



**NEW YORK STATE BAR ASSOCIATION  
MEETING OF THE HOUSE OF DELEGATES  
VIRTUAL MEETING  
SATURDAY, APRIL 4, 2020 – 9:00 A.M.**

**AGENDA**

1. Call to order, Pledge of Allegiance, and welcome 9:00 a.m.
2. Approval of minutes of January 31, 2020 meeting 9:05 a.m.
3. Report of President – Mr. Henry M. Greenberg 9:10 a.m.
4. Report of Treasurer – Mr. Domenick Napoletano 9:25 a.m.
5. Election of Nominating Committee and State Bar Delegates to ABA House of Delegates – Ms. Claire P. Gutekunst 9:30 a.m.
6. Report and recommendations of Task Force on Rural Justice – Hon. Stanley L. Pritzker and Ms. Taier Perlman 9:40 a.m.
7. Report and recommendations of Task Force on the New York State Bar Examination – Hon. Alan D. Scheinkman 10:00 a.m.
8. Report and recommendations of the Committee on Standards of Attorney Conduct – Mr. Joseph E. Neuhaus 10:20 a.m.
9. Report and recommendations of Task Force on Autonomous Vehicles and the Law – Dean Aviva Abramovsky 10:40 a.m.
10. Report and recommendations of Task Force on Free Expression In the Digital Age – Ms. Cynthia Arato and Mr. David E. McCraw 11:00 a.m.
11. Administrative Items – Mr. Scott M. Karson 11:25 a.m.
12. New Business 11:30 a.m.
13. Date and place of next meeting:  
Saturday, June 13, 2020  
The Otesaga, Cooperstown, New York





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April 4, 2020

**President's Report  
to the House of Delegates  
April 4, 2020**

**Our Finest Hour**

Our entire society is in the throes of a historic public health crisis. Our lives have been upended, and the legal profession is not immune. As the state and federal governments work to contain the novel coronavirus (COVID-19), it continues to race across the nation and globe, leaving a trail of hardship and suffering in its wake. Here in New York, the epicenter of the pandemic, the virus has forced mass cancellations, curtailed our travel and compelled businesses and schools to close indefinitely. Most of us are cloistered at home in hopes of “flattening the curve” of infections and preventing our already stressed health care system from being completely overwhelmed.

The New York State Bar Association is meeting this unprecedented challenge head-on. Leaders and staff are working around the clock to help our members and the public. Rather than shut down, we stepped up. No bar association is providing more services or engaging in more effective advocacy for the betterment of the profession.

To paraphrase Winston Churchill, this is our finest hour.

Here are just a few examples of the work being done to address the challenges presented for lawyers by COVID-19.

### **Information Center**

Because COVID-19 forced most lawyers to hunker down at home, it forced us to shift our law practices from real to virtual. NYSBA was well positioned to support and assist our members.

This past June we launched an all-out effort to complete construction of a “Virtual Bar Center” -- a digital platform where attorneys across the street and around the world are just a click away on their computer or smart phone from accessing NYSBA’s services and benefits. To do this, we overhauled our operating systems by creating a new website, adding state of the art e-commerce technology, enhancing the quality and reach of our communications capacity and digitalizing all publications.

When we were forced to close the Bar Center at 1 Elk Street in Albany, our Virtual Bar Center was open for business and could be operated remotely. In just a week, we converted NYSBA’s website, social media outlets and other digital platforms into the most robust COVID-19 information center of its kind for lawyers. Our members are kept up to date on the latest information -- including court notices, summaries of new directives and laws, and other developments -- through a continuous stream of e-mail alerts, podcasts, real-time posts on social media and original news stories.

At the same time, we have provided a record number of online CLE programs and webinars that address the unique legal issues arising from the crisis. Many of our coronavirus-related webinars are offered for free to members.

NYSBA has updated and reissued a comprehensive book on the state's public health laws entitled "New York State Public Health Legal Manual: A Guide for Judges, Attorneys and Public Health Professionals." The book, issued in collaboration with the New York State Office of Court Administration, examines the law governing the containment of communicable diseases, including pandemics like the one we now face.

We have also sought to educate the public about the laws that govern a public health crisis. NYSBA leaders have been cited and quoted in numerous news outlets on the complex civil liberties dimensions of the crisis.

Only when we are armed with accurate and timely information can we make smart decisions that will best prepare us to represent our clients, serve our communities and do the public good. NYSBA is providing our members with the information they need to navigate the crisis.

### **Emergency Task Force for Solos & Small Firms**

Solo practitioners and law firms of fewer than 10 attorneys comprise more than half of NYSBA's membership. COVID-19 is having a devastating impact on these practitioners, many of whom have limited financial resources to draw upon during the crisis.

To provide immediate assistance, we have established an emergency task force comprised of a distinguished group of lawyers and judges from around the state. The task force is chaired by Domenick Napoletano from Brooklyn and June Castellano from Rochester, both solo practitioners themselves. This body is focused like a laser beam on the needs of solos and small firms and will make recommendations to get them help as quickly as possible.

## **Statewide Pro Bono Network**

NYSBA has been in communication with senior officials in all three branches of government throughout the crisis. Lawyers have always led in times of crisis and policymakers are turning to us for ideas, assistance and support.

In late March, NYSBA and the Office of Court Administration announced a partnership to support and coordinate a statewide pro bono network of lawyers to handle the expected surge in legal cases resulting from the coronavirus pandemic and the ensuing economic fallout. New York's network of pro bono and institutional legal service providers was strained prior to the pandemic and will not be able to handle the expected onslaught of virus-related cases unaided. Thousands of New Yorkers will need help with a wide range of legal issues, including those arising from unemployment, evictions, family emergencies and claims by creditors. We will support legal aid societies and other institutional providers by matching pro bono attorneys with the anticipated overflow of clients.

The partnership between NYSBA and the state court system will seek to ensure that all indigent New Yorkers are able to exercise their right to legal counsel at a time when the demand for legal services will be higher than ever. As a first step, we will convene meetings of the state's bar associations, large law firms, the heads of law school clinics, institutional providers of legal services and others for the purposes of assembling a network of pro bono lawyers who can be rapidly dispatched to help those in need. Former Chief Judge Jonathan Lippman has agreed to spearhead the effort.

In times of crisis, lawyers and law firms have always met their professional obligation to protect the rights of those who cannot afford an attorney. We saw that during 9/11. We saw that in 2017, when thousands of lawyers mobilized at the nation's airports in response to

President Trump's attempt to ban entry into the United States by people from predominantly Muslim countries. We are seeing that again now.

### **Enhanced Advocacy**

NYSBA has ramped up its advocacy efforts on multiple fronts. We joined the chair of the state Senate Judiciary Committee, Brad Hoylman, and other lawmakers in calling for Governor Andrew Cuomo to toll all statutes of limitations for the duration of the coronavirus disaster emergency. Our motive was simple: litigants and attorneys should not have to choose between placing themselves at risk of exposure to the coronavirus or pursuing civil and criminal justice.

Within two days of our announcement supporting this measure, the Governor signed the executive order.

In a similar vein, NYSBA has battled for graduating law students, many of whom carry massive student loan debts and are facing declining job opportunities as a result of the pandemic. Adding to their stress is the uncertainty over when they would be able to take the bar examination in New York. On March 23, I charged our Task Force on the Bar Examination on an emergency basis to consider how the state should handle the examination during the coronavirus crisis. In a week, the task force produced a cogent report that made three recommendations: First, that the July bar exam be rescheduled for a later date, as soon as possible around Labor Day. Second, if circumstances make a fall bar exam impossible, then graduates should be allowed to engage in certain law practice under practice orders, with the supervision of licensed attorneys. Third, a one-time general waiver should be granted to all law schools of the Court of Appeals' limits on distance learning credits for applicants to the New York bar, so that students completing law school this year would not be penalized due to

widespread social distancing measures implemented by their law schools to stop the spread of the coronavirus.

In less than 48 hours, the Court of Appeals adopted all three of the task force's recommendations. That action is a testament to the extraordinary leadership of the task force's chair, Hon. Alan Scheinkman, presiding justice of the Appellate Division, Second Department, and diligence of his colleagues. It also speaks volumes about the esteem with which NYSBA is regarded by the court system's leaders.

### **Attorney Well-Being**

The COVID-19 outbreak is not only a threat to lawyers' physical health and law practices. It is also taking a toll on their emotional well-being. In this time of fear and isolation, many are experiencing anxiety and depression.

To help judges, attorneys and law students cope with the crisis, NYSBA is offering confidential support groups being held weekly via videoconference. The group is facilitated by Libby Coreno, the chair of the Attorney Well-Being Committee, and Kerry O'Hara, a psychiatrist. Each group session is organized with an overarching theme for discussion. All participants are given the opportunity to share if they wish, with supportive conversation to follow.

### **Looking to the Future**

An old adage holds that "this too shall pass." And it shall. We have been here before. Just as NYSBA has weathered dangerous storms in the past — including two World Wars and the Great Depression — so too we will overcome the current crisis.

That said, the coronavirus pandemic is an inflection point. Trends long underway in the practice of law have been accelerated. With respect to the use of technology, for example, the

profession has experienced more change in just the past few weeks, than it has in the past few decades. It does not require prophetic powers to know that, when the crisis passes, traditional face-to-face encounters with clients and others will be less necessary as remote options become the norm. I am confident that soon, technology-enhanced courtrooms will become commonplace from Niagara Falls to Montauk.

The New York State Bar Association is now an agile technological powerhouse. That is a good thing, because never in the association's storied history has our voice and leadership been more desperately needed. Our response to the COVID-19 crisis proves that we are up to the challenge.

**NEW YORK STATE BAR ASSOCIATION  
2020 OPERATING BUDGET  
TWO MONTHS OF CALENDAR YEAR 2020**

**REVENUE**

	2020 BUDGET	ADJUST- MENTS	2020 BUDGET AS ADJUSTED	UNAUDITED RECEIVED 2/29/2020	% RECEIVED 2/29/2020	2019 BUDGET	UNAUDITED RECEIVED 2/28/2019	% RECEIVED 2/28/2019
<b>MEMBERSHIP DUES</b>	9,732,250		9,732,250	8,518,600	87.53%	10,050,000	8,877,657	88.33%
<b>SECTIONS:</b>								
Dues	1,321,800		1,321,800	1,131,622	85.61%	1,302,000	1,182,145	90.79%
Programs	3,123,430		3,123,430	669,903	21.45%	3,160,640	797,800	25.24%
<b>INVESTMENT INCOME</b>	500,800		500,800	(33,458)	-6.68%	478,000	-17,554	-3.67%
<b>ADVERTISING</b>	250,000		250,000	21,009	8.40%	219,000	46,984	21.45%
<b>CONTINUING LEGAL EDUCATION</b>	3,220,000		3,220,000	929,105	28.85%	3,130,000	744,401	23.78%
<b>USI AFFINITY PAYMENT</b>	2,306,000		2,306,000	481,566	20.88%	2,196,800	368,241	16.76%
<b>ANNUAL MEETING</b>	1,312,000		1,312,000	1,585,376	120.84%	850,000	946,483	111.35%
<b>HOUSE OF DELEGATES &amp; COMMITTEES</b>	174,750		174,750	7,440	4.26%	78,250	26,837	34.30%
<b>PUBLICATIONS, ROYALTIES AND OTHER</b>	216,200		216,200	38,860	17.97%	268,200	66,998	24.98%
<b>REFERENCE MATERIALS</b>	1,250,000		1,250,000	106,170	8.49%	1,274,000	100,082	7.86%
<b>TOTAL REVENUE</b>	<b>23,407,230</b>	<b>0</b>	<b>23,407,230</b>	<b>13,456,193</b>	<b>57.49%</b>	<b>23,006,890</b>	<b>13,140,074</b>	<b>57.11%</b>

**EXPENSE**

	2020 BUDGET	ADJUST- MENTS	2020 BUDGET AS ADJUSTED	UNAUDITED EXPENDED 2/29/2020	% EXPENDED 2/29/2020	2019 BUDGET	UNAUDITED EXPENDED 2/28/2019	% EXPENDED 2/28/2019
<b>SALARIES &amp; FRINGE</b>	8,790,034		8,790,034	1,368,082	15.56%	9,382,242	1,493,331	15.92%
<b>BAR CENTER:</b>								
Rent	284,000		284,000	56,951	20.05%	284,000	31,766	11.19%
Building Services	397,000		397,000	63,243	15.93%	230,750	46,155	20.00%
Insurance	170,000		170,000	22,500	13.24%	162,000	25,354	15.65%
Taxes	7,750		7,750	96,213	1241.46%	2,750	740	26.91%
Plant and Equipment	890,500		890,500	119,981	13.47%	862,000	141,028	16.36%
Administration	537,600		537,600	109,067	20.29%	539,100	88,239	16.37%
<b>SECTIONS</b>	4,445,230		4,445,230	534,555	12.03%	4,466,940	525,219	11.76%
<b>PUBLICATIONS:</b>								
Reference Materials	312,800		312,800	26,213	8.38%	306,752	45,836	14.94%
Journal	396,500		396,500	37,555	9.47%	360,200	46,331	12.86%
Law Digest	156,000		156,000	29,560	18.95%	172,300	29,637	17.20%
State Bar News	122,300		122,300	14,456	11.82%	135,300	14,468	10.69%
<b>MEETINGS:</b>								
Annual Meeting	714,700		714,700	2,154,958	301.52%	338,500	1,498,711	442.75%
House of Delegates, Officers and Executive Committee	468,825		468,825	42,090	8.98%	519,300	107,203	20.64%
<b>COMMITTEES:</b>								
Continuing Legal Education	1,480,500		1,480,500	118,587	8.01%	1,659,000	201,686	12.16%
LPM / Electronic Communication Committee	38,100		38,100	2,005	5.26%	55,950	7,375	13.18%
Marketing / Membership	877,050		877,050	126,165	14.39%	924,350	167,644	18.14%
Media Services	144,720		144,720	54,900	37.94%	30,450	3,843	12.62%
All Other Committees and Departments	2,983,790		2,983,790	454,579	15.23%	2,574,705	440,605	17.11%
<b>TOTAL EXPENSE</b>	<b>23,217,399</b>	<b>0</b>	<b>23,217,399</b>	<b>5,431,660</b>	<b>23.39%</b>	<b>23,006,589</b>	<b>4,915,171</b>	<b>21.36%</b>
<b>BUDGETED SURPLUS</b>	<b>189,831</b>	<b>0</b>	<b>189,831</b>	<b>8,024,533</b>		<b>301</b>	<b>8,224,903</b>	

NEW YORK STATE BAR ASSOCIATION  
STATEMENTS OF FINANCIAL POSITION  
AS OF FEBRUARY 29, 2020

<u>ASSETS</u>	<u>UNAUDITED</u> <u>2/29/2020</u>	<u>UNAUDITED</u> <u>2/28/2019</u>	<u>UNAUDITED</u> <u>12/31/2019</u>
<b>Current Assets:</b>			
General Cash and Cash Equivalents	14,778,176	14,372,025	16,424,055
Accounts Receivable	188,390	239,268	111,401
Prepaid expenses	855,987	1,237,194	1,082,754
Royalties and Admin. Fees receivable	425,617	329,779	716,588
<b>Total Current Assets</b>	<b>16,248,170</b>	<b>16,178,266</b>	<b>18,334,798</b>
<b>Board Designated Accounts:</b>			
<b>Cromwell Fund:</b>			
Cash and Investments at Market Value	2,490,308	2,387,890	2,633,478
Accrued interest receivable	0	0	0
	<u>2,490,308</u>	<u>2,387,890</u>	<u>2,633,478</u>
<b>Replacement Reserve Account:</b>			
Equipment replacement reserve	1,117,695	1,117,391	1,117,659
Repairs replacement reserve	794,457	794,241	794,431
Furniture replacement reserve	219,975	219,915	219,967
	<u>2,132,127</u>	<u>2,131,547</u>	<u>2,132,057</u>
<b>Long-Term Reserve Account:</b>			
Cash and Investments at Market Value	25,060,429	23,717,068	26,428,136
Accrued interest receivable	0	0	138,364
	<u>25,060,429</u>	<u>23,717,068</u>	<u>26,566,500</u>
<b>Sections Accounts:</b>			
Section Accounts Cash equivalents and Investments at market value	3,954,951	3,720,662	3,876,815
Cash	1,266,970	1,454,725	-67,601
	<u>5,221,921</u>	<u>5,175,387</u>	<u>3,809,214</u>
<b>Fixed Assets:</b>			
Furniture and fixtures	1,448,300	1,431,781	1,448,300
Leasehold Improvements	1,470,688	1,368,781	1,470,688
Equipment	9,808,495	8,407,284	9,223,256
Telephone	107,636	107,636	107,636
	<u>12,835,119</u>	<u>11,315,482</u>	<u>12,249,880</u>
Less accumulated depreciation	10,293,121	9,987,834	10,193,121
<b>Net fixed assets</b>	<b>2,541,998</b>	<b>1,327,648</b>	<b>2,056,759</b>
<b>Total Assets</b>	<b>53,694,953</b>	<b>50,917,806</b>	<b>55,532,806</b>
<b><u>LIABILITIES AND FUND BALANCES</u></b>			
<b>Current liabilities:</b>			
Accounts Payable & other accrued expenses	1,333,189	1,529,891	837,151
Deferred dues	0	0	7,798,323
Deferred income special	423,076	653,845	461,538
Deferred grant revenue	29,906	27,406	29,906
Other deferred revenue	15,037	99,028	1,069,153
Unearned Income - CLE	48,474	29,221	93,111
Payable To The New York Bar Foundation	7,307	6,545	26,307
<b>Total current liabilities &amp; Deferred Revenue</b>	<b>1,856,989</b>	<b>2,345,936</b>	<b>10,315,489</b>
<b>Long Term Liabilities:</b>			
Accrued Pension Costs	0	0	0
Accrued Other Postretirement Benefit Costs	8,115,883	7,178,910	8,065,883
Accrued Supplemental Plan Costs and Defined Contribution Plan Costs	60,000	356,197	312,281
<b>Total Liabilities &amp; Deferred Revenue</b>	<b>10,032,872</b>	<b>9,881,043</b>	<b>18,693,653</b>
<b>Board designated for:</b>			
Cromwell Account	2,490,308	2,387,890	2,633,478
Replacement Reserve Account	2,132,127	2,131,547	2,132,057
Long-Term Reserve Account	16,884,546	16,181,961	18,049,972
Section Accounts	5,221,921	5,175,387	3,809,214
Invested in Fixed Assets (Less capital lease)	2,541,998	1,327,648	2,056,759
Undesignated	14,391,181	13,832,330	8,157,673
<b>Total Net Assets</b>	<b>43,662,081</b>	<b>41,036,763</b>	<b>36,839,153</b>
<b>Total Liabilities and Net Assets</b>	<b>53,694,953</b>	<b>50,917,806</b>	<b>55,532,806</b>

**New York State Bar Association**  
**Statement of Activities**  
**For the Two Months Ending February 29, 2020**

	<u>February 2020</u>	<u>February 2019</u>	<u>December 2019</u>
<b>REVENUES AND OTHER SUPPORT</b>			
Membership dues	8,518,600	8,877,657	9,637,873
Section revenues			
Dues	1,131,622	1,182,145	1,288,049
Programs	669,903	797,800	2,483,202
Continuing legal education program	929,105	744,401	3,153,234
Administrative fee and royalty revenue	519,344	428,096	2,464,041
Annual meeting	1,585,376	946,483	938,791
Investment income	(15,027)	3,095	1,099,904
Reference Books, Formbooks and Disk Products	106,170	100,082	1,097,627
Other revenue	29,531	98,597	328,069
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Total revenue and other support	13,474,624	13,178,356	22,490,790
<b>PROGRAM EXPENSES</b>			
Continuing legal education program	248,747	326,729	2,535,399
Graphics	241,914	280,098	1,418,158
Government relations program	66,652	84,676	380,376
Law, youth and citizenship program	11,770	11,967	75,284
Lawyer assistance program	32,171	22,152	172,636
Lawyer referral and information services	19,215	20,054	121,435
Law practice management services	8,808	20,744	72,534
Media / public relations services	152,700	55,429	483,920
Business Operations	77,921	-	-
Marketing and Membership services	244,253	317,121	1,600,124
Pro bono program	28,663	24,639	171,387
Local bar program	14,495	16,718	102,000
House of delegates	39,930	104,223	388,462
Executive committee	2,160	2,980	50,818
Other committees	24,133	36,535	494,134
Sections	534,555	525,219	3,838,851
Section newsletters	27,048	13,829	128,880
Reference Books, Formbooks and Disk Products	112,787	138,754	811,426
Publications	81,571	90,435	621,296
Annual meeting expenses	2,154,958	1,498,711	380,226
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Total program expenses	4,124,451	3,591,013	13,847,346
<b>MANAGEMENT AND GENERAL EXPENSES</b>			
Salaries and fringe benefits	487,034	628,568	2,910,524
Pension plans and other employee benefit plan costs	110,157	111,046	1,251,456
Rent and equipment costs	297,385	232,365	1,492,289
Consultant and other fees	244,199	212,763	1,346,720
Depreciation and amortization	100,000	112,600	317,887
Other expenses	68,028	26,816	263,005
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Total management and general expenses	1,306,803	1,324,158	7,581,881
<b>CHANGES IN NET ASSETS BEFORE INVESTMENT TRANSACTIONS AND OTHER ITEMS</b>			
	<b>8,043,370</b>	<b>8,263,185</b>	<b>1,061,563</b>
Realized and unrealized gain (loss) on investments	(1,220,339)	2,306,013	5,309,924
Realized gain (loss) on sale of equipment			
Gain relating to defined benefit plan curtailment			
Realized gain (loss) on sale of equipment			
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<b>CHANGES IN NET ASSETS</b>	<b>6,823,031</b>	<b>10,569,198</b>	<b>6,371,487</b>
Net assets, beginning of year	36,839,051	30,816,097	30,467,564
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Net assets, end of year	43,662,082	41,385,295	36,839,051
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# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #6

REQUESTED ACTION: Approval of the report and recommendations of the Task Force on Rural Justice.

Data show that 96% of New York lawyers practice in urban areas, with only 4% practicing in rural areas. Research also suggests that nearly 75% of current rural lawyers will retire over the next three decades with few to no new attorneys ready to replace them. The Task Force on Rural Justice was formed in 2019 to study these trends and make recommendations to ensure access to justice for rural communities.

The Task Force identified factors that make rural law practice difficult, including the following:

1. Prevalence of indigent clients
2. Financial stress on lawyers
3. Professional isolation
4. Overwhelming caseload/not enough attorneys to assist
5. Systemic inefficiencies
6. Distance burdens
7. Technology issues
8. Conflicts of interest/knowing too many people in small communities.

Among the Task Force's recommendations are the following:

- Loan repayment and tuition assistance reforms, which would make rural practice more appealing by removing, or at least diminishing, the specter of student loan debt when establishing a practice or entering into governmental service in a rural area.
- Law schools' promotion of rural practice.
- Relaxing residency requirements for public positions. Residency requirements hurt rural areas as communities cannot attract qualified talent due to such restrictions, which the task force deems outdated and questionable.
- Raise hourly rates for assigned counsel, which are outlined in Article 18-B of the County Law §722-b. The last increase in assigned counsel rates was in 2004, when they

were increased to \$60 an hour for misdemeanors and lesser offenses, and \$75 per hour for felonies and all other cases. Cases are also capped at \$4,400.

- Raise the cap for small claims court to at least \$7,500 from the current \$5,000 for all town, city, village and district courts, and eliminate all filing fees for wills.
- Assistance for lawyers in transition.
- Broadband and technology assistance and improvement.

This report was published in the Reports Community in March 2020. No comments have been received.

The report will be presented at the April 4 meeting by Task Force co-chairs Hon. Stanley L. Pritzker and Taier Perlman.



# **REPORT & RECOMMENDATIONS OF THE TASK FORCE ON RURAL JUSTICE**



## **INTERVENTIONS TO AMELIORATE THE ACCESS-TO-JUSTICE CRISIS IN RURAL NEW YORK**

**APRIL 2020**

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## APPENDIX

## INTRODUCTION

Despite New York State having more licensed attorneys than any other jurisdiction in the United States, many New Yorkers do not have access to attorneys to assist with their legal problems. This lack of access is acutely felt within New York's rural communities, where the delivery of legal services presents both distinctive challenges and rewards that are largely uninvestigated by our metro-centric bar.

This metro-centrism is a symptom of the following reality: the great majority of New York's licensed attorneys practice in or around urban centers. According to the data, roughly 96% of attorneys practice in metropolitan areas, with the remaining 4% presumably serving New York's mostly rural geography. Compounding this inequitable distribution of attorneys, recent research has brought to light that nearly 75% of current rural practitioners will be retiring from practice in the next 10–30 years, with little to no new attorneys taking their stead. This alarming legal trend is exacerbating the access-to-justice gaps already faced by rural communities.

The Task Force on Rural Justice was formed to investigate these legal trends and to propose creative interventions to combat this imminent crisis.<sup>1</sup> We have taken insight from the other jurisdictions that have already been addressing their rural access-to-justice challenges, and now, as a united Task Force, endeavor to advance solutions crafted for New York's own unique jurisdictional needs. The report and recommendations that follow are the culmination of our collective effort to spotlight alarming legal trends, ameliorate the plight of New York's rural attorneys, encourage new attorneys to consider rural practice, and ensure greater access-to-justice for all New Yorkers.

We hope this Report inspires all invested stakeholders to take the necessary action required to avert the rural access-to-justice crisis upon us.

Co-Chairs

Honorable Stan L. Pritzker  
Supreme Court, Appellate Division  
Third Judicial Department

Taier Perlman, Esq.  
Staff Attorney  
Legal Services of the Hudson Valley

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<sup>1</sup> A detailed description and background on the Task Force can be found in Appendix A.

## ACKNOWLEDGEMENTS

The Task Force on Rural Justice acknowledges Hank Greenberg, President of the New York State Bar Association (NYSBA), for his vision in spearheading the creation of this Task Force and assembling its diverse and knowledgeable members. Staying true to NYSBA's commitment to ensure access-to-justice for all New Yorkers, he created this task force to respond to the shrinking pool of attorneys serving rural communities across the state. Further, our work would not have been possible without our NYSBA Liaisons—Katherine Suchocki and Tom Richards—who supported us with great dedication to the cause, from start to finish. We would also like to thank the Honorable Elizabeth Garry, the Presiding Justice of the New York State Supreme Court, Appellate Division, Third Department, for her support of this initiative, and for championing the rural-justice cause long before this Task Force formed.

This report builds on an empirical study of lawyers in rural New York spearheaded by Taier Perlman for the Government Law Center at Albany Law School. The Task Force thanks the Government Law Center for sharing the underlying data on which its published study, [\*Rural Law Practice in New York State\*](#), was based.

The Rural Justice Task Force also acknowledges the many invested stakeholders across the state who graciously and generously shared their time and insights. Special thanks goes to David Kay and Robin Blakely-Armitage from the [Cornell Community & Regional Development Institute](#) (CaRDI) who offered expertise in data science, rural demographic trends, and preliminary map-making. The Task Force also thanks [ZevRoss Spatial Analysis](#) for creation of the maps, infographics, and tables.

Finally, we acknowledge the many hard-working and dedicated rural practitioners from across the state that reached out to share their stories, comments, and proposals to support the Task Force. Without their tireless self-sacrifice, rural access to justice would just be a concept. These rural practitioners creatively maneuver through myriad challenges to deliver urgently needed legal services. They are justice warriors at the frontlines of the accelerating access-to-justice crisis affecting rural New York.

## CONCEPTUAL FRAMEWORK—A PACKAGE OF PROPOSALS

It must be clarified at the onset, that the rural access-to-justice challenges this Task Force was formed to address are largely due to forces beyond the scope of our work. The social, economic, and political circumstances that have brought about the decline of rural communities in New York and other states will not be addressed herein. Further, given that the diverse and complex challenges rural communities face implicate multiple stakeholders, including local and state governments, the Task Force had to take a creative approach when developing our recommendations.

Our recommended interventions fall under five categories—Rural Law Practice, Funding, Broadband and Technology, Law Schools and New Attorneys, and Law and Policy—which in totality make up a package of targeted proposals. These category specific interventions address the diverse and complex challenges rural communities face. Only through such a diversified approach can we meaningfully avert the justice gap crisis that will occur when nearly 75% of present-day rural practitioners retire.

This package of proposals is an invitation to any and all stakeholders invested in rural well-being and access to justice. Our diverse interventions call on the State Bar, the State Legislature, the New York Unified Court System, law schools, and others to take action where action is due. The interventions we discuss in this Report are not mutually exclusive. They each make up a piece of the bigger rural justice puzzle, and advancement of any one of them will make a difference for the rural access-to-justice problems our Task Force set out to address. In laying out these diverse recommendations, we invite the full panoply of stakeholders to help bring them to fruition. It will take the proverbial village to activate all of our recommendations. The more recommendations we can advance, the better for all.

## BACKGROUND & RESEARCH

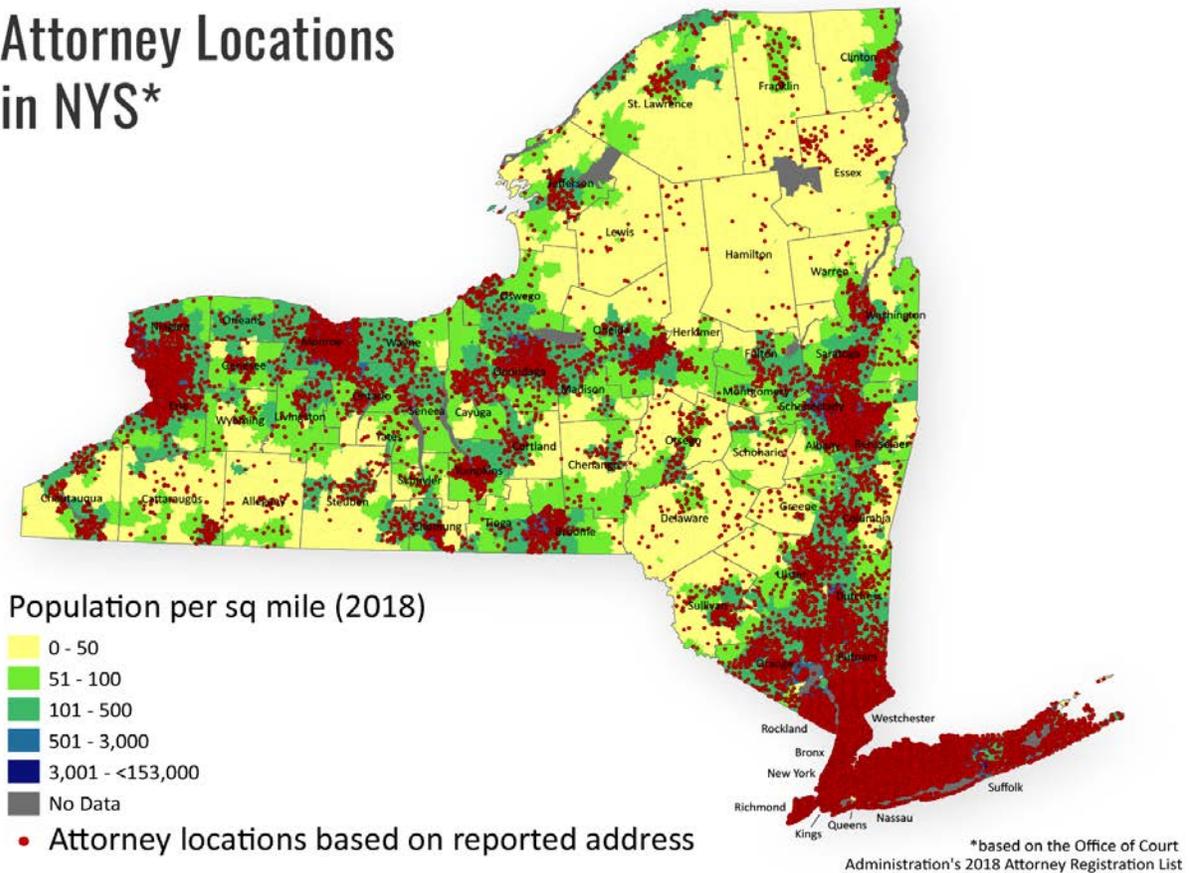
Readers familiar with the access-to-justice challenges experienced in rural New York may wish to skip this section and begin reading the Task Force recommendations which start at page 15.

### **I. New York State Attorneys: Where Are They?**

According to the *ABA National Lawyer Population Survey: Lawyer Population by State*, New York is home to the largest concentration of registered attorneys of any jurisdiction in the United States. As of 2018, New York had 179,600 registered attorneys, 155,369 of whom had in-state addresses. The majority of these registered attorneys are based in non-rural counties, so naturally, the organized bar focuses on meeting the needs of this great majority of practitioners. Accordingly, the needs of rural attorneys and access-to-justice challenges are not prioritized. This is documented across all jurisdictions.

The urban clustering of New York attorneys is readily apparent when projected on a map:

# Attorney Locations in NYS\*



Each dot represents a single attorney based on addresses reported to the Office of Court Administration.<sup>2</sup> The vast majority of New York State attorneys are located in urban centers of the state—Buffalo, Rochester, Syracuse, Utica, Albany (Capital Region), and the New York City metropolitan areas. Geographically, however, New York is primarily rural. Of the state’s 62 counties, 44 are considered rural under [New York State Executive Law § 481](#).

