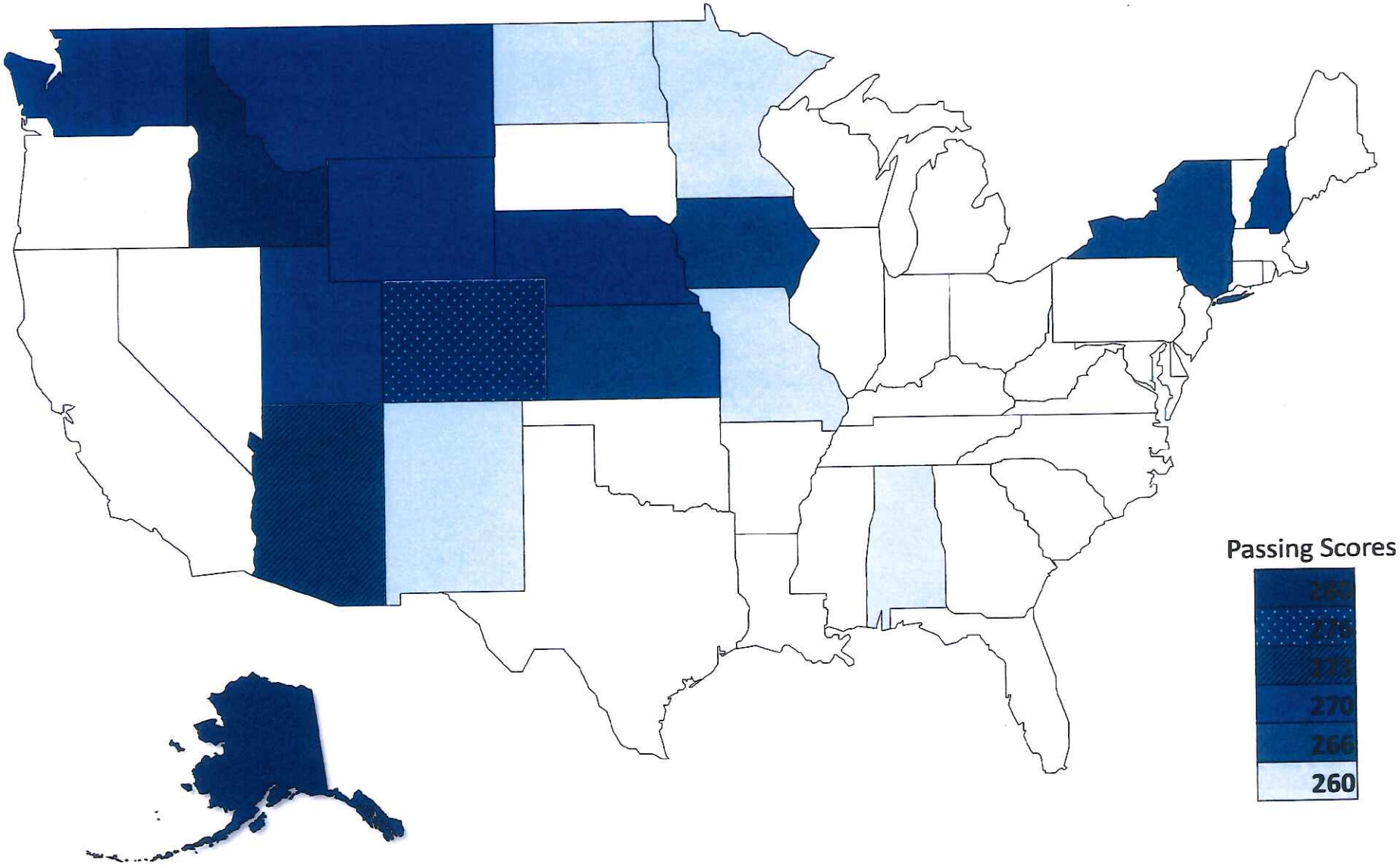
We need sound answers to these questions before we abandon the current exam format in favor of the UBE.

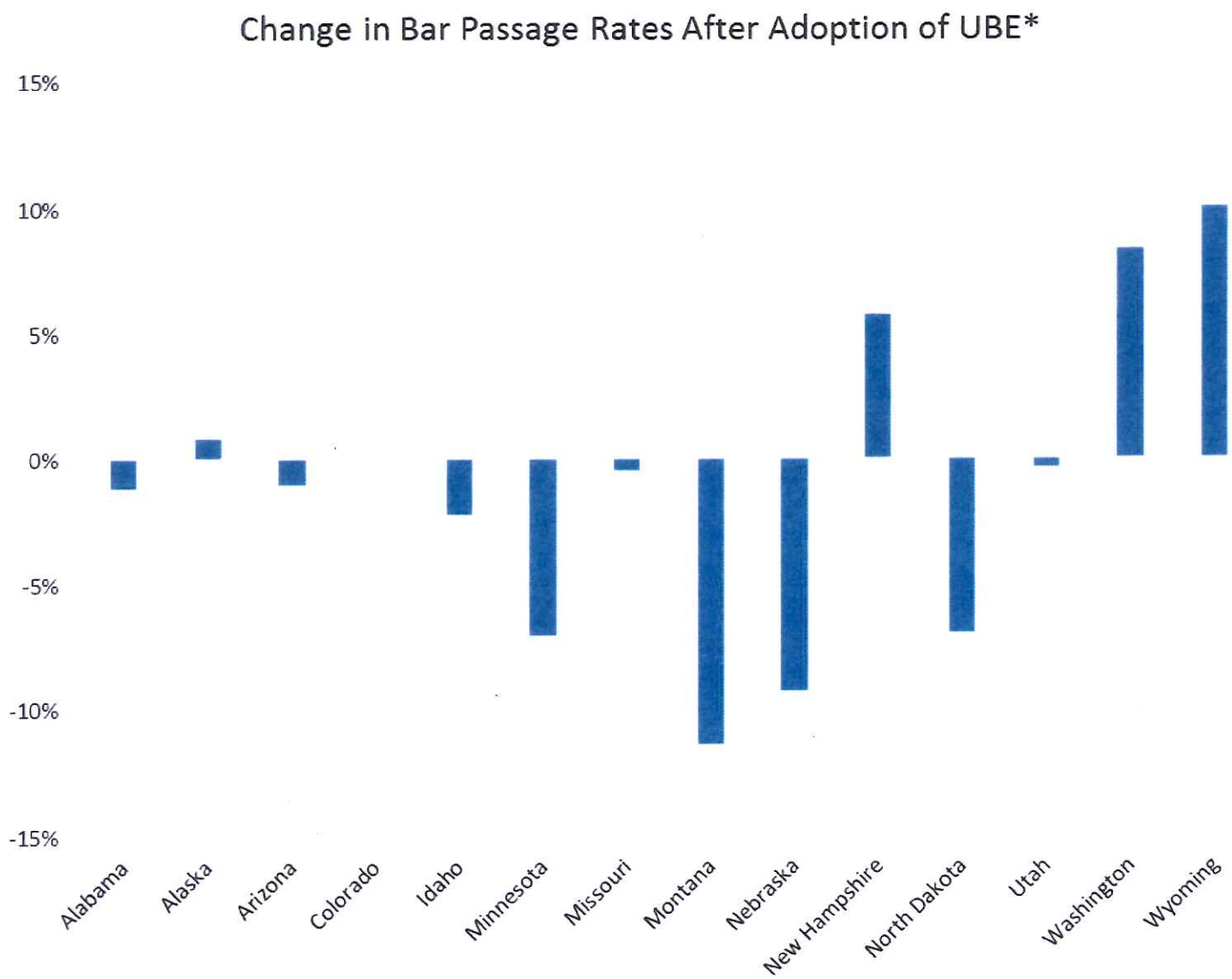
I thank you for this opportunity to share the concerns of the NJSBA and am prepared to answer any questions you may have at this time.


Time Limits for Accepting UBE Transfer
Alaska
Arizona
Nebraska
Washington
Idaho
Colorado
Kansas
Minnesota
Montana
New Hampshire
New Mexico
New York
Wyoming
Alabama
Missouri
North Dakota
Utah
0
1
2
3
4
5
Years
Roughly 75% of UBE states have a 2-3 year window for UBE transfers.


UBE Transfers as % of Total Admissions in 2014
Nebraska
Alabama
New Hampshire
Missouri
Arizona
Colorado
Minnesota
Washington
Alaska
Utah
North Dakota
Idaho
Wyoming
Montana
0
5
10
15
20
25
30
35
40
45
Percent of Total Admissions

UBE Passing Scores





*Average yearly pass rate after UBE adoption minus average yearly pass rate before adoption for first-time exam takers. Data evaluated were yearly passage rates 2005-2014.

APPENDIX E

AMERICAN BAR ASSOCIATION

LAW STUDENT DIVISION
LAW PRACTICE DIVISION
NATIONAL CONFERENCE OF BAR EXAMINERS

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges the bar admission authorities in each state and territory to expeditiously adopt the Uniform Bar Examination in their respective jurisdictions.

DRAFT

REPORT

Introduction

The Uniform Bar Examination ("UBE") is now in its fifth successful year. It has been more than five years since the Conference of Chief Justices and the American Bar Association Council of the Section of Legal Education and Admissions to the Bar adopted resolutions urging "the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination."[1]

Sixteen jurisdictions are currently scheduled to administer the exam in February 2016, and in July 2016, New York will become the seventeenth UBE jurisdiction when it administers its first UBE.[2] See Appendix A for a listing of all jurisdictions that have adopted the UBE to date. There have been discussions in other regions in favor of the UBE: the New Jersey Supreme Court has created an Ad Hoc Committee to study the UBE;[3] the Massachusetts Supreme Judicial Court has appointed a Committee to Examine the Uniform Bar Examination;[4] the Vermont Supreme Court has conveyed to the state Board of Bar Examiners its support for adopting the UBE,[5] and Dean Erwin Chemerinsky of the University of California, Irvine School of Law has called for California to adopt the UBE as well.[6]

Such momentum is right on schedule, if not a little late. Adoption of the UBE nationally would make the bar examination process more efficient and less costly for recent law graduates who are already saddled with significant debt. Because it results in a portable score that can be transferred to other UBE jurisdictions to seek admission, the UBE provides recent graduates with the greater mobility and flexibility they need in order to find employment. UBE jurisdictions maintain local control over bar admissions, while administering a uniform, high-quality examination of minimum competence to practice law.

Bar Exam History

The history of the written bar exam tells the tale of a steady progression toward the

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[1] Resolution of the Conference of Chief Justices, "Endorsing Consideration of a Uniform Bar Examination." Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the 2010 Annual Meeting (July 28, 2010), http://ccj.ncsc.org/~/media/Microsites/Files/CCJ/Resolutions/07252012-Endorsing-Consideration-of-a-Uniform-Bar-Examination.ashx; Resolution "Endorsing Consideration of a Uniform Bar Examination." Adopted by the Council of the Section of Legal Education and Admissions to the Bar on August 6, 2010, http://www.abajournal.com/files/Uniform_Bar_Exam_2010_Council_(9-14)_v2.pdf.

[2] *Notice: Uniform Bar Examination (UBE)*, NEW YORK STATE BOARD OF LAW EXAMINERS (May 5, 2015), http://www.nybarexam.org/.

[3] *Notice to Bar: Supreme Court Ad Hoc Committee on the Uniform Bar Examination*, NEW JERSEY COURTS, https://www.judiciary.state.nj.us/notices/2015/n151028b.pdf.

[4] *Supreme Judicial Court Announces Uniform Bar Examination Advisory Committee*, MASSACHUSETTS COURT SYSTEM, http://www.mass.gov/courts/news-pubs/sjc/sjc-announces-uniform-bar-exam-advisory-committee.html.

[5] *Board Of Bar Examiners Announces That Vermont Expects To Adopt Uniform Bar Examination For July 2016 Bar Exam*, VERMONT JUDICIARY LEGAL COMMUNITY, https://www.vermontjudiciary.org/LC/d-BBELibrary/Uniform%20Bar%20Exam%20Announcement.pdf.

[6] Erwin Chemerinsky, *It's time for California to accept the Uniform Bar Exam*, L.A. TIMES, May 11, 2015 available at http://www.latimes.com/opinion/op-ed/la-oe-0511-chemerinsky-standard-bar-exam-20150511-story.html.

UBE.[7] In 1972, the National Conference of Bar Examiners ("NCBE") introduced the Multistate Bar Examination ("MBE").[8] The MBE is now offered in 54 jurisdictions (the exceptions are the civil law state of Louisiana and Puerto Rico).[9] Over time, NCBE developed additional exams, including: (1) the Multistate Professional Responsibility Examination ("MPRE"), first offered in 1980[10] and now used in all but 3 jurisdictions;[11] (2) the Multistate Essay Examination ("MEE"), first offered in 1988[12] and now used in 31 jurisdictions;[13] and (3) the Multistate Performance Test ("MPT"), first offered in 1997[14] and now used in 41 jurisdictions.[15] See Appendix B for a table of jurisdictions using these tests.

Today, given that nearly all jurisdictions use the MBE and the MPRE, and most utilize one or more of the other NCBE multistate examinations, "in effect, a common licensing test is already in force."[16]

UBE Composition and Administration

The UBE is prepared and coordinated by NCBE and is composed of the MEE, MPT, and the MBE.[17] It is uniformly graded and offers test-takers a portable score that can be transferred to any other UBE jurisdiction. Jurisdictions that use the UBE continue to control the admission process locally and set their own admission requirements, such as deciding who may sit for the bar exam and who will be admitted to practice; determining underlying educational requirements; making all character and fitness decisions; setting their own policies regarding the

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[7] *See generally* Robert M. Jarvis, An Anecdotal History of the Bar Exam, 9 Geo. J. Legal Ethics 359 (1996).