It should be briefly noted that defining “rural” is no simple task.<sup>3</sup> The definition shifts depending on the specific data sets being used, and what demographic factors or data units are being analyzed. State and federal agencies define rural differently from each other, and which definition of rural to use in a particular study depends on the context and purpose of the research. In a presentation to the Task Force, Robin Blakely-Armitage, Senior Extension Associate and Program Manager at

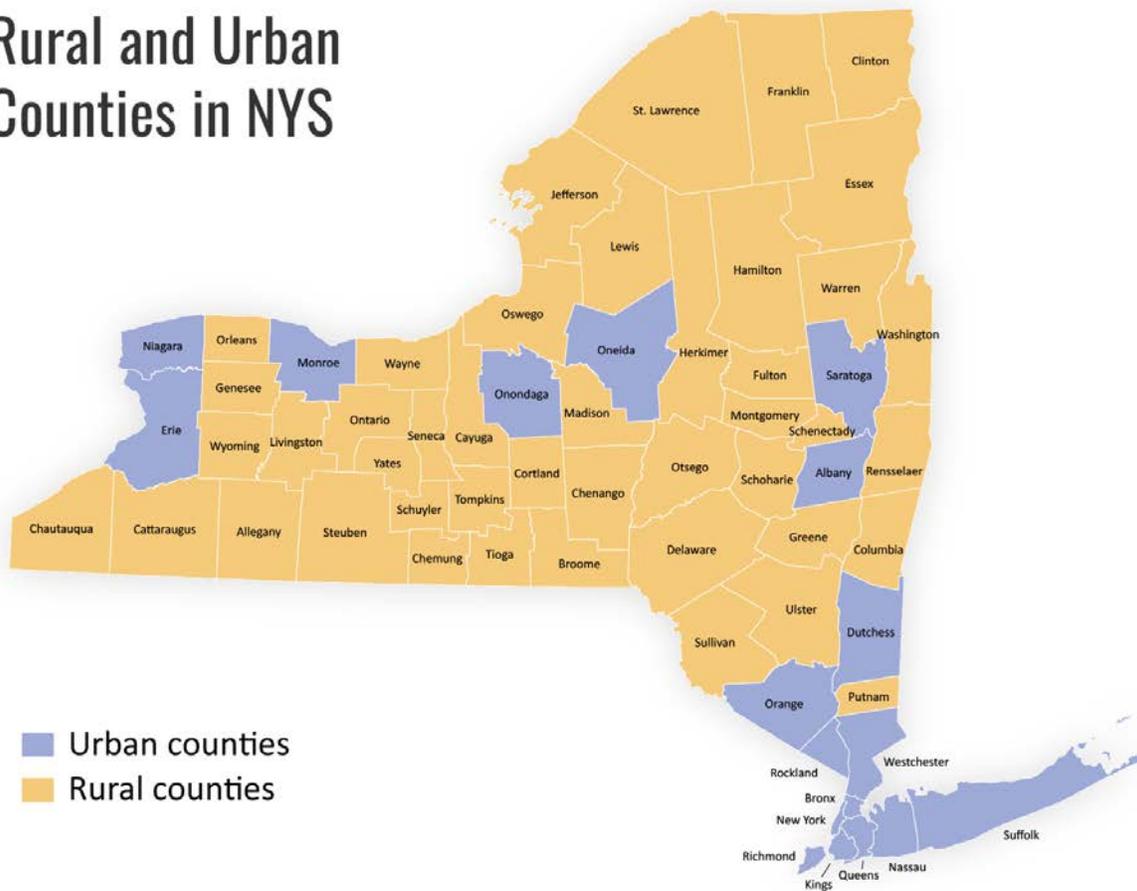
<sup>2</sup> The attorney registration list maintained by the Office of Court Administration’s Attorney Registration Unit only publicly releases an attorney’s work addresses, not their home addresses. Accordingly, attorneys that only report a home address, without including a work address, are not projected on this map. Additionally, attorneys in suspended status are not shown on this map.

<sup>3</sup> See Ruth Igielnik Wieder, Pew Research Center, “Evaluating what makes a U.S. community urban, suburban or rural” (Nov. 22, 2019), <https://medium.com/pew-research-center-decoded/evaluating-what-makes-a-u-s-community-urban-suburban-or-rural-159f9d082842>.

Cornell’s Community and Regional Development Institute, explained that defining rural is largely contextual, and shifts depending on what you are studying. She said that the best general definition of rural is lower population density and limited proximity to a population center.

The Task Force deliberately decided not to get bogged down by the nuance involved in crafting a specific definition of “rural.” For our purposes, we relied on the definition of “rural” in [Executive Law § 481](#), which identifies a county as rural if its population is below 200,000 people. Relying on this definition, the following map visualizes just how rural New York State is:

## Rural and Urban Counties in NYS



Rural New York makes up approximately 80% of New York’s land mass, and is home to approximately 17% of New Yorkers, or 3,260,008 people.<sup>4</sup> According to attorney-registration data, there are only 6,176 attorneys serving these vast rural territories. In reality, the number of rural attorneys that actually offer legal services to individual members of the public is much smaller than that statistic indicates, since it is unrealistic to presume that all 6,176 attorneys work in private law practices or legal services organizations. A sizable proportion of these attorneys are district attorneys, government lawyers, members of the judiciary, or employees of private

<sup>4</sup> This statistic was computed from the population data contained in the Table found in Appendix [\[redacted\]](#). This Table, created by [ZevRoss Spatial Analysis](#), used 2018 US Census population estimates.

businesses, government or public institutions, none of which offer legal services to the general public. This is corroborated by data from rural county bars. For example, the Delaware County Bar Association has a total of 71 members. However only 26 of them maintain a primary solo practice office in the county. Seventeen members are employed by the government, and the other 28 members are not offering legal services to the general public.<sup>5</sup> It is safe to conclude that less than 4% of New York licensed attorneys actually serve the access-to-justice gaps that exist in rural communities.<sup>6</sup>

Without a doubt, there are far fewer attorneys serving rural counties than urban ones. But are there too few? The uneven distribution of attorneys across New York State does not necessarily demonstrate an attorney shortage, particularly when we would expect there to be less attorneys in areas where there are less people. The question is whether there are enough attorneys per resident to meet the need, and in rural New York, there usually are not, as the following section shows.

## **II. Evidence of Rural Attorney Shortages**

### ***Not Just a New York Problem***

Research across jurisdictions documents the growing shortage of attorneys throughout rural America. For instance, a recent publication titled *Legal Deserts: A Multi-State Perspective on Rural Access to Justice* summarized research on rural attorney shortages across five states—California, Georgia, Maine, Minnesota, South Dakota, and Wisconsin.<sup>7</sup> Data studies of rural attorney shortages have also been done in other jurisdictions including Arkansas, Montana, and Utah.<sup>8</sup>

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<sup>5</sup> The Delaware County Bar Association statistics were shared with us by Task Force Member Gary A. Rosa on August 2, 2019. Similar figures come from other rural county bar associations. For example, the Madison County Bar Association has 86 members. 27 are court staff, agency attorneys, or lawyers who are members but do not practice law in the county. Of the 59 remaining, 5 are employed half time as government attorneys. Also, only 3 attorneys are under the age of 40. These figures were reported to us by Gemma Rossi Corbin on July 22, 2019. Corbin served as Madison County Bar Association President from 2016 to 2017.

<sup>6</sup> The facial inadequacy of the numbers in illuminating just how many rural practitioners actually serve rural legal needs was demonstrated in a rural practitioner survey that was conducted from August to October 2018 by Albany Law School's Government Law Center. Hundreds of survey responses had to be dropped from the analyzed data set because they were completed by rural practitioners who did not offer legal services to the general public. See Taier Perlman, *Rural Law Practice in New York State*, endnote 5 (Gov't Law Center, Apr. 16, 2019), available at <https://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative/Documents/rural-law-practice-in-new-york-state.pdf>.

<sup>7</sup> Lisa R. Pruitt, et al., *Legal Deserts: A Multi-State Perspective on Rural Access to Justice*, 13 Harv. L. & Pol'y Rev. 15 (2018). <https://harvardlpr.com/wp-content/uploads/sites/20/2019/04/4.-Legal-Deserts.pdf>.

<sup>8</sup> Arkansas study: Lisa R. Pruitt, et al., *Justice in the Hinterlands: Arkansas as a Case Study of the Rural Lawyer Shortage and Evidence Based Solutions to Alleviate It*, 37 U. Ark. Little Rock L. Rev. 573 (2015); Montana study: Hilary A. Wandler, *Spreading Justice to Rural Montana: Expanding Local Legal Services in Underserved Rural Communities*, 77 Mont. L. Rev. 235 (Summer 2016); Utah study: David McNeill, *Measuring the Legal Services Market in Utah*, Vol. 30 No. 5 Utah Bar J. 22 (Sept/Oct 2017).

The California studies are especially relevant, because California is similar to New York. It has the largest population of any state; it has the second highest count of registered attorneys; and its attorneys practice mostly in large metro-areas, even though the state is predominately rural. The California Commission on Access to Justice published a report in July 2019 spotlighting attorney shortages in California’s rural territories.<sup>9</sup> That study documented the same attorney distribution trends as New York, including the problematic attorney deserts that exist in rural communities.

### ***The New York Problem***

While many studies have been done examining workforce shortages across rural New York, no one entity has specifically studied legal workforce shortages until the Government Law Center at Albany Law School published its seminal *Rural Law Practice in New York State Report* in April 2019.<sup>10</sup> This detailed report, based on a three-month survey of rural practitioners, revealed a number of telling legal trends affecting rural communities. The report provided qualitative and quantitative data about what rural practice is like as well as the rewards and challenges of rural practice. Most significantly, it documented the growing shortage of rural attorneys based on several indicators—difficulties rural attorneys have making referrals in their geographic region, feeling overwhelmed by the volume of cases they are handling, and the greying of the rural bar due to a shortage of new attorneys. The below section focuses on the later indicator, which is what has prompted many jurisdictions to action.

#### **A. The Greying Rural Bar**

The Government Law Center’s survey reported an alarming figure: 74.3% of respondents were 45 years or older, with 54% at or near retirement age. This means that within 10 to 30 years, the majority of current rural attorneys will be fully retired. The gravity of these figures was colored by comments from the respondents:

*“I am the only lawyer handling complex business transactions. I am 69 years old and cannot retire because too many people rely on me.”*

*“While there are currently enough attorneys to go around, most are in their 60s, which means many will probably retire in 10-20 years. There may be a crisis in the future, just look at the age of the attorneys.”*

*“We are running out of lawyers! Something needs to be done to attract young attorneys to the rural areas . . . Our county is literally running out of lawyers.”*

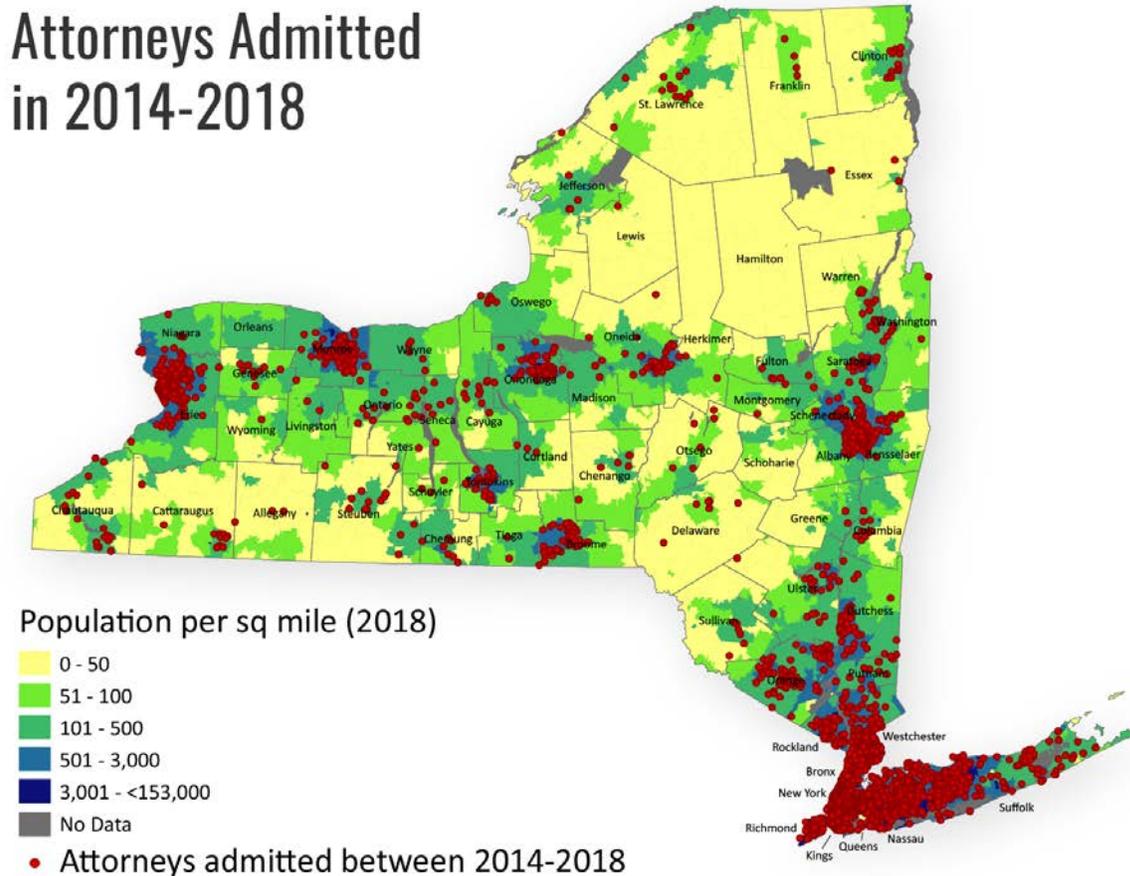
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<sup>9</sup> CA Commission on Access to Justice, CALIFORNIA’S ATTORNEY DESERTS: ACCESS TO JUSTICE IMPLICATIONS OF THE RURAL LAWYER SHORTAGE (July 2019).

<sup>10</sup> See Perlman, *Rural Law Practice*, at <https://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative/Documents/rural-law-practice-in-new-york-state.pdf>.

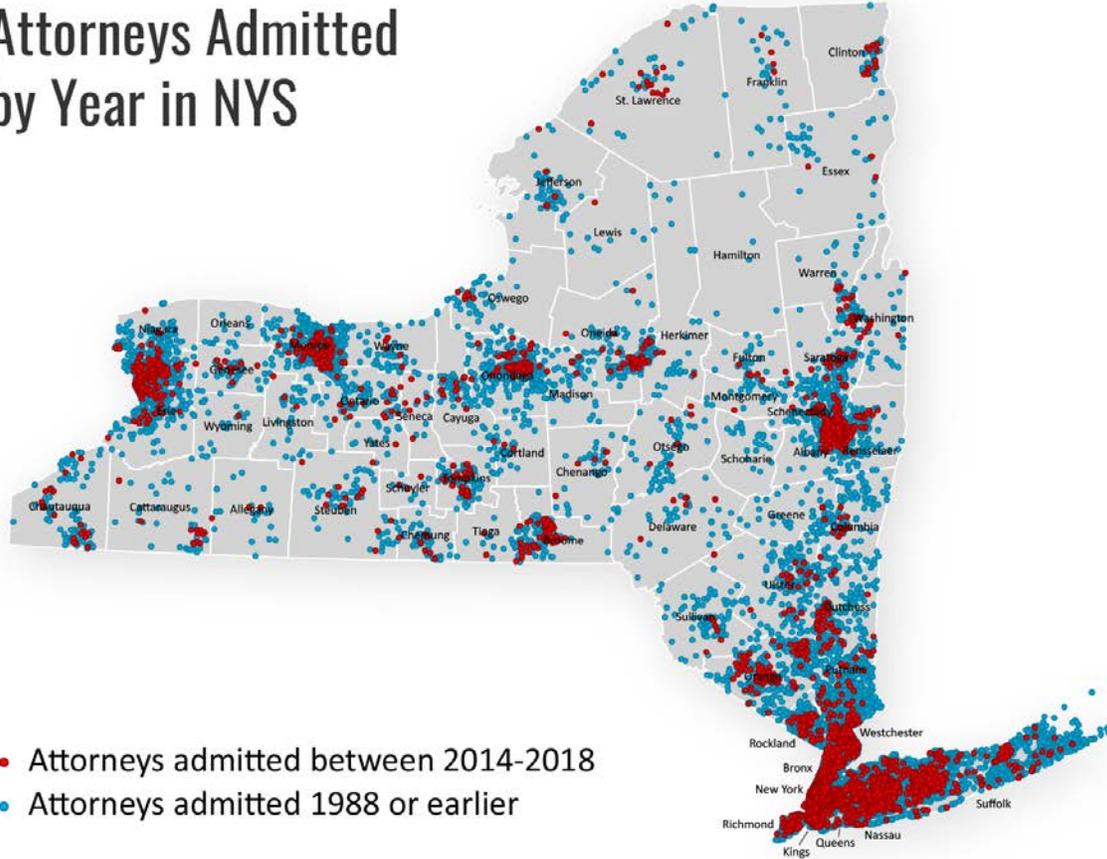
Based on these findings, the Task Force took a deeper look at the composition of rural practitioners. Using attorney registration data, we worked with data scientists to compare how many rural attorneys are newly admitted compared to those that have been in practice for quite some time.

The following map shows each attorney that was admitted to the bar between 2014 and 2018:



Like attorneys generally, newly admitted attorneys are heavily concentrated in New York’s urban counties. An overlay of attorneys that have been admitted since 1988 or before—representing attorneys that have been in practice for 30 plus years—shows a remarkable effect:

## Attorneys Admitted by Year in NYS



The older generation of attorneys are much more numerous and spread out across New York’s rural territories. They also clearly outnumber the newly admitted attorneys that are settling in rural areas. This attorney age imbalance was also documented in the Government Law Center’s survey, albeit qualitatively:

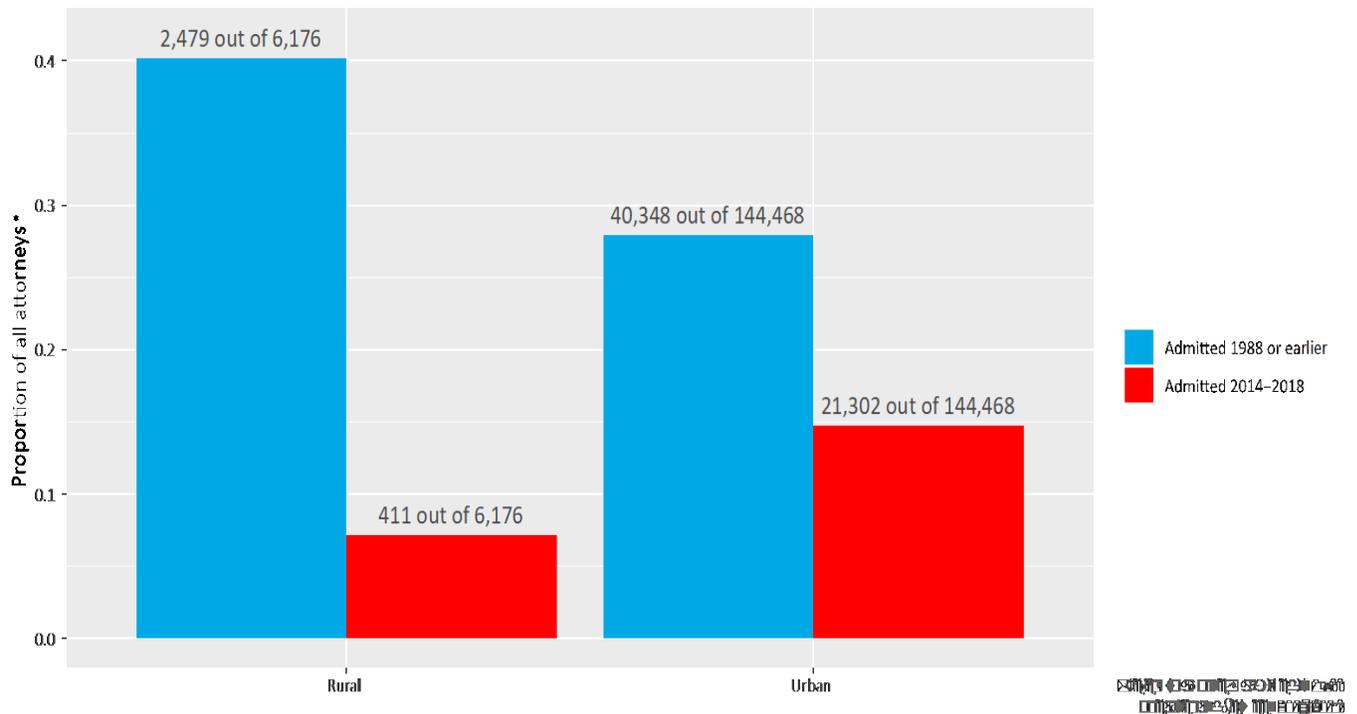
*“This county has no public defender office; all indigent legal defense is 18-b. We are running out of defense attorneys who are willing/able to take cases because more attorneys are retiring or leaving the area than those coming in to replace them.”*

*“I get the impression sometimes that young attorneys are coming out of law school with so much debt that they do not feel they can come to our small villages.”*

*“Attracting and retaining young lawyers to work in rural areas is one of the biggest challenges I face as a rural practitioner.”*

Many more commenters likewise expressed concern about the shortage of newer attorneys and the dim prospects once currently practicing attorneys retire.

The following graph compares the proportions of older and newer attorneys in urban and rural counties and corroborates the anecdotal knowledge:

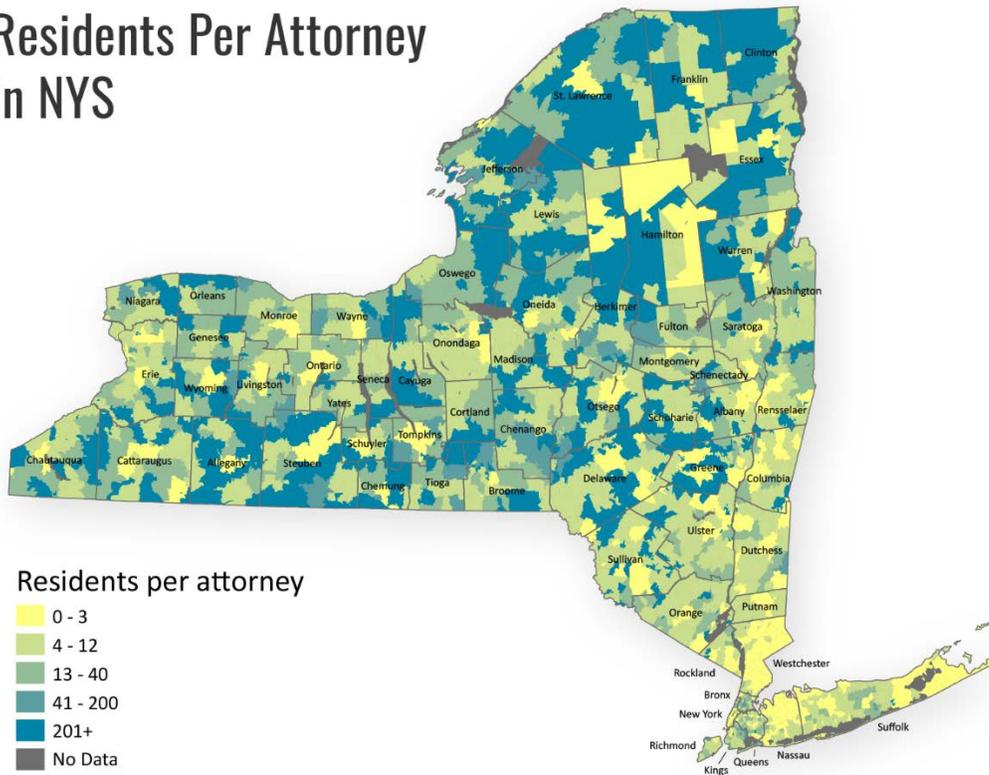


As the chart make clear, newer attorneys in rural areas are much more heavily outnumbered by late-career attorneys than newer attorneys in urban areas.

### **B. Attorney-to-Resident Ratios**

When we compare resident-to-attorney ratios across the state, we see a significant imbalance of attorneys in rural areas compared to urban or suburban areas as measured on a per capita basis. The below map uses population data and attorney-registration data to compute the resident-to-attorney ratio, giving an average of how many people there are for each attorney in that area. The darker areas are where there are more residents per attorney.

## Residents Per Attorney in NYS



As the map shows, rural areas across the state have higher resident-per-attorney ratios. This is in stark contrast to more urban areas of the state which have much better ratios—for each attorney there are 1 to 40 residents. In many rural areas, however, for each attorney there are 201+ residents. This explains the challenges rural practitioners reported from overwhelming volume of cases and difficulties making referrals to legal experts in their geographic region.<sup>11</sup>

### C. Challenges in Rural Practice

As noted above, rural law practice presents unique challenges (and rewards).<sup>12</sup> The rural-practitioner survey conducted by the Government Law Center at Albany Law School illuminated the following eight themes which make rural law practice difficult<sup>13</sup>:

<sup>11</sup> The disparity in the rural and urban attorney-to-resident ratios is perhaps more clearly visualized by the infographic in Appendix [\[redacted\]](#), which plots the attorney-to-resident ratios by county.

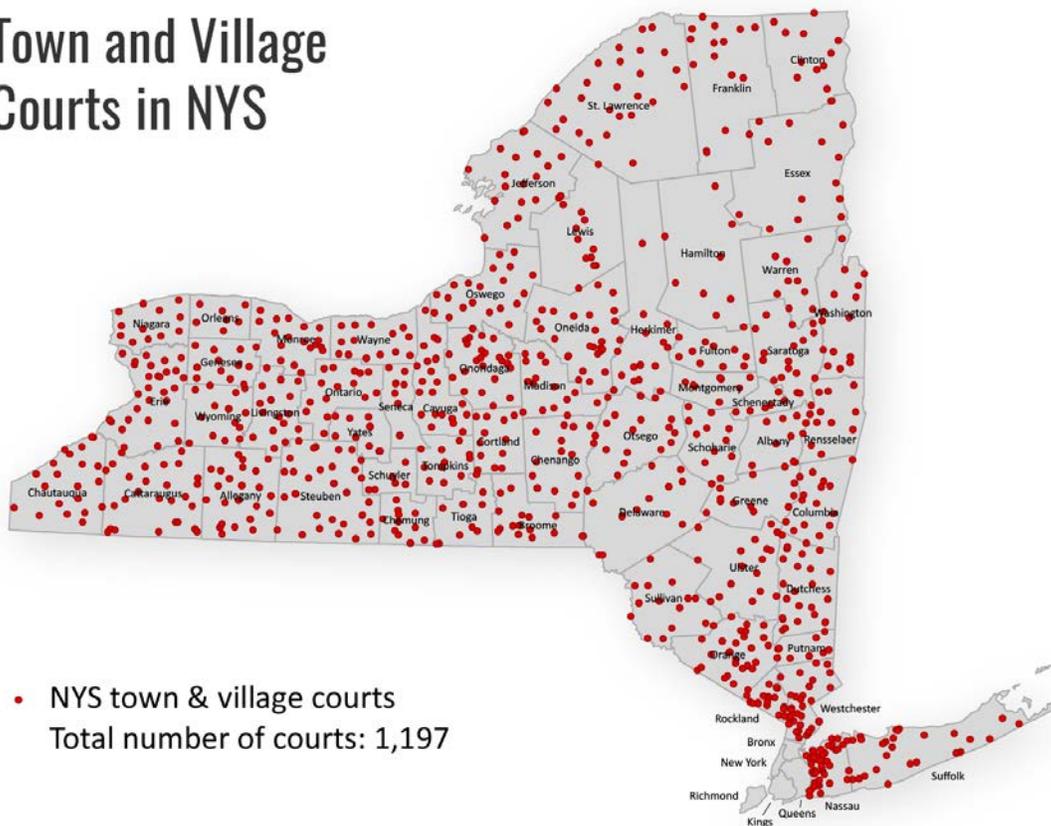
<sup>12</sup> The Government Law Center’s survey also revealed a number of rewards to rural practice, which are important to appreciate for full understanding of rural law practice. The rewards survey respondents discussed include: love for an impact on their community; reward of helping their clients in meaningful ways; reward of helping underserved poor clients; quality of life in rural communities; and appreciation for type of practice, the local bar community, and relationships with the courts.

<sup>13</sup> *Id.* at 6. Readers are encouraged to refer to Government Law Center’s report, which is available at <https://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative>, for more details.

1. Prevalence of indigent clients
2. Financial stress on lawyers
3. Professional isolation
4. Overwhelming caseload/not enough attorneys to assist
5. Systemic inefficiencies
6. Distance burdens
7. Technology issues
8. Conflicts of interest/knowing too many people in small communities

The Task Force considered these difficulties in devising its interventions, and several of our recommendations address these difficulties from multiple angles. For instance, one of the bigger challenges faced by rural practitioners relates to the non-uniform and scattered nature of the town and village court system in New York State, also known as justice courts. There are presently 1,197 active justice courts in New York State:<sup>14</sup>

## Town and Village Courts in NYS



<sup>14</sup> Data provided by the New York State Office of Justice Court Support. The Office of Justice Court Support was formed in 2007 as part of an initiative to improve the efficiency and quality of local town and village courts. The Office supports the work of the justice courts by delivering legal assistance, training, equipment, and services to the justices and court clerks.

Active rural practitioners have to travel tremendous distances to appear in these scattered courts, which typically only hold court during night hours one-to-several times a month. Steuben County in western New York, for example, has 34 justice courts, and Franklin County in northern New York has 20. *See* maps in Appendix [\[redacted\]](#). The tally of justice courts in Steuben County does not account for the county's five state-run courts, which sit in three different cities, or the federal district court that has jurisdiction over Steuben County, which has its courthouse two counties away, in Rochester.<sup>15</sup> This overwhelming tapestry of courts, no doubt adds to the challenges that rural practitioners experience.

The Rural Justice Task Force did not go further in studying justice courts, especially since several NYSBA task forces have already done so.<sup>16</sup> However, the impact of this court system on rural practice could not be ignored, and accordingly, several of the proposed interventions address the challenges of practicing in these courts.

We now move on to the recommended interventions of the Task Force which begins on the following page.

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<sup>15</sup> For a list of courts in Steuben County run by the state, see New York State Unified Court System, "Steuben County," <http://ww2.nycourts.gov/courts/7jd/steuben/index.shtml>. For information on the jurisdiction of the United States District Court for the Western District of New York, see <https://www.nywd.uscourts.gov/accessing-court>.

<sup>16</sup> Town & Village Courts Report, Report & Recommendations of the NYSBA Criminal Justice Section (2018), <https://www.nysba.org/tvcourtsreport/>.

# RECOMMENDATIONS OF THE NYSBA TASK FORCE ON RURAL JUSTICE

## **I. FUNDING-RELATED INTERVENTIONS**

### **A. Funding Is Crucial to Attract Rural Practitioners**

As this report shows, the serious shortage of lawyers in rural New York is amply demonstrated not only through metrics, but also anecdotally. Therefore, one focus of this Task Force has been on ways to incentivize new attorneys to practice their skills in these underserved areas.

One concrete approach involves providing financial assistance in exchange for a certain time commitment to practice in a targeted rural area. There are a number of possible models, discussed below, to achieve this. The student-debt crisis is not only real, but growing. “Economists project an accumulated student loan debt of \$2 trillion by 2021, and, at a growth rate of 7% a year, as much as \$3 trillion or more by the end of the next decade.”<sup>17</sup> Of course, this crisis has caused a wide range of pernicious impacts. “Studies show that many of those struggling to repay these mountainous student loans are also experiencing serious mental health problems, caused in large part by the crushing weight of these loans.”<sup>18</sup> Indeed, this crisis has profoundly impacted the choice of where one chooses to practice law, as the benefits of rural practice are often far outweighed by financial concerns as urban practice is often far more lucrative. It is within this vexing context that we have considered and now recommend the following ameliorative economic strategies.

We turn first to loan forgiveness. Here, the Task Force considered several different programs before endorsing the following approaches, ranked in order from most to least preferred.

### **B. Establish a Direct Pay Model**

Our first proposal is that New York State adopt a program similar to the South Dakota Legal Education for Public Service and Rural Practice Loan Repayment Assistance Program.<sup>19</sup> The general idea of this model is to provide money to certain attorneys, making rural practice feasible and more appealing by removing, or at least diminishing, the specter of student-loan debt when establishing a practice or entering into governmental service in a rural area.

Direct-pay models are a preferred method to incentivize rural practice because, compared to other interventions such as tax relief and law school scholarships, the direct pay model affords the following benefits:

- By allowing flexibility, it is scalable and provides a tangible benefit.

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<sup>17</sup> See Daniel Johnson, *What Will It Take to Solve the Student Loan Crisis?*, Harvard Business Review (Sept. 23, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> See *Rural Attorney Recruitment Program*, <https://ujls.sd.gov/uploads/RuralAttorneyRecruitmentProgram.pdf>

- The ability to operate as a pilot program for a limited number of years.
- The ability to direct the benefit to the rural areas that are the focus of this report.
- Avoiding the criticism that tax policy is not the best place to implement social policy.

The South Dakota program provides direct payment to attorneys in certain defined rural communities. The attorneys are paid \$12,500 per year for 5 years. The funding is provided as follows: 50% from the court system, 35% from the county (or the county and city combined) and 15% from the South Dakota Bar Association (a mandatory bar association).

The following proposals are based upon the South Dakota model but are somewhat different as the demographic landscape in New York differs significantly from South Dakota. Thus, the Task Force has modified the South Dakota model in significant ways to fit our needs in New York. Some of the details of our plan, which are highly flexible, are as follows:

### *1. New York State Direct Pay Model*

**Eligible Areas:** Counties with population densities less than 100 per square mile and outside of the corporate boundaries of a city.<sup>20</sup>

This would include the following counties, listed in order of decreasing population density: Cortland, Tioga, Columbia, Oswego, Cayuga, Seneca, Chautauqua, Sullivan, Washington, Greene, Clinton, Steuben, Warren, Wyoming, Yates, Wayne, Jefferson, Otsego, Cattaraugus, Chenango, Schuyler, Orleans, Schoharie, Allegany, Herkimer, St. Lawrence, Delaware, Franklin, Lewis, Essex, and Hamilton.

**Alternate Eligible Areas:** Counties with lawyer densities less than two lawyers per 1,000 population and outside the corporate boundaries of a city.<sup>21</sup>

This would include all of the counties described above, with the exception of Hamilton, Warren, Columbia, and Sullivan counties, and adding Oneida, Ontario, Genesee, Chemung, Montgomery, Livingston, Madison, and Fulton counties.

**Amount of annual benefit:** An amount equal to the average published annual in-state tuition rate and mandatory fees for the accredited SUNY law schools, CUNY School of Law, and School of Law at the University at Buffalo. Currently, that average is \$22,148.

**Benefit Period:** We recommend a five-year benefit period and justify that period, as it is longer than a traditional three-year law school program, because this time period allows the attorney to:

- Become firmly established in the community.
- Helps to repay tuition of more expensive schools.

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<sup>20</sup> *New York Population Density County Rank*, <http://www.usa.com/rank/new-york-state--population-density--county-rank.htm>.

<sup>21</sup> *New York Lawyer Report: How many lawyers per resident in each county in New York State?*, Press Connects (May 14, 2018), <https://www.pressconnects.com/story/news/local/2018/05/14/new-york-lawyer-report-how-many-lawyers-per-resident-each-county-new-york-state/545197002/>.

- Helps to repay room and board.
- Helps to repay interest.

**Eligible Applicant:** We propose an Eligible Applicant would be any person not currently employed in an Eligible Area, who has not previously participated in the Direct Pay Model Program and who:

- Is admitted to practice law in the State of New York.
- Has never been disbarred, suspended, or publicly censured from the practice of law in any jurisdiction.
- Is willing to sign a contract to practice in the selected Eligible Area for the length of the Benefit Period.
- Will carry malpractice insurance during their involvement in the program and provide proof thereof.
- Has in excess of \$100,000 in combined debt, including debt incurred in undergraduate and graduate programs.

**Method of Selection:** The application process will be designed, coordinated, and overseen by the New York State Bar Association (NYSBA). Applicants are to apply based upon their intended Eligible Area and selections per Eligible Area are to be made by way of a lottery. Final selections will be limited to the number of authorized awards each year. These awards will be made in rolling order from lowest population density/lawyer density (depending on definition of Eligible Area) to highest.

**Number of Annual Awards:** Seven awards annually over five years would potentially put 35 attorneys into the underserved rural counties, which we believe is enough to begin to make a significant difference.

**Funding:** State funding. To be made annually in a lump sum after the completion of each contract year.

## ***2. Direct Pay Loan Repayment Assistance for the Rural Lawyer***

We recommend this program as an alternative to the above, which is similar in scope and eligibility to the Direct Pay Model, but differs in that assistance would be directed to the attorneys' student loan payments, which would either be abated in whole or in part during the award period.

### **C. Student Loan Repayment Programs**

We recommend that NYSBA promote existing loan-repayment-assistance programs. First, the College Cost Reduction Act of 2007 created a federal program, administered by the U.S. Department of Education through subcontractors, which was designated to benefit both attorneys and non-attorneys in urban and rural areas. It provides for income-based repayment plans. And, for those with high debts and low incomes, federal loans qualifying for income-based repayments are structured so that payments are capped at a certain percentage of the borrower's income, with the remainder forgiven after 25 years.

The same Act created a program known as Public Service Loan Forgiveness, a more accelerated loan-forgiveness program for those who work in public service for a cumulative ten-year period. At the end of ten years, or after having made 120 qualifying payments while working in public service, the remainder of a federal direct-consolidation loan is forgiven.

There are significant problems with the administration of this program, and upwards of 90% of those applying for loan forgiveness following the ten-year period have had their applications for loan forgiveness denied. On April 3, 2019, six U.S. senators wrote to the Consumer Financial Protection Bureau and outlined problematic areas regarding the administration of the program. On October 28, 2019, 22 U.S. senators wrote to the Consumer Financial Protection Bureau requesting that it immediately open an enforcement investigation into the Pennsylvania Higher Education Assistance Agency's management of this program. The Pennsylvania agency is a U.S. Department of Education subcontractor.

In addition, in July 2019, the American Federation of Teachers (AFT) and individual plaintiffs filed a lawsuit in the United States District Court for the District of Columbia, *Weingarten v DeVos*, which challenges practices by the United States Department of Education that are contributing to the low rates of forgiveness currently being granted. These include claims of due process violations including the lack of notice regarding denials and processes for appealing denials.

Given this scenario, we further recommend that NYSBA engage in advocacy efforts to ensure proper administration of this program. NYSBA should do so through its Committee on Legal Aid and President's Committee on Access to Justice, both of which have subcommittees working on loan repayment issues and both of which have in the past recommended that this program be a federal legislative priority for NYSBA.

Second, the New York State District Attorney and Indigent Legal Services Attorney Loan Forgiveness Program is administered by the New York State Higher Education Services Corporation and is designed to retain experienced attorneys employed as district attorneys, assistant district attorneys, or indigent legal services attorneys throughout New York State. Again, attorneys may apply for this program from both urban and rural areas of the state. This is a retention program designed to keep people in these positions longer term. To be eligible, attorneys must have worked in these positions for at least four years, but no more than nine years. Awards are in the amount of \$3,400 each year with a cap of \$20,400 for each attorney. We recommend that the amount of the award be raised to \$5,500 per year and that the wait time to access this program be decreased from three years to two years, and that NYSBA advocate for pending bills on topic.<sup>22</sup> We further recommend that the program be more widely publicized by NYSBA.

Third, we also recommend that NYSBA publicize the Legal Services Corporation's Herbert S. Garten Loan Repayment Assistance Program which provides loan repayment assistance to select attorneys who work full time for Legal Services Corporation (hereinafter LSC) grantees

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<sup>22</sup> See pending Senate Bill S6668, which expands the eligibility period for indigent legal service attorneys to receive certain loan forgiveness and increases loan reimbursement for certain attorneys who work in legal services with indigent clients. <https://www.nysenate.gov/legislation/bills/2019/s6668>

throughout the United States, regardless of whether a program serves urban or rural areas. Six LSC grantees serve the counties outside of the five New York City boroughs and are headquartered in Albany, Buffalo, Geneva, Hempstead, Utica, and White Plains. Selected attorneys receive up to \$5,600 annually for a maximum period of three years.

### **C. Tuition Assistance Programs**

The Task Force also recommends that the Excelsior Program administered by the Higher Education Services Corporation be expanded to cover eligible students who wish to practice law in rural areas.

The Excelsior program, in combination with other student-financial-aid programs, allows students to attend a SUNY or CUNY college tuition-free, if they agree to work in New York State upon graduation. We recommend that consideration be given to establishing a similar program to develop a pipeline from high school to college to law school for rural high-school students who commit to return to their rural locations to work upon graduation from law school.

A model similar to this one has been established in Nebraska. In that program, students from certain Nebraska areas study at one of three Nebraska state colleges or universities, obtain their legal education at Nebraska College of Law, and then practice in rural areas throughout the state. Program benefits include full-tuition scholarships for undergraduate education, automatic acceptance into the law school, and eligibility for loan forgiveness after completion of law school. The high-school students must come from a rural section of Nebraska and must agree to return to that same rural area to practice law. Additionally, academic requirements must be met and maintained throughout college and law school. We envision that the establishment of a model such as this in New York would require partnership with University at Buffalo Law School and/or CUNY School of Law.

## **II. LAW SCHOOLS AND NEW ATTORNEYS INTERVENTIONS**

Law schools play an important role in ensuring access to legal services in rural communities. This section of the report identifies several strategies for law schools seeking to do more.

Law schools help rural communities obtain access to justice in two ways: directly, when law-school students, faculty, and staff provide legal services to people in rural communities; and indirectly, when law schools train the attorneys who will serve those communities. This section of the report recommends that law schools assess their programs in both areas in terms of their impact on rural justice.

### **A. Assessment of Existing and Potential Programs**

The first strategy available to law schools is to undertake an assessment of existing and potential programs in terms of their prospects for helping to promote rural access to justice. We recommend that law schools assess how their current programs serve the interests of people in rural communities and students who might choose to practice in rural communities.

Such assessment could be done on a schoolwide basis, but could also be done program-by-program. For example, a specific clinic could assess how many of their clients live in rural communities and whether a future expansion could make more services available to those communities. A law-school office that hosts panel discussions about careers could assess how many of its guest speakers practice in rural communities.

Assessments of this kind could be built into other strategic-planning processes. For example, if a school is undertaking an institution-wide strategic-planning process, one committee or planning group could be tasked with focusing on rural justice. The same task could be assigned within a department that is undertaking a strategic-planning process. Law schools or departments within law schools can identify specific goals for programs that serve rural communities and/or students who are interested in rural practice.

There are also less formal opportunities to incorporate rural justice into strategic planning. For example, job vacancies can be an opportunity for thinking about priorities; hiring a new admissions director is an opportunity to ask candidates about how they would reach out to prospective students from rural communities.

It should be emphasized that assessments of this kind should not be aimed at ensuring “balance” between rural communities and urban or suburban communities. Some law schools, depending on factors like whether they are located near rural communities, have good reason to emphasize rural practice to a greater extent than other schools. Moreover, all communities have access-to-justice needs, and every law school has students who have the potential to do great things in rural, urban, and suburban communities. The goal of assessment and strategic planning, then, should be to identify opportunities for growing schools’ capacity to serve rural communities and the students who might wish to serve them, not to take focus away from the needs of other communities.

Assessments of the kind recommended above depend on information, but at this point little information is available about the impact of law-school programs on rural communities and students who might wish to serve them. Thus, gathering data is an important part of the assessment process.

Again, departments within law schools can gather data separately or together: admissions offices can collect data about their own recruitment efforts in rural areas, and the outcome of those efforts; careers offices can collect data about employers and students to learn more about where jobs are located and how attitudes toward rural practice affect students’ career choices; alumni offices can survey alums in rural communities about the skills needed to prepare for practice in those areas and schools’ outreach to people in their communities; and so on. Gathering information about the impact of programs on rural communities and students who are interested in serving them is an important precursor to meaningful strategic planning.

## **B. Law Schools’ Role in Providing Services**

The simplest way for law schools to address the shortage of legal services—although not necessarily the most effective in the long term—is for the law schools to provide legal services

themselves. Every law school supports numerous programs in which students, sometimes with the help of significant faculty and school resources, directly provide services to people in their communities. These services fall into a number of overlapping categories.

One major category is services that students receive academic credit for providing. The rise in experiential education over the last few decades has created numerous ways for law students to provide services to their communities, including clinics, externships, internships, and other curricular options. One example of a rural-focused program of this kind is the Drake Agricultural Law Center.<sup>23</sup>

In addition, students participate in pro bono programs. Albany Law School students, for example, provided a total of 42,000 hours of pro bono work in 2018, with some students providing more than 750 hours, or nearly 19 weeks of full-time service.<sup>24</sup> (No data is available on how much of that service was provided to rural communities.)

Pro bono work is not optional in New York; the state court system requires that all students complete 50 hours of pro bono service before they are admitted to the bar.<sup>25</sup> The regulation defines “pro bono service” as “assist[ing] in the provision of legal services without charge,” which allows students to count work for which they receive academic credit (such as clinical work) as pro bono service. Work that counts as pro bono service can thus be provided either as part of a curricular program, like a clinic, or as an extracurricular activity or part of an outside job.

Direct-services programs take many forms. Many law schools provide institutional support for students’ pro bono work. Not all student pro bono work involves direct services; a different kind of service is provided by the Legislative Research Service of the Rural Law Center at the University of Wyoming College of Law, which involves student volunteers providing free legislative research and drafting services.

Another creative program is the Justice Bus program in Buffalo. This program is an initiative of Neighborhood Legal Services, joined by community partners including Volunteer Lawyers Project, the Western New York Law Center, and the University at Buffalo School of Law. The project is a 12-passenger van that transports lawyers and law students to rural areas of Western New York to provide services to poor and disabled people.<sup>26</sup>

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<sup>23</sup> See Drake University, *Agricultural Law Center*, <https://www.drake.edu/law/clinics-centers/aglaw/>.

<sup>24</sup> Albany Law School, *Students Commit to Pro Bono Work, Exceed 42,000 Hours* (Apr. 26, 2018), <https://www.albanylaw.edu/about/news/2018/Pages/Graduating-Class-Drives-Public-Interest-Work-Far-Beyond-the-States-50-Hour-Requirement.aspx>.

<sup>25</sup> Rule 520.16 of the Rules of the Court of Appeals, available at <http://www.nycourts.gov/ctapps/520rules10.htm#B16>. FAQs make clear that qualifying work includes clinical work, work under the supervision of a faculty member, and externships and internships. See [http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/FAQsBarAdmission\\_0.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/FAQsBarAdmission_0.pdf), page 9.

<sup>26</sup> See UBNOW, *Justice Bus to offer on-site legal help to poor, disabled*, (Aug. 21, 2019), <http://www.buffalo.edu/ubnow/stories/2019/08/justice-bus.html>; see also Neighborhood Legal Services, *Beep Beep! The Justice Bus Is Coming to Western New York*, <https://nls.org/justicebus/>.

While some programs are supervised by law school staff and faculty—which is costly for the law schools—others involve outside placement of students. These programs are variously known as internships, externships, or field placements, and all of them involve primary supervision of the students providing services by attorneys in practice, rather than law school faculty or staff. There appear to be more programs of this kind supporting rural areas than faculty or staff-run programs.

Are law schools' direct-services programs an important way to address the shortage of legal services in rural communities? It is clear that service providers within law schools can become important resources within their communities. For example, the Farmworkers Clinic at Cornell and the Immigration Law Clinic at Albany Law School serve not only as significant providers of legal services but as hubs through which people in need of legal services are put in contact with attorneys who can provide those services. But their scope is limited in several ways: students spend longer on cases than experienced attorneys, and require supervision; clinics generally pick one kind of case (like immigration) and serve only clients with needs relating to that subject; and clinics are geographically limited because there are only four law schools in upstate New York (above Westchester County): Albany, Buffalo, Cornell, and Syracuse. Also, clinics are by far the most expensive educational program run by law schools, which makes it challenging to expand them.

One potential benefit of law students' direct-service work is that, in addition to helping the recipients of the services, it also exposes students to practice in rural communities. But there is good reason to be skeptical of experiential education's potential for motivating students to work in rural communities. Students' experiences in clinics involve working with very specific clienteles in narrow legal areas. This is very different from most rural law practice, in which a majority of lawyers are general practitioners working in solo practice or small firms. A farmworkers' clinic may give students excellent exposure to the life of farmworkers, but it will give them little insight into the life of rural lawyers. In this sense, direct-services programs' primary benefit is the services themselves.

One important consideration for programs that provide direct services is their relationship to other service providers. Ideally, the programs will complement and cooperate with existing service providers, rather than displacing them or competing for funding.

In sum, it is important for law schools to assess their direct-services programs with an open mind. While they have the potential to contribute significantly to the needs of their communities, law schools' role in producing future lawyers affects rural communities on a much greater scale.

### **C. Law Schools' Role in Providing Attorneys**

Although law schools can usefully serve their communities by providing direct services, their greater impact is training the lawyers who will go on to serve rural communities.

Without wading into complex questions of curriculum design, the Task Force recommends that schools assess their curricula with an eye towards the needs of lawyers who will practice in rural communities. In the substantive legal training that law schools provide—that is, the courses they teach—the schools can (and many do) make an effort to give students the skills and training they need to succeed in rural practice. This includes both substantive courses and skills-based courses

like practice management. And although there is much debate within law schools about the idea that graduates should be “practice-ready”—given the diversity of legal practices—there is a growing movement to teach classes on practice management and other classes that will be particularly useful for rural lawyers.<sup>27</sup>

It is also worth noting that law schools nationally are expanding online education.<sup>28</sup> This presents a potential opportunity for students who might consider rural practice, because prospective students in rural communities, especially those with limited resources, might find distance learning more manageable. Law schools considering such programs should assess their capacity for making law school more accessible to people in rural areas.

Outside of the curriculum training law schools provide, there are several important strategies for supporting students who might wish to practice in rural communities. Three of them include: increasing students’ access to information about rural practice; working to challenge the prestige hierarchy which devalues rural practice; and growing the pipeline to rural practice by recruiting more students from rural communities.

### ***1. Increasing students’ access to information about rural practice***

One important way law schools can support students who might wish to practice in rural communities is by helping them learn more about rural practice through mentoring, informational, and connection-building programs. Lack of information should not be a barrier to serving communities that need legal services.

Ideally, law students would never miss out on a possible career choice because they are unable to obtain information about it. But information about rural careers can be scarce. Every law school has an office responsible for helping students learn about careers, and those offices are increasingly conceiving of their function in a broader way—hence the phrase “professional development” increasingly being incorporated into the names of those offices. As these offices help students build their professional identity and their career goals, they have an opportunity to introduce them to the significant opportunities that may exist in rural communities—or to reinforce the unfortunate message that such opportunities are not worth pursuing.

Professional Development offices can bring in guest speakers or organize informational sessions to help students learn about rural practice. They can engage in outreach to rural employers, who (lacking large human-resources offices) may be less knowledgeable about how to make their job openings known to law schools. One innovative program is the [Iroquois “Take a Look” program](#)

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<sup>27</sup> See Robert J. Condlin, “*Practice Ready Graduates*”: A Millennialist Fantasy, 31 *Touro L. Rev.* 75 (2014); Martha Kanter and Grace Dodie, *Discarding the Fiction of The Practice-Ready Law Graduate to Reclaim Law As A Profession*, 17 *W. Mich. Cooley J. Prac. & Clinical L.* 265 (2015); Jason G. Dykstra, *Beyond The “Practice Ready” Buzz: Sifting Through The Disruption Of The Legal Industry To Divine The Skills Needed By New Attorneys*, 11 *Drexel L. Rev.* 149 (2018).

<sup>28</sup> See Mark Lieberman, *States Limit Spread of Online Legal Education*, Inside Higher Ed (Jan. 23, 2019), <https://www.insidehighered.com/digital-learning/article/2019/01/23/new-york-maintains-restrictions-around-online-programs-amid>

—a healthcare-related program which takes downstate doctors on tours of upstate areas to entice them to move and work upstate.<sup>29</sup> To the extent that lack of information about upstate living is an obstacle to choosing rural practice, simple exposure can be very powerful.

Professional Development offices can also encourage students, during mentoring sessions, to consider rural options. Of course, many offices do just this; the Task Force’s recommendation is simply that such offices assess their work to see whether their students are missing opportunities.

Professional Development offices are not the only offices within a law school that can help students learn more about rural practice. Alumni offices, for example, may sponsor mentoring programs that connect law students to attorneys in practice, and those offices can make sure to reach out to attorneys in rural communities for mentoring programs. Likewise, student-services offices can encourage students to form affinity groups on campus. Every office that works directly with students can assess their programs to determine whether they are serving students who might wish to practice in rural communities.

For each program in this category, questions for assessment should include:

- Whether the program helps eliminate informational barriers to rural practice (in other words, make sure that students do not eschew rural practice because of a lack of accurate information);
- Whether it makes it easier for students interested in rural practice to overcome the cultural devaluing of rural practice within law schools;
- Whether it helps students make connections with attorneys in rural practice who can help them establish a practice there.

## ***2. Perceived Prestige of Rural Jobs***

One important way law schools can make a long-term difference is by working to change the way rural practice is perceived by students. There is a perceived prestige hierarchy of jobs in law schools, and rural practice, because it involves small towns and small firms, can be seen as low in that hierarchy. Law schools could do more to change the cultural perception of rural work, to spread the understanding that—as Professor Hannah Haksgaard has written—“Private practice legal work in rural areas is public interest work.”<sup>30</sup>

Law professors and law-school staff frequently send implicit messages about the legal profession when they talk about successful lawyers (and identify certain lawyers as successful); when they talk about jobs (and identify certain jobs as desirable); and when they talk about the rewards they themselves find in their own work.

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<sup>29</sup> It is not clear there will be continued funding for this program.

<sup>30</sup> Hannah Haksgaard, *Rural Practice as Public Interest Work*, 71 Me. L. Rev. 209, 210 (2019).

As many scholars have noted, prestige in the legal profession tends to be associated with urban practice, large firms, male lawyers, and representation of institutions rather than individuals.<sup>31</sup> It is important for professors and staff at law schools to challenge this prestige hierarchy and speak about the value of small-town and small-firm practice. The Government Law Center's data clearly shows that many lawyers thrive in rural practice because of benefits that are simply unavailable in large firms and large metropolitan practices, such as deep connections with close-knit communities. Professors and staff should endeavor to make clear to students that practice of this kind has more value than traditional prestige hierarchies acknowledge.

### *3. Growing the Pipeline to Rural Communities*

Finally, one of the most important ways law schools can help rural communities is by recruiting applicants from those communities. As the Task Force spoke to rural lawyers, we heard a strong consensus that the new lawyers most likely to stay in rural communities were those who had connections to those communities, particularly those who had grown up in them. That being the case, it is extremely important to make sure that college students in rural communities—and even high-school students—are fully aware of the availability of legal careers.

One exemplary program in this regard is Washburn School of Law's Rural Legal Practice Initiative, a partnership with undergraduate schools that helps pre-law students learn about legal career opportunities in rural communities.<sup>32</sup> Albany Law School, too, is reaching out to undergraduate students in rural communities through its partnership with SUNY Cobleskill. Many students who attend rural schools do not have family members who practice law and may never consider law school unless they encounter outreach or role models.

While there is no doubt that law schools in today's climate are aggressively recruiting students from all geographic regions, admissions offices can nonetheless usefully assess their own outreach efforts in rural communities. Faculty, too, can contribute to awareness of the possibility of legal careers by guest-teaching classes at rural schools, including high schools. Students in rural communities should not miss out on the possibility of a legal career simply because they are not exposed to that possibility.

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<sup>31</sup> See, e.g., John Heinz & Edward Laumann, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (rev. ed. 1994).

<sup>32</sup> Washburn School of Law, *Rural Legal Practice Initiative*, <http://washburnlaw.edu/news/2016/10/RuralInitiative.html>.

### **III. RURAL-LAW-PRACTICE INTERVENTIONS**

#### **A. Introduction**

The great majority of rural lawyers in New York are solo practitioners or members of small firms, are over age 45, and serve clients of modest means, and there are not nearly enough lawyers in rural areas to meet residents' needs.<sup>33</sup> To achieve rural justice, the bar must find creative ways to lure lawyers and judges to come to, or remain in, rural communities. To this end, the Task Force makes six recommendations: (1) to relax residency requirements that compromise the ability of rural employers to find talent and of rural lawyers to thrive; (2) to increase rates for assigned counsel to fairly compensate attorneys; (3) to raise the low jurisdictional limits in small claims court, which can undermine the ability of rural New Yorkers to achieve justice; (4) to consider law school loan forgiveness programs that could enable more attorneys to settle in rural communities; (5) to eliminate will filing fees; and (6) for NYSBA to offer discounted CLE rates to rural attorneys and free consultations and/or expanded programming to support lawyers in transition.

#### **B. Legislative Action**

##### ***1. Raise 18-B rates***

Extensive advocacy has occurred around stagnant hourly rates paid to assigned counsel in criminal and Family Court cases. The Task Force does not recommend further study, but instead discusses the particular impact of the assigned counsel rates on rural attorneys, rural New Yorkers entitled to mandated representation, and rural justice. In 2018, the State Bar embraced a report of the Criminal Justice Section and Committee on Mandated Representation, calling for a rate increase. Most recently, this goal has been declared a 2020 legislative priority of the Association.<sup>34</sup>

An Interim Report to Chief Judge Janet DiFiore, issued by the Commission on Parental Legal Representation in February 2019, recommended that the rates for parental representation increase to \$150 an hour.<sup>35</sup> In her State of the Judiciary Message in 2019, the Chief Judge advocated for an increase in assigned counsel rates for criminal defendants, parents, and children, and stated that she had transmitted a letter to Governor Cuomo and leaders of the Legislature urging action. She further explained:

New York State has made great progress to strengthen its criminal indigent defense system thanks to the creation of the Office of Indigent Legal Services...and to increased state funding...However, our state continues to rely on the hundreds of

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<sup>33</sup> Taier Perlman, *Rural Law Practice in New York State*, Albany Law School Gov't Law Center (April 2019), at 2, 4, 6, 8.

<sup>34</sup> The last increase in assigned counsel rates was in 2004, when rates went to \$75 per hour regarding felonies and \$60 per hour for representation of a person charged with a misdemeanor or lesser offense. After 16 years, these rates should be increased to prevent the further exodus of practitioners from the assigned counsel program across the state.

<sup>35</sup> See [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf).

private attorneys or assigned counsel who provide legal representation to indigent criminal defendants and family court litigants in many areas of the state. Without fair and adequate compensation for these attorneys, a vital component of the system is at risk.<sup>36</sup>

The success of the criminal defense reforms contemplated by the Legislature depends on the availability of enough qualified attorneys. A survey of assigned counsel plan administrators conducted by the Committee on Mandated Representation revealed that a significant number of programs do not have enough attorneys because the fees are too low. The impact of inadequate rates—and a resulting shortage of qualified private attorneys willing to accept assigned cases—is felt acutely in rural counties. In such areas, fewer institutional offices exist to handle mandated representation cases. Thus, assigned counsel attorneys play a particularly significant role in protecting the rights of New Yorkers accused of crimes, as well as Family Court litigants and children. Increased rates are vital to sustaining such representation. The key role played by assigned counsel in rural criminal defense was underscored by a report of the NYSBA Criminal Justice Section on Town and Village Justice Courts.<sup>37</sup>

A survey of rural attorneys revealed the importance of raising rates, as exemplified by these comments:

*“My clients cannot afford my services, and I cannot sustain a practice on only 18-B representation, as those fees are too low.”*

*“Clients cannot afford lawyers for the criminal and family cases...and therefore lawyers often take on assigned cases to supplement income, but assigned cases do not pay well, and it is easy to become overloaded with assignments. We need to encourage more young people to move into rural counties, and mentors in diverse areas of law to dedicate time to teaching [these young lawyers]... We also need to increase pay for assigned counsel and allow practitioners to decline assignments once they’ve maxed out their caseload.”*

*“Clients are very poor, as this is an economically depressed area. It is rare to have private-pay clients, and unless attorneys are being appropriately compensated, we will not be able to attract qualified attorneys to serve our needs. I made my money doing other types of cases and can only afford to represent indigent clients because I am toward the end of my career and don’t have the financial obligations most young lawyers do...[T]he hourly rate for assigned counsel needs to be increased in order to have attorneys available to handle these matters.”*

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<sup>36</sup> [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19\\_SOJ-Speech.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19_SOJ-Speech.pdf).

<sup>37</sup> See <https://www.nysba.org/tvcourtsreport/>.

## ***2. Relax residency requirements for public positions***

### ***Attorneys***

The idea that public employees who live where they work are more invested in the community appears to underlie residency requirements set forth in State law. *See Matter of Dehond v Nyquist*, 65 Misc 2d 526 (Sup Ct, Albany Co 1971) (residency requirement aims to hire public officials who are knowledgeable and concerned about affairs of unit of government they seek to serve). Since 1829, New York has required public officers to be residents of the State, and local governments have required public officials to be residents of the locality by which they are employed. *See Winkler v Spinnato*, 72 NY2d 402, 405 (1988), *cert denied* 490 US 1005 (1989). Many things have changed in the last two centuries. Workers commute significant distances, and many work remotely. The notion that public officials will be less dedicated to their jobs absent residency mandates seems outdated and questionable.

Instead, rural communities are hurt by residency provisions. Rural justice is eroded by residency requirements, as communities cannot attract qualified talent due to such restrictions. The pool of attorneys to draw from locally is far too small in rural areas of the State. The vast majority (96% according to data from the Office of Court Administration) of New York attorneys live and/or work in urban areas. For all these reasons, to advance rural justice, the concept of “community” should be broadened to encompass rural regions, and residency requirements found in State law and other relevant laws should be relaxed.

The primary residency statute for “public officers,” is found in Public Officers Law § 3 (1), which provides that “[n]o person shall be capable of holding a civil office who shall not\*\*\*[be] a resident of the political subdivision\*\*\*of the state for which he shall be chosen.” Section 30 (1) (d) further provides that “[e]very office shall be vacant upon\*\*\*[the incumbent’s] ceasing to be an inhabitant\*\*\*of the political subdivision\*\*\*of which he is required to be a resident when chosen.” The terms “resident” and “inhabitant” are understood to be synonymous with “domicile.” *See Matter of Hosley v Curry*, 85 NY2d 447, 451 (1995).

Section 3 contains a patchwork of numerous special laws that provide for more flexible residency requirements as to certain attorney or judge positions in individual villages, towns, cities, or counties. *See e.g.* subdivisions (37), (38), (40), (44), (46), (64), (69). Typical exceptions declare that a specified town or city official need only reside in the county in which the city is located, or the specified county official may reside in an adjoining county. Specific positions covered include Town and Village Court Justices, City Court Judges, Assistant District Attorneys, Assistant Public Defenders, Deputy County Attorneys, and City Attorneys. Some exceptions are broad, such as subdivision (28), providing that all public officers employed in Westchester County may reside anywhere in the State of New York. Other State laws that impose residency mandates on officials, and thus are implicated by this analysis and recommendation, include Town Law § 23 (1) and Village Law § 3-300.

Insight into why some localities sought special residency laws can be gleaned from one Memorandum of Support of an Assembly bill that resulted in such a special law—Public Officers

Law § 3 (64) (Wyoming County Assistant District Attorneys, except the Chief or First ADA, may reside in adjoining county). The justification in the memo explained:

The Assistant District Attorney position requires a set of unique skills and specialized experiences...This bill has been introduced at the request of the Wyoming County District Attorney. It is essential that predominantly rural counties...have the same ability as...[other] counties with a higher population to recruit practitioners with the necessary skills and experience...Exceptions for the residency requirement...have typically been granted to counties with smaller populations...Adoption of this legislation will provide the Wyoming District Attorney with a more flexible recruiting process by allowing the District Attorney to hire from adjoining rural counties...[that] share many of the same characteristics as Wyoming County, ensuring that the interests of Wyoming County are adequately represented.

As the memo indicates, strict residency requirements work against localities' ability to find skilled attorneys to fill public positions; and since adjoining rural counties share many of the same characteristics, nothing is lost by imposing a less parochial approach to hiring talent.

In addition to the state law, some local laws impose residency mandates. As to some positions, localities have the authority to enact local laws providing for stricter or more liberal residency requirements than Public Officers Law § 3, and many have exercised that authority. *See generally Matter of Ricket v Mahan*, 97 AD3d 1062 (3<sup>rd</sup> Dept 2012) (discussing Public Officers Law residency provisions and localities' home-rule powers). The result of the current State requirements and exemptions and the local laws is an inconsistent mélange of residency provisions that do not serve New York well and that undermine the consistent administration of rural justice. To overcome the challenges faced by under-resourced municipalities and to attract qualified employees, the State law on residency requirements should be reformed. Further, rural localities should be discouraged from enacting local provisions providing for stricter requirements.

Relaxing state law residency requirements for the public positions set forth above, as well as for attorney officials at County Departments of Social Services, would make it more practicable for a larger pool of attorneys to work in rural areas. Opportunities regarding where attorneys may hold public office, while also engaging in private practice, would be broadened. The desired flexibility could be achieved as to county positions by removing any residency requirement, except for requiring New York state residence, or by providing that the officials could reside in a county adjacent to the county in which the positions are held.

In the area of public defense, flexibility as to residency could have a particularly profound impact. The case of *Hurrell-Harring v State of NY* brought attention to the State's failure to provide for effective representation to criminal defendants. A settlement in that case resulted in significant State funding to the five named counties to improve the quality of criminal defense by public defenders and assigned private attorneys.<sup>38</sup> The reforms embodied in the settlement are now being

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<sup>38</sup> See New York State Office of Indigent Legal Services, *Hurrell-Harring Settlement and Implementation Information*, <https://www.ils.ny.gov/content/hurrell-harring-settlement-and-implementation-information>.

implemented throughout the State, pursuant to Executive Law § 832 (4) and State Legislature budget plans for incremental implementation of the State funding of public defense.

Hundreds of public defense positions have been added in rural counties across New York. Moreover, assigned counsel programs are expanding, becoming more structured,<sup>39</sup> and receiving significant resources. To recruit qualified applicants to serve in rural public defender offices and as administrators and supervising attorneys at assigned counsel programs, greater flexibility in State laws as to the county of residence will be needed. Further, by allowing private attorneys from adjoining counties to participate on assigned counsel panels, counties will be able to attract more talent. These attorneys can help deliver quality representation to criminal defendants and Family Court litigants, while achieving professional growth via the mentoring, second-chair, training, and other resources that are being provided, or will soon be provided, to such programs via State funding. The importance of also increasing assigned counsel rates to achieve the public defense reforms contemplated by the Legislature was already discussed above.

### ***3. Raise small-claims-court caps***

Small-claims courts are special parts in justice, city, and district courts where litigants can sue for money damages. Uniform Justice Court Act § 202 provides that, where justice courts handle small claims actions for money damages, the amount sought to be recovered, or the value of the property at issue, must not exceed \$3,000. The statute was last amended more than four decades ago (L 1977, ch 685, § 2). Uniform City Court Act § 1801 and Uniform District Court Act § 1801 have a cap of \$5,000—an amount set in 2003 (L 2003, ch 601, § 3).<sup>40</sup>

The decades-old jurisdictional limits are too low, and the RLP Committee recommends that they be raised to a uniform amount of at least \$7,500 for all Town, Village, City, and District Courts. This change could close a justice gap and allow for proper representation of rural clients, while bolstering the practices of rural attorneys and advancing judicial economy. Often litigants with disputes involving relatively small matters cannot afford the attorney fees and court expenses, multiple appearances, and delays associated with initiating a civil case in Supreme Court. In contrast, small claims in rural areas can be brought in front of an appropriate Town or Village Court.<sup>41</sup> While litigants can represent themselves in these small claims courts, many are reluctant to do so and, in fact, cannot do so effectively. Increasing the monetary maximum will mean that more cases could be handled in small claims courts, where the filing fees are nominal. Rural practitioners could potentially expand their practice by obtaining fees in a large volume of such matters, while helping their neighbors favorably resolve their disputes.

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<sup>39</sup> See <https://www.ils.ny.gov/files/ACP/ACP%20Standards%20with%20Commentary%20070119.pdf>.

<sup>40</sup> Under Chief Judge Janet DiFiore's proposal to consolidate New York's trial courts, District Courts and upstate City Courts would be abolished and would become part of a new statewide municipal court. See [https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/PR19\\_22.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/PR19_22.pdf).

<sup>41</sup> <http://www.rurallawcenter.org/docs/Guide%20to%20Small%20Claims%20Court.pdf>.