[8] *Id.* at 378.

[9] Comprehensive Guide to Bar Admission Requirements 2015 at 25 (Erica Moeser & Claire Huismann, eds. 2015), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2015_comprehensive_guide_to_bar_admission_requirements.authcheckdam.pdf; *see also* Appendix B.

[10] Arthur Karger, *The Continuing Role of the NCBE in the Bar Admission Process*, BAR EXAMINER, at 14, 19 available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F1996%2F650296_karger.pdf.

[11] Maryland, Wisconsin and Puerto Rico are the exceptions. *See Comprehensive Guide,* supra note 11.

[12] Jane Smith, *Testing, Testing*, BAR EXAMINER, Nov. 1998, at 24, available at https://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F1998%2F670498_Testingtesting.pdf.

[13] *See Comprehensive Guide,* supra note 11, and Appendix B.

[14] Judith A. Gundersen, *Happy Birthday, MPT!*, BAR EXAMINER, Nov. 2007, at 18, 20, available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2007%2F760407_Gundersen.pdf.

[15] *See Comprehensive Guide,* supra note 11, and Appendix B.

[16] Frederic White, *A Uniform Bar Examination: An Idea Whose Time Has Come*, BAR EXAMINER, Feb. 2009, at 6, 6-7, available at https://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2009%2F780109_UBEEssays_01.pdf.

[17] *Jurisdictions That Have Adopted the UBE*, NATIONAL CONFERENCE OF BAR EXAMINERS (last visited Sept. 27, 2015), http://www.ncbex.org/ exams/ube/.

number of times applicants may retake the bar examination; making disability accommodations decisions; grading the MEE and MPT; setting their own pre-release regrading policies; assessing candidate knowledge of jurisdiction-specific content through a separate test, course, or some combination of the two if the jurisdiction chooses; accepting MBE scores earned in a previous examination or concurrently in another jurisdiction for purposes of making local admission decisions if they wish to; setting their own passing scores; and determining how long (i.e., the maximum age) incoming UBE scores will be accepted.[18]

More than 26,800 examinees took the UBE between February 2011 and July 2015. The number of scores transferred has increased considerably from year to year as the number of UBE jurisdictions has grown. As of October 2015, approximately 2,300 scores have been transferred. See Appendix C. With the addition of New York in July 2016, the number of UBE scores earned and transferred can be expected to increase significantly as New York typically tests more than 15,000 candidates each year.[19]

Benefits of Nationwide UBE Adoption

Nationwide adoption of the UBE would have numerous benefits for new law graduates and lawyers, jurisdictions, and the profession as a whole.

I. Reducing the Burden on New Law Graduates and Lawyers

The practice of law has become multi-jurisdictional and global, and lawyers, like all professionals, are increasingly mobile, changing firms and locations more frequently than ever.[20] Reciprocity agreements between jurisdictions, however, are generally only available to seasoned lawyers with several years of experience,[21] while young lawyers have to "study for, pay for, wait for, and take multiple bar exams with uncertain results."[22] Because UBE scores can be transferred to other UBE jurisdictions, widespread adoption of the UBE would help alleviate this burden. Additionally, the UBE enables new lawyers to gain jobs with the federal government or federal agencies because licensure in any state is sufficient regardless of where the federal office is located.

The need for greater mobility for recent graduates is particularly acute given the state of

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[18] *See Policies Set By UBE Jurisdictions,* National Conference of Bar Examiners (last visited Sept. 27, 2015), available at http://www.ncbex.org/exams/ube/.

[19] *See* Statistics Archives published by NCBE at http://www.ncbex.org/publications/statistics/.

[20] *See* Hon. Rebecca White Berch, *The Case for the Uniform Bar Exam,* BAR EXAMINER, Feb. 2009, at 9, 10, available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2009%2F780109_UBEEssays_01.pdf; Mary Kay Kane, *A Uniform Bar Exam: One Academic's Perspective,* BAR EXAMINER, Feb. 2009, at 19, 20, available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2009%2F780109_UBEEssays_01.pdf; *See also* Deborah Jones Merritt, *What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession* (April 8, 2015). 2015 Mich. St. L. Rev. (Forthcoming); Ohio State Public Law Working Paper No. 290; HLS Center on the Legal Profession Research Paper No. 2015-3, available at http://ssrn.com/abstract=2577272 (study of new lawyers admitted to the Ohio bar in 2010 found that women were significantly more likely than men to move out of state within their first five years of practice- 18.4% of women left Ohio after gaining bar admission, while just 14.1% of the men did so).

[21] *See Comprehensive Guide,* supra note 11, at 34.

[22] New York Chief Judge Jonathan Lippman, Address at the Court of Appeals for Law Day 2015 (May 5, 2015), available at http://www.nycourts.gov/ctapps/news/LawDay2015.pdf.

the legal job market. Currently, law graduates might have to choose a jurisdiction in which to take the bar exam before they have even found employment. If these graduates subsequently find employment in another jurisdiction, they are forced to take the bar examination again, adding thousands of dollars to their already-considerable debt load.[23]

II. Reducing the Burden on Jurisdictions ;

Some jurisdictions still have their board of bar examiners drafting essay questions, even though the topics are largely similar to those tested on the MEE and include little or no local content.[24] Adopting the UBE would reduce these duplicative efforts, freeing jurisdiction resources to focus on other areas of importance in bar admissions, such as conducting character and fitness examinations, setting passing standards, enforcing rules for admission, and administering CLE programs.

Critics of the UBE often highlight that certain areas of law vary considerably from one jurisdiction to another, such as probate, trusts and estates, and family law. However, a test of minimum competency should not require specialized knowledge of these areas of the law. Furthermore, the law is increasingly uniform throughout the states and territories. Through adoption of uniform codes and principles in the Restatements, laws do not vary considerably from one jurisdiction to the next.

In any case, the UBE does not prevent state bar examiners from testing or otherwise ensuring competency with respect to local law through use of online courses, webinars, or CLE programs as a requirement for admission to the bar.[25] New York, for example, will require both an online course and an online examination on New York law.[26] Jurisdictions can provide applicants access to outlines containing critical information about local law, and administer a corresponding online open-book test, as is the case in Missouri. Such materials can easily be updated to remain a relevant, accessible resource for the entire legal community.[27]

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[23] There are expenses not only in registering for exams, but also in preparing for them. Popular courses "cost between $3,000 and $4,000, and many finance those fees—as well as their living expenses while they study—with a bar review loan of up to $16,000." Sarah Mui, *Did you take a bar exam prep course? If so, did you take out a loan to finance it? Any regrets?*, ABA JOURNAL, June 5, 2013, http://www.abajournal.com/news/article/did_you_take_a_bar_preparation_course.

[24] *See* White, *supra* note 19, at 6-7.

[25] The following UBE jurisdictions require completion of a jurisdiction-specific component before admission:

- Alabama: Online course on Alabama law is required for applicants seeking admission by examination or by UBE score transfer.
- Arizona: Online course on Arizona law is required prior to admission for all applicants.
- Missouri: Rules require an open-book online test, the Missouri Educational Component Test (MECT), for applicants to complete as a condition of licensure. Review materials are posted to assist applicants.
- Montana: Montana Law Seminar attendance is required prior to admission. The course is offered the day after the bar exam.
- Washington: Washington Law Component (WLC) is an open-book, timed, online multiple-choice test with Washington-specific study materials available online to review prior to and during the test.

See Comprehensive Guide, supra note 11, at 32-33.

[26] *See* http://www.nybarexam.org/.

[27] Cindy L. Martin, *Local Law Distinctions in the Era of the Uniform Bar Examination: The Missouri Experience (You Can Have Your Cake and Eat It, Too)*, BAR EXAMINER, Sep. 2011, at 7, available at https://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2011/800311Martin.pdf.

III. Ensuring the Quality and Consistency of the Bar Exam

Widespread adoption of the UBE would help ensure the consistency and quality of the bar exam.[28] Many states may lack the resources to retain test writers, which can result in exam questions that are unreliable tests of legal competency. The tests prepared by NCBE are drafted by diverse committees composed of practicing attorneys, law professors, and judges, and NCBE employs test editors who are lawyers to support these committees. NCBE's test questions are reviewed by outside subject matter experts and pre-tested.[29]

Exam grading would also potentially be improved with the UBE. NCBE provides jurisdictions with uniform model answers and grading materials, and offers extensive opportunities for graders to participate in question-specific training, which takes place after the exam is administered and before grading begins. Graders of the MEE and MPT rank-order the answers of candidates from best to worst and, the raw scores are then converted to the MBE scaled score distribution in order to make the scores comparable from one exam administration to another.[30] A more detailed explanation of scaling written component scores to the MBE can be found in the December 2014 issue of The Bar Examiner.[31] Uniformity in exam grading, along with the fact that each jurisdiction sets its own minimum passing score, also alleviates the concern that students will opt to take the UBE in one jurisdiction rather than another with the hope of passing in an "easy" jurisdiction and then transferring the score.

IV. Benefit to the Profession

The UBE is consistent with several current ABA policies. As recently as August 2014, the ABA House of Delegates adopted Resolution 108 of the Legal Access Job Corps Task Force regarding the access to justice gap. Wider adoption of the UBE, by providing portability of bar examination scores, would make it significantly easier for new law graduates to seek employment in areas with underserved populations, helping to alleviate the problems of both recent graduate unemployment and lack of access to legal services that Resolution 108 addresses.

Moving toward greater adoption of the UBE will also help to align the legal field with other professions, such as accounting and medicine that already utilize a uniform exam for board licensure. In the late 1980s, the National Board of Medical Examiners went through the same

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[28] Susan M. Case, Ph.D., *A Uniform Bar Examination: What's In It For Me?*, BAR EXAMINER, Feb. 2010, at 50, 52, available at https://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2010/790110_TestingColumn.pdf.

[29] *See* C. Beth Hill, *MBE Test Development: How Questions are Written, Reviewed, and Selected for Test Administrations*, BAR EXAMINER, Sept. 2015, at 23, available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2FUploads%2FBE-Sept2015-MBETestDev.pdf; Judith A. Gundersen, MEE and MPT Test Development: A Walk-Through From First Draft to Administration, BAR EXAMINER, June 2015, at 29, available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2FUploads%2F840215-Gundersen.pdf

[30] Judith A. Gundersen, *The Testing Column: Essay Grading Fundamentals*, BAR EXAMINER, Mar. 2015, at 54, available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2015%2F840115-TestingColumn.pdf.

[31] Mark A. Albanese, *The Testing Column: Scaling: It's Not Just for Fish or Mountains*, BAR EXAMINER, Dec. 2014, at 50, available at http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2014%2F830414-testingcolumn.pdf.

process that NCBE is going through now: it worked to establish a uniform exam that ensured the competency of medical professionals, while at the same time easing state and territorial medical boards' expenses in administering separate exams across the country.[32]

Summary

The recommended resolution will enable the ABA to remain a leader in representing the interests of law students, young lawyers, and the bar in new and innovative ways. The UBE is an idea whose time has come. Its widespread adoption would better reflect the multijurisdictional practice of law today, while ensuring a standard level of competency for all lawyers throughout the United States. The exam would greatly assist law school graduates facing tremendous challenges finding employment and managing student debt, while reducing inefficiency and expense by eliminating duplicative efforts among state bar examiners. Finally, because many states already, in essence, administer the functional equivalent of the UBE, formal adoption is the next logical step.

Respectfully submitted,

Christopher Jennison
Member, Board of Governors

Fabiani Duarte
Chair, Law Student Division

DRAFT

[32] *See* Susan M. Case, Ph.D., *A Uniform Licensure Examination: It Can Be Done*, BAR EXAMINER, Feb. 2009, at 30, 31-32, available at https://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2009%2F780109_UBEEssays_01.pdf.

Appendix A: UBE jurisdictions by State and Passing Score

State	First UBE Administration	Passing Score
Alabama	July 2011	260
Alaska	July 2013	280
Arizona	July 2012	273
Colorado	February 2012	276
Idaho	February 2012	280
Iowa	February 2016	266
Kansas	February 2016	266
Minnesota	February 2014	260
Missouri	February 2011	260
Montana	July 2013	270
Nebraska	February 2012	270
New York	July 2016	266
New Hampshire	February 2014	270
North Dakota	February 2011	260
Utah	February 2013	270
Vermont (proposed)	July 2016	270
Washington	July 2013	270
Wyoming	July 2013	270

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Appendix B: Multistate bar exam components already in use

Jurisdiction	Multistate Bar Examination (MBE)	Multistate Essay Examination (MEE)	Multistate Performance Test (MPT)	Multistate Professional Responsibility Examination (MPRE)
Alabama	X	X	X	X
Alaska	X	X	X	X
Arizona	X	X	X	X
Arkansas	X	X	X	X
California	X			X
Colorado	X	X	X	X
Connecticut	X	X	X	X
Delaware	X		X	X
Dist. of Columbia	X	X	X	X
Florida	X			X
Georgia	X		X	X
Hawaii	X	X	X	X
Idaho	X	X	X	X
Illinois	X	X	X	X
Indiana	X		X	X
Iowa	X	X	X	X
Kansas	X			X
Kentucky	X	X		X
Louisiana				X
Maine	X		X	X
Maryland	X		X	
Massachusetts	X			X
Michigan	X			X
Minnesota	X	X	X	X
Mississippi	X	X	X	X
Missouri	X	X	X	X
Montana	X	X	X	X
Nebraska	X	X	X	X
Nevada	X		X	X
New Hampshire	X	X	X	X
New Jersey	X			X
New Mexico	X	X	X	X
New York	X		X	X
North Carolina	X			X
North Dakota	X	X	X	X
Ohio	X		X	X
Oklahoma	X			X
Oregon	X	X	X	X
Pennsylvania	X			X
Rhode Island	X	X	X	X
South Carolina	X			X
South Dakota	X	X	X	X
Tennessee	X		X	X
Texas	X		X	X
Utah	X	X	X	X
Vermont	X		X	X
Virginia	X			X
Washington	X	X	X	X
West Virginia	X	X	X	X
Wisconsin	X	X	X	
Wyoming	X	X	X	X
Guam	X	X	X	X
N. Mariana Islands	X	X	X	X
Palau	X	X	X	X
Puerto Rico				
Virgin Islands	X			X

Excerpted from
http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2015_comprehensive_guide_to_bar_admission_requirements.authcheckdam.pdf

APPENDIX C

UBE SCORES EARNED AND TRANSFERRED BY EXAM DATE
(as of October 27, 2015)

	FEBRUARY		JULY		TOTAL BY YEAR	
Year	Scores Earned	Scores Transferred	Scores Earned	Scores Transferred	Scores Earned	Scores Transferred
2011	216	11	1237	40	1453	51
2012	936	68	3169	364	4105	432
2013	1401	228	4670	593	6071	821
2014	2166	222	5475	448	7641	670
2015	2340	165	5197	174	7537	339
TOTALS	7059	694	19748	1619	26807	2313

Data provided by the National Conference of Bar Examiners.

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GENERAL INFORMATION FORM

Submitting Entity: American Bar Association Law Student Division

Submitted By: Christopher Jennison, ABA Board of Governors, Delegate

1. Summary of Resolution(s).

   The American Bar Association urges the bar admission authorities in each state and territory to expeditiously adopt the Uniform Bar Examination in their respective jurisdictions.

2. Approval by Submitting Entity.

   Law Student Division, October 2014
   Young Lawyers Division, February 2015

3. Has this or a similar resolution been submitted to the House or Board previously?

   No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

   Supporting the UBE would be consistent with several ABA policies. For instance, the ABA, along with NCBE and the Association of American Law Schools, has adopted a Code of Recommended Standards for Bar Examiners. The House of Delegates adopted the latest version of this code in August 1987. This code includes several provisions that support the UBE. The standards are consistent with, if not supportive of, using the UBE to test general subject matter taught in law school primarily for the purpose of testing legal reasoning and communication skills, not for the purpose of testing knowledge of specific local laws. The standards are consistent with using the UBE, in that they support testing general subject matter, legal reasoning, and communication skills, rather than knowledge of specific local laws.

   In 1994, the ABA adopted as policy the recommendations from a report of the Task Force on Law Schools and the Profession. Among other recommendations, the task force urged "licensing authorities to consider modifying bar examinations which do not give appropriate weight to the acquisition of lawyering skills and professional values." Adopting the UBE would support this aim.

   In 2006, the ABA House of Delegates adopted a resolution concerning minorities in the pipeline to the profession. Among other policies within the resolution, it urged state and territorial bar examiners to address significant problems facing minorities within the pipeline to the profession. Certainly, erecting a barrier in the form of duplicative and expensive tests for each state and territory is just the type of significant problem that should be addressed.

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The January 2014 Final Report of the Task Force on the Future of Legal Education "specifically recommended… that state supreme courts, state bar associations, and other regulators of lawyers and law practice… establish uniform national standards for admission to practice as a lawyer, including adoption of the Uniform Bar Examination."

Finally, in August 2014, the ABA House of Delegates adopted Resolution 108 of the Legal Access Job Corps Task Force regarding the access to justice gap. Resolution 108 outlines that "most states have substantial rural areas and some of them have an aging lawyer population. As a result, many communities are now without lawyers. For example, in one South Dakota community, the nearest lawyer is 120 miles away. State bars faced with this challenge are creating rural placement projects designed to encourage and give incentives for recently admitted lawyers to set up or assume practices in these communities." The UBE by its very nature encourages portability of bar licensure, and would remove barriers to access to justice in rural regions.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. None.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

   The Law Student Division will work with the National Conference of Bar Examiners, the Conference of Chief Justices and the ABA HOD members to disseminate official ABA policy to local bar examiners to encourage their adoption of the UBE expeditiously.

8. Cost to the Association. N/A

9. Disclosure of Interest. None.

10. Referrals. None.

11. Contact Name and Address Information.

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    13408 Bingham Court
    Silver Spring, MD 20906
    (301) 538-5705
    csjennis@syr.edu

12. Contact Name and Address Information.
    Christopher Jennison
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DRAFT

EXECUTIVE SUMMARY

1. Summary of the Resolution

The American Bar Association urges the bar admission authorities in each state and territory to expeditiously adopt the Uniform Bar Examination in their respective jurisdictions.

2. Summary of the Issue that the Resolution Addresses

Currently, law students must often choose a bar admission jurisdiction before they know where they will be employed, limiting the applicability of their first bar admission given limitations on admission and motion and transferability. Some state bar examiners draft essay questions, even though the topics are those tested on the MEE and include little local variation, and states may also have variability in bar exam grading. The Uniform Bar Exam addresses these concerns, and also is consistent with several ABA policies.

3. Please Explain How the Proposed Policy Position will address the issue

Through greater adoption of the UBE, the model becomes more effective as test-takers are able to transfer their scores to more jurisdictions.

4. Summary of Minority Views

While some critics of the UBE wish to retain local bar exams, no known ABA entities have formally presented any opposing views to this resolution.

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APPENDIX F

CONFERENCE OF CHIEF JUSTICES

Resolution 4

Endorsing Consideration of a Uniform Bar Examination

WHEREAS, the states' highest courts regard an effective system of admission and regulation of the legal profession as an important responsibility for the protection of the public; and

WHEREAS, the increased demand for lawyer mobility results in greater multijurisdictional practice and increased access to admission on motion; and

WHEREAS, the increasing use of uniform, high quality testing instruments has rendered most jurisdictions' bar examinations substantially similar; and

WHEREAS, law is the only major profession that has not developed a uniform licensing examination; and

WHEREAS, a uniform licensing examination for lawyers would facilitate lawyer mobility and enhance protection of the public; and

WHEREAS, state bar admission authorities and state supreme courts would remain responsible for making admission decisions, including establishing character and fitness qualifications and setting passing standards, and enforcing their own rules for admission; and

WHEREAS, issues relating to knowledge of local law can be addressed through a mandatory educational component, a separate assessment, or a combination thereof;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination.

Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the 2010 Annual Meeting July 28, 2010.

APPENDIX G

Section of Legal Education and Admissions to the Bar

Council Resolution

Endorsing Consideration of a Uniform Bar Examination

WHEREAS, the Section of Legal Education and Admissions to the Bar of the American Bar Association regards an effective system of admission and regulation of the legal profession as an important responsibility for the protection of the public; and

WHEREAS, the increased demand for lawyer mobility has resulted in greater multijurisdictional practice and has increased utilization of admission on motion by experienced lawyers; and

WHEREAS, admission by motion does not apply to recently admitted lawyers; and

WHEREAS, adoption of a uniform licensing examination for lawyers in all jurisdictions would facilitate lawyer mobility and enhance protection of the public; and

WHEREAS, the increasing use of uniform, high quality testing instruments has rendered most jurisdictions' bar examinations substantially similar; and

WHEREAS, law is the only major profession that has not adopted a uniform licensing examination, the scores on which are transferable among jurisdictions; and

WHEREAS, after adoption of a uniform examination on legal knowledge, reasoning and skills, state bar admission authorities and state supreme courts would remain responsible for making admission decisions, including establishing character and fitness qualifications and setting passing standards, and enforcing their own rules for admission; and

WHEREAS, issues relating to knowledge of local law can be addressed through a mandatory educational component, a separate state-specific assessment, or a combination thereof;

NOW, THEREFORE, BE IT RESOLVED that the Council of the Section of Legal Education and Admissions to the Bar urges the bar admission authorities in each state and territory to consider participating in the development and implementation of a uniform bar examination.

ADOPTED by the Council of the Section of Legal Education and Admissions to the Bar on August 6, 2010.

APPENDIX H

Update to Testimony previously provided before the Advisory Committee on the Uniform Bar Examination for the State of New York

Submitted to the New Jersey Committee Studying Adoption of the Uniform Bar Examination

December 16, 2016
Honorable Cynthia L. Martin

Justice Jaynee LaVecchia
Suite 1101, North Tower
158 Headquarters Plaza
Morristown, NJ 07960-3965

Justice John E. Wallace, Jr. (retired)
Brown & Connery, LLP
6 North Broad Street
Woodbury, NJ 08096

I am a former member of the Missouri Board of Law Examiners, and remain active in bar admission issues on a national level. I was President of the Missouri Board of Law Examiners when Missouri adopted the Uniform Bar Examination ("UBE"). Missouri has been administering the UBE since February 2011, and is thus uniquely situated to respond to concerns about the potential effect of adoption of the UBE with empirical data drawn from five years of actual experience in administering the UBE.

In connection with the State of New Jersey's consideration of the UBE, I have been asked to provide an update to testimony I earlier gave to the Advisory Committee on the UBE for the State of New York. In particular, I have been asked to comment on the change, if any, in my earlier testimony on two subjects: (i) the relationship between adoption of the UBE and a decline in the overall bar examination pass rate, and (ii) the relationship between performance of minority applicants on the bar examination and adoption of the UBE.

My testimony on these topics before the State of New York is best captured in a February 3, 2015 written supplement I provided to the New York Committee. I have attached that supplement for your ready review. It explains, statistically, that the overall pass rate on the bar examination in Missouri did ***not*** decline following adoption of the UBE, and in fact increased during the first two years the UBE was administered, and remained relatively stable during the third year. And it explains, based on data collected by one Missouri law school, that the UBE did not have a disparate impact on minority

applicants, and that the pass rate for minority applicants has been higher since adoption of the UBE.

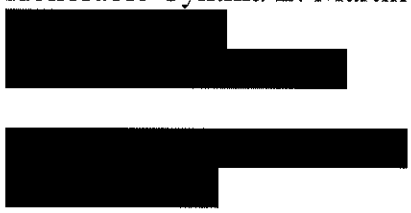
Since submission of the written supplement to my New York testimony, Missouri has administered the UBE on two additional occasions--February and July of 2015. In February 2015, there were 305 applicants and the total pass rate was 77.70%. In July 2015, there were 771 applicants and the total pass rate was 84%. The total number of applicants in 2015 was, therefore, 1076 with an overall pass rate of 82.2%. This represents a decline in the overall pass rate from 2014, a downward trend that began (materially) in 2014, **three years after the UBE was first administered**. Missouri has never believed there to be a connection between recent declines in the overall pass rate on the bar examination and the UBE. This is no doubt influenced by the fact that, as noted, the overall pass rate on the bar examination actually increased or remained stable in the first three years the UBE was administered.

I do not have the 2015 bar exam performance data for minority applicants from UMKC Law School. I thus cannot update the statistical chart on that subject which appears in the written supplemental to my New York testimony. However, I can tell you that UMKC law school representatives remain staunch advocates for and supporters of the UBE, believing the portable score the UBE produces represents an invaluable tool for law school graduates, including minority graduates. I gather from that continued support that UMKC law school representatives perceive no issue with adoption of the UBE as relates to disparate impact on minority applicants.

I hope this update to my New York testimony on the two topics identified is of assistance to you. Please know that I am available to answer any other questions you may have as you address possible adoption of the UBE in New Jersey.

Sincerely,

Honorable Cynthia L. Martin



cc: Susanne Johnson
Heather Joy Baker
P.O. Box 973
Trenton, NJ 08625

APPENDIX H
Attachment 1

1 COURT OF APPEALS

2 STATE OF NEW YORK

3 ----------

4

5 UNIFORM BAR EXAM PUBLIC HEARING

6

7 ----------

8 20 Eagle Street
Albany, New York 12207
February 03, 2015

9

10 Panel Members:

11 HONORABLE JENNY RIVERA
Associate Judge, New York Court of Appeals

12

13 DAVID HERNANDEZ, ESQ.
Founder, David J. Hernandez & Associates

14 MICHELLE ANDERSON, ESQ.
Dean, CUNY School of Law

15

16 DIANE BOSSE, ESQ.
Chair, New York State Board of Law Examiners

17 SEYMOUR JAMES, JR., ESQ.
Attorney-in-Chief, The Legal Aid Society of New York City

18

19 HANNAH ARTERIAN, ESQ.
Dean, Syracuse University College of Law

20 NITZA ESCALERA, ESQ.
Assistant Dean of Student Affairs, Fordham University
21 School of Law

22

23

24

25

1 Appearances:

2 MARY A. LYNCH, ESQ.
Clinical Legal Education Association

3

IRENE V. VILLACCI, ESQ.
4 Women's Bar Association of the State of New York

5 DAVID MIRANDA, ESQ.
President-elect, New York State Bar Association

6

EILEEN MILLETT, ESQ.
7 Co-chair, NYSBA Committee on Legal Education and Admission to the Bar

8

SARAH GOLD, ESQ.
9 Chair, NYSBA Young Lawyers Section

10 ERIC LANE, ESQ.
Dean, Maurice A. Deane School of Law at Hofstra University

11

HONORABLE CYNTHIA MARTIN (Telephonically)
12 Missouri Court of Appeals, Western District and Chair, ABA Bar Admissions Committee

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Sara Winkeljohn
25 Official Court Transcriber

1 MS. ANDERSON: But - - -
2 JUDGE RIVERA: Michelle?
3 MS. ANDERSON: This - - - this - - - given
4 - - - given perfect data, which we don't have, and -
5 - - and resources, this is a knowable question. You
6 could control for GPA in law school and - - - and
7 make assessments about disparate impact. So the data
8 is valuable, even if imperfect, and has to be looked
9 at in a complicated way. I think we all agree with
10 that. And I'll just - - - I'll just say that.
11 MR. LANE: Yes.
12 JUDGE RIVERA: Thank you. Thank you so
13 much.
14 MR. LANE: Okay, thank you.
15 JUDGE RIVERA: Very much appreciate it.
16 MR. LANE: Thanks for doing this.
17 JUDGE RIVERA: Yeah. No, thank you.
18 And we have two other people left. They
19 are going to be on the phone. I do know that at
20 least one member of the committee has to leave to
21 make sure that the member doesn't miss their flight.
22 So we're going to try and move this along as quickly
23 as we can.
24 We're ready?
25 JUDGE MARTIN: I'm here. Thank you.