#### ***4. Eliminate will-filing fees***

SCPA 2402 (9) (v) regarding Surrogate's Court filing fees states that a \$45 fee applies as to "a will for safekeeping pursuant to section 2507 of this act except that the court in any county may reduce or dispense with such fee." The fees are discretionary, but should be eliminated entirely. This could benefit rural solo lawyers whose practices includes estate planning and administration and the filing of a large volume of wills. Such an amendment would also benefit the estates by encouraging the best practice of filing of wills with the court. Given the prevalence of indigent clients in rural communities and the tremendous amount of pro bono or low bono services offered by rural lawyers, this filing fee is unnecessarily cost-prohibitive.

### **C. NYSBA Action**

#### **Offer assistance and consultation for lawyers in transition**

NYSBA's 2020 legislative priorities declare that a core mission of the Association is to represent the interests of the legal profession, and that the Association thus works to ensure that attorneys are able to protect their clients' interests and effectively engage in the practice of law.<sup>42</sup> The creation of the Rural Justice Task Force was an important step toward helping attorneys to engage in the practice of law in rural New York.

In this regard, the NYSBA Law Practice Management Committee has published an invaluable Planning Ahead Guide, including information regarding succession planning and the sale of a law practice. Further, the State Bar's Committee on Lawyers in Transition provides excellent, free programs to members regarding transitioning or retiring.<sup>43</sup> The RLP Committee suggests that an additional service be offered by the State Bar: free, individualized consultations on succession planning and the sale of a law practice. Such a service is provided by the North Carolina Bar Association Transitioning Lawyers Commission.<sup>44</sup> As many rural New York attorneys are approaching retirement age, they could benefit greatly from particularized, expert guidance and assistance regarding transition plans.

Further, services could be expanded to include a mentoring program to connect transitioning attorneys with new attorneys interested in taking over an established practice. Also, rural attorneys could be encouraged to use [www.lawyerexchange.com](http://www.lawyerexchange.com) to post announcements regarding the sale of their practices. This could serve two purposes: first, it could facilitate the sale of the practices to the advantage of the selling attorneys; and second, it could help draw more attorneys to rural communities by making them aware of the attractive opportunities that exist.

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<sup>42</sup> See n 2, *supra*.

<sup>43</sup> See <https://www.nysba.org/SellingYourPractice/>.

<sup>44</sup> See <https://www.ncbar.org/members/committees/transitioning-lawyers-commission/>.

#### **IV. BROADBAND & TECHNOLOGY INTERVENTIONS**

The practice of law has transformed over time, given the rise in technology. Many solo and small-firm practitioners adopt technology in order to streamline their practice, as well as to handle firm business outside of a standard office space. However, such technology adoption is reliant on the infrastructure available in their office, home, business, or courthouse. A number of rural attorneys who responded to the Government Law Center’s survey complained about technological shortcomings.<sup>45</sup> We have discovered in our research that such technological shortcomings arise from the lack of technology infrastructure in many instances. In fact, the American Bar Association has recognized that lack of access to highspeed broadband is a hurdle for access-to-justice efforts. Recognizing this, the American Bar Association passed a resolution in August 2019 urging “federal, state, local, territorial, and tribal legislatures to enact legislation and appropriate adequate funding to ensure equal access to justice for Americans living in rural communities by deploying, to at least 98% of the population, broadband infrastructure with a download speed of at least 100 megabits per second [Mbps], and an upload speed of at least 30 Mbps.”<sup>46</sup>

To that end, New York State has a program in place presently called “Broadband for All”<sup>47</sup> which calls for investment in the state’s broadband capacity with the ultimate goal of 99.9 percent of New Yorkers having access to broadband. This plan was created in 2015, to be handled in three phases. The last phase, “Round III,” awarded 43 projects \$209.7 million dollars to handle “last mile” connectivity.<sup>48</sup> However, that last round was announced on January 31, 2018, with the effect of it being the end of this multi-year program. As is well understood, such connectivity is hindered by geography, distances between connection points, tower placements, as well as costs involved with laying miles of cabling, whether fiber optic or otherwise. To put it in perspective, one CEO of a broadband company that we spoke with quoted a basic cost of \$20,000-\$25,000 per mile for infrastructure. This does not include the cost to connect from the pole to the individual home(s), which is dependent upon pole location. Depending on the distance from the closest pole, that cost may double. So, by whom should the costs be borne, and will the end users be able to afford the service if finally made available?

Satellite internet is often the only other option you have available should you be too far away from a pole for broadband to be economically feasible. There are only two residential satellite internet providers available in the entire United States, Viasat and HughesNet.<sup>49</sup> HughesNet download speeds top out at 25Mbps<sup>50</sup>, or a quarter of what’s considered standard broadband speeds, and

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<sup>45</sup> Taier Perlman, *Rural Law Practice in New York State*, Albany Law School Gov’t Law Center (April 2019), at 11.

<sup>46</sup> ABA House of Delegates Resolution 10B, Adopted August 12–13, 2019.

<sup>47</sup> <https://www.ny.gov/programs/broadband-all>.

<sup>48</sup> <https://www.governor.ny.gov/news/governor-cuomo-announces-round-iii-nation-leading-new-ny-broadband-program-bring-high-speed>.

<sup>49</sup> <https://www.satelliteinternet.com/>.

<sup>50</sup> <https://www.satelliteinternet.com/providers/hughesnet/internet/>.

Viasat offers speeds of “up to 25Mbps.”<sup>51</sup> In the case of HughesNet, they throttle the speed once users reach 50GB of usage in a month, meaning that it will be considerably slower for the remainder of the period. Both plans cost between \$60 and \$150 a month. By comparison, nationwide average download speed of a Verizon cellphone on their LTE network is 53.3 Mbps.<sup>52</sup>

In effect you have two issues, not just one. If you have broadband service at your home or office, you may be able to do work and service clients. But if you leave your home or office, what then? The instant always-on connectivity that so many of us take for granted may end once you are out of the radius of your router. That is because your cellphone, probably the most important article in an attorney’s bag, becomes a worthless brick without a cell phone signal to back it up. Travel through upstate New York with some of your colleagues to find out how important that fickle signal can be.

*“Providing colleagues or family members with name and address of court along with the route you will be traveling in the event something was to happen to you i.e. car breaking down or getting lost because you are traveling in areas where there is no cell phone reception and often times the GPS signal on direction apps gets lost.”*

*“Serving process on someone in the middle of nowhere with no ability to access public safety without reception.”*

*“Trying to broker a stipulation when you are trying and failing to get a signal in a courthouse to call an out-of-area client, and hoping you don’t have to ask for the judge’s landline in order to do so.”*

At the same time, technology has changed and will continue to change during the rollout of these plans. In the newest iteration of cellular technology, 5G, the fastest signals are created with many small cell sites, which need to be much closer together than today’s standard technologies. Even so, each cell site must be connected to a network backbone, whether through a wired or wireless connection.<sup>53</sup> That implies that a network backbone is present, which in many rural areas it is not.

While this is certainly problematic for legal providers, it is also troublesome for legal clients. Trying to contact and do work with clients who also live rurally can be abnormally challenging. Distance and technology combine to be a strong issue when it comes to getting documents to and from clients, getting those documents filed with courts, and service of process are just some of the challenges faced by rural practitioners. Many upstate county courts, not including town and village courts, have been slow to implement e-filing, if they have at all. As of December 2019, 52 of 62

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<sup>51</sup> <https://www.viasatspecials.com/lp/internet>.

<sup>52</sup> <https://www.tomsguide.com/us/best-mobile-network.review-2942.html>.

<sup>53</sup> <https://www.pcmag.com/news/what-is-5g>.

counties have some sort of e-filing, but current legislation does not authorize town and village courts to do so. If you have no internet, you cannot e-file or implement any technology at all into the court system. Given the distances involved in the larger counties, it makes sense to offer such opportunities to file even at the basic county level. Some of these counties have no cities, which makes the county courthouse the only point of service for purposes of any civil actions. To that end, the lack of scanned documents in real time can make for additional travel for practitioners. By either e-filing or at least providing real time access to non-electronic documents would allow attorneys to access the documents without bothering the court staff and not have to rely upon clients to transport copies of these documents to them. Many of these clients have lack of transportation issues, lack of access to scanners or fax machines, forcing actual paper copies to become the only viable record available for review.

Currently, Monroe County has a Justice for All Initiative which is present in Monroe County Village and Justice Courts, where they are collecting data on the number of filings, defaults, representations, and dispositions as well as surveying litigants about their experiences. Part of the initiative may be further expanded into working on transportation issues. Litigants have been found to have a lack of transportation in far-flung areas, making physical access to justice an ongoing issue, given the requirements for in-person appearances and lack of telephonic/video conference opportunities.

To this end, we make the following recommendations:

1. NYSBA should adopt a resolution that urges New York State to enact further legislation and adequate funding to expand and continue the Broadband for All program with a Phase 4 round of funding. The goal of Phase 4 should be further deployment of reliable broadband infrastructure with a download speed of at least 100 megabits per second and an upload speed of at least 30 megabits per second for 100% of New Yorkers with a specific focus on the rural areas that were not served by Phase 3 of the program. We recommend the following steps:
  - a. New York State should require the creation of a granular database of all broadband serviceable locations at the completion of Phase 3 to “map the gap” which will allow policymakers to target where funds should be allocated. (Using the same methods as was used in the US Telecom broadband initiative pilot project in Virginia and Missouri or those suggested by the FCC granular mapping initiative).
  - b. Specifically target additional funding to those “gap” areas where the Broadband for All program did not extend access to broadband at speeds of 100/30.
2. Monitor and track the Monroe County Justice for All pilot project. This project includes initiatives around real-time access to filings in civil matters, transportation to court in civil matters, uniform data collection and a court monitoring project in the town and village justice courts. Assuming that this program will be successful in breaking down these

particular barriers to accessing justice, NYSBA should advocate for its expansion throughout the state.

3. The Office of Court Administration should promulgate guidelines to encourage and promote remote video conference appearances in town and village justice courts (and across all New York courts) by attorneys and litigants for civil matters using the available SKYPE technology already provided to town and village courts, or other similar technology.
4. The Office of Court Administration should continue to expand e-filing initiatives across the state as these important initiatives provide easier access to the courts for both practitioners and litigants alike. Legislation should be passed to authorize e-filing expansion into town and village justice courts.
5. NYSBA should again recommend the repeal of Judiciary Law §470 requiring a physical office in New York State. (This recommendation was previously adopted by the NYSBA Working Group on Judiciary Law §470, October 8, 2018.)

## **V. LAW AND POLICY INTERVENTION**

The Committee on Law and Policy examined other laws and rules that affected rural practice. In particular, the Committee examined New York Court Rule §100.6(B)(2), which provides:

(B) **Part-Time Judge.** A part-time judge:

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

The Committee examined this rule particularly in light of the longstanding NYSBA policy against non-lawyer judges. In 2009, the House of Delegates adopted the Report of the Committee on Court Structure and Judicial Selection, which was charged with reviewing the 2008 Report of the Chief Judge's Commission on the Future of the State Courts. The Commission Report had concluded that lawyer judges were desirable, but because of claims of feasibility, it had stopped short of seeking a constitutional amendment to require that all justices be lawyers. The NYSBA report in response reiterated the NYSBA position that all justices should be lawyers. The report also included the history of the NYSBA position, noting that such a position had been taken on numerous occasions going back to 1979.

The part-time judge rule in §100.6(B)(2) has been in effect for many decades, previously as Rule 100.5(f), and before that as Rule 33.5(f). There are three different extra-judicial activities prohibited: (1) The practice of law by the part-time judge in his/her own court, (2) the practice of law by the part-time judge in another court within the same county, if that judge is also permitted to practice law, and (3) the participation as a lawyer in any proceeding in which the judge has acted

as a judge, or in any proceeding related to one in which the judge acted as judge. The Committee recommends maintaining the first and third of these prohibitions in their current form, and removing the second prohibition.

The rationale for the second prohibition has been stated in several opinions and disciplinary proceedings as to avoid the appearance of impropriety in the nature of a quid pro quo between part-time lawyer judges. Interestingly, where discipline is sought for violation of 100.6(B)(2), there are usually other provisions violated, particularly where the judge has participated in a case that truly creates a conflict or other improper activity. In the one reported case where the lawyer judge was subject to the disciplinary commission, the commission unanimously imposed an admonition only.<sup>54</sup>

The rule has produced several opinions allowing the part-time lawyer judge to appear before an OCA employee who is a part-time judge,<sup>55</sup> a lawyer licensed to practice only in another state,<sup>56</sup> and a lawyer who is retired from the practice of law.<sup>57</sup> There have also been opinions regarding engineering the part-time judge's client cases before full-time, rather than part-time, judges in city, town and village courts. This is not permitted by transferring cases assigned to part-time judges to full-time judges<sup>58</sup>, but it is permitted in a prospective way by an administrative judge,<sup>59</sup> and is permitted upon transfer down from Supreme Court by CPLR 325.<sup>60</sup> In addition, because Rule 100.6(B)(3) provides that the prohibition of practice of a part-time judge before other part-time judges does not extend to the judge's associates and partners (although the prohibition of practice in the judge's own court does extend to any lawyer associated in any way with the judge), there have also been opinions allowing the associates to use a letterhead which includes the lawyer/judge's name as long as there is no indication on the letterhead that the lawyer is a judge.<sup>61</sup>

The Committee concluded that the rule has a limited benefit. This is because the lawyer judge is governed by both the Rules of Judicial Conduct and the Rules of Professional Conduct which would otherwise prohibit any sort of quid pro quo between part-time lawyer judges. In addition, where an associate of a part-time judge appears before a part-time judge of another court in the same county, that associate may use a law firm name and stationery which uses the name of the part-time judge. Thus, the judge who the associate appears before may know full well that the associate has a relationship with the part-time judge. It should be noted that non-lawyer judges are not subject to Rules of Professional Conduct and have no specific rule regarding conflicts akin to

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<sup>54</sup> *In re Brian D. Mercy* (N.Y.S. Comm'n on Jud. Conduct, June 22, 2012), 2012 WL 2786179, available at <http://cjc.ny.gov/Determinations/M/Mercy.Brian.D.2012.06.22.DET.pdf>.

<sup>55</sup> NY Jud. Adv. Op. 10-73, 10-167.

<sup>56</sup> NY Jud Adv. Op. 10-100.

<sup>57</sup> NY Jud. Adv. Op. 90-199.

<sup>58</sup> NY Jud. Adv. Op. 02-87 and opinions cited therein.

<sup>59</sup> NY Jud. Adv. Op. 08-132.

<sup>60</sup> NY Jud. Adv. Op. 08-96.

<sup>61</sup> NY Jud. Adv. Op 08-210.

Rule 100.6(B)(2). Accordingly, this rule effects only attorney part-time judges, and creates an unfair chilling effect on them, while part-time non-attorney judges continue to serve on the bench freely, even where appearances of impropriety exist. For instance, where a non-attorney part-time judge works in law enforcement within the county, but presides over criminal cases with county prosecutors appearing before them.

The presence of the rule is a considerable deterrent to lawyers in rural areas to seek positions as part-time judges. While there may be a substantial number of part-time judges who are lawyers in suburban settings, there are relatively few in rural areas. For example, in the 20 justice courts in Franklin County there is only one practicing lawyer and one retired lawyer; all of the rest are non-lawyers.

The Task Force believes that the elimination of this rule will result in more lawyer judges, in furtherance of the longstanding NYSBA policy that justices should be lawyers, and recommends that the Chief Administrative Judge amend the rule to eliminate the second prohibition as follows:

(B) Part-Time Judge. A part-time judge:

(2) shall not practice law in the court on which the judge serves, ~~or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law,~~ and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

\*\*\*\*\*

A minority of the Task Force did not support the amendment, concluding that lawyer judges often have substantial practices and can appear before full-time judges and part-time non-lawyer judges. This is true only because presently there are so few part-time lawyer judges in rural settings. If NYSBA's policy to have all attorney justices were to come to fruition, this rule would have a significant effect on a lawyer judge's practice, and is, in fact, a deterrent to fulfilling this NYSBA policy.

## CONCLUSION

As amply demonstrated in this Report, we face formidable challenges in ensuring that rural legal services are adequately delivered and administered with a fair and even hand. To be sure, a great society - a just society - is judged not on the success of the successful, but upon its response to those in need. The time has come to recognize that those in need include the many families and individuals who reside in rural New York. We hope that our diverse proposed interventions ameliorate some of these critical issues and that the full panoply of stakeholders who need to be involved to initiate these interventions step up, as we must do something about the imminent crisis before us. Thank you for your careful consideration.





COMMITTEE ON LEGAL AID

PRESIDENT’S COMMITTEE ON ACCESS TO JUSTICE

March 18, 2020

RE: Report and Recommendations of the Task Force on Rural Justice

The Committee on Legal Aid and President’s Committee on Access to Justice jointly and enthusiastically support the bold recommendations contained in the report of the Task Force on Rural Justice. The report strikingly shows the extent of the justice gap in rural communities statewide. The recommendations proposed by the Task Force, if implemented, will better facilitate and improve the quality and availability of legal services for the indigent – benefiting our clients, the profession, and all New Yorkers.

Thank you.

Very truly yours,

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Sally Curran  
Co-Chair, Committee on Legal Aid

---

Adriene Holder  
Co-Chair, Committee on Legal Aid

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Scott M. Karson  
Co-Chair, President’s Committee on Access to Justice

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Tiffany Liston  
Vice Chair, President’s Committee  
on Access to Justice

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Edwina Martin  
Co-Chair, President’s Committee on Access to Justice





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #7

REQUESTED ACTION: Approval of the report and recommendations of the Task Force on the New York Bar Examination.

The Task Force on the New York Bar Examination was appointed in 2019 to review the impact of New York's adoption of the Uniform Bar Examination (UBE) on applicants; the qualifications and legal knowledge of newly-admitted attorneys; and the impact on potential employers, the court system, and diversity in the profession. The UBE, which is developed by the National Conference of Bar Examiners, was first administered in New York in 2016. Accompanying the UBE is the New York Law Examination (NYLE), intended to introduce candidates to principles of New York law.

The Task Force identifies problems with both the UBE and the NYLE. With respect to the UBE, it finds that lawyers are being trained on matters unrelated to issues they will face in practice; the portability of UBE scores benefits relatively few candidates; and the UBE has had the effect of discouraging law students from enrolling in courses based on New York law. With respect to the NYLE, the Task Force notes that it is not taken seriously and is not policed.

The Task Force recommends the following:

- The NYLE be eliminated;
- Passage of a rigorous examination on New York law be made a prerequisite to admission to the New York Bar;
- An independent psychometric analysis be conducted on the grading and scaling of the UBE;
- Pending such analysis, the UBE should be retained to accommodate law graduates, especially foreign law school graduates, who seek admission to American UBE jurisdictions; however, any graduates who seek New York admission should pass a separate, rigorous New York based test;
- While the Multi-State Bar Examination (MBE) and the Multistate Performance Test (MPT) should be re-examined, pending their revision, law graduates who intend to

practice only in New York would need to take the MBE and MPT and pass a separate, rigorous New York based test;

- Alternatively, if the UBE continues as it is now, no candidate should be admitted in New York without passing a separate, rigorous New York law-based examination;
- Consideration be given to a New York Law Certification program that would permit people to forego the bar exam entirely. and
- Consideration be given to an experiential learning pilot program, modeled on New Hampshire's Daniel Webster Scholars Honors Program.

This report was published in the Reports Community in March 2020. New York County Lawyers, Brooklyn Bar, Nassau County, Erie County, Bronx County, and Onondaga County Bar Associations have indicated that they support the report and recommendations.

The report will be presented at the April 4 meeting by Task Force chair Hon. Alan D. Scheinkman.



NEW YORK STATE  
BAR ASSOCIATION

# Report of the New York State Bar Association **Task Force on the New York Bar Examination**

April 2020

The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.



**Report of the NYSBA Task Force on  
the New York Bar Examination**

**March 5, 2020**

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## **I. EXECUTIVE SUMMARY**

The Task Force on the New York Bar Examination (the “Task Force”) was formed in April 2019 by then-President Michael Miller to investigate and report on the impact of New York’s adoption of the Uniform Bar Examination (UBE) on applicants, on the qualifications and relevant legal knowledge of newly-admitted New York attorneys, on potential employers, on members of the Bar, on the court system, and on diversity in the profession. This report sets forth the results of our work and our recommendations for New York’s bar examination.

We begin with a simple statement of fact: New York no longer has its own bar examination. It uses the UBE. As the rules of the Court of Appeals declare, the New York State bar examination consists of the UBE, developed by the National Conference of Bar Examiners (NCBE).<sup>1</sup> The only component of the bar examination experience that “tests” New York law is the New York Law Examination (NYLE) which, while an examination in name, is not an examination in fact. It is a means, according to the New York Board of Law Examiners (BOLE), to give candidates exposure to important principles of New York law. Candidates are not required to demonstrate that they have meaningful knowledge of New York law. The BOLE acknowledges that the “initial versions” of the NYLE were “overly simplistic,” but claims the NYLE has become “more challenging overall.” Since the NYLE has only been administered since 2016, it is disheartening that the bulk of its administrations were, even for an exercise in consciousness-raising, “overly simplistic.”

As set forth in this report, we have identified serious problems with both the UBE and the NYLE. The NYLE is not taken seriously as a test by anyone and is widely held in disrepute. Even with its low bar for passage, there are incidents of cheating, which are compounded by applicants attesting in affirmations that they did not cheat, with no effective means of either policing the administration of the test or policing the accuracy of the anti-cheating affirmations. It is ironic that one of the first steps a prospective attorney takes on the path to admission may be to dissemble on the affirmation relating to honesty in taking the NYLE.

The UBE, with its reliance on testing the “law of nowhere,” has led to the training of lawyers on matters that bear little relation to the legal issues that they will encounter in practice. The grading and scoring practices are questionable and no independent analysis has been conducted into whether the UBE accurately measures what it purports to assess. While we are cognizant that a three-year study has recently been published as to New York’s experience with the UBE, we are concerned by the fact that the study was conducted by the NCBE, which is the sponsor of the UBE. It is as if the author of a book wrote its own book review. Moreover, even that study finds that the UBE perpetuates a disparate impact to women and, to some extent, minorities. While that study reports that the disparate impact is no greater than under the former testing regime, we are not satisfied with leaving a known disparate impact in place on the premise that it was not made worse.

The vaunted portability of the UBE benefits, at best, a minority of New York test takers, while the majority of test takers are admitted to practice in New York without having to demonstrate any knowledge of New York law. For the most part, foreign law school graduates, who now comprise roughly one-third of the New York test takers, use their New York admission

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<sup>1</sup> 22 N.Y.C.R.R. § 520.8(a).

only as a credential, without practicing here. In the main, scores are transferred out of state, not into New York. Since UBE scores can be used for portability only for three years, and many states, including New York, permit admission after five years of practice elsewhere, the portability of the UBE is limited under any circumstances.

We can debate whether any test can properly measure an applicant's ability to practice law in New York. Nevertheless, the adoption of the UBE has had the unintended, though foreseeable, consequence of rendering applicants less, not more, equipped to meet the challenges of practicing law in New York. And this may not be entirely the test's fault. What we have learned is that many of the New York-based law schools, in adjusting to the UBE, have ceased offering courses in New York law and students have similarly stopped enrolling in the courses that are offered. Law students are incentivized to study that which is most relevant to their most immediate objective—passing the bar exam. Law schools, whose rankings and accreditation may be dependent to a significant degree on their bar passage rate, are incentivized to teach to the bar. If New York law is not a bar exam tested subject, law students are disinclined, in general, to study it and law schools are less inclined, in general, to teach it.

There was a time when debates as to legal education centered around whether it was more beneficial to attend a "New York" law school or one that considered itself "national." We never thought, however, that New York law would not be included in a meaningful way on any examination for admission to the New York State Bar. It is likewise almost unfathomable that there are those who maintain that there is no need to test New York law at all, just some New York distinctions from otherwise generally accepted legal principles. Most important, because the primary arguments in favor of the UBE center around convenience or lack of hardship to bar applicants, we are concerned that the focus of the bar examination has shifted away from its primary purpose—the protection of the public from attorneys lacking competence. We should not be ashamed or embarrassed for wanting those attorneys who desire to practice law in New York to meet the highest standards—not just the least common denominator.

We need to cease the administration of the NYLE as soon as possible as that examination is so lightly-regarded as to be unworthy of our State. We need to demand independent answers to the scoring and grading questions surrounding the UBE. We cannot simply rely upon the assurances of NCBE, which composes, licenses, and scores the UBE, as to the quality of its own product. Regardless of whether or not the UBE is retained, a rigorous New York component must be added as a prerequisite for admission to practice in New York. Otherwise, the problem of unprepared newly-admitted attorneys practicing law in New York will only get worse, to the great disadvantage of New York consumers of legal services. Adding a rigorous New York component also has the advantage of giving New York the opportunity to mitigate its existing dependence upon the UBE scoring regimen as well as the opportunity to develop our own innovative methods for truly testing lawyer competency. We also believe that a new New York bar examination could test on subjects that, while not New York specific, are quite relevant to practice in New York and which are not currently tested on the UBE. As Dean Craig M. Boise of Syracuse University College of Law has pointed out, important subjects such as cybersecurity and data privacy, as well as the law of health care and corporate compliance, are not currently

tested.<sup>2</sup> We also believe that attorneys seeking admission to New York after five years of practice elsewhere should likewise be required to pass a New York law-based examination.

The UBE has led to the admission in New York of law graduates who do not intend to practice here and use New York admission as a mere credential. This is imposing an unforeseen but potentially significant regulatory burden in New York. New York requires that admitted attorneys register in New York, and pay a registration fee, prior to taking the constitutional oath, then re-register every two years.<sup>3</sup> Examination of the published orders of suspensions of attorneys for failure to register reflect a high incidence of out-of-state addresses, frequently comprising an overwhelming majority of the names listed. While these suspensions thus far have typically involved attorneys admitted for at least several years, we are concerned that at least some newly-admitted attorneys may not register or stay registered, leading to enforcement activities by the disciplinary authorities. The admission in New York of substantial numbers of attorneys who do not stay registered is an unanticipated burden on New York's disciplinary processes. It is also unclear whether there is any effective complaint process, let alone disciplinary process, for attorneys admitted to practice in New York but who do not, in fact, practice here and who commit acts of professional misconduct elsewhere. If such attorneys are admitted elsewhere, reciprocal discipline could be imposed as the result of a New York disciplinary process but, in order for a disciplinary proceeding to be brought, notice of the foreign discipline must be provided.

As detailed in this Report, we recommend:

- The NYLE be eliminated;
- Passage of a rigorous examination on New York law should be made a prerequisite to admission to the New York Bar;
- An independent psychometric analysis should be conducted on the grading and scaling of the UBE;
- Pending such analysis, the UBE should be retained to accommodate law graduates, especially foreign law school graduates, who seek admission to American UBE jurisdictions; however, any graduates who seek New York admission should pass a separate, rigorous New York based test. Those who pass the UBE in New York should receive from the BOLE an appropriate certification that they passed.
- While the Multi-State Bar Examination (MBE) and the Multistate Performance Test (MPT) should be re-examined, pending their revision, law graduates who intend to practice only in New York would need to take the MBE and MPT and pass a separate, rigorous New York based test;
- Alternatively, if the UBE continues as it is now, no candidate should be admitted in New York without passing a separate, rigorous New York law-based examination. We acknowledge that this would require an additional day of

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<sup>2</sup> Craig M. Boise, Dean of Syracuse University College of Law, Keynote Address to the NYSBA Judicial Section, (Jan. 31, 2020).

<sup>3</sup> N.Y. JUD. LAW § 468-a; 22 N.Y.C.R.R. § 118.1.

testing but we cannot endorse perpetuating the current system, which favors a minority of test-takers and disadvantages New York consumers of legal services who do not benefit if we continue to admit attorneys who have not demonstrated any meaningful knowledge of New York law. Furthermore, there are means readily available to mitigate any hardship;

- We urge consideration of a New York Law Certification program that would permit people to forego the bar exam entirely. Under this path, ABA-accredited law schools inside and outside New York would offer courses meeting defined criteria as to New York-law based content. For example, a course on New York Civil Procedure would be entirely credited towards a New York certification, while a course on Evidence could give partial credit if the curriculum contained a specific amount of New York law content. Students have to graduate with a sufficient grade point average in a sufficient number of New York course credits; and
- We also recommend consideration of an experiential learning pilot program, modeled on New Hampshire’s Daniel Webster Scholars Honors Program. Students would be permitted to enter the program after their first year of law school and spend their second and third years counseling clients, working with practicing lawyers, conducting depositions, participating in court appearances, negotiating business documents, thus creating a portfolio of work to be assessed every semester.

## II. INTRODUCTION

Admission to the New York Bar has traditionally been regarded as the gold standard in the legal profession. The common law of the State of New York is one of the foremost, if not the foremost, set of governing legal principles in the world.<sup>4</sup> There is no federal general common law.<sup>5</sup> While federal law displaces state law in narrow areas involving uniquely federal interests,<sup>6</sup> American common law is determined by the states. No state has been more influential in the development of American common law than New York. Since 1848, the New York Court of Appeals has been widely-recognized as America’s leading expositor of common law. Led by such distinguished Chief Judges as Benjamin Cardozo, Stanley Fuld, Charles Breitel, Judith Kaye, and now Janet DiFiore, the Court has created a body of common law and other jurisprudence that is truly a beacon to the world. New York is the leading law of choice for contracting parties who agree to have their disputes governed by American law.

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<sup>4</sup> See *Deutsche Bank Nat’l Trust Co. v. Barclays Bank PLC*, — N.Y.3d —, 2019 N.Y. Slip Op. 08519, 2019 WL 6255792, at \*1 (2019) (“New York State is a national and international leader in commerce. As a result, large numbers of contracting parties in the United States include New York choice-of-law and forum selection clauses in their contracts. This fact amplifies the effect of every decision made by this Court in the area of contract law.”).

<sup>5</sup> See *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938); *Republic of Iraq v. ABB AG*, 768 F.3d 145, 172 (2d Cir. 2004).

<sup>6</sup> See *Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641-42 (1981); *O’Melveny & Myers v. FDIC*, 512 U.S. 79, 87 (1994); see also 29 U.S.C. § 1144(a) (Employee Retirement Income Security Act of 1974 § 514(a)).

On the occasion of the Court's 150<sup>th</sup> anniversary, the prominence of the Court was justly celebrated:

During its first 150 years, the New York Court of Appeals has had more impact on more areas of law than any other court in the United States. Other state courts—the California Supreme Court in the Traynor era, the New Jersey Supreme Court under Chief Justice Weintraub, to take two obvious examples—have had enormous impact, but no other state court has generated leading case after leading case in every decade for 150 years. Federal courts, including the United States Supreme Court, have had an enormous impact on American law, but that impact has been concentrated in public law; no federal court has exerted influence comparable to that of the Court of Appeals over the wide range of problems that confront most Americans in their everyday lives: contracts, torts, property, trusts, wills, divorce law (to name a few).

Why has the Court of Appeals exercised such influence? In part, because of New York's importance as a center of commerce and finance. In large measure, however, the significance of the Court of Appeals' decisions is attributable to the wisdom (and the style) of the judges who have graced the Court during its first century and a half. The leading law school casebooks—the sources that introduce law students into the profession—are filled with Court of Appeals opinions, most of them chosen because they serve as the best exposition of important legal principles.<sup>7</sup>

New York has developed a stable, reliable body of common law worthy of its central role as a global financial center. New York common law has become the choice nationally and internationally.

“The substantive benefits to international and domestic businesses of New York law and New York courts and arbitral tribunals have made it a common choice for business contracts around the globe.”<sup>8</sup> In the ever-expanding arbitration arena, the parties to contracts containing arbitration clauses frequently designate New York law to govern issues of arbitrability, the interpretation of the contract, and its enforcement.<sup>9</sup>

This primacy of New York law carries with it a concomitant need for attorneys knowledgeable in New York law, whether to litigate a personal injury case, to prepare a will or trust, or to guide a complex international financial transaction.

New York's status as a world-leading commercial center, with active and influential bar associations and a deep and creative bar, militates toward, not against, New York-centric

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<sup>7</sup> Stewart E. Sterk, *The New York Court of Appeals: 150 Years of Leading Decisions*, 48 SYRACUSE L. REV. 1391, 1392 (1998).

<sup>8</sup> Andre R. Jaglom & Michael W. Galligan, *New York Law as the Gold Standard Choice for Global Business Contracts*, 91 NYSBA JOURNAL 13, 14 (Nov. 2019).

<sup>9</sup> See, e.g., *N.J.R. Assocs. v. Tausend*, 19 N.Y.3d 597, 602 (2012) (interpreting contract expressly stating that “New York law shall govern both the agreement and its enforcement”); see also Siegel & Connors, *New York Practice* §§ 588, 607 (6th ed. Thomson 2018).

principles. New York is an incubator of ideas and initiatives and should not be afraid to take the road less traveled. For example, the New York courts recently revised and extended its Standards of Civility, thus assuming a leadership role in heightening focus on civility and its role in today's world. New York and its attorneys should not shy away from things that make them different.

New York attorneys are and should be proud of New York's historic leadership role in American and international law. Until the advent of the UBE, admission to the New York Bar certified that the attorney had the competence and fitness to practice, not just anywhere, but in New York, the veritable mothership of American law. With the adoption of the UBE, it is no longer necessary for an attorney to know anything about New York law to gain admission. We now actually have two distinct groups of New York Bar members: those who happen to be admitted here though utterly lacking in our laws and those who are competent to practice here. Because the members of both groups are admitted in New York equally, there is no effective means to distinguish between them. Foreign law offices are now staffed with New York-admitted attorneys but the qualification to answer a New York law question is no longer provided by admission alone. More importantly, a client in New York can no longer rely upon a new lawyer's admission in New York as reflecting competence to provide appropriate representation.