1 JUDGE RIVERA: Yes, Honorable Cynthia
2 Martin, yes?
3 JUDGE MARTIN: That's me.
4 JUDGE RIVERA: Yes, hello. Thank you so
5 much for agreeing to speak to us. Our apologies,
6 we're a little bit behind schedule.
7 Just for everyone and for the record,
8 Honorable Cynthia Martin from the Missouri Court of
9 Appeals in the Western District and Chair of the ABA
10 Bar Admissions Committee.
11 And, again, we're sorry that you could not
12 join us in person. The weather was not behaving.
13 But we are so grateful that technology makes it
14 possible to at least hear your voice and hear your
15 comments.
16 JUDGE MARTIN: I appreciate that as well.
17 And I - - - I really wish I could be there. It's
18 always so much better when you have the opportunity
19 to speak with people face-to-face, but, you know, as
20 a bar admissions junkie, I do have a great interest
21 in this issue, having served on the Missouri Board of
22 Law Examiners for almost eleven years.
23 And - - - and, frankly, it's in that
24 capacity largely that I have an interest in
25 addressing the committee about the UBE, because

1 Missouri, of course, was the first jurisdiction to
2 adopt the UBE. I - - - I've had the opportunity to
3 read the testimony from your first set of public
4 hearing and to listen the majority of the testimony
5 today. And, you know, it's an interesting
6 observation, I had to chuckle at that, because I - -
7 - I - - - I understand. And many of the themes about
8 which you're hearing today are themes that resonate
9 with me as a former member of our board about certain
10 potential criticism and alarm with respect to what
11 the UBE may do in a hypothetical.
12 And yet, I find it kind of a curious
13 observation that you're now in a position where you
14 don't have to speak about the UBE in a hypothetical
15 context for a number of jurisdictions, and Missouri
16 is certainly one of them; the UBE is now a tried and
17 true mechanism for accepting minimum competence for
18 our practitioners.
19 And probably more important to the Missouri
20 Board of Law Examiners, it is a very accepted means
21 by which our applicants are able to generate a
22 portable score that creates flexibility for them,
23 portability for them, and opportunities for them at a
24 time when many of our applicants simply don't even
25 know, at the time they sit for the exam, where

1 they're going to practice.

2 And so in the "for what it's worth"

3 department, my goal in - - - in testifying today was

4 really hopefully to give New York what I thought it

5 must surely want to know, and that is some testament

6 of what the UBE has really turned out to be, as

7 opposed to a concern about what the UBE might be.

8 And I can assure you, at least based on Missouri's

9 experience, the only thing UBE has failed to - - - to

10 do is to yield the parade of hypothetical horribles

11 that - - - that many seem to be concerned might

12 occur.

13 In - - - in that respect, you know, UBE in

14 Missouri and the consideration of adopting it, we're

15 - - - we're not that much different from New York.

16 We were already using many of the same components of

17 the UBE that New York is using. We were using the

18 MPT. We tried one MPT. We had a number of essays,

19 not all of which were MPT essays. There were usually

20 at least four to six essays on our exam that were

21 crafted by our board. And many of us on the - - - on

22 the board when we were first approached about the

23 notion about taking UBE were like, why? Why would we

24 really be interested in modifying our exam?

25 We had a series of questions on that

1 subject at our board, and, frankly, with our Supreme
2 Court that embraced the notion right away of the UBE
3 and came to recognize pretty quickly that the purpose
4 of the bar exam is it's designed to test for minimum
5 competence to practice law. And that from our
6 perspective, creating an atmosphere where applicants
7 who sat for the exam and generated a score that tests
8 minimum competency to practice law, may not know
9 where they will be practicing law, we should be doing
10 what we can, not to obstruct their ability to work,
11 but to recognize that for some period of time, that
12 score is an adequate measure that should satisfy a
13 jurisdiction looking at that score.
14 And we had a hard time, frankly,
15 disengaging the discussion from our condition of our
16 admission on motion practice, where we already had
17 come quite comfortably to terms with the fact that
18 minimum competence for purposes of admission to
19 practice for those who had been at the practice of
20 law for five or ten years preceding application was a
21 fine measure for us. We didn't spend time worrying
22 about where they've gone to law school. We didn't
23 spend time worrying about their competence with
24 respect to particular unique aspects of Missouri law.
25 We relied upon the practice being that measure of

1 minimum competence.

2 And so for us, it was a recognition that

3 really with the UBE, we are dealing with - - - and

4 were dealing with a relatively small period of time,

5 and that's not a very rash change, where we would be

6 embracing the notion of minimum competence for newly

7 licensed lawyers based on a score as opposed to after

8 years of practice.

9 And in that respect, we recognized that we

10 would be admitting candidates where, just as we had

11 in motion practice, we didn't really have that much

12 control over whether they've been practicing in

13 Missouri or knew Missouri law in any - - - in any

14 event. And at the end of the day, we basically came

15 to the conclusion that the recognition of the bar

16 exam is not really a measure; it's not - - - it's not

17 designed to test complete comprehension of every

18 substantive matter about which a law student might

19 have been exposed to in law school. That's a

20 physical impossibility.

21 But instead, what you hope that you have

22 with your bar exam is a testing instrument that

23 generates a reliable score, that tells you what it is

24 that you think it tells you. And in the case of the

25 UBE, we were confident that it would give us a score

1 that would be equatable across different
2 administration dates and as to which we could
3 comfortably advise any other jurisdiction that might
4 adopt the UBE, and has given the test, it's the same
5 test on the same date that we look for, that they
6 should recognize an importance for.
7 Having said that, we faced the very same
8 perception obstacle that you're facing and that,
9 frankly, every UBE jurisdiction faces. How in the
10 world can you license a lawyer to practice in a
11 jurisdiction unless you've tested their knowledge of
12 law in that jurisdiction? And we faced that
13 perception for much of the same reason you are. We
14 had exam questions that we had drafted, and we had
15 subject matters on our exam that were not tested on
16 the National Conference that date or on the MBE. For
17 example, Missouri Civil Procedure and Administrative
18 Law were two threshold questions that were often a
19 part of our essay subjects.
20 And having said that, we came to the
21 realization that notwithstanding the fact we ask our
22 applicants to answer essays based upon "Missouri law"
23 and not generally accepted principles of law, the
24 reality was we had been working very hard to
25 generate, on our board-directed essays, good reliable

1 measures, and that in doing so, we had come to
2 appreciate that our essays really needed to be
3 crafted, not based on memorization of precise
4 particular differential aspects of the law, but on
5 comprehension of general principles of law.
6 So it was a form-over-substance realization
7 that the perception was not really based in reality
8 and that move to "NCBE-directed essays" for all of
9 the essays would really not be a significant change
10 in practice on our exam. And so overcoming the
11 perception, that obstacle that somehow you must test
12 lawyers on state-specific issues, we - - - we came to
13 the conclusion that we could do both. That we could
14 adopt the UBE and as well look at some other
15 mechanism to assure us that we were exposing our
16 applicants to the things that we would want Missouri
17 lawyers to know.
18 And we started the process of our curricula
19 very much as you have. We looked at substantive
20 areas of the law that we felt would warrant
21 particular coverage because of unique rules or
22 procedures or statutes. And we ended up on torts and
23 Civ pro, real property, trusts, estates, family law,
24 business association, admin law and evidence.
25 Incredibly, Missouri doesn't have modified rules of

1 evidence, so talk about weird. We - - - we would be
2 right up there.
3 And we actually have a test subject that
4 has to do with our court system because of our
5 nonpartisan court plan. And as a side note, I note
6 that - - - that really that meant we were adding
7 content to our unique areas of law that would be
8 something you'd never actually test on a bar exam.
9 We created annotated specific outlines for those
10 subject matters, and then we talked about how best to
11 ensure that our applicants who sat for the bar in
12 Missouri would be exposed to those subject matters.
13 And after looking, frankly, at a lot of
14 options, and I won't bore you with those, we opted
15 for essentially a multiple-choice test, as much as
16 you - - - you are. Ours is a little different in
17 that it can be taken online, and we don't honestly
18 care if it's open book. It does require a particular
19 score to pass. But in our way of thinking, it was
20 kind of a lightbulb moment for us, we recognized that
21 by incorporating a local law distinction in this
22 fashion as a checkmark for criteria for admission, we
23 weren't interested in whether or not that component
24 of the exam created psychometric measures.
25 We were interested in ensuring that those

1 who would be practicing in Missouri were exposed in a
2 manner where it would be fresh in their minds and
3 highlighted for them to the unique and peculiar
4 aspects of Missouri law that we would want every
5 lawyer to know. And by generating outlines in the
6 fashion that we did that could be readily modified
7 and that were not some line, we were actually
8 creating a tool for newly licensed lawyers in
9 Missouri, in fact for every lawyer in Missouri,
10 because these - - - Missouri ones are publicly
11 available, to - - - to come back to this resource and
12 to say hey, I understand the general principle, but
13 what would be different in Missouri if I needed a
14 specific reference point to find that information?
15 And as a result, we have actually become
16 very, very excited about the fact that this
17 component, this local component of admission, has
18 given us actually greater control over exposure to
19 local law distinctions as contrasted with the spot
20 testing that is inherent in a finite number of essays
21 that can only cover a finite aspect of a particular
22 subject matter over a finite period of time on a bar
23 exam.
24 And in short, we just felt that we - - - we
25 were better served by the Missouri local law

1 component in our jurisdiction in ensuring access to
2 local law distinctions without requiring that those
3 local law distinctions be tested as a part of the bar
4 exam itself.
5 And I'd kind of like to get to the point of
6 - - - of my outline, which really addresses sort of a
7 confession in the profession adopting UBE, because
8 these were all things that Missouri addressed in the
9 course of deciding to adopt the UBE. Some think the
10 process would be better off simply just studying for
11 an exam in another jurisdiction instead of paying to
12 transfer a UBE score. Of course, you're free to do
13 that if you wish. No one makes you transfer your UBE
14 score if you get one. But I note that for a number
15 of jurisdictions, the fee to transfer the UBE score
16 is identical to the fee for admission on motion. And
17 that reflects the analogous circumstances you're
18 dealing with. You're really recognizing a score
19 versus active practice as a measure of minimum
20 competence you're willing to recognize in your
21 jurisdiction.
22 The other advantage, of course, of the UBE
23 score is you can transfer at any time. You're not
24 confined to the framework for bar admission of - - -
25 of the February, July bar exam administration. And I

1 suppose if you check with those who have sought UBE
2 admission, they consider it an advantage that you
3 don't have to sit for the exam. And for a lot of
4 people, that's probably a significant advantage. A
5 lot of people don't want to go back if they don't
6 have to. I think perhaps I, the best evidence I have
7 of that, is anybody who applies in your state to be
8 admitted on motion has the right, if they want, to
9 sit for the exam. But I would venture to suggest
10 most don't, even if the expense to transfer into your
11 jurisdiction on motion is more expensive than the fee
12 to sit for the exam itself.
13 We have also heard that, you know, what we
14 - - - what if we don't have applicants who really
15 want to transfer to another UBE state, or there
16 aren't UBE states close to us that would really be an
17 attractive option for our law students. And I have
18 to remind - - - remind you, of course, that that
19 discussion - - - of course, Missouri adopted the UBE
20 when no one else had it, and we were prepared for the
21 prospect that no one else ever would. But what was
22 the downside for us to be in a position where we at
23 least created that flexibility for our law students
24 and permitted them to be in the driver's seat should
25 it be that other jurisdictions, within some period of

1 time after they obtained the UBE score, in fact,
2 adopted the UBE exam?
3 And, in fact, that potential for dynamic,
4 effective adoption of the UBE has borne out in our
5 area. You look at the map of those jurisdictions
6 that have adopted the UBE and what certain states
7 it's going in.
8 In fact, to my tremendous surprise, we just
9 learned last Friday that Kansas has now adopted the
10 UBE, and I have to confess, having lived in the state
11 and on the state line - - - Kansas City, right
12 between Missouri and Kansas - - - I would never have
13 guessed that to happen, because the Kansas Board of
14 Law Examiners craft every single essay on their exam.
15 They have sixteen on their exam. They're - - -
16 they're quite protective of their essay questions on
17 their exam, and the notion that they've abandoned
18 ship on all of them and have not at all adopted
19 state-specific local components to their exam and
20 have looked at adopting the UBE was both very
21 refreshing to me and exciting to me, but surprising
22 to me. But it does seem that speaks to the dynamic
23 effect of adopting the exam in a particular
24 geographic area.
25 You know, much has been made about the

1 disparate impact of the UBE on minorities. And I
2 certainly am not a psychometrician, nor do I choose
3 or want to or have any reason to minimize that. In
4 fact, educational accomplishments, however they may
5 be measured - - - by GPA, tests, at any point in time
6 in one's educational career or licensure exam - - -
7 may, in fact, result in disparate percentages of pass
8 rates for those in different classifications.
9 But to suggest that changing the essays on
10 any state bar exam from those drafted by a board of
11 law examiners testing particular state law versus
12 essays directed in a psychometrically more reliable
13 fashion, quite frankly, testing general principles of
14 law would have greater impact, inherently, I have a
15 problem with the premise of that assumption. And
16 though I don't at all want to minimize that there's
17 concern, I think the comments that you've heard
18 today, in terms of disparate impact, the questions
19 that have been asked really underscore that this
20 issue is not a function of the bar exam itself, but
21 it's a function of a number of other factors about
22 which the bar exam, however it may be structured, is
23 not likely to have any impact.
24 I would also point out that it's - - - and
25 that the comments and the questions that the extent

1 to which anyone is in a position to study this issue
2 is going to be a function of what each state
3 determines and collects by way of data. And that's
4 not something that is nationally collected, but the
5 exam, when it's administered, it's administered under
6 the jurisdiction of each state board law examiner,
7 and the state would control that data.
8 I'm particularly interested by the comment
9 with respect to redoing legal education and
10 jurisdiction and/or the impact on practical
11 curriculum. I - - - I find that intriguing because
12 it - - - it seems to me to kind of defy the basic
13 premise of the distinction between legal education,
14 which is where lawyers learn to be lawyers and become
15 prepared for the practice of law, versus the point
16 and purpose of the bar exam, which is not to teach
17 lawyers how to practice law, but rather to measure
18 minimum competence.
19 And I can tell you from, at least, the
20 perspective of Missouri that there has been
21 absolutely zero impact on our curriculum. Our
22 courses - - - the courses are still the same. The
23 offerings are still the same. Students are still
24 taking Missouri civil procedure. They're still
25 taking administrative law. And the law schools in

1 our state - - - we have four - - - continue to
2 embrace the notion that their obligation is to
3 prepare lawyers to practice. And to the extent a
4 great majority of their law students intend to
5 practice or could practice in Missouri, their
6 obligation is to prepare lawyers to practice in the
7 State of Missouri.
8 So we simply have not seen any impact in
9 that scholarship and certainly no impact on practical
10 curricula, experiential learning, so to speak. In
11 fact, most of our law schools have seen a marked
12 uptake in the experiential learning opportunities.
13 And I - - - I think that's largely a part of the
14 corrected view of the deans in Missouri and in part a
15 function of ABA's recognition that experiential
16 learning is an important component of legal
17 education.
18 Finally, there is this notion of a flood of
19 applicants. There is data that is available and has
20 been collected with respect of the number of UBE
21 scores that have been obtained in jurisdictions and
22 transferred both into and out of jurisdiction. And
23 it's been Missouri's experience, and I think the
24 experience of - - - of every UBE jurisdiction, much
25 as was predicted by those who adopted the UBE, that

1 the UBE is a tool for applicant portability
2 associated with employment opportunities. It is not
3 a tool that is going to be relied upon by newly
4 licensed lawyers who, frankly, are just interested in
5 getting a job and paying off a lot of student loans
6 to go jumping around from jurisdiction to
7 jurisdiction for the two years or three years or
8 however many years that score may be recognized to
9 secure licensure in a number of different
10 jurisdictions and the associated expenses of that
11 licensure.
12 And once again, I would just point out I
13 think the best evidence about the fact that a flood
14 of applicants is not likely to result from a UBE
15 jurisdiction is measured by your motion practice,
16 where five or ten years of practice could score you
17 that coveted gold standard New York law license,
18 regardless whether the practitioner was taught the
19 law of your jurisdiction - - - or Missouri or any
20 other UBE jurisdiction. It's just, frankly, a
21 concern that does not appear to have been borne out
22 by experience.
23 In summary - - - and I apologize; I know
24 you guys are running late, and I respect your time,
25 but I - - - I just think it's important to point out

1 to you that from a UBE jurisdiction's perspective, we
2 believe in UBE because we believe it generates a
3 score that's a reliable measure of minimum
4 competence, and that is, in fact, the point and
5 purpose of the exam. That is not a variable of local
6 law distinctions. We're embracing a notion that has
7 been consistent with our appreciation that there are
8 things we want Missouri lawyers to know.
9 And there are ways to get that counted that
10 don't require incorporation of Missouri-specific
11 questions on the bar exam. And, in fact, I would
12 submit to you that the way that one can embrace the
13 local law components can actually be more beneficial
14 to exposing your applicants and emphasizing local law
15 distinctions to your applicants than a spot testing
16 on essays that currently occurs in jurisdictions
17 taking away state-specific exam questions.
18 JUDGE RIVERA: Well, thank you so much,
19 Judge Martin, for waiting for us and then - - - and
20 dealing with our time constraints and our time issue.
21 But most importantly for the great wisdom and the
22 thoroughness of your comments; very, very helpful,
23 very thought provoking, and we're very grateful to
24 hear from the first UBE state.
25 I will have just one quick question. Then

1 we'll see if anyone else has a question. I was
2 curious since you've mentioned that you've got this
3 multiple-choice open-book component to your exam how
4 you came to determine that you could do that and
5 maintain a certain sense of, sort of, the security
6 and the integrity of that exam?
7 JUDGE MARTIN: We talked about that a great
8 deal, frankly, and - - - and consulted our court on
9 that point. I think one way to capture it, to quote
10 one of our justices, Judge - - - Justice Zel Fischer
11 of the Missouri Supreme Court, who basically says,
12 the court came to understand that its point and
13 purpose with the local component was not to worry
14 about - - - well, we were more concerned that people
15 would back into problems than to run into them front
16 way, and that by requiring certification, which we
17 do, students actually have to go online, certify that
18 they've gone online, that they have reviewed these
19 materials, they actually have to sign in through
20 their portal and take this exam online so we know it
21 is them. We're relying on their honesty and in that
22 respect, of course, just as we do with any number of
23 other things associated with bar admissions. But the
24 reality is, we're confident that we're exposing them
25 to that information. You know, whether one elects

1 that New York is considering to make this a closed-
2 book board exam in a - - - in an exam-testing
3 environment versus our online feature, it's probably
4 less of a concern, it would seem to me, this notion
5 that you are requiring the students to assess this
6 material and be prepared to answer questions about
7 this material.
8 JUDGE RIVERA: Thank you so much. Any
9 other questions? Yes, Seymour. Seymour James, go
10 ahead.
11 MR. JAMES: Good - - - good afternoon,
12 Judge.
13 JUDGE MARTIN: Thank you.
14 MR. JAMES: I - - - my - - - my question
15 relates - - - I - - - I looked at your submission and
16 you indicated that Missouri has not experienced any
17 claim of disparate impact on minorities. Does the
18 state record demographic information about the people
19 who take the test? And if they don't, has any ever
20 been made, as Dean Lane suggested, to go through the
21 law schools in the state to see whether there's been
22 any difference in the pass rate amongst min - - -
23 minority students? Pre - - -
24 JUDGE MARTIN: The state does not record
25 demographic information at the time of the bar exam.

1 There has not been an effort undertaken by the Board
2 of Law Examiners, to my knowledge, to work with the
3 law schools to assess the extent to which their data
4 would translate into pass-rate data on the bar exam.
5 But I will tell you this; we - - - and by
6 "we", I mean the Missouri Board of Law Examiners - -
7 - have a very close working relationship with our
8 four law schools. And, in fact, we meet with them on
9 an annual or biannual basis to talk about matters of
10 general interest and concern relating to bar
11 admission. And I feel very confident that if there
12 was a concern amongst our law schools that somehow
13 components of our exams, or certainly the adoption of
14 UBE, had - - - had in some fashion created a problem
15 that perhaps didn't already exist in some fashion, we
16 would most definitely have been hearing about it.
17 On that point, I think it's important to
18 note that we do keep the specifics, of course, about
19 pass rates generally, first-time takers, second-time
20 takers, et cetera. They're not demographically
21 based, but our pass rates were not negatively
22 impacted by the adoption of the UBE, despite any re-
23 weighing of some components of our exam, and, of
24 course, the abandonment of state-specific essays.
25 And, in fact, both in the first February

1 administration and the first July administration of
2 the UBE, our pass rates slightly went up.
3 MR. JAMES: Okay.
4 JUDGE RIVERA: Thank you so much.
5 Michelle, Michelle Anderson?
6 MS. ANDERSON: Thank you, Judge, for your
7 thoughtful remarks and your experience in this area.
8 I wonder what percentage of the applicants taking the
9 bar exam are people of color in Missouri?
10 JUDGE MARTIN: I am not prepared to answer
11 that question. I don't know the answer to that
12 question, but I can certainly attempt to secure the
13 answer to that question. Again, I don't think the
14 Board of Law Examiners will be in a position to give
15 me that information, because we do not collect that
16 democrat - - - or demographic data.
17 We could certainly see whether or not
18 through the Board of Law Examiners we could
19 determine, of our four law schools, the percentage of
20 applicants of color who are enrolled in our law
21 schools. That wouldn't necessarily translate,
22 because not all of our law students, of course, sit
23 for the Missouri State Exam, although a great
24 majority of them do.
25 MS. ANDERSON: Right. As you can - - - can

1 see, I'm - - - I'm wondering about the applicability
2 of the thoughts about disparate impact from Missouri
3 and New York.
4 JUDGE MARTIN: I can certainly check with
5 our Board of Law Examiners and see if there's a
6 possibility of securing that information for you.
7 MS. ANDERSON: Thank you.
8 JUDGE RIVERA: That would be wonderful.
9 Thank you, Judge Martin. Anyone else?
10 No, we're done. Thank you so much. We
11 really appreciate, again, your written testimony and,
12 again, your testimony by phone.
13 JUDGE MARTIN: Thank you.
14 JUDGE RIVERA: Thank you.
15 Okay, as it turns out, Mary Gallagher is
16 unable to testify today given the time we've gone
17 over. So we are adjourned. Thank you so much. We
18 very much appreciate your coming today and your
19 testimony. I hope everyone makes their ride home.
20 (Hearing is adjourned)
21
22
23
24
25

1
2 C E R T I F I C A T I O N
3
4 I, Sara Winkeljohn, certify that the
5 foregoing transcript of proceedings in the Court of
6 Appeals was prepared using the required transcription
7 equipment and is a true and accurate record of the
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11 Sara Winkeljohn
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17 Suite # 607
18 New York, NY 10040
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20 Date: February 8, 2015
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APPENDIX H
Attachment 2

Supplemental Testimony before the Advisory Committee on the Uniform Bar Examination
February 3, 2015
(Supplement Submitted on February 5, 2015)
Honorable Cynthia L. Martin

I testified by telephone on February 3, 2015 about Missouri's experience with the UBE, and a local law component. In the course of my testimony, I hoped to provide empirical experience responsive to concerns expressed in the hypothetical about the prospect of adoption of the UBE in New York.

As a part of my testimony, I noted: (i) that the overall pass rate on the bar exam in Missouri did not decline following adoption of the UBE, and in fact, remained steady or increased slightly; and (ii) that neither the Missouri Supreme Court nor the Missouri Board of Law Examiners has received complaints following adoption of the UBE suggesting that the UBE has a disparate impact on minorities exam takers--in other words, that no one has voiced a concern that the UBE has negatively impacted the gap between general pass rates, and the pass rates for certain demographics.

I was asked by a Committee member whether I happened to know the percentage of law students at Missouri law schools who are minorities--particularly African American and Hispanic. I explained I did not have that information, and that the Missouri Board of Law Examiners does not gather such demographic information in connection with administering the bar exam. However, I indicated I would follow up to see if the requested information is publicly available.

I have not been able to secure the information requested. It does not appear to be readily available in the public domain. However, I did reach out to my alma mater, the University of Missouri at Kansas City Law School. The Dean and Director of Bar Services at UMKC are avid supporters of the UBE. In fact, their discussions about the UBE with the Kansas Board of Law Examiners no doubt played a significant role in Kansas's recently announced decision to adopt the UBE.

I am advised by the Director of Bar Services at UMKC that following adoption of the UBE, the pass rate for the minority demographic groups identified above actually increased. The information I received from the Director of Bar Services is quoted verbatim, below, and is shared with permission, for the limited purpose of supplementing my testimony:

"Our numbers of minority students beget a small sample but do indicate that the Uniform Bar Exam did impact their passage rates-to their improvement! While our [pass] rate for

2008 was 100% for a small group, the rates for 2009 and 2010 were 77.77%, and 66.67%. With the Uniform Bar Examination, our rates were 85.71% [2011], 87.5% [2012], 92.31% [2013], and 80% [2014]."

The data provided by UMKC combined pass rates for the February and July examinations in each calendar year. By way of comparison the overall pass rate on the bar exam in the same calendar years (combining February and July administrations, and drawn from statistics published by the Missouri Board of Law Examiners for all who sat for the exam) was as follows:

Total test takers (not just from UMKC)	**UMKC Minority applicants**
2008: 86.60% (1075 applicants)	2008: 100% (7 applicants)
2009: 86.77% (1089 applicants)	2009: 77.77% (9 applicants)
2010: 85.94% (1010 applicants)	2010: 66.67% (12 applicants)
2011: 88.86% (997 applicants)	**2011: 85.71%** (14 applicants)
2012: 88.36% (1066 applicants)	**2012: 87.5%** (8 applicants)
2013: 87.04% (1088 applicants)	**2013: 92.31%** (13 applicants)
2014: 84.15% (1054 applicants)	**2014: 80%** (10 applicants)

The bolded data represents UBE administrations. It may be helpful to know that Missouri has four (4) law schools, and that UMKC is an "urban" campus, located in the heart of Kansas City, Missouri. UMKC tends to draw locally for its student population, and is progressive in minority recruitment.

I hope this information assists the Committee.