There was, and should be, nothing wrong with New York's being distinct and distinguishable in the way it handles the testing of prospective New York attorneys. Indeed, New York is the wrong jurisdiction to be leading any movement towards standardization of the bar examination. Unlike many other American jurisdictions, New York has its unique and complex court structure as well as its own unique codes and governing procedure in the various courts. Unlike many other American jurisdictions, New York does not have codified rules of evidence, relying primarily on caselaw principles. New York has its own individualized principles for determining the validity of wills, for dividing property among divorcing spouses, and for governing the relationship between landlord and tenant. These are just a few of the matters that are of paramount importance to the millions residing in New York and to the just determination of the millions of cases heard in the New York courts each year. New York has an interest in establishing the baseline information that prospective New York attorneys should have and the standards that New York attorneys should meet.

The licensure of attorneys is required for the protection of the public. Over 100 years ago, Judge Crane of our Court of Appeals posed, and answered, the critical question:

Why have we in this state such strict requirements for admission to the bar? A regents' certificate or college degree, followed by three years in a law school or an equivalent study in a law office, marks the course to a bar examination, which must finally be passed to entitle the applicant to practice as an attorney. Recognizing that knowledge and ability alone are insufficient for the standards of the profession, a character committee also investigates and reports upon the honesty and integrity of the [person], and all of this with but one purpose in view, and that to protect the public from ignorance, inexperience, and unscrupulousness.<sup>10</sup>

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<sup>10</sup> *People v. Alfani*, 227 N.Y. 334, 339 (1919)

Judge Crane went on to say that outside of court, when the attorney is alone with the client,

[i]gnorance and stupidity may ... create damage which the courts of the land cannot thereafter undo. Did the Legislature mean to leave this field to any person out of which to make a living? Reason says no. Practicing law as an attorney likewise covers the drawing of legal instruments as a business.<sup>11</sup>

The need to protect the public from ignorance, inexperience, and unscrupulousness is as great today as it was 100 years ago. It is imperative for New York to assure that the persons it admits to practice are competent to practice law in New York. Indeed, before we presume that any New York attorney is competent to practice elsewhere, we must look inward first and assure ourselves, and the public, that attorneys are not admitted here simply so that they can gain a credential that enables them to represent themselves as being competent to represent clients in New York.

New York administered its own bar examination until 1979, when it adopted the MultiState Bar Examination (MBE), which displaced roughly one-half of the local examination. When the Court of Appeals decided to adopt the UBE in 2015, Chief Judge Jonathan Lippman stressed that “New York will remain the gold standard of the legal profession because rather than being insular, we are embracing a broad vision for the future of our profession.”<sup>12</sup> At the time, Chief Judge Lippman declared that there would be a “thorough and rigorous” portion of the exam that would cover “[i]mportant and unique principles of New York law.”<sup>13</sup> This, however, has not occurred. The NYLE cannot fairly be described as either “thorough” or “rigorous.”

The Rules of the Court of Appeals leave the content and method of the NYLE to the BOLE.<sup>14</sup> While the BOLE has the proven ability to construct a thorough and rigorous examination, it has not done so. The BOLE, in its construction of the NYLE, followed the guidance of the Advisory Committee on the Uniform Bar Examination, which urged setting the passing score of 30 out of 50 and designing the test as a means of assuring that applicants have processed the information provided in the New York Law Course (NYLC) and “have at least a basic understanding of the ways in which New York law differs from generally accepted principles of law.”<sup>15</sup> Following this guidance, the BOLE eschewed any effort to make the NYLE a “high stakes test” or “a significant hurdle to admission.”<sup>16</sup> As designed and

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<sup>11</sup> *Id.* at 340; *see Chase Sci. Research, Inc. v. NIA Group, Inc.*, 96 N.Y.2d 20, 29 (2001) (Chief Justice Kaye observing that “the learned profession[.]” of the practice of law “include[s] extensive formal learning and training, licensure and regulation indicating a qualification to practice, a code of conduct imposing standards beyond those accepted in the marketplace and a system of discipline for violation of those standards”).

<sup>12</sup> Jonathan Lippman, Chief Judge of the New York State Court of Appeals, Law Day 2015 Address, at 7 (May 5, 2015) (transcript available at <https://www.nycourts.gov/ctapps/news/LawDay2015.pdf>).

<sup>13</sup> *Id.* at 6.

<sup>14</sup> 22 N.Y.C.R.R. § 520.9(a)(3).

<sup>15</sup> ADVISORY COMMITTEE ON THE UNIFORM BAR EXAMINATION, ENSURING STANDARDS AND INCREASING OPPORTUNITIES FOR THE NEXT GENERATION OF NEW YORK ATTORNEYS, FINAL REPORT TO CHIEF JUDGE JONATHAN LIPPMAN AND TO THE COURT OF APPEALS 47 (2015) [hereinafter, “ADVISORY COMMITTEE REPORT”].

<sup>16</sup> Appendix A: *Letter to Presiding Justice Alan D. Scheinkman*, New York State Board of Law Examiners, at 9 (Dec. 16, 2019) [hereinafter, “BOLE Letter”].

administered by BOLE, there is no question that the NYLE is an extremely minimal hurdle for an applicant seeking admission in New York.

On April 1, 2019, in response to widespread concerns from the bench and the practicing bar that newly-admitted lawyers were not sufficiently prepared to practice law in New York, the New York State Bar Association (NYSBA) created the Task Force,<sup>17</sup> whose mission was to investigate and report on the experience and impact of New York’s adoption of the UBE. The Task Force considered the impact that the UBE has had on applicants; on the qualifications and relevant knowledge of newly-admitted New York attorneys; on potential employers; on current members of the bar; on the Judiciary; and on diversity in the profession. Ultimately, the Task Force was charged with making recommendations regarding the future content and form of New York’s bar exam.<sup>18</sup>

During the past eleven months, the Task Force conducted public hearings across the State, heard from experts in measuring lawyer competency and the study of bar examinations, analyzed alternative approaches to law licensing, examined numerous studies, surveyed law students, and engaged with all relevant stakeholders, including bar associations, the judiciary, practitioners, the BOLE, students, professors, and law school deans. This allowed the Task Force to more fully understand the impact of the UBE and determine what could be done to ensure that newly-admitted attorneys are equipped to serve the citizens of New York. All of these activities culminated in this report.

### **III. BACKGROUND**

#### **A. The New York Bar Examination Prior to the Adoption of the UBE**

The last true New York bar examination (the “NYBE”) was administered in February 2016. The first day of the exam included five essay questions and fifty multiple-choice questions, prepared by the BOLE.<sup>19</sup> These portions of the exam exclusively tested knowledge of New York law, specifically “New York Civil Practice Law and Rules (CPLR), and . . . the numerous New York distinctions in wills, domestic relations, criminal law and procedure, and other subjects.”<sup>20</sup> Generally, about half of the fifty multiple-choice questions tested on the CPLR.<sup>21</sup>

In formulating this portion of the exam, the BOLE “specifically encourage[d] comments as to what new lawyers need to know for effective practice and where New York law may vary from the common law and/or prevailing views.”<sup>22</sup> “The [NYBE] contained a unique feature . . . , as many of the essay questions were drawn from opinions in . . . cases that had reached the Appellate Division and Court of Appeals. That meant that the New York essays were testing

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<sup>17</sup> See Press Release, New York State Bar Association Forms Task Force to Review NY Bar Exam (Apr. 1, 2019) (available at <https://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=92358>).

<sup>18</sup> *Id.*

<sup>19</sup> See ADVISORY COMMITTEE REPORT, *supra* note 15 at 10.

<sup>20</sup> Mary Campbell Gallagher & Suzanne Darrow-Kleinhaus, *A Comparison of the New York Bar Examination and the Proposed Uniform Bar Examination*, 87 NYSBA JOURNAL 32, 33 (Feb. 2015).

<sup>21</sup> *See id.*

<sup>22</sup> Diane F. Bosse, *The New York Bar Exam by the Numbers*, 85 NYSBA JOURNAL 24, 26 (Sept. 2013).

applicants on issues and points of law that were actually confronted by a great number of lawyers in practice. . . . [A]pplicants were often rewarded for their knowledge of New York decisional law, which is invaluable to the practice of law.”<sup>23</sup> The “New York Day” comprised half of a test-taker’s overall score, with multiple-choice questions weighted 10% and essays 40%. “When 50 percent of one’s bar exam grade depended on retained knowledge of New York law, and the application of it in a closed book exam, applicants took great pains to learn that material in law school and in bar review courses.”<sup>24</sup>

The distinctions between New York law and the common law and federal rules were prevalent on the essays and the multiple-choice questions. New York also tested specifically on workers’ compensation, no fault, and professional ethics. Often, New York essays would include professional ethics as an issue on two different essays. And virtually every bar exam administration tested New York civil practice and procedure as embedded issues in the substantive law questions in the essays. The questions often included summary judgment motions or CPLR 3211(A) motions for failure to state a cause of action. These motions were woven into the fabric of the substantive law questions and were in addition to the specific multiple-choice questions testing on various areas of New York substantive law. Those multiple-choice questions could be on any area of civil practice or New York statutory or common law. This model of testing dovetailed with the way procedural and substantive law issues arise in practice.

The “New York Day” fulfilled a number of important purposes. Foremost, it assured the public that attorneys would not be admitted to practice in New York without a working knowledge of New York legal principles, as demonstrated by attainment of a passing score on a meaningful New York law-oriented test. Secondly, it ensured that persons who attained New York admission, whether they practiced here or not, had demonstrated knowledge of key common law principles articulated by the New York Court of Appeals, principles which have been adopted and applied elsewhere, through judicial or legislative adoption, or a New York choice-of-law clause.

The remainder of the first day included the Multistate Performance Test (MPT), which was developed by the National Conference of Bar Examiners (NCBE) and added to the NYBE in 2001 by the BOLE. The MPT was “designed to examine [the] fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills arise.”<sup>25</sup> The MPT was worth 10% of one’s overall score on the NYBE.<sup>26</sup>

The second day of the NYBE consisted of the MBE (added in 1979), a 200-question multiple-choice exam developed by the NCBE. The MBE accounted for 40% of a test-taker’s

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<sup>23</sup> Patrick M. Connors, *Will New Bar Exam Prepare Attorneys for Practice?*, N.Y.L.J. (Feb. 26, 2016), <https://www.law.com/newyorklawjournal/almID/1202750651634/Will-New-Bar-Exam-Prepare-Attorneys-for-Practice/>.

<sup>24</sup> *Id.*

<sup>25</sup> ADVISORY COMMITTEE REPORT, *supra* note 15 at 11.

<sup>26</sup> *See id.* at 10. In addition to passing the bar examination, applicants for admission to practice in New York still had to pass the Multistate Professional Responsibility Exam and, as of January 2015, complete 50 hours of pro bono service.

overall score.<sup>27</sup> The use of the MBE reflected that there are some legal principles that apply across state lines, such as federal constitutional law and federal civil procedure. However, the importance of New York legal principles was reflected in the 50% weight given to the New York specific portion of the examination administered on the “New York Day.”

The NYBE tested on the following subjects: administrative law, constitutional law, professional responsibility, business relationships, contracts and contract remedies, real property, New York civil practice and procedure, criminal law and procedure, torts and tort damages, conflict of laws, evidence, trusts, wills, and estates, matrimonial and family law, and UCC Articles 2 and 9.<sup>28</sup> According to the BOLE, the NYBE was “designed to assess minimum competence” in these subjects.<sup>29</sup>

The NYBE had “exceptional prestige among state bar examinations in the United States.”<sup>30</sup> However, it was by no means perfect. There were concerns that the format of the bar exam failed to measure the full range of competencies needed to practice law in New York and disparately impacted the diversity of the legal profession.<sup>31</sup> As a result, in February 2012, the NYSBA Committee on Legal Education and Admission to the Bar (“CLEAB”) issued several recommendations for improving the bar exam, including many aimed at ensuring that a broader range of practice skills played a role in licensing: incorporating “criteria-referenced assessment,” such as those used in law school clinical courses; granting credit toward an applicant’s bar exam score from a limited group of pre-approved, specially assessed, clinical courses; and developing a pilot project through which a limited number of applicants could provide meaningful legal services while being assessed on a range of lawyering competencies.<sup>32</sup> CLEAB also explored the idea of appointing a task force, made up of various private and public-interest practitioners, to provide input on modifying bar exam content to “realistically test a candidate’s essential knowledge” and ensure that the New York portion of the exam was focused only on skills and knowledge that new attorneys must possess.<sup>33</sup> Several members of CLEAB dissented from the majority view at the time these recommendations were made,<sup>34</sup> including John McAlary, Executive Director of the BOLE, who noted: “Making changes to the bar examination is not going to alter the education that graduates receive or better prepare them for the practice of law.”<sup>35</sup>

However, as experience under the UBE has shown, changes to the bar examination do alter the education that law school students receive. Law schools are ranked and accredited, in

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<sup>27</sup> See *id.* at 10-11.

<sup>28</sup> See Gallagher & Darrow-Kleinhaus, *supra* note 20 at 33.

<sup>29</sup> Bosse, *supra* note 22 at 26.

<sup>30</sup> Gallagher & Darrow-Kleinhaus, *supra* note 20 at 33.

<sup>31</sup> See Mary A. Lynch & Kim Diana Connolly, *Is It Time for Real Reform? NYSBA’s 20 Years of Examining the Bar Exam*, 85 NYSBA JOURNAL 31, 33 (Sept. 2013).

<sup>32</sup> THE NEW YORK STATE BAR ASSOCIATION COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR, RECOMMENDATIONS FOR IMPLEMENTATION OF THE REPORT OF THE SPECIAL COMMITTEE TO STUDY THE BAR EXAMINATION AND OTHER MEANS OF MEASURING LAWYER COMPETENCE 12 (2012).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 28-41.

<sup>35</sup> *Id.* at 34.

part, based on their bar admission rates. Furthermore, law school applicants, who will likely spend over \$200,000 on their law school education, are understandably interested in knowing their chances of passing the bar before enrolling in a law school. Therefore, course offerings, and student choices as to which offered courses to take, are heavily influenced by the subjects tested on the bar examination.

## **B. BOLE Proposal to Change to the UBE**

### *(i) Background*

As early as 2013, BOLE officials were monitoring the development of the UBE by certain states in consideration of replacing the NYBE. At the time, the UBE had been adopted by 14 jurisdictions: Alabama, Alaska, Arizona, Colorado, Idaho, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Utah, Washington, and Wyoming.<sup>36</sup> The BOLE observed that “portability is a worthy goal, especially in the current job market,” and “follow[ed] the progress of this movement with great interest.”<sup>37</sup> Diane Bosse,<sup>38</sup> Chairwoman of the BOLE, noted that “[l]aw is the only profession that doesn’t have a uniform exam,” and adopting the UBE “would enable people to get admitted without the delay, costs and uncertainty and anxiety of taking another bar exam.”<sup>39</sup> However, Ms. Bosse admitted the importance of local law. She acknowledged that “New York state does have some distinctions and they’ll be tested in th[e] [NYLE].”<sup>40</sup>

Despite its name, the UBE is not, in fact, a uniform bar examination, partly because the passing score varies from jurisdiction to jurisdiction and, as will be reviewed further, the grading of the UBE is not consistent. Unless and until every state decides to adopt a single, uniform examination, and have it graded consistently, there will not be a uniform bar examination. That other professions have adopted uniform national licensure has little, if any, relevance to lawyer licensing because the bedrock principles do not vary across state lines. The human anatomy, for one, is the same regardless of where one is in the world.

On October 6, 2014, Chief Judge Lippman announced the BOLE’s proposal to replace the NYBE with the UBE.<sup>41</sup> The proposed UBE was “a two-day package of bar-exam components created by the NCBE and licensed to the states.”<sup>42</sup> The UBE was designed to be a

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<sup>36</sup> See Gallagher & Darrow-Kleinhaus, *supra* note 20 at 34.

<sup>37</sup> Bosse, *supra* note 22 at 26.

<sup>38</sup> Bosse was appointed to the BOLE in 1998, and has chaired the BOLE since 2001. She served on the Board of Trustees of the NCBE from 1999 to 2008, and was the chair from 2006 to 2007. Bosse previously chaired the NCBE’s Long Range Planning Committee, and currently serves on the NCBE’s Testing Task Force. Additionally, Bosse serves as Chair of the Council of the American Bar Association Section of Legal Education and Admissions to the Bar, and has previously chaired its Accreditation Committee.

<sup>39</sup> Michael Petro, *NYS Eyes Changes to the Bar Exam*, Buffalo Law Journal (Nov. 4, 2014), <https://www.bizjournals.com/buffalo/news/2014/11/04/nys-eyes-changes-to-the-bar-exam.html>.

<sup>40</sup> *Id.*

<sup>41</sup> See *Proposed Rule Change to the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law* (to modify 22 N.Y.C.R.R. Part 520) (available at [https://www.nycourts.gov/legacyPDFs/IP/bar-exam/Appendices/18Proposed\\_Rule\\_Change.pdf](https://www.nycourts.gov/legacyPDFs/IP/bar-exam/Appendices/18Proposed_Rule_Change.pdf)).

<sup>42</sup> Gallagher & Darrow-Kleinhaus, *supra* note 20 at 34.

complete substitute for the components of the NYBE, and none of the content would be drafted by the BOLE. The BOLE would create only an add-on one-hour multiple-choice test on New York law.<sup>43</sup> The proposal called for the elimination of the New York-specific portion of the first day of the NYBE, the replacement of the New York essays and multiple-choice questions with six essays on uniform laws, and the addition of a second MPT to day one of the exam. The second day would retain the MBE. The Court of Appeals considered adopting the UBE for the July 2015 bar exam.<sup>44</sup>

(ii) *Rationale*

In a presentation to CLEAB, BOLE Chairwoman Bosse argued that adoption of the UBE would have the following advantages for test-takers: (1) it would eliminate the duplication of effort associated with taking multiple bar exams; (2) it would reduce the cost, delay, anxiety, and uncertainty of taking multiple bar exams; (3) it would maximize employment opportunities; (4) it would enhance mobility for law graduates; and (5) it would provide additional options for where to take the bar exam.<sup>45</sup> Other proponents noted that the legal profession should move towards a national licensing exam and New York's participation would convince other states to follow suit; law firms would be able to recruit from a more geographically diverse applicant pool; and the use of a second MPT segment would enhance the exam's utility by assessing "practice ready" skills.<sup>46</sup> Chairwoman Bosse assured CLEAB that each state would continue to decide how to assess knowledge of local law.<sup>47</sup>

**C. Consideration of the UBE Proposal**

(i) *Public Comment Period*

Initially, the Court of Appeals issued a Request for Public Comment on the BOLE's proposal and accepted submissions until November 7, 2014.<sup>48</sup>

During the initial public comment period, NYSBA's CLEAB carefully considered what was then known about the proposal and assessed the presentation of Chairwoman Bosse regarding the proposed change.<sup>49</sup> In the report that followed, CLEAB noted the changes proposed to the New York portion of the bar exam; specifically, the transition away from New York distinctions and issue-spotting across multiple practice areas and towards general principles of uniform law.<sup>50</sup> CLEAB ultimately concluded "[p]rudence dictates proceeding with caution with a change of this significance."<sup>51</sup> Therefore, the report submitted to the Executive

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<sup>43</sup> See *id.* at 34-35.

<sup>44</sup> See THE NEW YORK STATE BAR ASSOCIATION COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR, REPORT OF NEW YORK BOARD OF LAW EXAMINERS (BOLE) PROPOSED CHANGE IN NEW YORK TO THE UNIFORM BAR EXAM 1 (2014) [hereinafter, "NYSBA COMMITTEE INITIAL REPORT"].

<sup>45</sup> See Gallagher & Darrow-Kleinhaus, *supra* note 20 at 36.

<sup>46</sup> See NYSBA COMMITTEE INITIAL REPORT, *supra* note 44 at 5-6.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> See *id.* at 1.

<sup>49</sup> See *id.*

<sup>50</sup> *Id.* at 2-3.

<sup>51</sup> *Id.* at 9.

Committee of NYSBA took no position on the proposal, but urged delay and careful consideration.<sup>52</sup>

A major concern was the practical effect of adopting a test that was designed to assess a person's competency in laws that had the potential to be at odds with New York law. At the November 1, 2014 meeting of the NYSBA House of Delegates, former NYSBA President Justin L. Vigdor said:

I'm very concerned about the fact that [the UBE] is going to test on uniform law. I have been one of New York's five uniform law commissioners for 26 years. Unfortunately, New York is not big on adopting and passing uniform laws. We have a terrible time getting most uniform laws through the legislature . . . . When we do get uniform laws passed, we have a New York version of those uniform laws, and it's questionable whether they're really uniform. . . . That is an issue that must be addressed.<sup>53</sup>

The House of Delegates unanimously adopted the Committee's report, and urged delay of the UBE's implementation in New York so that adequate notice could be provided to all affected parties.<sup>54</sup>

Similar concerns were expressed by the Society of American Law Teachers in a November 3, 2014 letter to the BOLE: "New York should study the proposed change more fully to understand the implications of the change before acting on it."<sup>55</sup> The Suffolk County Bar Association expressed different critiques with rushing the proposal: "it would appear . . . that adopting the UBE would force New York law schools to teach less about New York substantive law and procedure and more about generic or Federal principles of law."<sup>56</sup>

Although the New York City Bar Association ("City Bar") supported a transition to the UBE in New York, it too asked the Court of Appeals to consider a one-year delay in its implementation.<sup>57</sup> The City Bar noted that "[s]tate-by-state bar examinations significantly limit lawyer mobility at a time when the practice of law is increasingly national and global,"<sup>58</sup> and that "implementation of the UBE itself will deliver powerful benefits to disadvantaged groups, especially facilitating the ability of new lawyers to relocate if necessary to areas where jobs

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<sup>52</sup> *Id.*

<sup>53</sup> REPORT OF THE NYSBA COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR, FOLLOW-UP REPORT TO OCTOBER 2014 REPORT ON THE UNIFORM BAR EXAM 6 (2015) [hereinafter, "NYSBA COMMITTEE FOLLOW-UP REPORT"].

<sup>54</sup> *See id.* at 1.

<sup>55</sup> *Id.* at Appendix E.

<sup>56</sup> NYSBA COMMITTEE INITIAL REPORT, *supra* note 44 at Appendix E.

<sup>57</sup> Comments on NYS Board of Law Examiners Proposal Regarding Uniform Bar Examination, New York City Bar (Nov. 6, 2014) (available at <https://www2.nycbar.org/pdf/report/uploads/20072798-CommentsonUniformBarExamProposal.pdf>) [hereinafter, "City Bar Initial Comments"].

<sup>58</sup> *Id.*

become available, as they are available.”<sup>59</sup> However, the City Bar also opined that “the bar examination should continue to have a New York component” and “[w]e should expect lawyers admitted in New York to have a grounding in New York law.”<sup>60</sup>

“[I]n light of the issues raised by some of the commentators and the overwhelming request for additional time,” Chief Judge Lippman extended the public comment period on the BOLE proposal to March 1, 2015.<sup>61</sup>

In response, the New York County Lawyers Association (NYCLA) issued a report supporting a one-year period to study the arguments for and against the UBE.<sup>62</sup> NYCLA questioned whether a transition to the UBE would force New York law schools to shift their emphasis to a national law curriculum, and whether the reduced focus on New York law would expose the public to new attorneys less qualified to deal with New York specific legal problems.<sup>63</sup>

NYSBA’s CLEAB issued a follow-up report that formally opposed the proposal.<sup>64</sup> Its three main areas of concern were “whether the proposal adequately tests knowledge of [New York] law requisite for practice in the state; whether the proposal adequately tests the professional skills required for practice; and whether the proposal threatens to worsen the disparate impact of the bar exam.”<sup>65</sup> It expressed “reason to be concerned about whether the UBE proposal lessens the significance of the distinctions of New York law, lessens New York peculiarities, and lessens the high esteem in which the New York exam is held.”<sup>66</sup> It worried that “[t]he preparation and the emphasis for the proposed UBE will be different” and “will not require the same rigorous attention to the study of the uniqueness of New York law distinctions as does the current exam.”<sup>67</sup> It discussed how the former state-specific essays were “longer and more complex than the proposed multistate essays,” making “an applicant . . . less reliant on rote memorization and more attentive to analytical thinking, and to the interplay of various legal concepts and theories.”<sup>68</sup> In contrast, it found “the proposed UBE change will not require the same rigorous attention to the study of the uniqueness of New York law distinctions as does the current exam.”<sup>69</sup> CLEAB concluded that “adoption of the proposed UBE . . . has the potential to

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<sup>59</sup> Supplemental Statement of the New York City Bar Association Before the Advisory Committee on the Uniform Bar Examination (Feb. 18, 2015) (available at <https://www2.nycbar.org/pdf/report/uploads/SupplementalStatementonUniformBarExamFebruary2015.pdf>).

<sup>60</sup> City Bar Initial Comments, *supra* note 57.

<sup>61</sup> ADVISORY COMMITTEE REPORT, *supra* note 15 at 9.

<sup>62</sup> NEW YORK COUNTY LAWYERS ASSOCIATION REPORT ON THE NEW YORK UNIFORM BAR EXAM PROPOSAL 15 (2015) (available at [https://www.nycla.org/siteFiles/Publications/Publications1746\\_0.pdf](https://www.nycla.org/siteFiles/Publications/Publications1746_0.pdf)) [hereinafter, “NYCLA REPORT”].

<sup>63</sup> *Id.* at 11-13.

<sup>64</sup> NYSBA COMMITTEE FOLLOW-UP REPORT, *supra* note 53 at 15.

<sup>65</sup> *Id.* at 3.

<sup>66</sup> *Id.* at 5.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

diminish the value and prestige of being admitted to the bar in New York state.”<sup>70</sup> Moreover, practitioners on the Committee thought that “the conceptual NYLE is inadequate to demonstrate an acceptable minimal level of proficiency in New York law prior to admission.”<sup>71</sup>

Others shared similar concerns. For instance, Professor Patrick M. Connors<sup>72</sup> stressed that although students might learn “fundamental principles of law that will assist them in representing clients in matters governed by federal or nationally uniform law, ... *they will have only minimal education in New York law.*”<sup>73</sup> Professor Connors predicted that

[t]his facile treatment and examination of New York law will almost certainly lead to a significant erosion of the quality of the legal representation offered to our citizenry. . . . With the rigors of testing New York law essentially reduced to the level of difficulty of an extra point after a touchdown, that level of preparation will no longer occur.<sup>74</sup>

(ii) *Advisory Committee Recommendation*

When Chief Judge Lippman extended the public comment period in November 2014, he appointed an Advisory Committee on the Uniform Bar Exam.<sup>75</sup> Similar to this Task Force, the Advisory Committee held public hearings throughout New York in early 2015 “to receive the views of interested individuals, organizations[,] and entities on the possible transition to the UBE.”<sup>76</sup> It is not without significance that the Advisory Committee was formed after the Chief Judge and the BOLE had already declared themselves in favor of the adoption of the UBE.

In April 2015, the Advisory Committee determined:

[A]doption of the UBE and two separate New York components . . . will propel New York’s licensing process into the modern economy while at the same time ensuring that applicants for admission in this state have sufficient competence in fundamental legal principles and New York-specific law. In short, the measure is good for the profession and good for the public.<sup>77</sup>

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<sup>70</sup> *Id.* at 6.

<sup>71</sup> *Id.* at 7.

<sup>72</sup> Prof. Patrick M. Connors is a member of the Task Force. He is a distinguished Professor of Law at Albany Law School where he teaches New York Practice and Legal Ethics. Since 2013, Professor Connors has authored the *New York Practice* treatise, Siegel & Connors, *New York Practice* (6th ed. Thomson 2018). He also authors numerous portions of McKinney’s C.P.L.R. Practice Commentaries, and previously authored the Practice Commentaries for the New York Rules of Professional Conduct and the Surrogate’s Court Procedure Act.

<sup>73</sup> Connors, *supra* note 23.

<sup>74</sup> *Id.*

<sup>75</sup> See NYSBA COMMITTEE FOLLOW-UP REPORT, *supra* note 53 at 1.

<sup>76</sup> ADVISORY COMMITTEE REPORT, *supra* note 15 at 9.

<sup>77</sup> *Id.* at 38.

Notably, the Advisory Committee highlighted what it dubbed “a unique two-component paradigm in bar testing.”<sup>78</sup> This state-specific portion would consist of: “(1) an online educational course devoted to New York rules and distinctions, to be denominated the [NYLC] and (2) a separate open-book, online 50-question multiple choice test on New York law (the [NYLE]),” requiring a score of thirty correct answers.<sup>79</sup> Observing that, “no other UBE jurisdiction require[d] both an online course and a separate online exam,” the Committee asserted, “this hybrid approach will best serve the goal of ensuring that new attorneys are competent to practice law in New York.”<sup>80</sup> It continued:

The purpose of the NYLC is to highlight those areas of practice and procedure that the Court and [BOLE] believe are important for every new attorney in New York to know. It will serve as a helpful refresher for those who studied New York law in law school and a suitable introduction for those who did not. It is a pedagogically sound vehicle for educating New York State’s future lawyers. The separate NYLE will assure that applicants have processed the information presented in the course and have at least a basic understanding of the ways in which New York law differs from generally accepted principles of law.<sup>81</sup>

While Chief Judge Lippman stated that the New York test component would be rigorous and thorough, the Advisory Committee spoke of assuring only that applicants have “suitable exposure” to New York law without having a test that would “act as an insurmountable burden to admission.”<sup>82</sup>

The Advisory Committee minimized concerns that New York law schools would move away from teaching New York law by noting that “[t]he current New York bar exam tests general principles of law, through the use of the MBE, and New York law, through the essays and New York multiple choice questions” and the “same principles would be tested on the UBE and the separate NYLE.”<sup>83</sup> It emphasized that for several years members of the legal academy, bar, and the judiciary had had concerns that applicants entering the legal profession were insufficiently prepared for the demands of New York practice.<sup>84</sup> The Advisory Committee found that the UBE recognized the importance of skills training by requiring two MPT tasks, more than the NYBE.<sup>85</sup> It found this increased skills testing consistent with the growing emphasis on clinical and practical training in law schools and responsive to the profession’s calls for “more practical skills training” for new attorneys.<sup>86</sup>

The Advisory Committee did not think that the UBE would tarnish the perceived New York gold standard for legal practice: “In sum, the Committee believes that New York’s ‘gold

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<sup>78</sup> *Id.* at 47.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 49.

<sup>84</sup> *Id.* at 50.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

standard' reputation results not from the difficulty of the bar exam, but from the rigorous demands of practice in New York State.”<sup>87</sup> It concluded that “a transition to the UBE, NYLC and NYLE will help maintain the New York professional bar’s reputation of excellence by ensuring that new attorneys are competent in general legal principles and important New York distinctions.”<sup>88</sup>

#### **D. Decision by Court of Appeals to Adopt the UBE**

##### *(i) Rationale*

The Court of Appeals approved the Advisory Committee’s recommendations and adopted the UBE, effective for the July 2016 bar exam.<sup>89</sup> Chief Judge Lippman remarked that “[t]his reform will enormously benefit law school graduates, the legal profession, and the public.”<sup>90</sup> The Chief Judge justified “this dramatic step here in New York” by stressing the portability the new test would offer, an asset for lawyers and their families (particularly those with military spouses or partners).<sup>91</sup> He thought it would aid in the modern era of multi-jurisdictional practice.<sup>92</sup> The Chief Judge also theorized that the move would reverse the decline in enrollment at New York law schools because it would make the process more cost-efficient and less burdensome for New York law school graduates.<sup>93</sup> Although he acknowledged the need for New York-specific questions, he said that court administrators were reluctant to add a third-day of testing.<sup>94</sup> “We don’t think it’s necessary to test New York law on the bar exam itself anymore.”<sup>95</sup>

##### *(ii) Expectations*

Chief Judge Lippman expected that UBE scores would “demonstrate that applicants have the fundamental knowledge and skills necessary for legal practice,” but stressed that “each state [will] still maintain[] control over setting the requirements for admission to their individual jurisdiction and the method of evaluating local law.”<sup>96</sup> He proclaimed that “[i]n many ways, the new paradigm will be more comprehensive in testing state-specific knowledge.”<sup>97</sup> He reasoned that, “[u]nder the [NYBE], an applicant does not actually need to show great knowledge of distinctive aspects of New York law at all. A high MBE score can outweigh weaker

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<sup>87</sup> *Id.* at 52.

<sup>88</sup> *Id.* at 71.

<sup>89</sup> *See* Lippman, *supra* note 12 at 1.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *See id.* at 1-2.

<sup>93</sup> *See id.* at 2.

<sup>94</sup> *See* Joel Stashenko, *Court System Seeks Comment on Adopting Uniform Bar Exam*, N.Y.L.J. (Oct. 7, 2014), <https://www.law.com/newyorklawjournal/almID/1202672451929/CourtSystem-Seeks-Comment-on-Adopting-/>.

<sup>95</sup> Stephanie Clifford & James C. McKinley Jr., *New York to Adopt a Uniform Bar Exam Used in 15 Other States*, N.Y. TIMES (May 5, 2015), <https://www.nytimes.com/2015/05/06/nyregion/new-york-state-to-adopt-uniform-bar-exam.html>.

<sup>96</sup> Lippman, *supra* note 12 at 2-3.

<sup>97</sup> *Id.* at 6.

performance on the New York essays and multiple choice questions and still result in a passing score. In contrast, under the new regime, a test taker must pass the UBE exam, which has some significant overlap with New York law, and complete the New York component, which will cover areas of New York law not encompassed by the UBE.”<sup>98</sup>

Chief Judge Lippman stated that the NYLC and NYLE “will ensure the integrity of the state’s licensing structure.”<sup>99</sup> He stressed his expectation that “the online test will be thorough and rigorous”<sup>100</sup> and would test “[i]mportant and unique principles of New York law.”<sup>101</sup> When asked about the “practical aspects” of expecting an out-of-state attorney to know New York law, Chief Judge Lippman responded that an out-of-state attorney is “going to have to take an online course and a little test so we know people know New York law. But if you’re a good lawyer and you know where to find answers, you should be able to practice anywhere in the country.”<sup>102</sup>

## **E. Current State of the Bar Exam**

### *(i) UBE*

New York became the 16th state to adopt the UBE. Since then, twenty more states have adopted it.<sup>103</sup> The fact that UBE participation more than doubled after New York adopted it reflects the advantage seen by other jurisdictions, whose law graduates now have a clear pathway to admission in New York without having to demonstrate knowledge of New York law. New York’s adoption of the UBE also resulted in a boon to the NCBE’s coffers, as it now administers many more exams.<sup>104</sup>

According to the NCBE, “[t]he UBE is designed to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law.”<sup>105</sup> The BOLE, in its annual budgetary submissions, describes the UBE as “a high quality, uniform battery of tests that are administered simultaneously in the UBE jurisdictions.”<sup>106</sup> As discussed above, day one consists of two MPTs and the MEE, and day two consists of the MBE.