APPENDIX I

HeatherJoy Baker

Subject: FW: UBE Information
Attachments: CJ Berch Testimony in NY Public Hearing.pdf; CJ Berch Arizona Email to NY.pdf

From: Berch, Rebecca [redacted]
Sent: Thursday, December 17, 2015 8:38 PM
To: Susanne Johnson
Subject: UBE Information

Hi, Susanne. My name is Rebecca Berch. Kellie Early asked that I contact you regarding Arizona's adoption of the UBE. As you likely know from Kellie, I was the Chief Justice of the Arizona Supreme Court when it adopted the UBE in Arizona. I think she may also have provided to you my letter to New York's UBE task force and the transcript of my presentation before that committee. If not, let me know and I'll try to secure them for you. They may assist your court if its concerns resemble those my court faced in making this decision.

I'm happy to report that Arizona remains extremely happy with the change to the UBE. The results have been beneficial to the students/admittees who were able to take the exam and to the State of Arizona.

Although I retired from the court at the end of September, I was around when the results of the last two administrations of the UBE were finalized, and nothing has changed. Students continue to pass at the expected rates, and the portability of the score has enabled some students whose scores did not meet Arizona's passing standard (276) to transport their scores to other states, a benefit to all. As I said to the New York task force: the sky didn't fall, and students were greatly benefitted by being able to have a portable score, even if only for a short term.

The main resistance we faced came from the organized bar, and it quickly dissipated once we explained that the UBE does not open the floodgates to allow hordes of experienced lawyers to come into the state to take all of the good cases. Scores remain portable only for as long as the Supreme Court of each state says they are.

I would enjoy the opportunity to talk with you – or exchange further emails – if you or your court have other questions about the UBE. I've become quite a fan and am happy to share Arizona's experience. I'm still sitting with the court, so still have my court email: [redacted]. Let me know if you want to arrange a phone call, as I'm not at the court building very often any more. I'm happy to answer any questions.

APPENDIX I

Attachment 1

[redacted]

From: Berch, Rebecca <[redacted]
Sent: Wednesday, January 28, 2015 5:14 PM
To: Uniform Bar
Subject: UBE Testimony

I would appreciate the opportunity to address the Advisory Committee about the UBE at your February 26 meeting in Rochester. I have arrived at my position strongly favoring adoption of the UBE as a result of much study and thought resulting from several positions in have held or now hold.

(1) I am a supreme court justice, so appreciate the special concerns each state has about potential incursions into the state's autonomy. Because the UBE simply provides a portable score on a well-conceived, vetted, and executed standardized exam, many of these concerns are alleviated. States maintain the right to require a state-law component, enforce character and fitness standards, and set forth other considerations important to the admitting jurisdiction.
(2) Arizona adopted the UBE during my term as Chief Justice. I will share my court's endorsement of the exam and our experience creating an Arizona Law component.
(3) I currently serve as chair-elect of the Council of the ABA Section of Legal Education and Admissions to the Bar. During my term as a Council member, the Council approved a resolution encouraging jurisdictions to consider adoption of the UBE.
(4) During my term as Chief Justice of Arizona, I served on the Conference of Chief Justices, which adopted a similar resolution encouraging states to consider adoption of the UBE. (I recall that no-one voted against it, but that is subject to verification.)
(5) I served as a bar examiner for seven years in Arizona, so am familiar with exam writing/procuring and exam grading. From that experience, I can avow that NCBE has more resources and produces a better exam than any jurisdiction could possibly produce (though we thought we did a pretty good job at the time). I am also aware that an applicant for admission could miss every Arizona-law nuance in our home-produced essays, yet still pass the Arizona bar exam. With the required Arizona Law Course, we ensure that all applicants for admission to the Arizona Bar have at least passing familiarity with important aspects of Arizona law – even if those aspects (such as the requirement of filing the annual continuing legal education affidavit) are too minor to ever have been included on a bar exam.
(6) I serve on the Board of Trustees of the National Conference of Bar Examiners and on the Conference's Uniform Bar Examinations Committee, so I am familiar with the quality of the individual exam products produced by the NCBE and also with the UBE and the policies surrounding its administration and grading.
(7) I served on the faculty at Arizona State University College of Law (now the Sandra Day O'Connor College of Law) from 1986-1995. During that time, I taught (among other courses) the academic support program and special classes on exam writing. I am sensitive to concerns about the impact of uniform exams on diverse candidates. I am also aware that most law schools teach from law books produced by national vendors, such as Thompson/West, Foundation, and Little Brown, which do not focus on the law of any one jurisdiction. With very rare exception, the schools teach Federal Rules, Uniform Laws, and Model Rules and Laws, rather than the laws of any local jurisdiction. As a result, in-state schools usually don't teach local law; they teach law applicable

pretty much throughout the country. Given that, it seems unproductive to require recent law graduates and new lawyers to take essentially the same test, based on national rules, in each jurisdiction in which they wish to practice.

In short, from this background, I have become convinced that a more uniform approach to bar examinations nationwide serves the public both from the perspective of making access to justice more readily available, and protection of the public through administration of a high-quality, uniform exam to test the knowledge a new lawyer should possess. The UBE serves law students and new lawyers by allowing them to take an exam score earned in one jurisdiction an move it to another jurisdiction, while they remain responsible for satisfying local criteria for admission, such as a state-law program, pro bono requirements, and C&F. Law schools should also embrace the UBE, as it provides students with mobility. Given the difficult market for law-related jobs, schools should embrace programs that assist their students with placement. Finally, high courts or supervisory bodies can be assured that the test given is of the highest quality and the administrative requirements embody best practices, helping to alleviate concern regarding the giving of a high-stakes gatekeeping examination.

I hope you will consider my request. Thank you, and good luck with your inquiry.

Rebecca White Berch
Justice
Supreme Court of Arizona
1501 W. Washington St.
Phoenix, Az. 85007-3231
[redacted]

APPENDIX I

Attachment 2

1 COURT OF APPEALS
2 STATE OF NEW YORK
3 ----------
4 UNIFORM BAR EXAM PUBLIC HEARING
5 ----------
6 50 East Avenue
Rochester, New York 14604
7 February 26, 2015
8 Panel Members:
9 HONORABLE JENNY RIVERA
10 Associate Judge, New York Court of Appeals
11
12 DIANE BOSSE, ESQ.
13 Chair, New York State Board of Law Examiners
14
15 SEYMOUR JAMES, JR., ESQ.
16 Attorney-in-Chief, The Legal Aid Society of
17 New York City
18
19 HANNAH ARTERIAN, ESQ.
20 Dean, Syracuse University College of Law
21
22 HON. E. LEO MILONAS
23 New York State Board of Law Examiners
24
25 Reported by: Joony Lomenzo, RPR, CRR

1 Appearances:

2

3 CHRISTOPHER JENNISON

4 2L, Syracuse College of Law; Second Circuit

5 Governor, ABA Law Student Division

6

7 HON. REBECCA WHITE BERCH

8 Justice, Arizona Supreme Court

9

10 GREGORY G. MURPHY, ESQ.

11 Vice Chair of the ABA Council of the Section of

12 Legal Education and Mission to the Bar

13

14 JUSTIN L. VIGDOR, ESQ.

15 Member, New York State Uniform Law Commissioners

16

17 DAVID SCHRAVER, ESQ.

18 Immediate Past President of the New York State Bar

19 Association

20

21

22

23

24

25

1 MR. JENNISON: Yes.
2 HON. RIVERA: -- test or that there weren't
3 enough multiple choice questions --
4 MR. JENNISON: I think --
5 HON. RIVERA: -- or both?
6 MR. JENNISON: I think it's a combination,
7 but more that it was a multiple choice test. You
8 know, it's fifty multiple choice questions. It's
9 possible that that might adequately test depending
10 on the structure of the questions, you know, as
11 opposed to adding more or less questions. The
12 concern I believe was more so about a multiple
13 choice test versus some other factor.
14 HON. RIVERA: Thank you so much.
15 MR. JENNISON: Thank you.
16 HON. RIVERA: Next we have the Honorable
17 Rebecca White Berch, Justice of the Arizona Supreme
18 Court. Thank you for joining us today. The weather
19 is of course much different from what you're used
20 to. We appreciated you joining us here.
21 HON. WHITE BERCH: The weather was delightful
22 when the wind wasn't blowing.
23 HON. RIVERA: True in Arizona, too.
24 HON. WHITE BERCH: It is true in Arizona at
25 this time of year.

1 Judge Rivera and members of the Advisory
2 Committee, good afternoon and thank you for letting
3 me appear here this afternoon. This is the third
4 hearing you've had, so I assume you've heard quite a
5 bit about the UBE itself, and I read some of the
6 comments that have been made on the website, so I'm
7 familiar with some of the things you've heard. And
8 as I was preparing for this I was trying to think
9 what can I say that will be helpful and not
10 repetitive of things you've already heard.
11 I thought what I might share with you is
12 Arizona's experience in adopting the UBE. I was
13 chief justice during the time that we adopted the
14 UBE and I'm familiar with concerns that were raised
15 there which seem to be echoed in the comments that
16 have been made to you.
17 We're a smaller jurisdiction. We're a mid
18 size state, but the concerns of the lawyers and
19 concerns of those who might take it seem to be the
20 same.
21 Arizona already had what we thought was a
22 good test. I know this because when I was a
23 practicing lawyer I served as a bar examiner for - I
24 want to pull a Brian Williams here - nearly seven
25 years. So it wasn't quite a full term. I was

1 kicked off the committee when I became Justice of
2 the Arizona Supreme Court.
3 We procured our essay questions by working
4 with an out of state law professor because we didn't
5 want any instate law school to have an advantage.
6 We would work with the professor to get a question.
7 We would vet it with our committee and we would
8 sometimes try to add an Arizona law twist. And
9 sometimes we did and sometimes we didn't, but I'll
10 tell you very frankly one could take the Arizona bar
11 examination, miss every nuance of Arizona law that
12 we put in our Arizona bar exam and still pass the
13 test, sometimes with flying colors. We had a lot of
14 students that went to schools out of state who did
15 very well.
16 When we proposed going to the UBE I was
17 familiar -- I was familiar with it because I worked
18 with the National Conference of Bar Examiners. I
19 became familiar with how they procured their
20 questions, how they put them together with
21 committees made up of law professors, practitioners,
22 judges, how they reviewed the questions, sent them
23 out for professional editing, how they vetted them,
24 how they had law students take a practice test, how
25 they had psychometricians look at the answers to try

1 to determine whether the questions were testing what
2 they purported to be testing.
3 We didn't do any of that in Arizona. You're
4 New York. I assume in terms of resources you have
5 more than anyone else, but I'd suggest that almost
6 no one can put those kinds of resources into testing
7 questions.
8 Our law school strongly supported the UBE for
9 the reasons that you heard from Mr. Jennison. It
10 allows them to take a portable score and move from
11 state to state.
12 Our state bar was recalcitrant, as you might
13 expect, until we explained to them that we were
14 giving quite a bit of a uniform bar already. We'd
15 been giving the Multistate Bar, the two hundred
16 question multiple choice, since the seventies. We
17 were giving one MPT, and the rest we were giving
18 half hour essay Arizona exam questions.
19 So we decided before we went to the UBE in
20 February of 2012 we would switch over, give a second
21 MPT, and we had started using MEE questions before
22 that time, but we would go to what really looked
23 like the UBE, but we wouldn't call it that in case
24 it was a bomb and we had to, you know, retrench. We
25 gave it and there was zero effect - none. Our pass

1 rates remained constant with prior February bar pass
2 rates.
3 So we began in July of 2012 giving the UBE.
4 Again, the sky didn't fall. The result was zero.
5 That is there was no change in the rates from prior
6 years. Frankly, I think most lawyers in Arizona
7 have no idea that there was even a change in the bar
8 exam.
9 So the bar was opposed, came around. The law
10 schools were supportive. My court. We have the
11 concerns that regulators have when you talk about
12 changing entry into the practice of law in your
13 jurisdiction. We were protected, but we became
14 convinced that it was a better test for the reasons
15 that I've just said.
16 We also realized that our state test even
17 though we thought it was a good test of Arizona law
18 really contained very little Arizona law, that we
19 could much better educate lawyers that were going to
20 practice in Arizona on Arizona law by having a
21 course.
22 We gave a six hour course, half an hour
23 modules on each of several subject matters --
24 subject matters, and we found that they came, they
25 saw, they answered the questions, they took the

1 course and they liked it. It was so popular we were
2 having Arizona lawyers ask if they could take it for
3 CLE credit.
4 We think it's so far superior a vehicle for
5 teaching local Arizona law than having a component
6 on a bar exam that we require every lawyer who is
7 admitted in Arizona by UBE to take this Arizona law
8 course even if they went to an Arizona law school.
9 I was on the faculty at Arizona State Law
10 School from 1986 to 1995. My husband is a law
11 professor and my daughter is now teaching law and
12 generally familiar with what goes on at law schools
13 and it has been my experience that by and large they
14 don't teach the law of a state. They teach law
15 according to the general principles that are
16 contained in textbooks published by Foundation,
17 Little Brown, Thompson West and the like, but they
18 teach general principles of law.
19 That's why law students from Arizona can go
20 to other states and pass their bar exams. That's
21 why my daughter who went to law school in New York -
22 Columbia - and all of her friends who took bar exams
23 with her who went to other states all passed bar
24 exams just fine.
25 Law schools are not really the place where

1 they're learning most of their local law. They can
2 learn enough to pass a component on a bar exam by a
3 review course.
4 Mostly though my court was simply convinced
5 as regulators that this was a better vetted more
6 professional put together test, and that as
7 regulators if we're going to stand -- have a test
8 that stands as a barrier to entry to the practice of
9 law in our jurisdiction, then we want to give the
10 best most fair test we can possibly give so that
11 everybody has a fair chance of passing. So we
12 changed.
13 It also helped persuade me that every
14 professional regulated group that I know of uses a
15 national test. And it's fine to say well, you know,
16 the body doesn't change from jurisdiction to
17 jurisdiction, you know, the federal tax code doesn't
18 change for CPA's from jurisdiction to jurisdiction,
19 but, you know, in all regulated professions there
20 are local laws.
21 If you're a CPA, you had best know Arizona
22 state law if you're going to be advising
23 corporations on law in Arizona. So if other
24 professions can learn the local law that they need
25 to know, we can do it, too.

1 The question was raised to Mr. Jennison
2 should the test be given more than twice a year. I
3 think it should. We've migrated our course online.
4 We've embedded questions in it to make sure that
5 they're not just turning it on and walking away.
6 We've embedded questions in it. They have to answer
7 them correctly before they're entitled to move on.
8 We think that provides a good system, and we
9 found that those who were going to work in say
10 family law might relisten to the family law half
11 hour or if they're going to do criminal law they
12 might relisten to that half hour.
13 The final point I'll make since I'm almost
14 out of time is that many of the professional groups
15 to which I belong have endorsed adoption of either
16 the UBE by name or a uniform bar. The Conference of
17 Chief Justices of America in 2009 or 2010 when I was
18 on the conference adopted a resolution encouraging
19 states to adopt or to consider adoption of the
20 uniform bar. The council of the section of legal
21 education and admissions to the bar, I believe you
22 have a letter from Barry Courier giving the
23 council's position on adoption of the UBE.
24 The young lawyers division is strongly in
25 support of adopting the UBE. And there was a recent

1 commission on the future of legal education chaired
2 by retired Indiana Supreme Court Chief Justice Randy
3 Shepherd, and as one of its recommendations it
4 recommends this.
5 The nation has always looked to New York as a
6 leader in innovation, in the practice of law and in
7 processes. I'm surprised that New York hasn't been
8 on the forefront of this one, but we look forward to
9 having you join the rest of us.
10 I never thought I would say that Arizona was
11 ahead of New York, but here I am.
12 HON. RIVERA: And on the record, too.
13 Thank you so much, Judge Berch. I wanted to
14 ask you about the online course.
15 HON. WHITE BERCH: Yes.
16 HON. RIVERA: So the online course if I'm
17 understanding you correctly -- and I understand the
18 point about giving it in steps. You've got to sort
19 of complete one section before you can move on.
20 It's the building blocks of that comprehension. So
21 I understand that point.
22 So can you take the course at any time or is
23 it offered at particular times during the year?
24 HON. WHITE BERCH: It's online. You can take
25 it at midnight on Sunday.

1 HON. RIVERA: At any time. Is it open book?
2 HON. WHITE BERCH: There really is no book.
3 There's a study guide that goes along with it, but
4 yes.
5 HON. RIVERA: So I could have anything in
6 front of me while I'm taking the exam.
7 HON. WHITE BERCH: There's no exam.
8 HON. RIVERA: I'm sorry. Because it's a
9 course.
10 HON. WHITE BERCH: We want you to just study.
11 We want you to be exposed to these concepts.
12 HON. RIVERA: I'm sorry. I'm sorry to
13 interrupt you. There's not any point where you're
14 evaluating the comprehension. I thought you said
15 you move -- you just have to complete a model to go
16 to the next. You don't have any testing.
17 HON. WHITE BERCH: That's correct, but there
18 are questions embedded within each half hour module.
19 Every ten minutes or so there's a question that you
20 must answer correctly which will keep you -- I
21 should interpret this.
22 So it will keep you seated there and looking
23 at the questions making sure you're paying
24 attention.
25 HON. RIVERA: I see.

1 HON. WHITE BERCH: If you don't answer it
2 correctly, you go back, listen to it. If you answer
3 correctly, you move on.
4 HON. RIVERA: You're not going to score from
5 that. You've got to answer that correctly before
6 you move on to the next?
7 HON. WHITE BERCH: Yes.
8 HON. RIVERA: And they can stop at any time?
9 HON. WHITE BERCH: That's correct, and come
10 back and get up and leave. Get up, leave, have
11 lunch, come back. It allows us to cover things
12 like -- we have continuing legal education
13 requirements in Arizona and it will tell you how
14 many, what kind and when to file your affidavit, and
15 these are things that not only wouldn't you cover,
16 you really shouldn't cover on a bar exam, that kind
17 of detail and memorization, but we can convey those
18 kinds of things.
19 The other thing I've found is that a lot of
20 what we think of as nuances in Arizona law really
21 are just general law. It's just that we're used to
22 citing Arizona cases and statutes for those
23 propositions, but they're really standard
24 propositions of law.
25 HON. RIVERA: Do you have to have completed

1 and passed the UBE to take the online course?
2 HON. WHITE BERCH: No. You can take the
3 online course at any time. You just have to submit
4 your packet together. You have -- we thought about
5 doing the course after you had completed the exam
6 within six months or a year, but frankly after
7 talking to our committee members they didn't want to
8 have to do the follow-up.
9 Now we make them submit their certificate
10 with their other papers.
11 HON. RIVERA: Okay. Thank you.
12 MR. MILONAS: Do you keep track of the
13 different test takers and the impact on them,
14 minorities, et cetera?
15 HON. WHITE BERCH: I wish we did. I was the
16 Director of the Academic Support Program at Arizona
17 State. So this is an area that's near and dear to
18 my heart.
19 There has been no discernible impact on pass
20 rates of minorities. There's really no data because
21 we can't do research on human subjects and you can't
22 know how they would have done if they hadn't taken a
23 bar exam if they take another kind.
24 I do understand that in Missouri - I was
25 speaking to Judge Cindy Martin - that there may be a

1 small sample of data from UMKC that shows that not
2 only was there no difference -- it was slight -- I'm
3 not sure statistically significant increase in
4 passage of diverse candidates.
5 MR. MILONAS: Do you keep track of the people
6 being admitted to the state?
7 HON. WHITE BERCH: We certainly keep track.
8 MR. MILONAS: I know. You know what I mean.
9 Color, et cetera.
10 HON. WHITE BERCH: I don't know.
11 MR. MILONAS: Okay.
12 MR. JAMES: The online course, I know you
13 said you can stop it, you know, have lunch. Is it
14 to be taken in a day or over a period of time that
15 you want?
16 HON. WHITE BERCH: Over any period of time
17 that you want. It tracks. It knows -- you get an
18 identifier of some sort and it will track you. So
19 if you come back in a week and you finish it then --
20 MS. BOSSE: You mentioned that your state bar
21 had concerns, the practicing bar had concerns.
22 HON. WHITE BERCH: Yes.
23 MS. BOSSE: What were those concerns?
24 HON. WHITE BERCH: We all love our homes. We
25 all think everybody wants to come to our homes. And

1 really the threat was that if you have this uniform
2 bar, people are going to flood Arizona to practice
3 law here -- there. I guess there. I'm here now.
4 There. Especially in the winter.
5 I think a lot of their concerns were
6 alleviated when it was pointed out to me, you know,
7 this is really for entering lawyers. It's really
8 the law students who are going to be most concerned
9 about this now. So that was their concern.
10 Data wise more -- we expected again to see
11 people transferring in. Our data showed that more
12 people are transferring out than are transferring
13 in. Being a westerner we were assuming that they
14 would transfer to Colorado or Washington or hiking
15 kind of states, and what we found instead was that
16 they are going to Alabama and Minnesota. And for
17 the life of me I couldn't figure that one out.
18 And I was speaking to a member of our board,
19 and she said don't you get it. I said apparently
20 not. She said their passing score is below ours.
21 So a few people who had not passed in Arizona -- who
22 did not pass in Arizona were able to take their
23 scores. We tracked a few of them, and at least
24 seven of them are working for the federal government
25 now.

1 So these are people who are able to have a
2 professional job because they have a UBE score that
3 they could take to a jurisdiction in which their
4 score was passing and they're now working.
5 MR. MILONAS: They're all going to come to
6 New York now.
7 HON. WHITE BERCH: Not quite yet, but perhaps
8 after 2016. We'll see. I'm sure they'd love to.
9 HON. RIVERA: Any other questions? No.
10 Thank you so much. We very much appreciate
11 you sharing with us your experience and concerns and
12 how you addressed them.
13 HON. WHITE BERCH: Thank you, Judge Rivera,
14 and members of commission. Thank you so much.
15 HON. RIVERA: Safe travels home.
16 We will now hear testimony from Gregory G.
17 Murphy, Vice Chair of the ABA Council of the Section
18 of Legal Education and Admissions to the Bar, and
19 Cochair of the National Conference of Bar Examiners
20 Committee on the Uniform Bar Exam.
21 Thank you for being here today.
22 MR. MURPHY: Well, thank you, Judge Rivera,
23 and members of the advisory committee. It's a real
24 privilege to be here. It's a delight.
25 I was harking back to my introduction to New

APPENDIX J

TO: Supreme Court Ad Hoc Committee on the Uniform Bar Examination
FROM: Elizabeth A. Weiler, Esq., Chair, New Jersey Board of Bar Examiners
DATE: December 17, 2015
RE: The National Conference of Bar Examiners' Multistate Essay Examination and Multistate Performance Test

Per the request of Justices Jaynee LaVecchia and John Wallace, I submit this summary of the comments I offered at the December 16, 2015 meeting of the Supreme Court Ad Hoc Committee on the Uniform Bar Examination concerning the Multistate Essay Examination ("MEE") and the Multistate Performance Test ("MPT"). The MEE and the MPT are two components of the Uniform Bar Examination ("UBE") developed by the National Conference of Bar Examiners ("NCBE").

As I indicated, my comments are informed by my twenty-six year involvement with the New Jersey Board of Bar Examiners. I began as a Bar Reader— someone who grades essay examinations for a Bar Examiner. In 2004 I was appointed a Bar Examiner—one of seven Examiners who write the seven essay examinations administered twice per year and who grade the essay examinations along with their assigned Readers. I have been the Chair of the Board of Bar Examiners for the past three years.

I carefully reviewed the February 2010 MEE questions included in the materials provided to the Committee. I have found a coincidence between the MEE questions and the essay examinations that our Board prepares in several important areas:

- The questions appear fair, well-researched, and well-worded.
- There are not a lot of extra words employed.
- There are no "runway lights" used such that the candidates must identify the subject matter of the question, e.g. torts, constitutional law, real property, contracts.
- The questions are devoid of pop-culture references, which might not be familiar to all candidates and might therefore disadvantage some subset of candidates.
- There were no offensive references in the questions from the standpoint of race, sex, religion, politics, gender, or diverse cultures.
- There were no tricks or aha-s!
- The questions appear to be written so that candidates can distinguish themselves based on their knowledge of applicable general law and their abilities to reason, apply the facts to the law, organize, and communicate coherently.
- The questions appear to include enough issues so that grading can be done on the six-point scale currently employed.

While our Board does not currently administer a performance test, after carefully reviewing the two parts of the July 2009 MPT provided to the Committee, I am comfortable that the tests are well-written, well-presented, and provide a fair opportunity for the candidates to demonstrate practical lawyering skills.

APPENDIX K

To: Supreme Court Ad Hoc Committee on the Uniform Bar Examination

From: Susanne Johnson, Assistant Secretary, New Jersey Board of Bar Examiners

Re: Explanation of Scaling Methodology with Examples

Date: December 16, 2015

Several of the articles you received describe the methodology and mathematical justifications for scaling the raw essay scores to scaled MBE scores. Scaling allows two sets of data with different scoring ranges to be compared. In the context of bar examinations, for example, MBEs and essays are graded using different ranges. Most jurisdictions, including New Jersey, scale their raw essays to the scaled MBEs.

First, the MBE is scaled by the National Conference of Bar Examiners (NCBE) by equating the raw scores across different administrations of the examination. Simply stated, the NCBE uses an imbedded set of questions that have been tested before and for which the range of applicant performance is known. If the current applicants outperform prior applicants, the scores are adjusted appropriately (see Mark Albanese article – Equating the MBE). This makes MBE scores comparable from one test administration to another.

Second, each state grades essays using their local scale. The NCBE recommends a 1 to 6 scale for each individual essay question, which New Jersey currently uses in its grading process. Because New Jersey administers seven essay questions, the maximum total raw essay score an applicant can earn is 42. For July 2015, the mean total essay score in New Jersey was 24. Raw essays scores in each state are then scaled against that state's MBE scores. Because the MBE is a standardized, computer-graded test not subject to grader leniency or "local" bias, it provides a valid measure for the scaling process.

The following explanation and examples demonstrate what actually occurs when the scaling formula is applied to the data.

Example 1. The first example demonstrates how scaling adjusts raw essay scores using two hypothetical jurisdictions, one of which grades more stringently than the other (assuming this would even occur as there are several mechanisms in place to counteract any such tendency). The MBE scores against which the essays are scaled are presumed to be identical in both jurisdictions.

Two sets of essay scores are used in this example – Set A and Set B. For the purpose of this example, we presume that graders of Set B are more stringent and therefore the essay scores for Set B are lower on average than those in Set A. As demonstrated below, the mathematical scaling process offsets the stricter grading by adjusting the scaled scores of the applicants in Set B upwards, resulting in scaled essay scores higher than those awarded to applicants in Set A who earned equivalent raw scores.

Therefore, an applicant from Set B with a raw essay score of 20 would receive a scaled essay score of 124.3 while an applicant from Set A with a raw essay score of 20 would receive a scaled essay score of only 121.63. By extension, if an applicant with essays of similar quality were to receive a 19 in Set B due to stricter grading in that jurisdiction, the applicant still would fare better than an applicant in Set A; the Set B applicant would receive a scaled essay score of 122.0, slightly higher than the 121.6 scaled score that would be earned by the applicant in Set A.