### *(a) The MPT*

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<sup>98</sup> *Id.* at 6-7.

<sup>99</sup> *Id.* at 5.

<sup>100</sup> *Id.* at 6.

<sup>101</sup> *Id.*

<sup>102</sup> Karen Freifeld, *Q&A: Ex-Chief New York Judge on Practicing Law Across State, National Borders*, REUTERS LEGAL (Nov. 29, 2016).

<sup>103</sup> *See Jurisdictions That Have Adopted the UBE*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/exams/ube/> (last visited Feb. 9, 2020).

<sup>104</sup> *See Comprehensive Guide to Bar Admission Requirements 2019, CHART 9: Bar Examination Application Deadlines and Fees*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/pdfviewer/?file=%2Fassets%2FBarAdmissionGuide%2FNCBE-CompGuide-2019.pdf#page=41> (last visited Feb. 10, 2020).

<sup>105</sup> *See Purpose*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/exams/ube/> (last visited Feb. 9, 2020).

<sup>106</sup> Appendix B at 115.

According to the NCBE's website, the "Test Format" for the MPT is as follows:

The materials for each MPT include a File and a Library. The File consists of source documents containing all the facts of the case. The specific assignment the examinee is to complete is described in a memorandum from a supervising attorney. The File might also include transcripts of interviews, depositions, hearings or trials, pleadings, correspondence, client documents, contracts, newspaper articles, medical records, police reports, or lawyer's notes. Relevant as well as irrelevant facts are included. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or a supervising attorney's version of events may be incomplete or unreliable. Examinees are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.

The Library may contain cases, statutes, regulations, or rules, some of which may not be relevant to the assigned lawyering task. The examinee is expected to extract from the Library the legal principles necessary to analyze the problem and perform the task. The MPT is *not a test of substantive law; the Library materials provide sufficient substantive information to complete the task.*<sup>107</sup>

For each MPT, the candidate is given 90 minutes to complete the assigned task. "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. *The MPT is not a test of substantive knowledge.* Rather, it is designed to evaluate certain fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills are applied."<sup>108</sup>

(b) *The MBE*

The MBE "assess[es] the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns."<sup>109</sup> The general principles tested by the MBE were not changed with the adoption of the UBE.<sup>110</sup> Seven subjects are tested equally on the MBE: Civil Procedure, Constitutional Law, Contracts, Criminal Law, Evidence, Real Property, and Torts.<sup>111</sup> The MBE still consists of 200 multiple-choice questions, only 175 of which are scored. The other 25 questions are unscored pretest questions.<sup>112</sup> Although this

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<sup>107</sup> *Preparing for the MPT*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/exams/mpt/preparing/> (last visited Feb. 18, 2020) (emphasis added).

<sup>108</sup> *Jurisdictions Administering the MPT*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/exams/mpt/> (last visited Feb. 9, 2020) (emphasis added).

<sup>109</sup> *Jurisdictions Administering the MBE*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/exams/mbe/> (last visited Feb. 9, 2020).

<sup>110</sup> See BOLE Letter, *supra* note 16 at 4.

<sup>111</sup> Presentation of Suzanne Darrow-Kleinhaus at the Sept. 17, 2019 meeting of the Task Force [hereinafter, "Darrow-Kleinhaus Presentation"].

<sup>112</sup> *Id.*

scoring system has not changed with the adoption of the UBE, the MBE itself is now weighted more.<sup>113</sup>

(c) The MEE

The MEE consists of six thirty-minute essays. Essay topics include all MBE subjects and business associations: agency and partnership; business associations: corporations and LLCs; conflict of laws; family law; secured transactions; trusts and estates: decedent's estates; and trusts and estates: trusts and future interests.<sup>114</sup> The MEE does not test Administrative Law, Professional Responsibility, or New York Civil Practice and Procedure, which are covered exclusively by the NYLE, as discussed below.<sup>115</sup> However, it does test Federal Civil Procedure—a subject that was previously dropped from the NYBE in 2015 when it was added to the MBE.<sup>116</sup> According to the NCBE,

[t]he 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.<sup>117</sup>

Under the new scoring regimen, the MBE makes up 50% of a candidate's overall score; the MEE 30%; and the MPT 20%.<sup>118</sup> Overall, the UBE in New York has a cut score (the minimum score necessary to pass the exam in a specific jurisdiction) of 266 on a 400 point scale.<sup>119</sup> It is said to correspond to what the previous cut score in New York was at 665 on a 1,000 point scale.<sup>120</sup>

(ii) *State-Specific Requirement for Admission*

New York also requires an applicant to pass the NYLC and the NYLE, which essentially replaced the five essays and fifty multiple-choice questions testing New York law that were part of the former NYBE. The NYLC and NYLE focus on aspects of New York law that are either different from the general principles and prevailing views of the law tested on the MBE and the MEE or are unique to New York.<sup>121</sup>

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<sup>113</sup> *Id.*

<sup>114</sup> *See* Appendix H.

<sup>115</sup> *See* BOLE Letter, *supra* note 16 at 4.

<sup>116</sup> *See id.*

<sup>117</sup> *Jurisdictions Administering the MEE*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/exams/mee/> (last visited Feb. 9, 2020).

<sup>118</sup> Darrow-Kleinhaus Presentation, *supra* note 111.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *See generally Course Materials for the New York Law Course and New York Law Exam*, NEW YORK STATE BOARD OF LAW EXAMINERS (revised Sept. 2019), <https://www.nybarexam.org/content/newyorkcoursematerials.pdf>.

The NYLC is an online course that covers Administrative Law, Business Relationships, Civil Practice and Procedure, Conflict of Laws, Contracts, Criminal Law and Procedure, Evidence, Matrimonial and Family Law, Professional Responsibility, Real Property, Torts and Tort Damages, and Trusts, Wills and Estates. It consists of approximately 17 hours of recorded lectures, which each contains embedded questions that must be answered correctly before the viewer may continue viewing the lecture.<sup>122</sup> If the applicants answer incorrectly, they are required to restart from an earlier point in the lecture. Applicants must achieve a minimum score of only 30 correct answers out of 50 questions to pass the NYLE.<sup>123</sup> Although the NYLE is an unproctored, open-book examination, “[e]very applicant is required to certify that he or she completed the NYLE without assistance from anyone else and that he or she did not provide assistance to any other applicant.”<sup>124</sup>

According to the BOLE, “[t]he purpose of the [NYLC] and the [NYLE] is to provide assurance that candidates who have passed the [UBE] and are being certified for admission to the New York State bar have been exposed to and have knowledge of law that is specific to New York State.”<sup>125</sup> The BOLE also maintains that “[a]lthough the NYLE is an open book exam, it will be a rigorous one. Time will not permit an applicant to research the materials for the answer to every question. Preparation for the NYLE by taking the NYLC and studying the Course Materials will be necessary.”<sup>126</sup>

The BOLE’s statements reflect a fundamental inconsistency. To those who seek information on its public website, the BOLE states that the NYLE is a “rigorous” examination.<sup>127</sup> To our Task Force, however, the BOLE has stated the NYLE is not intended to “mimic a bar exam” and is not intended to be “a high stakes test” or “a significant hurdle to admission.”<sup>128</sup>

#### **IV. THE EFFECT OF NEW YORK’S ADOPTION OF THE UBE**

##### **A. Anecdotal Evidence of a Problem**

When the Court of Appeals adopted the UBE, Glenn Lau-Kee, then President of NYSBA, said his central question was “how prepared are new lawyers to practice law in New York, both for the protection of the profession and the public.”<sup>129</sup> His question would soon be answered.

During a March 2019 lecture at Fordham School of Law, New York State Supreme Court Justice Barry Ostrager called attention to his concerns about the unpreparedness of newly-admitted attorneys, noting that his law clerks receive several calls a day from lawyers asking for information that they should know or be able to find easily in the CPLR. He reflected, “[I]t is

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<sup>122</sup> See BOLE Letter, *supra* note 16 at 5.

<sup>123</sup> See *Uniform Bar Examination, New York Law Course & New York Law Exam*, THE NEW YORK STATE BOARD OF LAW EXAMINERS, <https://www.nybarexam.org/UBE/UBE.html> (last visited Feb. 9, 2020).

<sup>124</sup> See *NYLC & NYLE Course Materials & Sample Questions*, THE NEW YORK STATE BOARD OF LAW EXAMINERS, <https://www.nybarexam.org/Content/CourseMaterials.htm> (last visited Feb. 9, 2020).

<sup>125</sup> *Course Materials*, *supra* note 121 at iii.

<sup>126</sup> *NYLC & NYLE Course Materials & Sample Questions*, *supra* note 124.

<sup>127</sup> *Id.*

<sup>128</sup> BOLE Letter, *supra* note 16 at 8-9.

<sup>129</sup> Clifford & McKinley, *supra* note 95.

unfathomable that practitioners who plan to practice in New York would start their careers without the most basic knowledge of the rules that govern almost every aspect of practice in the New York State Courts.”<sup>130</sup>

At the Task Force’s first meeting in April 2019, members discussed the negative impacts they noticed after New York’s transition to the UBE. They shared stories of newly-admitted attorneys unprepared at court appearances. The Task Force decided to examine whether the NYLE was achieving its objective of capturing what is significant and unique to New York practice and serving as a vehicle for retention of such knowledge. Furthermore, the Task Force was concerned that the open-book format of the NYLE invited dishonest behavior and that it lacked coverage of New York specific substantive law—such as Domestic Relations, Estates, Powers and Trusts Law (EPTL), and Criminal Procedure. The Task Force was dismayed by reports that student enrollment in New York Practice courses had plummeted, despite the forecasts by the proponents of the UBE.

Accordingly, the Task Force sought information to substantiate or debunk the anecdotal evidence. It held public hearings throughout New York where it heard testimony from professors, law school officials, bar association leaders, students, and practitioners. It also met monthly to receive and discuss presentations from experts in legal competency and law licensing as well as members of academia and to discuss its findings. The Task Force engaged in extensive and constructive dialogue with as many relevant stakeholders as it could, including the BOLE.

## **B. Public Hearings Across the State**

The Task Force held public hearings in Rochester on October 4, 2019, in Mineola on October 21, 2019, in Albany on October 25, 2019, and in New York City on November 18, 2019. The hearings provided a useful insight from law school professors, directors of academic success, bar leaders, and practitioners.

### *(i) Western New York*

Bill McDonald, the Director of Academic Success at University at Buffalo School of Law (“Buffalo”), shared two chief concerns with the UBE: (1) the practice-readiness of applicants in New York, and (2) the possible effect on diversity in the legal profession. He reported that there has been a lessening of preparedness noted by some of the attorneys hiring students from Buffalo, that enrollment in New York Practice has decreased, and that there has been a disproportionate effect on solo and small practitioners.

McDonald noted that many of Buffalo’s students tend to be local and intend to practice in New York after graduation. A “significant” number of graduates go into small firms. However, he testified that the Dean of Buffalo is hearing from alumni who are reluctant to hire recent graduates because of increased costs and efforts in taking them on and training them.

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<sup>130</sup> Susan DeSantis, *NYSBA to Study if Move to Uniform Bar Exam Led to a Rise in Lawyers Unprepared to Practice*, N.Y.L.J. (Apr. 1, 2019), <https://www.law.com/newyorklawjournal/2019/04/01/nysba-to-study-if-move-to-uniform-bar-exam-led-to-a-rise-in-lawyers-unprepared-to-practice/>.

McDonald highlighted his concerns with the content of the NYLC and NYLE: “The online test does not appear to be as challenging as it was before,” on the previous NYBE. He noted the detrimental impact this had on learning New York distinctions, because less emphasis is given to New York law under the NYLE and NYLC than on the previous NYBE. He reached this conclusion because students believe the NYLC is designed to help them pass the NYLE, not to practice law in New York.

McDonald shared his concerns with the NYLE’s format. First, he stated that the test is does not demonstrate that the taker is ready to practice in New York. He criticized the rote memorization required by an exam that exclusively consists of multiple-choice questions. He observed that students are accordingly less prepared in a broader range of things, including writing and New York law.

To combat these issues, McDonald suggested a formalization and modification of the NYLE and/or coupling the NYLE score with the UBE score. McDonald hoped there was something the Task Force could do with the exam to improve writing and knowledge of New York law: “[i]nclusion of an essay portion can be helpful because it does require students to think in a different way, to apply facts, and it gives them room to make arguments that maybe would not have been anticipated.” McDonald observed “[i]f we choose what we think is important to test because we want to know that our students have these skills, we are sending a message to students that this is what you actually need to focus on while you’re in school.”

He suggested that a third day of New York testing would just mean formalizing the current NYLE—since the State already requires a State-specific portion of the exam. This way, McDonald contended, New York would be sending a message to students that the NYLE is just as important because New York law is taken seriously. He saw this as having the potential for a domino effect: students would take New York law courses and ask professors to teach more New York specific material. He also theorized that combining the UBE and NYLE score would force students to take the NYLE more seriously.

John McCann, a Task Force member, asked if law schools could certify students that completed a certain number of courses focusing on New York law as “ready for practice in the State.” McDonald personally endorsed the idea but expressed some concern that it might overburden for students already heavily burdened with preparing for the UBE.

McDonald acknowledged that adoption of the UBE was done for valid reasons, that the Task Force should endeavor to retain the portability component in whatever change is suggested, and that “[a]ny change would have to be phased in to give students a chance to adjust to the changing expectations.”

The Director of Student Affairs at Syracuse College of Law, Sarah Collins, noted that “[a]nything we can do to prepare students [for practice] in the real-world is going to be beneficial for them.”

*(ii) Nassau County*

Vincent J. Messina, Jr., a partner at Sinnreich Kosakoff & Messina LLP and Second Vice President of the Suffolk County Bar Association, testified as to his perspective on the state of

legal training and education in New York. “The verdict is in and unfortunately it is not good,” he said, citing near-unanimous sense that newly-admitted attorneys are unready for the practice of law. It is more difficult for newly-admitted attorneys to get their first job because the burden and costs of training falls on the employer, and many employers would rather just hire a more experienced attorney.

When asked whether these changes result from the change to the UBE, Messina mentioned the “unanimous response” from practitioners that new attorneys need more training than in previous years. The former “New York day,” he thought, was an important component under the old bar exam. He concluded that the bar examination should be one component of several to ensure a basic competency to practice law.

Richard D. Collins, founding partner at Collins Gann McCloskey & Barry PLLC and President of the Nassau County Bar Association, spoke about the need for educational changes in training, preparing, and introducing young lawyers to the profession. Specifically, Collins noted that: (1) in-person communications must be emphasized over digital connections since there is a decline in younger lawyers’ interpersonal skills; (2) there should be a remedial approach to “cogent and clever” critical thinking and writing in law school; and (3) the qualifications for measuring the ability to practice law should be reexamined.

Robert M. Nigro, Administrator of the Nassau County Assigned Counsel Defender Plan, commented that, with many experienced practitioners retiring, he is having a hard time finding practitioners to serve as assigned counsel for children in Family Court. He also suggested that law schools should provide more specialized experiential training for the needed open positions.

Liz Post, Executive Director of the Nassau County Bar Association, agreed that additional experiential programs, including those providing pro bono representation, may help to better train newly-admitted attorneys.

One attorney present, who was licensed to practice in New Mexico, commented that he recently took the NYLE and found it to be “easy and straightforward.”

### *(iii) Capital Region*

Albany Law Professor Patrick Connors, a member of the Task Force, testified that he is “constantly hearing from lawyers and judges that young lawyers don’t know enough about New York law. And it’s not just New York Practice. It’s criminal law, it’s trust and estates, criminal procedure, evidence.” Under the former NYBE, where New York Practice and other New York distinctions were significantly tested in detail in a closed book exam, the level of preparation was much greater. The former NYBE served students well when it based questions on leading Court of Appeals decisions because it incentivized students to study those cases. This sort of studying allowed a student to acquire a general reservoir of knowledge so that when an issue arose in practice, it triggered something.

Most bar review companies offered at least nine hours of classroom instruction in New York civil practice, in addition to additional lectures on federal civil procedure. Some bar review companies offered between fifteen and twenty hours of New York Practice instruction in their bar review course. All of the bar review companies also taught significant New York

distinctions in substantive law courses such as Evidence, Torts, Contracts, and Criminal Law and Procedure. After the UBE was adopted, all of the bar review courses stopped teaching New York Practice and New York distinctions in other substantive law subjects.

Now, Professor Connors observed, students are not actually studying for the NYLE, which is “[n]ot a testing of New York law sufficient to practice law in this state.” In the NYLC, “[s]tudents race through lectures while they’re home doing other things. . . . They are treating it as a joke.” Anecdotes have been shared of students watching the lectures at home while watching television and drinking wine.

Professor Connors considers the UBE “a mistake [that] led to what we have now, where the lawyers in the State are unable to serve their clients to the degree they should be serving them.” He believes this impact is felt more in remote and rural communities, where small firms have more difficulty absorbing the costs of getting a new lawyer up to speed.

Professor Connors suggested adding a written component to the NYLE or requiring applicants to take closed-book exams at testing centers (a la the MPRE exam). Such steps aimed at making the exam more rigorous would force students to take the exam more seriously. It would not add an additional day to the UBE because it could remain separated from the two-day UBE, and the NYLE is already given in the middle of the weekday.

Joe Buffington, the Director of Bar Success and an Assistant Professor at Albany Law School, echoed the sentiment that his students do not take the NYLE seriously. More troubling still, some students were comfortable cheating or finding work-arounds for the various restrictions on the NYLE put in place by BOLE because they did not perceive that others took the exam seriously. The problem was not the materials, which he described as comprehensive and quite helpful, but the fact that the students did not need to learn those materials to pass the NYLE. He suggested building a more formal test and have it administered at a testing center.

John J. McAlary, Executive Director of the BOLE, indicated that adding a written component would increase the time it took to grade the exam. Professor Connors acknowledged that producing essays and getting them all graded would be a lot more work for the BOLE, “but it’s a much more effective way of testing a person’s skill to go out and practice law.” “[It would] be more expensive no doubt, but I think it’s worth it.”

McAlary went on to note that, of the 36 UBE jurisdictions, most had no state-specific portion whatsoever, and those that did were not as rigorous as New York’s. McAlary reminded the Task Force that the NYLE was not designed to be as rigorous as the bar exam, but rather to look at where there are key differences and alert the applicant to them. He said students take it seriously because it’s interesting to them, and if they don’t, “shame on them.”

### **C. Viewpoints of the Deans of New York Law Schools**

The Task Force solicited the opinions of all the ABA-accredited law schools in the state, because of reports of changing curriculum since the UBE, and because of these stakeholders’ institutional and academic expertise.

In a letter to the Task Force, New York Law School Dean Anthony W. Crowell stressed that “[t]he move away from state-specific law resulting from the adoption of the UBE . . . has undermined the importance that New York law plays in both the global and local economies and in resolving cases and conflicts.”<sup>131</sup> He said that “[t]he vast majority of NYLS graduates who enter the profession historically have relied on their knowledge of New York law to serve New York’s communities, including those with vulnerable populations in need of representation and access to justice.”<sup>132</sup> Since the adoption of the UBE, there has been a “pedagogical shift” in curriculum, which “require[s] students to focus on law that they may never need to know except for purposes of the UBE.”<sup>133</sup> “This . . . problem [may be] more acute in some subjects than others, but there is little doubt that the most glaring example of the problem, as reported by many law schools across the state, is the change in enrollment in courses focused on New York Practice.”<sup>134</sup> He said that “although the [NYLE] is designed to test state-specific subjects, the weight and value of an open book test after completion of an online course as a measure of any true knowledge or competency can, at best, be described as limited.”<sup>135</sup>

Dean Crowell recommended that the Task Force “identify ways to make testing of New York State law a more relevant and meaningful component of admission to the New York State Bar”; “work with the state to examine the format, relevancy, transparency, and necessity of the [NYLE]”; and “explore options to require that UBE takers answer written questions applying the law of the state in which they take the exam.”<sup>136</sup>

As for the UBE, Dean Crowell recommended that the Task Force (1) “review the feasibility of combining the MEE and MPT, making all written work for the UBE an expanded MPT that not only tests the analytical and writing skills of bar takers, but also requires them to apply their substantive knowledge of the law, including relevant state law, in the process”; (2) “review the feasibility of refining the scope and complexity, but keeping the rigor, of the MBE”; and (3) “explore whether the bar exam can be disaggregated and re-sequenced in three stages as follows: MPRE after the 1L year, MBE after the 2L year, and a newly-expanded MPT during or after the 3L year.”<sup>137</sup>

The Task Force also invited the Deans of every law school in New York to discuss their views of the current bar exam in person. Twelve of the fifteen law school deans (or their representatives) attended personally or by phone for a lengthy dialogue with many views presented and much commonality. All of the Deans seemed to agree that the current NYLE had issues. Most believe that the students do not regard it as important and treat it casually. Most Deans felt that the exam needs to emphasize New York practice specific areas, and they differed on how that could be accomplished. Others believed the UBE has serious flaws, including racial

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<sup>131</sup> Appendix C: *Letter to the Co-Chairs of the Task Force*, Anthony W. Crowell, at 2 (Oct. 23, 2019) [hereinafter, “NY Law School Letter”].

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* Moreover, Dean Crowell expressed a concern that results of the NYLE are not made available to law schools, “leaving [them] without any way to gauge the success of [their] students.” *Id.* It is worth noting that our investigation revealed very few reported failures of the NYLE.

<sup>136</sup> *Id.* at 3.

<sup>137</sup> *Id.* at 3-4.

and gender inequality on the MBE, overemphasis on speed on the MPT, and a disparity in overall scoring depending on the state where the exam is taken.

The University at Buffalo School of Law Dean, Aviva Abramovsky, wanted to explore what areas should be tested and when. Most Buffalo students come from and remain in New York. She therefore generally supported a greater emphasis on New York law. Albany Law School's Dean, Alicia Ouellette, shared the concern regarding a lack of knowledge of New York practice, a complaint that she has heard from many employers. Like Buffalo students, most Albany Law students come from and remain in New York. Dean Ouellette also said that students do not take the NYLE seriously and it should be changed. She supported emphasizing New York law both on the bar exam and in law schools.

Dean Crowell of New York Law School repeated his concern about the lack of focus on New York law and the declining enrollment in New York Practice courses. He has heard from judges and employers that new lawyers do not know any New York practice. Students are aware that the NYLE is not relevant or meaningful, he said, and, as a result, they do not take it seriously. He supported restoring a New York law emphasis on the bar exam, which would reverberate throughout law schools.

The Dean of St. John's University School of Law, Michael Simons, agreed that as the bar exam moves away from New York specific law, so does the curriculum and the importance of New York law in law schools. He was concerned by this trend and suggested changes were necessary to protect New York's gold standard. CUNY School of Law's Dean, Mary Lu Bilek, said that students did not understand the CPLR, and that fewer third-year students took the CPLR clinic than in previous years. A representative for Dean Michael Cahill of Brooklyn Law School also observed the trend away from New York specific law.

Conversely, the Columbia Law School Dean, Gillian Webster, said that while many of Columbia's law students remain in New York after graduation, the UBE had helped foster growth in New York by attracting students to New York from elsewhere. (She did, however, express concern regarding the racial disparity of the UBE. CUNY's Dean also stressed that the current bar exam has a disproportionate negative impact on women and minorities.) Fordham Law School's Dean, Matthew Diller, supported the movement to the UBE and the recruitment of law students and law graduates from out of state. The Cornell Law School Dean, Edwardo Penalver, cautioned that you cannot design a bar exam for the few graduates who will hang out a shingle, and that most new attorneys get mentoring and support from their employment.

Other deans shared innovative ideas for improving the state's licensing system. The Syracuse University College of Law Dean, Craig Boise, suggested re-sequencing the exam to ensure that students come out of law school "practice ready." He "welcome[d] the recent national interest in rethinking the bar exam."<sup>138</sup> He observed that "[t]he dominance of traditional bar subjects makes it difficult to expand our curriculum into current critical legal topics, including subjects like compliance, data privacy and cybersecurity, smart contracts and the blockchain, healthcare, the legal implications of climate change and others."<sup>139</sup>

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<sup>138</sup> Boise, *supra* note 2.

<sup>139</sup> *Id.*

The Dean of Pace Law School, Horace Anderson, discussed the benefit of clinical programs, which are much more valuable for practice after law school. The Brooklyn Law School Dean’s representative also noted the importance of clinical programs.

#### **D. Student Survey**

The Task Force surveyed law graduates seeking admission in all four of the Judicial Departments. As of February 24, 2019, 1,617 applicants provided responses.<sup>140</sup> 768 students reported that their law school did not offer a course focused exclusively on New York law, such as New York practice.<sup>141</sup> (285 students were not sure if their law schools offered such a course, perhaps even more troubling.<sup>142</sup>) According to the responses received, where law schools offered a New York specific course, students choosing not to take the course greatly exceeded those who did (229 students took the course; 609 students did not).<sup>143</sup> Of the surveyed students who took one of the courses, only 81 did so because they expected the course to benefit them for practice in New York.<sup>144</sup> Of the surveyed students who could have taken a New York course but did not, the reasons given were primarily because their schedules did not permit it,<sup>145</sup> because it was not required for the bar exam, or because they were interested in other courses. 249 students whose law school offered a course exclusively teaching New York law did not take such a course even though they intended to practice law in New York.<sup>146</sup>

716 respondents that the NYLC was either a helpful or somewhat helpful educational experience, while only 279 found it unhelpful. 348 applicants found the NYLE was challenging, 625 thought it was somewhat challenging, and 573 thought it was not challenging at all. 494 applicants reported that they intended to seek admission in another American jurisdiction, while 448 reported that they did not so intend and 464 indicated that they were uncertain.<sup>147</sup>

#### **E. Presentations from Experts and Studies on Bar Exams**

*(i) Alternative Approaches to Licensing Lawyers: Presentations of Professor Deborah Merritt and Dean Judith Wegner on Assessing Legal Competency*

At its June 2019 meeting, the Task Force had three questions on its agenda: How should we address competency and training for lawyers entering the profession? What are the essential questions to ask on a bar exam? What goes into devising the best bar exam? To help answer

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<sup>140</sup> Since approximately 8,500 attorneys are admitted to practice in New York State each year, it is unclear whether these 1,617 respondents represent a representative sample of the whole. *See* NEW YORK STATE UNIFIED COURT SYSTEM 2018 ANNUAL REPORT, REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS FOR THE CALENDAR YEAR JANUARY 1 THROUGH DECEMBER 31, 2018 at 38.

<sup>141</sup> Appendix D.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

these questions, the Task Force heard from Professor Deborah Merritt<sup>148</sup> and Dean Judith Welch Wegner,<sup>149</sup> experts on the subject of lawyer competency.

Professor Merritt acknowledged that, in the abstract, portability was a benefit of the UBE.<sup>150</sup> “The portability does increase the lawyer pool, so there are somewhat more lawyers here in New York and in other states who are available to serve clients.”<sup>151</sup> Portability is “particularly attractive to clients who are national or international, because whether or not a lawyer actually moves from one place to another, having a lawyer who is licensed in both New York and Ohio may be beneficial to some clients in [the] tristate area.”<sup>152</sup>

Yet, in an earlier study conducted by Professor Merritt, she found that the impact the UBE has had on the number of attorneys available to serve New York clients is difficult to assess.<sup>153</sup> The limited available data shows that “New York transferred more 2018 scores out of the state (1,663) than into the state (747).”<sup>154</sup> There was a similar pattern for 2017 scores.<sup>155</sup> The available data also suggested that the number of candidates who obtain a passing score in New York versus the number who gain admission in New York based on that passing score has diminished since adoption of the UBE.<sup>156</sup> “Whether they use that license to advise clients physically located in New York or in other parts of the nation/world, they understand the value of a New York license when serving clients.”<sup>157</sup>

“From the perspective of client access to lawyers,” Professor Merritt says, “it is reassuring that adoption of the UBE did not diminish the number of lawyers admitted to practice

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<sup>148</sup> Professor Deborah Merritt is the John Deaver Drinko-Baker & Hostetler Chair at The Ohio State University Moritz College of Law. She formerly clerked for then-Judge Ruth Bader Ginsburg on the D.C. Circuit Court of Appeals, and Justice Sandra Day O’Connor, on the United States Supreme Court. She serves on the ABA Commission on the Future of Legal Education (the “ABA Commission”), and has been studying lawyer competencies and lawyer licensing for many years. Professor Merritt is the lead investigator on “Measuring Minimum Competence: New Lawyers in the Workplace,” a project co-sponsored by the ABA Commission and AccessLex Institute, and the Institute for the Advancement of the American Legal System.

<sup>149</sup> Judith Welch Wegner was the principal investigator and co-author of the renowned Carnegie Report on Educating Lawyers. See THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS, PREPARATION FOR THE PRACTICE OF LAW (2007). She has been the President of the American Association of Law Schools, the Dean of the University of North Carolina School of Law, and a visiting scholar in Australia studying law competency. Dean Wegner has written numerous articles on lawyer competencies and lawyer licensing.

<sup>150</sup> Deborah Merritt Presentation at the June 3, 2019 meeting of the NYSBA Task Force [hereinafter, “Merritt Presentation”].

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> See Appendix E: Deborah Merritt, *The UBE and Service to New York Clients*, at 1 (June 12, 2019).

<sup>154</sup> *Id.*

<sup>155</sup> See *id.* However, given other factors, these numbers did not necessarily mean that New York is suffering a net loss of registered attorneys. For instance, “many of the lawyers transferring UBE scores out of New York are doing so to obtain a second license that will complement their New York license—not because they are relocating to another state.” *Id.* at 1, 4.

<sup>156</sup> See *id.* at 6.

<sup>157</sup> *Id.*

in New York.”<sup>158</sup> From 2016 to 2018 the number of applicants admitted to practice in New York through examination has seen a gradual increase from 7,885 in 2016, to 8,181 in 2018, to 8,199 in 2018.<sup>159</sup> The number of applicants being admitted by transferring a UBE score has also increased each year since adoption of the UBE, from 11 to 172 to 283.<sup>160</sup> That number is expected to grow in 2019 and beyond as students have three years to transfer their UBE score.

Part of the benefit of the UBE’s portability is the reliability associated with the UBE scores, assuming that “[the NCBE] are experts at reliability, which means that the exam they produce is consistent from year to year, in terms of the line that they’re drawing.”<sup>161</sup> However, Professor Merritt considered reliability only a minor benefit because it hinged on the exam’s content and quality as a measure of competency. Ultimately, Professor Merritt concluded that the detriments of the UBE eclipsed its benefits.<sup>162</sup>

Specifically, since New York’s transition to the UBE, Professor Merritt found that “clients are losing. [Newly-admitted attorneys] are entering the workplace with less knowledge of New York law. . . . That is aggravated by the fact that the UBE requires really extensive memorization of federal rules and what we call ‘the law of nowhere,’ because the law of nowhere is supposedly majority rules.”<sup>163</sup> Professor Merritt discussed her research on rote memorization. “The more you focus the exam and you’re testing only things that have already been memorized, you both are limiting the scope of the exam and you’re creating some of these dangers . . . that people are memorizing federal rules when they really need to know New York rules.”<sup>164</sup> Moreover, she noted, “[t]hat . . . is further aggravated by the fact that the UBE as well as the [MBE] . . . ha[ve] over time come to focus more and more on weeds rather than on trees.”<sup>165</sup>

Professor Merritt found that the UBE “doesn’t test some key skills that lawyers need”<sup>166</sup> She referred to soft lawyering skills such as plea bargaining, which is essential to prosecution and criminal defense practitioners. New York was not alone in facing these issues: “the ABA Commission on the Future of Legal Education has heard from other states . . . that the UBE is not what they thought it was cracked up to be, and one of the options that people have started talking about is to create alternative paths to the same license.”<sup>167</sup> She provided an overview of several alternatives to the current UBE. For starters, New York could specify that students take particular courses to demonstrate that they are prepared for legal practice in the State.<sup>168</sup> “This path might be just for people in New York, and the others just go the UBE path. Or it could be that if they have not taken New York Practice while in law school, they could do that in some

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<sup>158</sup> *Id.* at 7.

<sup>159</sup> *See* Appendix F.

<sup>160</sup> *See id.*

<sup>161</sup> Merritt Presentation, *supra* note 150.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

other way online[.]”<sup>169</sup> New York could allow students to forego the UBE entirely by taking a certain number of hours of clinical or externship work as a practical component, and then taking an exam specifically tailored to New York law.<sup>170</sup> Another option would be an exam focused on fundamental lawyering skills. “One could take all the money that people currently spend on bar prep and the bar itself and have them instead pay for a six-week boot camp in which they would be intensively learning and practicing both doctrinal law and skills.”<sup>171</sup> Although Merritt acknowledged the additional costs of setting up these alternatives, she noted that larger states, like New York, would be better equipped to handle such pilot programs.

Dean Wegner spoke about developing a better New York-specific portion of the exam. She thought it should be tailored to career paths and communities that the attorney will represent.<sup>172</sup> She said it is important to recognize the additional burden placed on students.<sup>173</sup> She suggested that the Task Force “may want to look more closely at whatever the patterns of complaints are . . . and try to zero in to see where those are before assuming that you’re going to overhaul the whole approach to a state law you have now in order to target better solutions.”<sup>174</sup>

After some Task Force members raised the concerns they had heard from students at Character and Fitness interviews—that the NYLE is not taken seriously and students can circumvent exam rules—Dean Wegner articulated ways to make the test seem less like a joke and reduce the potential for cheating. She noted how the field of medicine uses test centers. “People can go to monitored centers and do something online and the cheating can be controlled. So, you don’t need to necessarily have an exam that takes place in the Javits Center that everybody comes to.”<sup>175</sup>

As for the content of the NYLE, Dean Wegner suggested better ways to format state-specific portions of tests to enable students to obtain competence in those subjects. “For example, having to look up the law and not simply answer multiple-choice questions on previously served videos or materials . . . would more likely help people achieve some mastery[.]”<sup>176</sup> She also noted that assessing students based on work product in short courses would be beneficial, “rather than simply having them read [the outline], watch the video, and then answer multiple-choice questions.”<sup>177</sup>

Dean Wegner previously cautioned that a “singular focus on bar examinations misses important points.”<sup>178</sup> She advocated for multifaceted licensing systems, which “are already

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> Judith Welch Wegner Presentation at the June 3, 2019 meeting of the NYSBA Task Force [hereinafter, “Wegner Presentation”].