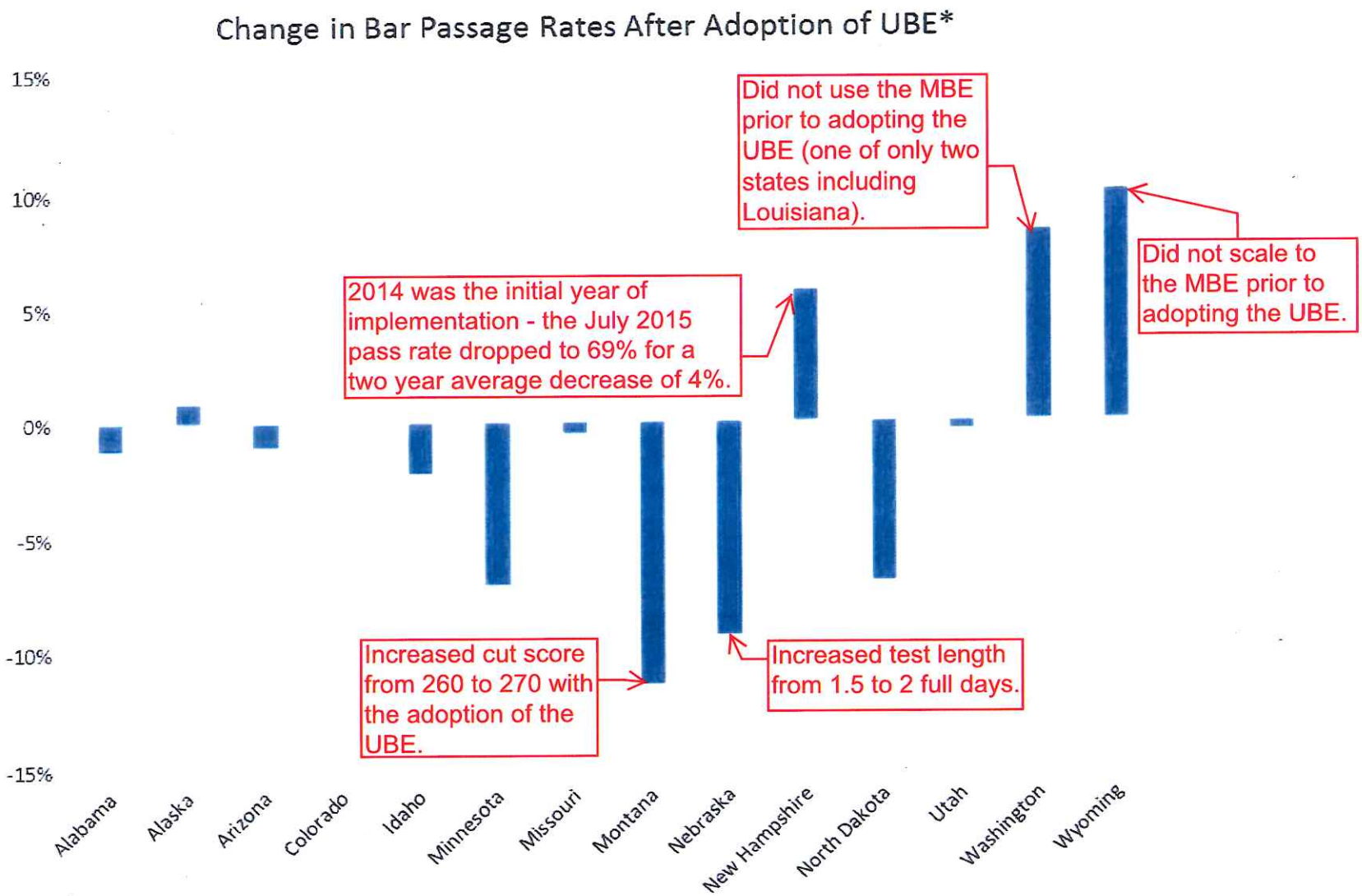
Simply put, scaling takes the applicants' MBE scores and lines up the raw essay scores against that scale – converting to a common scale. The highest and lowest raw essay totals will be equated to the highest and lowest scaled MBE score, for this example 96 and 173. An applicant who scores a 130 on the MBE but excels on the essays, receiving a raw essay score of 41, would earn a scaled essay score of 173.

Example 2. Scaling also addresses the situation where applicants in a jurisdiction achieve higher overall MBE scores. In this example, each applicant from Set B is given an additional scaled MBE point, creating Set C. The raw essay scores remain the same for both Set B and Set C. When the scaling formula is applied to Set C applicant raw essay scores, the scaled essay scores are higher than those in Set B due to the higher MBE scores. Because applicants in Set C outperformed other applicants on the MBE, a raw essay score of 20 in Set C receives a 125.3 scaled essay score. In short, the formula adjusts the scaled essay scores upwards to account for superior MBE scores.

Description	Set A	Set B	Set C
Average MBE score	133.1	133.1	134.1
Average raw essay	25.1	23.8	23.8
Scaled score of raw essay scores of 19 and20	Raw 19 - 119.3 Raw 20 - 121.6	Raw 19 - 122.0 Raw 20 - 124.3	Raw 19 - 123.0 Raw 20 - 125.3

The NCBE performs the scaling procedure for all UBE states to ensure that it is done uniformly. Through that process the NCBE performs certain statistical checks which would likely identify anomalies in the grading process. UBE jurisdiction graders can attend a workshop or request a hands-on training session from the NCBE.

APPENDIX L



*Average yearly pass rate after UBE adoption minus average yearly pass rate before adoption for first-time exam takers. Data evaluated were yearly passage rates 2005-2014.

Annotations to New Jersey State Bar Association Chart prepared by Board of Bar Examiners staff and shown in red.

APPENDIX M

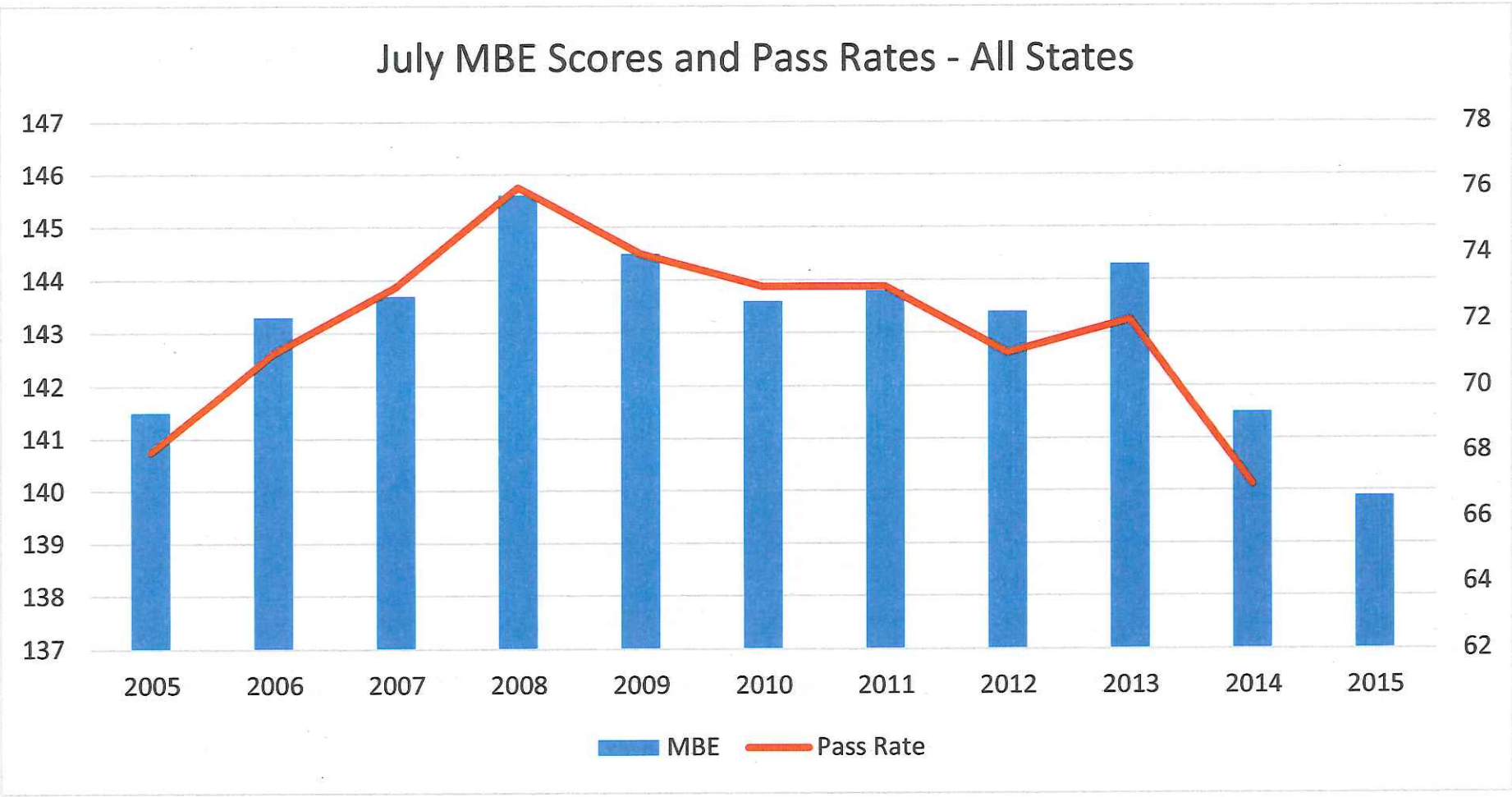


Chart prepared by Board of Bar Examiners staff. Data from the National Conference of Bar Examiners.

APPENDIX N

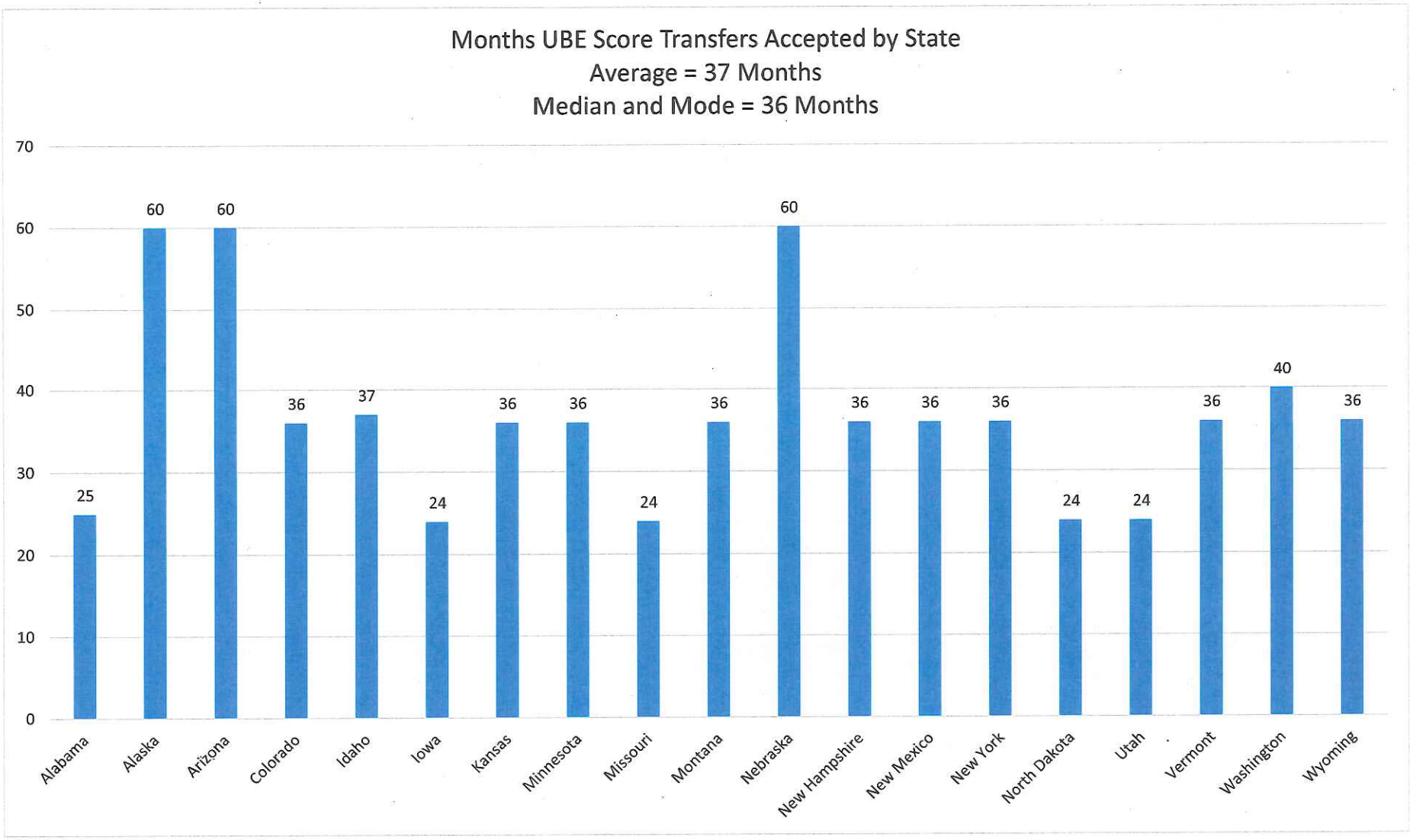


Chart prepared by Board of Bar Examiners staff. Data from the National Conference of Bar Examiners.