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Judith Welch Wegner, *Rethinking Law Licensing*, NYSBA JOURNAL, [https://www.nysba.org/Journal/2018/Sep/Rethinking\\_Law\\_Licensing/](https://www.nysba.org/Journal/2018/Sep/Rethinking_Law_Licensing/) (last visited Feb. 9, 2020).

embedded in the existing American legal licensing system.”<sup>179</sup> “A multifaceted licensing system should reflect best practices in professional licensing and should foster incentives for practitioners to achieve the highest possible level of competence in the public interest.”<sup>180</sup> Accordingly, Dean Wegner theorized about adopting the following components: “(1) an initial post-1L test on foundational skills involving critical thinking, legal writing and research; (2) a ‘residency’ requirement that facilitates training and assessment of students’ performance in practice-based settings such as clinics, externships and jobs; (3) a possible limited license system that allows qualified students to gain skills in specific practice areas and be credentialed based on performance in those areas before returning to seek a general license; and (4) an advanced bar examination system that allows applicants who have passed the initial post-1L year exam to demonstrate more in-depth expertise in substantive areas and additional skills.”<sup>181</sup>

Dean Wegner observed that countries like England and Scotland have been moving towards allowing students the option of being examined in depth in a couple of areas and basic competency in others, which she observed “give[s] students an incentive to focus and to develop more expertise so they are more confident when they come out.”<sup>182</sup> Canada uses assessment centers for skills-based assessments. These jurisdictions “may have an online contained set of cases that if a student is doing some kind of a written assessment in a particular area, if research is involved, they would be expected to use that online controlled set of materials in terms of their performance. The assessment centers also allow them to do things like client counseling or negotiation.”<sup>183</sup> Dean Wegner also compared training and licensing of students in Australia, which has “a very, very effective system of online teaching and learning where students are supervised by preceptors, that we might call mentors, that are assigned simulation exercises that relate to both practice skills and content.”<sup>184</sup>

The Task Force also considered the Daniel Webster Scholar Honors Program, “a first-of-its-kind program in the country allowing students to graduate without the need to take the traditional two-day bar exam.”<sup>185</sup> Instead, licensure follows successful completion of a rigorous practice-based curriculum in the second and third years of law school. According to the University of New Hampshire Franklin Pierce School of Law, “[s]uccessful Webster Scholars pass a variant of the New Hampshire Bar exam during their last two years of law school and are sworn into the New Hampshire bar the day before graduation. They are also eligible to sit for the bar exam in any jurisdiction outside New Hampshire for which they would qualify having graduated from an ABA-accredited law school.”<sup>186</sup>

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> Wegner Presentation, *supra* note 172.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Daniel Webster Scholar Honors Program*, UNIVERSITY OF NEW HAMPSHIRE FRANKLIN PIERCE SCHOOL OF LAW, <https://law.unh.edu/academics/experiential-education/daniel-webster-scholar-honors-program> (last visited Feb. 10, 2020); *see* John Burwell Garvey, *Making Law Students Client-Ready*” *The Daniel Webster Scholar Honors Program: A Performance-Based Variant of the Bar Exam*, 85 NYSBA JOURNAL 44, 44-50 (Sept. 2013).

<sup>186</sup> *Daniel Webster Scholar Honors Program*, *supra* note 185.

In the Webster program, students are accepted into the program after their first year of law school and have the opportunity to counsel clients, work with practicing lawyers, conduct depositions, appear before judges, negotiate, mediate, and draft business documents—all “while creating portfolios of written and oral work for bar examiners to assess every semester.”<sup>187</sup> Dean Wegner noted that the Daniel Webster Scholar Honors Program had stringent selection criteria, but that the committee tasked with selecting scholars is focused on admitting minority students.<sup>188</sup> Specifically, “the committee seeks an overall balanced group from the pool of qualified applicants. In addition to each individual’s qualifications, the committee considers personal experiences including ... urban/rural background, education, culture, life/work experience, travel, extra-curricular activities before and during law school, hobbies, and goals for the applicant’s legal career.”<sup>189</sup> Notably, “[t]he committee also considers whether an applicant is likely to remain in New Hampshire in order to balance the class between prospective New Hampshire and non-New Hampshire practitioners.”<sup>190</sup>

Ultimately, Dean Wegner concluded that whatever change is made, it is important “to think about the whole enterprise as not just a test at the end of the third year, but how you stage different assessments as you go along. Think about the fact too that if you only test at the end of the third year, you’re really putting your finger on the scale in terms of debt load and people’s capacity to serve those with limited means.”<sup>191</sup>

(ii) *Building a Better Bar Exam: Report by Andrea A. Curcio, Carol L. Chomsky, and Eileen Kaufman*<sup>192</sup>

The Task Force examined a study co-authored by one of its members that explored alternatives to licensing systems that could serve as examples for improving New York’s licensing system. That study was centered on the bedrock principle that “the purpose of the bar exam (both the UBE and the NYLE) is consumer protection—ensuring that new lawyers have the competencies required to practice law effectively.”<sup>193</sup>

The study looked at the 1983 Performance Test offered in California and the Law Society of Upper Canada Exam used in Ontario. The study found that these examples, which were both

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<sup>187</sup> *Id.*

<sup>188</sup> Wegner Presentation, *supra* note 172.

<sup>189</sup> *Daniel Webster Scholar Honors Program*, *supra* note 185.

<sup>190</sup> *Id.*

<sup>191</sup> Wegner Presentation, *supra* note 172.

<sup>192</sup> Eileen Kaufman is a Professor of Law at Touro Law Center where she teaches Torts, Constitutional Law, Evidence, Sex-Based Discrimination, and Civil Liberties in an Age of Terrorism. Professor Kaufman was Touro’s Vice Dean from 1996-2000, the founder of Touro Law’s summer program in India and the co-director of Touro Law’s summer program in Israel. Among her professional activities, Professor Kaufman served as the Co-President of the Society of American Law Teachers, the Reporter for the New York Pattern Jury Instructions Committee, the Chairperson of the Bar Admission and Lawyer Performance Committee of the American Association of Law Schools, and the Co-Chair of CLEAB.

<sup>193</sup> Andrea A. Curcio et al., *How to Build a Better Bar Exam*, 90 NYSBA JOURNAL 38, 38 (Sept. 2019). One of the authors of this study, Eileen Kaufman, is also a Task Force member.

open-book exams that featured multiple-choice questions, could be built on, and either would “do a better job of testing minimum competence” than the UBE.<sup>194</sup>

The 1983 California Performance Test provides an example of the benefits of a case-file approach to testing. The test consisted of “factual material and appellate opinions that provided the basis for both multiple-choice and essay questions.”<sup>195</sup> Test-takers therefore “had information lawyers might see when working on a client’s file.”<sup>196</sup> The multiple-choice portion of the assessment “focus[ed] directly on an important analytical we expect lawyers to have: the ability to read and understand appellate cases and use those cases to support a party’s legal contentions and theories.”<sup>197</sup> “Answering these questions was not a simple matter of identifying case holdings but, instead, demanded close reading of the cases and understanding subtle differences in holdings and rationales.”<sup>198</sup> The study concluded that these techniques would improve the status quo in New York because it “shifts the testing lens from the ability to *recall* rules to the ability to *discern* and *comprehend* legal rules in typical legal materials.”<sup>199</sup>

The Ontario Exam, which is still administered today, consists of “a seven-hour multiple-choice test consisting of 220 to 240 multiple choice questions [testing] a wide range of lawyering competencies including ethical and professional understanding, knowledge of the law, establishing and maintaining client relationships, practice management issues, and (for barristers) problem/issue identification, analysis, and assessment.”<sup>200</sup> The exam, “like U.S. bar exams, tests legal knowledge and analytical skills, but it often does so in a practice-oriented context, focusing on how knowledge of the law informs the proper representation of clients.”<sup>201</sup>

Like the NYLE, the Ontario Exam is open book and provides examinees online access to the necessary materials before the exam. The administrators also encourage students to organize, code, and summarize the materials in ways that best suit their learning styles.<sup>202</sup> However, candidates must take the exam at a testing site.<sup>203</sup>

The study makes clear that “it is possible to design multiple-choice questions that test a wider range of lawyering competencies[.]”<sup>204</sup> These examples could also be built upon. For

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<sup>194</sup> *Id.* at 38, 41.

<sup>195</sup> *Id.* at 38.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* at 39.

<sup>199</sup> *Id.* As the study notes, such an exam could also be validated, as demonstrated by the fact that the Law School Admission Council developed and validated a similar assessment method as part of a 2008 study. *See id.*

<sup>200</sup> *Id.* at 40.

<sup>201</sup> *Id.*

<sup>202</sup> *See id.*

<sup>203</sup> *See Barrister Licensing Examination - Tuesday, March 3, 2020*, LAW SOCIETY OF ONTARIO, <https://lso.ca/becoming-licensed/lawyer-licensing-process/licensing-examinations/dates,-times-and-locations/barrister-exams> (last visited Feb. 10, 2020).

<sup>204</sup> Curcio et al., *supra* note 193 at 41.

instance, New York could test experiential skills, such as client interviewing and negotiation, through a closely-supervised clinical or externship experience.<sup>205</sup>

(iii) *Assessing the Transition to the UBE: Professors Suzanne Darrow-Kleinhaus and Allison Robbins*

On September 17, 2019 the Task Force heard from Professor Suzanne Darrow-Kleinhaus<sup>206</sup> and Professor Allie Robbins.<sup>207</sup>

Professor Darrow-Kleinhaus spoke of the change in law school curriculum soon after the adoption of the UBE. “New York law schools have modified their curriculums to cover more of the UBE tested subjects.”<sup>208</sup> For example, she noted that they added previously untaught subjects like secured transactions. “New York law schools have also modified the content of courses. . . . We reviewed our content of *all* of our courses to make sure we are covering the general principles of law, often instead of New York law, because there is no time to teach everything.”<sup>209</sup>

She confirmed statistics of “[d]ecreased student enrollment in New York practice courses across the board in all of our schools.”<sup>210</sup> The schools that continue to offer New York Practice have lessened its credit value.<sup>211</sup> “There’s also greater emphasis now in law school classes on bar prep itself and on the MBE portion of the bar exam, as opposed to the written portion . . . because it drives the scoring with being 50% of your score.”<sup>212</sup> She also noted, and other professors confirmed, that many schools have six credit courses that focus exclusively on how to pass the UBE. In some New York law schools, students can take more than ten credits in bar review courses. These are essentially bar review courses in which students can receive credit toward their J.D. degree. “[T]his is life in New York and that local color is missing. Every jurisdiction that has gone UBE has lost its own identity.”<sup>213</sup>

Furthermore, she explained why the current state of the NYLC and NYLE does not make up for what was lost when the state abandoned the NYBE.

[S]ince students are not tested on New York law, faculty don’t cover it in their classes. Which means that they’re not studying it from day one and throughout their three and four years of law school. And when you’re not studying it to take

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<sup>205</sup> *See id.*

<sup>206</sup> Suzanne Darrow-Kleinhaus is a member of the Task Force. She is also a professor and the Director of Academic Development and Bar Programs at Touro Law School.

<sup>207</sup> Allie Robbins is an associate professor of law at CUNY School of Law, where she has helped to coordinate and develop new bar support programs.

<sup>208</sup> Darrow-Kleinhaus Presentation, *supra* note 111.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

law school exams, you're not learning it the way that you would normally learn the law as part of your law school education.<sup>214</sup>

She said that students “study” for the NYLE by developing a coded system of tabs and highlighting for the outline provided by the BOLE so that they can easily find an answer to a corresponding question on the NYLE.<sup>215</sup> Other students simply “get another laptop and they automate it and they just do control, find.”<sup>216</sup>

One Task Force member noted that New York Rules of Professional Responsibility are different from the ABA Model Rules of Professional Conduct tested on the MPRE. Because of this, Chief Judge Judith Kaye had urged, and the Court of Appeals had decided, that New York should test the New York Rules of Professional Conduct on the NYBE so applicants were aware of their professional responsibilities when practicing in the state. Such testing now is done only in a handful of multiple-choice questions on the NYLE.

Robbins gave an overview of the MPT. She discussed the time constraints of the MPT and how preparing for that portion of the exam may teach bad lawyering skills. Task Force members questioned whether the MPT would be a better assessment of practice readiness if it focused on practical law that compounds understanding, instead of the fictional law of an imaginary jurisdiction.<sup>217</sup>

*(iv) New York Study on the Transition to the UBE*

In August 2019, the New York Court of Appeals released the results of a three-year study on the impact of adoption of the UBE in New York.<sup>218</sup> The Study was conducted by staff from the Research Department of the NCBE at the request of the BOLE. The impartiality of this Study is open to question because of the NCBE's own significant role in the UBE, and the stream of money it receives from those who are required to take the UBE. The NCBE develops the major constituent parts of the UBE, that is, the MEE, MPT, and MBE. The NCBE then scores the MBE, calculates scaled written scores (MEE and MPT) for jurisdictions, and serves as the coordinating body for UBE administrative policies. The NCBE is compensated for its licensing of the examination and for its services in scoring it. Having the NCBE critique the UBE is like having an author write her own book review.

Apart from NCBE's lack of neutrality, we also note that the data sample sizes were small:

- (a) Only two samples were from the prior NYBE: July 2015 and February 2016;
- (b) Only three samples were of the UBE: July 2016 and July 2017; and

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> Allie Robbins Presentation at the September 17, 2019 meeting of the NYSBA Task Force.

<sup>218</sup> See generally *Impact of Adoption of the Uniform Bar Examination in New York*, NATIONAL CONFERENCE OF BAR EXAMINERS RESEARCH DEPARTMENT (2019) (available at <https://www.nybarexam.org/UBEReport/NY%20UBE%20Adoption%20Part%202%20Study.pdf>) [hereinafter “BOLE Study”].

(c) February results tend to be less stable in general.<sup>219</sup>

Notwithstanding this, the study concluded that “[t]he short answer, based on the data available, is that the impact [of the adoption of the UBE in New York] was, at most, small.”<sup>220</sup> The study concluded that “[b]ar exam performance increased, on average, after UBE adoption and the improvement in performance appeared to be explained in large part by improvements in the background characteristics of candidates taking the New York bar exam. In other words, the improvement in bar exam performance after UBE adoption was likely not attributable to the UBE.”<sup>221</sup>

The study revealed that Caucasian/white test takers tended to have the highest average score on the UBE.<sup>222</sup> Male test-takers tended to have higher pass rates than females.<sup>223</sup> The study also found that “[d]ifferences observed across groups defined by gender or race/ethnicity on the UBE also tended to be observed prior to UBE adoption in New York.”<sup>224</sup>

That these troubling statistics existed prior to the adoption of the UBE is not a surprise. Former NYSBA President Seymour James stated in 2013: “Achieving diversity and inclusion is an ongoing and multi-faceted goal for the State Bar and our profession. In our increasingly diverse society, a legal profession representative of our society at large is necessary to maintain the legitimacy of our legal system and respect for the rule of law. A diverse legal profession allows us to better represent our clients and helps to ensure the fair administration of justice.”<sup>225</sup>

What is surprising, and totally unacceptable, is the NCBE’s bland acceptance of the broken status quo. The NCBE should not take comfort in a finding that disparities exist but are no worse than they always were. As one Task Force member stated at the September 17 meeting, “[T]he [NCBE] is saying there’s a gender disparity and there’s a race disparity, but we’re fine with it. And I think that that’s a huge problem for a licensing exam in a profession that’s the least diverse profession in the country.”

Despite New York’s being—as NYSBA President Hank Greenberg dubbed it—a “gorgeous mosaic of diversity,” New York law firms continue to be plagued by a diversity imbalance. The Task Force shares President Greenberg’s opinion that “[t]his state of affairs is unacceptable. It is a moral imperative that our profession better reflects the diversity of our clients and communities, and we can no longer accept empty rhetoric or half-measures to realize

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<sup>219</sup> *Id.* at 112. “In general, February results appeared less stable likely due to (a) the nature of the group taking the exam in February, where most candidates are repeat takers and the first-time takers tended to be different than first-time takers in July, (b) the sample sizes in February were smaller, which may have affected the stability of results for first-time takers, and (c) candidates included in the school-based sample may not have well represented candidates taking the New York bar exam, particularly first-time takers and candidates taking the February 2016 bar exam.” *Id.*

<sup>220</sup> *National Conference of Bar Examiners Research Department, Executive Summary, Impact of Adoption of the Uniform Bar Examination in New York*, at 1 [hereinafter, “The Executive Summary”].

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 4.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* at 7.

<sup>225</sup> Seymour James, *President’s Message*, NYSBA JOURNAL, May 2013, at 5.

that goal.”<sup>226</sup> The New York Study does little to assuage this concern. While we need further investigation on how to eliminate gender and race disparity from the legal profession,<sup>227</sup> the recommendations below would start to make New York’s attorney-licensing system more equitable.

(v) *NCBE Study on the Transition to the UBE*

In 2018, the NCBE appointed a Testing Task Force charged with undertaking a three-year study “to ensure that the bar exam continues to test the knowledge, skills, and abilities required for competent entry-level legal practice in a changing legal profession.”<sup>228</sup>

In Phase One of the study, the Testing Task Force met with stakeholders and reported its findings from various listening sessions. Some common threads from the listening sessions are notable. They include the following critiques: the UBE should emphasize more lawyering skills and less subject matter knowledge; the UBE should feature more writing, less multiple-choice, and additional testing-methods, like simulations; and the UBE should be divided into different parts over multiple days.<sup>229</sup>

## F. Meeting with the BOLE

The Task Force distributed several questions and concerns to the BOLE as it studied the issue. On December 16, 2019, the BOLE issued a statement in response.

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<sup>226</sup> Hank Greenberg, *Diversifying the Legal Profession: A Moral Imperative*, NYSBA NEW YORK CRIMINAL LAW NEWSLETTER, Winter 2020, at 4.

<sup>227</sup> The Dean of New York Law School was one of the stakeholders who encouraged the Task Force to continue studying how the UBE truly impacts law graduates of color, considering the short period since the UBE’s implementation. See NY Law School Letter, *supra* note 131 at 2. Likewise, the Director of Academic Success at Buffalo noted that there appears to be a downward trend of diverse applicants since adoption of the UBE and suggested the issue is something that should be studied further.

<sup>228</sup> NATIONAL CONFERENCE OF BAR EXAMINERS TESTING TASK FORCE, YOUR VOICE: STAKEHOLDER THOUGHTS ABOUT THE BAR EXAM 1 (2019). The NCBE has now entered into phase two of its study, “a nationwide practice analysis [designed] to collect information about the importance and frequency of tasks performed by [newly-admitted attorneys], as well as the importance of related knowledge, technologies, skills, abilities, and other characteristics necessary for competent entry-level practice.” *Id.* at 5. The final phase of the study will “develop[] recommendations for the next generation of the bar examination and MPRE.” *Id.* “The Task Force aims to have its final recommendations in place sometime in 2021.” Karen Sloan, *Overhaul the Bar Exam? Two Major Studies Focus on the Test’s Future*, LAW.COM (July 31, 2019), <https://www.law.com/2019/07/31/overhaul-the-bar-exam-two-major-studies-focus-on-the-tests-future/>. Additionally, the Institute for the Association for the Advancement of the American Legal System (“IAALS”) is working on its own study of the exam. See *Building a Better Bar: Capturing Minimum Competence*, UNIVERSITY OF DENVER INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, <https://iaals.du.edu/projects/building-a-better-bar> (last visited Feb. 10, 2020). IAALS aims to speak with new attorneys across the country to pinpoint the knowledge and skills that make them effective, as well as more seasoned attorneys who supervise newly-admitted attorneys. See *id.* The Task Force will be monitoring both groups of reports closely.

<sup>229</sup> See Kyle McEntee, *The Future of the Bar Exam*, ABOVE THE LAW (Aug. 16, 2019), <https://abovethelaw.com/2019/08/the-future-of-the-bar-exam/?rf=1>.

The BOLE opined that none of the anecdotal problems regarding new attorney’s practice-readiness is attributable to the bar exam.<sup>230</sup> “It is a false premise that passing the [NYBE] demonstrated practice-readiness, while passing the UBE and the NYLE does not so demonstrate.”<sup>231</sup> Notably, BOLE pointed out that “although the Board supported the answers to the multiple-choice and essay questions it drafted for the prior New York exam with New York authorities, [it] made no concerted effort to test New York distinctions in most doctrinal areas” and “[w]hile [it] did test specific New York statutes, [it] did not seek to determine if the particular statute was in accord with prevailing views or any applicable model rule or code.”<sup>232</sup> “Consequently, a candidate who had no knowledge of New York specific law but who was adequately educated in general principles of law could apply those principles and easily pass the exam.”<sup>233</sup> As for concerns regarding the newly-admitted attorneys’ lack of knowledge of New York Civil Procedure, the BOLE observed that “in many respects, the testing of New York civil procedure under the NYLE is more effective than was the testing on the [NYBE] because it is specific, and a lack of knowledge of New York procedure could be masked on the prior exam by a strong performance on the MBE and answering questions based on general principles.”<sup>234</sup> Instead of considering any changes to the UBE or NYLE, the BOLE suggested that law schools could require students take a New York Practice course, employers could require new attorneys to have taken a New York Practice course in order to receive a job offer, or new lawyers could be required to take New York-specific CLE courses.<sup>235</sup>

What is missing from the BOLE’s comment that a student could have masked his or her lack of knowledge of New York civil procedure by strongly performing on other aspects of the prior examination is that the same could be said about any subject of the examination. An applicant may balance out a poor performance on one aspect of a test with a stronger performance on another. The solution is not to eliminate New York specific questions from the examination. The common-sense notion that a person may perform better on some aspects of a test than others supports having a test that measures a broad base of knowledge—as the NYBE once did.

The Task Force invited the BOLE to a meeting, and the dialogue was robust and constructive. Chairwoman Bosse, BOLE members Bryan Williams and Michael Colodner, and Executive Director McAlary attended the Task Force’s meeting on January 13, 2020, where we focused primarily on the NYLE.

First, Ms. Bosse defended the open-book format of the NYLE as “pedagogically sound.” She also asserted its value as an educational tool because using resources to look up an answer is the same way lawyers find answers to legal questions in practice. Additionally, Ms. Bosse noted that the NYLE had to be open-book because the BOLE could not control it otherwise because

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<sup>230</sup> BOLE Letter, *supra* note 16 at 25.

<sup>231</sup> *Id.* at 23.

<sup>232</sup> *Id.* at 4.

<sup>233</sup> *Id.* at 5.

<sup>234</sup> *Id.* at 25.

<sup>235</sup> *Id.* at 26.

“thousands of people all over the world tak[e] the test at the same time.” She also observed that there would be a burden and expense to changing the open-book format.

However, Mr. McAlary later noted “the State takes in more than what it costs for [the BOLE] to run [the bar exam].” Although the funds allocated to the BOLE to administer the bar exam are not derived directly from the fees paid by applicants, the \$250 application fee for domestically educated applicants, which was last raised in 1991, “is the lowest fee in the country at this point, and it’s not even close.” Indeed, Indiana and Puerto Rico are the only other jurisdictions that charge the same fee as New York.<sup>236</sup> For comparison, New Jersey charges \$675, Massachusetts charges \$815, and California charges \$1,228.<sup>237</sup> As will be discussed further below, the adoption of the UBE was not urged on the basis of expense and it appears from available data that the fees received from the administration of the test exceed the expenses incurred by the BOLE.<sup>238</sup>

Despite evidence to the contrary uncovered by the Task Force’s investigation,<sup>239</sup> Ms. Bosse emphasized that the NYBE did not test distinctions that heavily. “I think there might be a misunderstanding of what the [NYBE] was in terms of the amount of New York law that was actually on it. I mean we would cite New York authorities for answers, but it didn’t necessarily mean that that was the law of New York and nowhere else.” She also argued that “essentially 70% of the exam now is the same as it was before.”

Furthermore, Ms. Bosse stated that “the purpose of this test . . . isn’t supposed to be a test of minimum competence. It’s supposed to be a test whereby people would get some exposure to fundamental principles of New York law.” She indicated this is so because the BOLE was “directed by the Court of Appeals, relying on the recommendation of the Advisory Committee on the Uniform Bar Exam, not to create too high a hurdle.” Mr. McAlary emphasized, “it’s not the bar exam. The bar exam is the UBE.

Yet, Ms. Bosse acknowledged that “in the beginning [the NYLE] was perhaps not challenging enough when we first started . . . but we’ve learned a lot over the . . . three and a half years now that we’ve been administering it and we’ve made more challenging questions. We’ve made questions that you can’t just look up or look for a few words and find the answers.” She noted that “it’s more challenging now than it has been . . . [a]nd I think people now would be less inclined to say it’s a joke.”

When the Task Force questioned Ms. Bosse on the ramifications of newly-admitted attorneys not being tested on the New York distinctions, she stated:

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<sup>236</sup> See *Comprehensive Guide to Bar Admission Requirements 2019, CHART 9: Bar Examination Application Deadlines and Fees*, NATIONAL CONFERENCE OF BAR EXAMINERS <http://www.ncbex.org/pdfviewer/?file=%2Fassets%2FBarAdmissionGuide%2FNCBE-CompGuide-2019.pdf#page=41> (last visited Feb. 10, 2020).

<sup>237</sup> See *id.*

<sup>238</sup> It is also worth noting that the NCBE receives fees for every applicant taking the UBE exam and it is, therefore, in its economic interests to have the UBE adopted in as many states as possible.

<sup>239</sup> See Appendices G-H.

[I]t seems to me that people weren't learning it on the bar exam before. I mean we always heard that people were memorizing rules and then the day after the bar exam, they forgot everything that they knew. So, I'm not quite sure it isn't better now that people are required to sit through a couple of hours' worth of civil procedure lectures and answer questions—even if they're finding the answers within materials that we provide that I think are pretty good in outlining what are the distinctions in New York law and what are the important principles that they ought to know if they want to practice in New York—regardless of whether or not they had the opportunity to take a New York practice course or took advantage of that opportunity while they were in law school.

As to rumors of cheating, Ms. Bosse stated “they can't collaborate really, because you can't backward navigate while you're taking it” and “the questions are scrambled.” As for other people not taking the exam assisting, Ms. Bosse said she had not heard such reports. (As will be discussed *infra*, cheating does occur because of readily-available work arounds to the security precautions identified by Ms. Bosse.)

The BOLE's response did little to address the negative effect of the NYLE and UBE on certain New York law schools that used to ground their students for practice in New York, which meant that those students were essentially reviewing for the NYBE throughout law school. Prior to the UBE, there was a reason why students went to New York law schools that focused on the study of New York law, such as Albany Law, New York Law, and Buffalo, to name a few. Students were required to learn New York law, both because it was tested on the bar examination and because it made students ready to practice. While the intensive study of New York law in many New York law schools did not negatively impact students who went on to practice with the large, elite law firms, it greatly benefitted the students who went into practice with smaller law firms in the City, in the suburbs, and in upstate New York. This has been entirely lost with the adoption of the UBE. It is simply not possible to replace it, or even come close to replacing it, by giving everyone a limited, generic, low-threshold, open book test, prior to which everyone has the course materials and knows what questions are coming. Prior to the adoption of the UBE, law teaching in most New York law schools and the bar examination were closely aligned with what most of the newly-admitted attorneys would end up doing. That alignment is now broken.

Ms. Bosse responded that the ABA has done curriculum studies and has never found that the bar exam drives curriculum. As previously noted, this point of view is opposed by many of the Deans of New York's law schools. When pressed on the idea that pushing bar pass rates as a measure for law school accreditation may be reinforcing the idea of teaching to the bar exam, Ms. Bosse stated that she would be surprised if that drives schools, other than those schools with performance problems. Ms. Bosse expressed similar disbelief when Task Force members shared what they had heard from several law school deans: “I'm surprised that the deans would say that the bar exam is driving curriculum.”<sup>240</sup> Additionally, Ms. Bosse reminded the Task Force that “the number of people taking New York Practice courses had declined prior to the adoption of the [UBE].”

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<sup>240</sup> In September 2013, Chairwoman Bosse suggested that the high passing rate for the NYBE was “a credit to the high quality of legal education offered in New York.” Bosse, *supra* note 22 at 26.

Eileen Kaufman responded that many professors have made dramatic changes to their syllabi over the last three years. “We never have enough time to cover everything we want. So, for example, in my torts class, I used to always include the leading New York Court of Appeals cases, recent cases that profoundly affected law in the State. In the last three years, I dropped most of them just because of the emphasis on the bar exam and the need to cover broad concepts, [which] left less room to cover New York laws.” In response, Ms. Bosse noted that New York “never had more than a third generally of our people sitting for the bar exam who went to New York law schools that would’ve had whatever opportunity there is to study those New York specific rules during their legal education.”<sup>241</sup>

Ultimately, although the BOLE did not endorse any changes to the NYLE or UBE, when asked whether it was possible to create a hybrid bar exam with a more robust New York piece that would then translate back to the law schools, Ms. Bosse stated, “I think it’s something that we could consider.”

## **V. FINDINGS**

### **A. The Lost Purpose of the Bar Exam**

We conclude that since the adoption of the UBE, the fundamental purpose of the bar examination has been lost. As Judge Crane said 100 years ago, the very purpose of a rigorous admissions process is to protect the public from ignorance, inexperience, and unscrupulousness. None of the arguments in support of the UBE’s adoption asserted that making this change would better protect the public. Rather, the arguments centered largely, if not entirely, upon the perceived benefits to law school graduates.

As Ms. Bosse said at the time, adoption of the UBE would mean that law graduates would not have to take multiple bar examinations and would have greater flexibility in pursuing employment opportunities in multiple jurisdictions. We, however, reject the idea that the bar admission process should benefit bar applicants. The purpose of the bar admission process is to assure the public that only those persons with the requisite skill, knowledge, character, and fitness may become members of the New York Bar. Moreover, a member of the public confronted with litigation in the New York courts cares little about the flexibility offered by a bar exam. Rather, the party seeks comfort in knowing that her attorney can provide competent representation, which “requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>242</sup>

### **B. The NYLE has Failed**

We believe that the NYLE has proven to be a complete failure and needs to be eliminated.

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<sup>241</sup> It must be noted, however, that several law schools outside New York State offered courses on New York law. For example, Seton Hall Law School offered a course in New York Practice for many years, as did Rutgers University School of Law-Newark.

<sup>242</sup> New York Rules of Professional Conduct, Rule 1.1(a).

We distinguish between the NYLC and the NYLE. The materials and presentation of the NYLC provide useful and important information to applicants to the New York Bar.<sup>243</sup> However, the laxity of the NYLE, both in terms of its content and in terms of its administration, communicate a message to applicants that they need not learn the materials, no matter how excellent they may be, in order to pass the NYLE. In essence, the NYLC is simply an on-line CLE program. While CLE programs are useful to further the continuing education of admitted attorneys, to assure that they are current on relevant legal topics, a CLE is no way to teach the full measure of New York law. Those taking the NYLC are not required to devote their full attention to the materials, as they are not tested on it. Applicants multi-task during the NYLC and pay only enough attention to respond to the periodic prompts and simplistic questions.

The evidence is overwhelming that applicants to the Bar simply do not take the NYLE seriously, with the NYLE being described variously as a farce or a joke. The evidence likewise reflects that cheating occurs to a considerable extent. The Advisory Committee anticipated that applicants would cheat on the NYLE and, to deter it, suggested that the BOLE employ technological methodologies, such as the use of scrambled questions and answers. The evidence we have gathered demonstrates that students have readily apparent work-rounds, such as taking the NYLE in groups and using multiple screens in order to share answers to questions, which are the same, even if posed to different applicants in different order.

The Advisory Committee also suggested, and the BOLE implemented, a requirement that applicants complete an affirmation swearing that they completed the NYLC and NYLE without assistance from anyone else and did not provide assistance to any other applicant. The Advisory Committee proposed that an applicant who violated the oath be subject to disciplinary action, including denial of admission.<sup>244</sup> This requirement has proven to be wholly ineffectual and, if anything, counterproductive.

While the BOLE claimed, at least before we raised the issue to it, to be unaware that cheating occurs, it seems apparent that the BOLE has not expended any energy to find out if cheating occurs and, if so, how to prevent it. The BOLE most certainly does not claim to have any methods in place to investigate incidents of cheating and, even though we have informed the BOLE of methods by which cheating occurs, the BOLE has not proposed or identified any methods to prevent it. One method would be to have the NYLE administered at test centers, a suggestion that the BOLE rejects.

Since individuals take the BOLE online in the setting of their choice, there is no practical means to control cheating and no reason to believe that any test takers will disclose their violations or violations of others. The BOLE has not reported that any have to date. We have received no indication from the BOLE that it reviews any of the affirmations submitted to it or that it has ever notified any of the Departments of the Appellate Division, or any Committee on Character and Fitness, that a given applicant has cheated on the NYLE. The BOLE has not given us any reason to expect that it intends to treat the affirmation requirement as anything other than a formality.

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<sup>243</sup> This is not to say that the NYLC is perfect. *See, e.g.,* Joe Patrice, *NY Bar Exam in Complete Disarray*, ABOVE THE LAW (Feb. 11, 2020), <https://abovethelaw.com/2020/02/ny-bar-exam-in-complete-disarray/?rf=1>.

<sup>244</sup> *See* ADVISORY COMMITTEE REPORT, *supra* note 15 at 48-49.

The Advisory Committee, in relying upon the oath requirement, stated that “the legal profession is based on truth and integrity” and that the threat of non-admission would be “a sufficient deterrent”<sup>245</sup> However, as experience has shown, the threat of non-admission is an idle one. We are in agreement with the Advisory Committee that our profession is based on truth and integrity. Because we agree with that foundational principle, we conclude the NYLE is a detriment to truth and integrity as an unquantifiable, but significant, number of bar applicants are submitting false affirmations. It is ironic, to say the least, that one of the initial acts of a prospective New York lawyer is to submit a knowingly false affirmation regarding the taking of the NYLE.

We asked the BOLE if it would consider changing the way the test is administered. The BOLE responded that “[c]ontinuing the test on-line is the only feasible way it can be administered.”<sup>246</sup> The BOLE explained that the test is taken routinely by thousands of people all over the world, so offering it in an on-site proctored format would be both administratively and economically infeasible.<sup>247</sup>

### C. The Problems with the UBE

In this section of our Report we address a complicated but necessary part of our evaluation. During its investigation, the Task Force learned of claims made by psychometric experts that the UBE’s scoring and equating practices do not necessarily result in “uniform scores” so as to have the same meaning and thus be sufficiently reliable for high-stakes testing. We are not psychometricians and do not profess to be. We are concerned that the science of testing has been given greater weight in the bar examination development and administration process than the primary object of the examination—to determine whether an applicant has the basic competence to practice law in the relevant jurisdiction.

The Advisory Committee Final Report on the Adoption of the UBE did not discuss any of the grading or scoring practices of the UBE except to claim that the UBE is a “**uniformly administered, graded and scored**” examination.<sup>248</sup> We have learned in the course of our work that this assertion may not be accurate and, therefore, it is our obligation to present the information we have gathered.

In discussing these issues, we recognize our own limitations. We also recognize that many of the readers of this report may not be conversant with the technical jargon and data analysis that follows. We have endeavored to explain the relevant concepts regarding grading, scoring, and scaling as clearly as possible, relying on the expertise of those who provided the information. Understanding the basic metrics of the bar examination and how it is scored is essential to our work for several reasons, but perhaps most importantly for the following two reasons: first, the recently released Study on the Impact of Adoption of the Uniform Bar Examination in New York contains 185 pages of data in Appendices A through O and another 24 pages of data in an Addendum; and, second, the reliance by the BOLE on the data and analysis

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<sup>245</sup> *Id.* at 49.

<sup>246</sup> BOLE Letter, *supra* note 16 at 11.

<sup>247</sup> *Id.*

<sup>248</sup> ADVISORY COMMITTEE REPORT, *supra* note 15 at 7 (emphasis added).

presented by the NCBE in its support of the reliability and validity of the UBE. Notably, the NCBE conducted the three-year study of the impact of the transition from the traditional New York bar examination to the UBE.

We have been required to seek an understanding of the basic metrics of the bar examination so we can independently assess what the NCBE and the BOLE have provided to us in their reports and articles. Because we have grave concerns with what we have learned, we believe it imperative that an independent psychometric authority (not connected to the NCBE or BOLE) undertake a fuller examination of the grading and scoring issues discussed in this report.

Fundamental questions have been raised as to the UBE itself by experts who have studied the UBE's scoring and scaling extensively. The Advisory Committee favored the adoption of the UBE, asserting that “[o]nce an applicant has achieved a certain score on this **uniformly administered and graded** test, the applicant should be able to seek admission in other UBE jurisdictions.”<sup>249</sup> We have been advised that the UBE is not uniformly administered and graded.

### 1. *Understanding the Methodology*

By adopting the UBE, jurisdictions agree to weigh the MEE at 30%, the MPT at 20%, and the MBE at 50% to determine an examinee's UBE score. A UBE score is obtained through a three-step process:

1. Relative grading or “rank-ordering” of the written score;
2. Scaling the “ranked” written score to the MBE score for the group of test takers; and
3. “Equating” the MBE to determine the strength or weakness of the group of test takers and then scaling the MBE score to adjust for differences in overall difficulty between administrations.

Each of these steps is nuanced.

Relative grading or “rank-ordering” occurs when graders make grading distinctions among papers predicated, not on whether the top grade goes to the most excellent paper, but on which paper is better than the others. Essay graders engage in relative grading so that the top performers in a group get the same top scores as those in a prior group, regardless of whether the pool is less or more competent than a prior pool.

In relative grading, graders sort papers into buckets according to their strength relative to the other papers. For example, using the scoring scale in New York of 1-10, a score of 10 goes to the best papers among all the answers assigned to that particular grader and they go into the “10 bucket.” These papers are “better” than those that go into the “9 bucket,” which are, in turn, better than those placed in the “8 bucket” and so forth down the line to the “1 bucket,” which contains the weakest papers.

A weakness with the practice of rank ordering is that graders may change the score that the examinee earned to make it fit whatever score scale the jurisdiction has in place. To

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<sup>249</sup> *Id.* at 39 (emphasis added).

illustrate, after reading a set of examinee answers and assessing them according to the grading materials, the grader finds that most of the answers belong in the 4 and 5 buckets. However, since all the buckets must be filled, distinctions must be made and the papers are redistributed. Papers at the top end of the bucket may get a boost up but others may move down simply because some papers must be placed in the 1, 2, and 3 buckets. This may result in an examinee failing simply because of bucket placement.

The objective of a bar examination should not be to rank-order examinees for entrance into the profession based on relative performance as compared to others. Rather, a bar examination should determine whether a particular examinee meets the requirements for minimum competency. Whether an examinee meets the criteria set for minimum competency, should not be dependent upon how other examinees performed. An examinee's being bumped up into a higher bucket does not make the examinee's paper any better or the examinee any more competent. Conversely, because an examinee's paper is downgraded to a lower bucket does not make the examinee any less competent.

Scaling is the process where the examinees' "ranked" essay scores are then scaled to that jurisdiction's MBE distribution by forcing them to have the mean and standard deviation as that of the MBE distribution for that jurisdiction. Essays are not scaled to a national distribution.

Since the mean and standard deviation is different in each jurisdiction based on the relative MBE skill of that jurisdiction's examinees, this means that the same skill level on the MEEs and MPTs would get a different score in different jurisdictions, depending not only on the relative written skill of the jurisdiction's candidates, but also on the relative MBE skill. This can have a significant impact on individual scores, especially in smaller jurisdictions where the size of the applicant pool might affect the standard deviation of the MBE distribution.

What meaning does such a "local" score have when it is used for "transport" to another jurisdiction where the examinee was not "ranked" or scaled against these examinees to achieve her score? How would the scores be "uniform"?

The MBE also uses a process known as "equating," which "scales" the test to adjust for differences between exams and by different test takers over time. Equating uses versions of questions from previous administrations of the exam, known as "anchor" questions or "equators" to compare two different groups. This way, in theory, one can tell if the second group performed better, worse, or similarly on the anchor questions, which allows groups of test takers to be compared across test administrations. Then, how the second group did on the new questions is examined so that performance on the new questions can be evaluated based on performance on the anchor questions.

Consider two groups of similarly-situated test-takers, Group A and Group B. They each achieve the same score, 15 correct, on a set of the "equator" questions. But Group A scores 21 correct on the unique questions, while Group B scores just 17 of these questions right. Based on Groups A and B's same score on the equator questions, we can feel fairly certain that Groups A and B are of similar ability. We can also feel fairly certain that Group B had a harder test than Group A. This is because we would expect Group B's scores to look like Group A's scores because they are of a similar capability. Because Group B performed worse on unique questions, it looks like they received a harder group of questions. Now we scale the answers so that Group

B's 17 correct answers look like Group A's 21 correct answers, thus accounting for the harder questions. Bar pass rates between Group A and Group B should then look the same. In short, it is irrelevant if Group B's test is harder because the results will be adjusted to account for variances in test difficulty. Group B's pass rate will match Group A's pass rate because the equators establish that they are of similar ability.

Now consider Group C. In the unique questions, Group C did worse than Group A (16 right as opposed to 21 right), much like Group B (17 to 21). But on the equators, the measure for comparing performance across tests, Group C also performed worse, 13 right instead of Group A's 15. We can feel fairly certain, then, that Group C is of lesser ability than Group A. Their performance on the equators shows as much. That also suggests that when Group C performed worse on unique questions than Group A, it was not because the questions were harder; it was because they were of lesser ability.

## 2. *Summary of the Issue*

Substantial evidence shows that the UBE's scaling and scoring practices make its score unreliable and an inappropriate measure of a person's minimum competency to practice law. This is especially problematic when the UBE score is earned in another jurisdiction and then transported to New York. Although Chairwoman Bosse assured the Task Force at our meeting that a passing score earned in any UBE jurisdiction reliably tests competency despite differences in cut scores because of the validity of the test itself, this is true only if one accepts NCBE's assumption that the MBE controls the uniformity of the candidates' scores across jurisdictions and over time. It appears that test scoring is, at best, an imperfect process, raising significant concerns over the validity of this assumption.

Exam scores earned by a person in a state scoring its own written exam differ from exam scores earned in another state where it is based on a different cohort. This may result in a "portable" score but not a "true" one because the written score—50% of the total—depends on the strength of the applicant pool in the jurisdiction where the candidate took the exam. The BOLE has acknowledged that it is "a theoretical possibility that a candidate might receive different scores in two different UBE jurisdictions."<sup>250</sup>

This is a stunning admission in itself, but what follows only confirms that a "portable" UBE score is the product of the time and place in which it was taken. The performance of a candidate varies according to the specific group of papers against which it is evaluated.

The problem is that when a candidate goes to another jurisdiction and takes the test, the performance is judged in that context—meaning the written performance is evaluated with the specific group of papers produced for that exam. It can't be assumed that the written score achieved on one exam would be the same as a written score achieved on another. It would be mere speculation to assume that a written score would increase by a given amount because of the perceived ability of the population with which the test was taken.<sup>251</sup>

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<sup>250</sup> BOLE Letter, *supra* note 16 at 16.

<sup>251</sup> *Id.* at 18.

The “portable” score is just a “local” score, dependent on the cohort that took that exam—and it is also “relative.” This is because of NCBE’s practice of scaling the written component to the MBE,<sup>252</sup> which comes only from that jurisdiction. The BOLE confirmed the locality of the “portable score” when it stated that “[s]caling related to putting written scores onto a distribution of the same mean and standard deviation as the MBE scores of a given group of test-takers.”<sup>253</sup>

According to Dr. Nancy Johnson, this practice could result in the case where an examinee who writes her essays in New York might get a different score than if she had written the same answers in a state with a lower MBE mean. “[T]he examinee’s written raw scores [are] forced into a distribution that compares them to the [examinee] pool in New York, whereas if [the examinee] had written the same answers in a state with a lower MBE mean, their scaled written score could then be different. That [i]s a problem, because that scaled score is supposed to be portable—it’s supposed to mean the same thing from one [UBE] jurisdiction to the next.”<sup>254</sup> And it may not.

The NCBE is protective of the confidentiality of its scoring practices and appears to consider at least some of its methodologies to be its own intellectual property. However, it is clear from anecdotal evidence that at least some applicants are forum-shopping their test locations, so that their scaled scores will be higher, as a result of taking the test with presumptively less able test takers. This is an outrageous gaming of the system and, critically, operates to the unfairness of at least some other test takers. If one assumes that the system is a closed system and that someone will come up to the line but not cross it, it is *ipso facto* true that the unfair elevation of one or more test takers as a result of the foregoing will result in the failure of that number of test takers that would otherwise have been regarded as having passed the test.

### 3. *The Reliability Issue: Scaling the Written Component to the MBE*

When questioned about the scaling of the UBE, the BOLE deferred to the NCBE Testing and Research Department’s description of the concept:

As with MBE items, the written components of the bar exam (essay questions and performance test items) change with every administration. The difficulty of the questions/items, the proficiency of the group of examinees taking the exam, and the graders (and the stringency with which they grade) may also change. All three of these variables can affect the grades assigned by graders to examinees’ responses to these written components of the exam and as with MBE items, the

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<sup>252</sup> See Susan M. Case, *The Testing Column, Demystifying Scaling To the MBE: How’d You Do That?*, THE BAR EXAMINER, May 2005, at 46. According to Dr. Susan Case, the Director of Testing for the NCBE until November 2013, “[s]caling the essays to the MBE is an essential step in ensuring that scores have a consistent meaning over time. When essay scores are not scaled to the MBE, they tend to remain about the same: for example, it is common for the average raw July essay score to be similar to the average February score even if the July examinees are known to be more knowledgeable on average than the February examinees. Using raw essay scores rather than scaled essay scores tends to provide an unintended advantage to some examinees and an unintended disadvantage to others.”

<sup>253</sup> BOLE Letter, *supra* note 16 at 23.

<sup>254</sup> Suzanne Darrow-Kleinhaus, *A Reply to the National Conference of Bar Examiners: More Talk, No Answers, so Keep on Shopping*, 44 OHIO N.U.L. REV. 173, 178-79 (2018) [hereinafter, “Darrow-Kleinhaus Reply”].

written components of the bar exam (essay questions and performance test items) change with every administration. The difficulty of the questions/items, the proficiency of the group of examinees taking the exam, and the graders (and the stringency with which they grade) may also change. All three of these variables can affect the grades assigned by graders to examinees' responses to these written components of the exam and can have the potential to cause variation in the level of performance the grades represent across administrations. Unlike the MBE, the answers to the written questions/items of the bar examination cannot be equated, because previously used questions/items can't be reused or embedded in a current exam—there are too few written questions/items on the exam and they are too memorable. If essay questions or performance test items were reused, any examinee who had seen them on a previous administration would be very likely to have an unfair advantage over examinees who had not seen them previously.

Because directly equating the written components is not possible, most jurisdictions use an indirect process referred to as scaling the written component to the MBE. This process has graders assign grades to each question/item using the grading scale employed in their particular jurisdiction (e.g., 1 to 6). The individual grades on each written question/item are typically combined into a raw written score for each examinee. These raw written scores are then statistically adjusted so that collectively they have the same mean and standard deviation as do the scaled scores on the MBE in the jurisdiction. (Standard deviation is the measure of the spread of scores—that is, the average deviation of scores from the mean. The term scaled score refers to the score as it has been applied to the scale used for the test—in the case of the MBE, the 200-point MBE scale.)

Conceptually, this process is similar to listing MBE scaled scores in order from best to worst and then listing raw written scores in order from best to worst to generate a rank-ordering of MBE scores and written scores. The best written score assumes the value of the best MBE score; the second-best written score is set to the second-best MBE score, and so on. Functionally, the process yields a distribution of scaled written scores that is the same as the jurisdiction's distribution of the equated MBE scaled scores. Another way to think about the process is that the raw written scores are used to measure how far each examinee's written performance is from the group's average written performance, and then the information from the distribution of the group's MBE scores is used to determine what "scaled" values should be associated with those distances from the average.

This conversion process leaves intact the important rank-ordering decisions made by graders, and it adjusts them so that they align with the MBE scaled score distribution. Because the MBE scaled scores have been equated, converting the written scores to the MBE scale takes advantage of the MBE equating process to indirectly equate the written scores. The justification for scaling the written scores to the MBE has been anchored on the facts that the content and concepts assessed on the MBE and written components are aligned and performance on the MBE and the written components is strongly correlated. The added benefit of

having scores of both the MBE and the written component on the same score scale is that it simplifies combining the two when calculating the total bar examination score. In the end, the result of scaling (like equating) is that the scores represent the same level of performance regardless of the administration in which they were earned.<sup>255</sup>

However, just because the NCBE contends that scaling and equating the written scores to the MBE assures reliability does not make it so. The NCBE acknowledges that there is a low correlation of the written component score with the MBE scaled score and that this correlation varies widely across the UBE jurisdictions.<sup>256</sup> Nonetheless, the NCBE assures us that despite a “low correlation,” when “these correlations are adjusted for their less-than-perfect reliability, they are generally above 0.60, indicating that the MBE and written components ‘assess some shared aspects of competency, and that each method also assesses some unique aspect of competency.’”<sup>257</sup> How is it possible that an average of “generally above 0.60” is an acceptable correlation when 0.90 is “the minimum level normally considered adequate for high-stakes testing purposes”?<sup>258</sup>

Why would the NCBE insist on scaling the written component scores to the MBE scaled score to achieve reliability when it admits that the written component score is unreliable and there is a low correlation between the written component score and the MBE scaled score? A low correlation between the written component and the MBE scaled score seems to undermine a fundamental premise of the scoring of the bar exam. In fact, a low correlation between exam components should justify ceasing the practice as antithetical to a high-stakes licensing exam. Instead, NCBE supports it and makes “adjustments.” What does it mean to have correlations “adjusted for their less-than-perfect reliability”? Why would it be an acceptable practice for a “high-stakes” licensing exam to make “adjustments”?

Perhaps “reliability adjustments” are what Judith A. Gundersen, NCBE’s prior program director for the MEE and the MPT, relies upon in finding a “correlation above .80” between the MBE scaled score and the written components and calling it “strongly correlated.”<sup>259</sup> “In addition to possible reliability adjustments, the .80 correlation that Ms. Gundersen refers to is a

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<sup>255</sup> BOLE Letter, *supra* note 16 at 16-18.

<sup>256</sup> See Mark A. Albanese, *The Testing Colum, Let the Games Begin: Jurisdiction-Shopping For the Shopaholics (Good Luck With That)*, THE BAR EXAMINER, Sept. 2016, at 52 [hereinafter, “Albanese, *Let the Games Begin*”]. For the July 2015 administration of the UBE, we are informed that “the correlations of the written component score with the MBE scaled score ranged from 0.44 to 0.81 and averaged 0.66 across the 14 UBE jurisdictions.” The February 2016 administration of the UBE showed even weaker correlations, ranging “from 0.51 to 0.67 and averaged .60 across the 17 UBE jurisdictions.” *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> Judith A. Gundersen, *It’s All Relative—MEE and MPT Grading, That Is*, THE BAR EXAMINER, June 2016, at 41. Gundersen claims that “[b]ecause the data have consistently shown across groups and time that the total MBE scaled score is strongly correlated with overall performance on the written components (correlation above .80 when reliability of the two measures is taken into account), we can use MBE performance information as a proxy indicator of the groups’ general ability levels.” Gundersen, former director of test operations, succeeded Erica Moeser as President of the NCBE in 2017. Moeser retired on August 20, 2017, after 23 years as NCBE President and CEO.

correlation of scaled MBE score to scaled written score, and that is a disattenuated correlation (it represents an estimation of the true scores' correlations)."<sup>260</sup>

This reliance on scaled score correlations is not in keeping with NCBE's own past practices in grader training and workshops where Dr. Susan Case, former Director of Testing for the NCBE, presented accurate raw score correlations.<sup>261</sup> According to Dr. Case, "the correlation with the MBE is "0.58 for the MEE" and only "0.38 for the MPT."<sup>262</sup> She explains that "[t]his shows a moderate correlation for . . . the MEE, but a weaker correlation for the MPT, indicating that the MPT is measuring different skills than the MBE, and the MPT skills are less like those measured by the MEE[.]" On the other hand, "[i]f two components measured exactly the same thing, the correlation would be 1.00 (perfectly related)."<sup>263</sup>

In contrast to Dr. Case, who presents raw score correlations by the individual components—0.58 for MBE with MEE and only 0.38 for MBE with MPT—Ms. Gundersen combines the MEE and MPT scores before scaling to the MBE. Still, a more fundamental flaw infects the resulting .80 correlation: it is the fact that Ms. Gundersen's MEE and MPT are 'scaled scores'—scores that result after they[ have] been forced into the same distribution as the MBE, and after estimating what the 'true scores' are (that is, trying to take out the error of measurement inherent in the tests).<sup>264</sup>

"Even so, it is a correlation of only .80. While this appears to be a strong correlation, it is not. It would be strong if it were based on raw scores, uncorrected," but it is not.<sup>265</sup>

Scaling and correlations matter. They relate to exam "validity," a core psychometric concept. An examination needs to be reliable; that is, each year, it must produce the same results despite the change in the individuals who are taking the test. But validity is all about whether the examination is truly testing the knowledge, skills, and values required in practice. Whether or not the examination is testing what it should be testing must be the central starting point for any licensing examination. "The most important psychometric property of any exam is that it be 'valid,' which means that the exam measures whatever it is supposed to measure. An exam that is not valid is not worth much[.]"<sup>266</sup> There are significant national studies now underway as to whether the UBE is reliable. We question whether it is.

A .80 correlation seems to indicate that the MBE and the written component are largely measuring the same construct—the same ability—so this kind of equating of the written to the MBE is fine. It is not. With these disattenuated correlations,

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<sup>260</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 181.

<sup>261</sup> See Susan M. Case, *The Testing Column, Relationships Among Bar Examination Component Scores: Do They Measure Anything Different?*, THE BAR EXAMINER, Aug. 2008, at 31.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 181.

<sup>265</sup> *Id.* at 181-82.

<sup>266</sup> Lynn M. Daggett, *All of the Above: Computerized Exam Scoring of Multiple Choice Items Helps To: (A) Show How Exam Items Worked Technically, (B) Maximize Exam Fairness, (C) Justly Assign Letter Grades, and (D) Provide Feedback on Student Learning*, 57 J. OF LEGAL EDUC. 391, 393 (2007).

for the test to [be] measuring the same thing, the correlation must approach unity (1.0). [Ms. Gundersen's] reported [a] number of .80, even if this were the disattenuated correlation of the raw scores rather than the standard scores, [it] is too low.<sup>267</sup>

Studies indicate cause for concern as to the validity and adequacy of using only multiple-choice items as anchors to equate forms of a mixed-format test:

For mixed-format tests, if the MC and CR [written] portions measure the same construct, in principle we would expect an MC-only anchor . . . to be sufficient to equate the test forms. . . . In the case of an MC-only anchor and a mixed-format test, the anchor can be construct representative of the total test only to the extent that the MC and CR portions measure the same thing (i.e., the test must be unidimensional).<sup>268</sup>

“Further, [w]hen we say the disattenuated correlations must approach unity, that means they must be on the order of .97 - 1.0. A disattenuated correlation of .88 is called ‘much less than unity, casting doubt on the unidimensional[ity] of these mixed-format tests.’”<sup>269</sup> The disattenuated correlation reported by Gundersen is lower yet at .80. The evidence indicates that the bar exam’s written component and the MBE do not measure the same thing, further supporting the claim that equating written to MBE as the anchor may be a deeply flawed technique.

4. *The Low Correlation Between the Written Component and the MBE is Attributable to Differences in the Skills and Knowledge Tested*

It is reasonable to question NCBE’s grading practices: why would components be scaled to each other when they are so different from each other in terms of what is tested? While a low and widely varying correlation between the written and MBE scaled score cause major concern as to the validity of final test scores, it is not the only problem: NCBE reports that there is also a problem with the reliabilities of the individual written component scores for the 14 UBE jurisdictions, since they ranged from “0.62 to 0.82 and averaged 0.73” in July 2015<sup>270</sup> and from “0.48 to 0.77 and averaged 0.72” for the 17 UBE jurisdictions in February 2016.<sup>271</sup> Currently, there are 36 UBE jurisdictions. The natural inference is that they would share the same reliability issue of the written component scores as with the other 14 jurisdictions.

As if these numbers were not sufficiently alarming, Dr. Albanese reports that “[a] bigger problem is that even the highest reliability [of the written component total scores] achieved in

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<sup>267</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 182.

<sup>268</sup> Sooyeon Kim & Michael E. Walker, RESEARCH REPORT ETS RR-11-44, DOES LINKING MIXED-FORMAT TESTS USING A MULTIPLE-CHOICE ANCHOR PRODUCE COMPARABLE RESULTS FOR MALE AND FEMALE SUBGROUPS? 17 (2011) (available at <https://www.ets.org/Media/Research/pdf/RR-11-44.pdf>) [hereinafter, “Kim & Walker, Linking Mixed-Format Tests”].

<sup>269</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 182-83.

<sup>270</sup> Albanese, *Let the Games Begin*, *supra* note 256 at 52.

<sup>271</sup> *Id.*

any [UBE] jurisdiction (0.82) does not reach 0.90, the minimum level normally considered adequate for high-stakes testing purposes.”<sup>272</sup> Nonetheless, Dr. Albanese asserts that scaling the written score to the MBE will account for the “possible variation in grading practices across jurisdictions.”<sup>273</sup> We are assured that “[j]urisdictions that scale the essays to the MBE scores for their jurisdiction, that weight the MBE at least 50%, and that make the pass/fail decision on the total score are assured of a sufficiently high reliability and high decision consistency.”<sup>274</sup> In short, NCBE asks us to accept the premise that it is possible to achieve a reliable final score when it is based in part on an unreliable one and to accept the underlying assumption that the written score is in fact unreliable.

## 5. *The MBE Issue*

The MBE is not the control factor for scoring reliability that NCBE and the BOLE would have us believe. Changes in the number and content of MBE items may affect equating, and just because NCBE says “no” does not make it so.

### (a) *What is the effect of reducing the number of MBE live test items by about 8%?*

NCBE contends that scaling and equating “unreliable” written scores to the MBE assures reliability and relies on the MBE and its “anchor” items for equating purposes.<sup>275</sup> While the MBE has a large population for each exam administration, which would help with the accuracy of equating, changing the number of MBE test items from 190 to 175 items commencing with the February 2017 bar exam must have some effect—even if NCBE denies it. Moeser advised law school deans that while the MBE will consist of only 175 scored items, “MBE scores will continue to be expressed on a 200-point scale. Because MBE scores are equated and scaled, scores will still be comparable to those earned when there were more scored questions.”<sup>276</sup> One need not “be a mathematician to recognize that the effect of one wrong answer is magnified when the number of test items goes down, and that this effect is most pronounced for those near the pass line.”<sup>277</sup>

NCBE’s conclusory, unsupported position that the change in the number of pre-test items will have no positive or negative effect contradicts Dr. Case’s own prior statements regarding the

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<sup>272</sup> *Id.* According to Dr. Albanese, “the reliabilities of the written component total scores for the 14 UBE jurisdictions ranged from 0.62 to 0.82 and averaged 0.73” in July 2015. *Id.* “In February 2016, the reliabilities of the written component total scores for the 17 UBE jurisdictions ranged from 0.48 to 0.77 and averaged 0.72.” *Id.* No basis for calculating these scores is provided, which leads one to question how they are determined.

<sup>273</sup> *Id.*

<sup>274</sup> Susan M. Case, *The Testing Column, Quality Control for Developing and Grading Written Bar Exam Components*, THE BAR EXAMINER, June 2013, at 34, 36.

<sup>275</sup> See generally Erica M. Moeser, *President’s Page*, THE BAR EXAMINER, Dec. 2014.

<sup>276</sup> Memorandum from Erica M. Moeser, President, NCBE, to Law School Deans (at all American Bar Association-accredited law schools) (Aug. 31, 2016) (available at [http://online.wsj.com/public/resources/documents/2016\\_0831\\_moeser\\_memo.pdf](http://online.wsj.com/public/resources/documents/2016_0831_moeser_memo.pdf)).

<sup>277</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 184.

inherent sampling, reliability, and validity issues with respect to written portions of the bar exam and equating to the MBE:<sup>278</sup>

- “[T]he more questions you ask, the higher the reliability.”<sup>279</sup>
- “The broader the content domain, the more questions are required.”<sup>280</sup>
- “If more questions provide greater reliability, it follows that reliability is reduced when fewer questions are used.”<sup>281</sup>

(b) *How many of the 175 scored items are MBE’s “anchor items”?*

The MBE’s anchor items present a separate issue. Anchor items are embedded test questions that have appeared on both previous and the current test form. They are used to compare “the performance of the new group of test takers ... with the performance of prior test takers on those questions. The embedded items are carefully selected to mirror the content of the overall test and to effectively represent a mini-test within a test.”<sup>282</sup> The anchor questions’ content and statistical properties are critical to the equating process, but we don’t know how many of the MBE’s 175 scored items are anchor items and how the change in the number and content of the MBE’s scored items has affected them. However, we do know that the higher the number, the more accurate the equating process. Everything is related: “the accuracy of the equating of the MBE affects the accuracy of the scaled written score because [the NCBE] scales the written [score] to the MBE distribution for the jurisdiction.”<sup>283</sup>

(c) *How has the change in the examinee population affected the equating process?*

The other critical issue with scaling the entire exam concerns the changes in the population taking the MBE when NCBE claims that their standardization process means that a 135 on the MBE last year is the same as a 135 now and a 135 ten years ago.<sup>284</sup> “NCBE’s standardization of the MBE assumes that the population today is the same (in terms of the underlying ability they’re testing) as was the population who originally answered the anchor items they’re using to standardize. To the extent that those two populations differ in that ability

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<sup>278</sup> See Susan M. Case, *The Testing Column, What Everyone Needs To Know About Testing, Whether They Like It Or Not*, THE BAR EXAMINER, June 2012, at 29 [hereinafter, “Case, What Everyone Needs To Know”].

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.* at 29-30.

<sup>282</sup> Moeser, *supra* note 275 at 4.

<sup>283</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 187.

<sup>284</sup> See Case, *What Everyone Needs To Know*, *supra* note 278 at 31. Dr. Case explains that “[s]caling written-component scores to the MBE involves an algebraic process that places the written-component scores on the same scale as the MBE. This process ‘equates’ the written-component scores and assures that the scores mean the same thing across test administrations.” *Id.* Moeser states that “[t]he result is that a scaled score on the MBE this past summer—say 135—is equivalent to a score of 135 on any MBE in the past or in the future.” Moeser, *supra* note 275 at 4.

the standardization becomes unreliable.”<sup>285</sup> And all indicators “point to the fact that the group that sat in July 2014 was less able than the group that sat in July 2013.”<sup>286</sup>

According to Erica Moeser, the recent historic plunges in bar exam pass rates are likely not an aberration but the start of a trend.<sup>287</sup> A convergence of events has changed the world of legal education and law licensure, a situation she terms “the new normal.”<sup>288</sup> According to Moeser, “[i]t is telling that between fall 2012 and fall 2013 the law school entering class that emerged in 2016 was reduced from 43,155 to 39,674. That figure dropped to 37,892 first-year students in the fall of 2014, the class that will graduate in 2017 and test that July.”<sup>289</sup> Today’s bar candidates differ from previous ones for many reasons, not least of which is that they are “less able” because law schools are admitting less qualified students.<sup>290</sup> The determination of “less qualified” is based on entering class data for scores marking the 25th percentile level of the Law School Admission Test (LSAT). The data for the class that entered law school in fall 2015 and will graduate in 2018 are “still discouraging.”<sup>291</sup> Further, Moeser claims that the downward spiral was “not unexpected” in “a period where we can expect to see some decline, until the market for going to law school improves.”<sup>292</sup>

A true vulnerability has thus been exposed: there is no valid way to standardize the test if the current population is not equivalent to past ones. Still, NCBE stands firmly behind the quality of MBE scoring and its equating process—even while pointing “to the fact that the group that sat in July 2014 was less able than the group that sat in July 2013.”<sup>293</sup> Historically, NCBE’s defense to changes in candidate populations is that “[t]he MBE is merely the messenger” and each jurisdiction “sets its own standards for admission.”<sup>294</sup> However, the UBE score is promoted

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<sup>285</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 188.

<sup>286</sup> Memorandum from Erica Moeser, President National Conference of Bar Examiners to Law School Deans on Two Matters (Oct. 23, 2014) [hereinafter, “Moeser, Letter to Law School Deans, Oct. 23, 2014”]. Moeser defended the MBE scores from the July 2014 test administration, and informed law school deans, that “[b]eyond checking and rechecking our equating, we have looked at other indicators to challenge the results. All point to the fact that the group that sat in July 2014 was less able than the group that sat in July 2013.” *Id.*

<sup>287</sup> See Erica M. Moeser, *President’s Page*, THE BAR EXAMINER, Sept. 2015, at 4 (“Over the course of the past year, [last year’s] analysis pointed to the probability that the scores earned in July 2015 would represent the continuation of a downward slide, and that is what we can now confirm. At 139.9, this July’s mean MBE score is the lowest July score since 1988, when it was 139.8.”).

<sup>288</sup> *Id.*

<sup>289</sup> Erica M. Moeser, *President’s Page*, THE BAR EXAMINER, Dec. 2016, at 4

<sup>290</sup> See Moeser, Letter to Law School Deans, Oct. 23, 2014, *supra* note 286.

<sup>291</sup> Moeser, *President’s Page*, THE BAR EXAMINER, March 2016, at 5, 11-12. Although NCBE provides no total number for how many law schools provided data for the charts, the scatterplot analysis indicates that “[m]ost of the schools appear in the lower left quadrant; this quadrant contains schools that have experienced decreases in both the LSAT score at the 25th percentile and their enrollment numbers.” *Id.*; see Paul L. Caron, *Law School Applicants From Top Colleges Increased 1% In 2016 (But Down 48% Since 2010)*, TAXPROF BLOG, March 1, 2017 (“For the first time since 2010, the total number of graduates from the nation’s top universities increased instead of continuing to decline.”).

<sup>292</sup> Natalie Kitroeff, *Bar Exam Scores Drop to Their Lowest Point in Decades: Unprepared Students Can’t Handle a Harder Test*, BLOOMBERG (Sept. 17, 2015), <https://www.bloomberg.com/news/articles/2015-09-17/bar-exam-scores-drop-to-their-lowest-point-in-decades>.

<sup>293</sup> Moeser, Letter to Law School Deans, Oct. 23, 2014, *supra* note 286.

<sup>294</sup> Moeser, *supra* note 287 at 4.

as “portable,” so that it has the same meaning in one UBE jurisdiction as it does in another. When populations differ in ability, NCBE’s standardization and equating process “becomes unreliable.”<sup>295</sup>

(d) *How are varying groups affected by the changes?*

Researchers have raised concern as to whether equating method works equivalently for different subpopulations.<sup>296</sup> In a 2011 study, Kim and Walker “looked at linking mixed-format using a multiple-choice anchor and asked whether it would produce comparable results for men and women. They found that when the correlation between the multiple choice and the written (constructed response items) is relatively low, large differences are seen between groups, and the use of multiple choice anchors is of questionable efficacy.”<sup>297</sup> In a recent empirical study, Dennis P. Saccuzzo and Nancy E. Johnson evaluated the likely outcome, by California ABA law school, of upcoming changes in the California Bar Exam. The results show that law schools will be affected unequally because the weighting of the MBE will be increased and that of the written component will be decreased. The authors sent this research to all of the ABA deans in California informing them that the changes would hurt women and minorities. To the extent that a school’s proportion of women relative to men increases, the school’s pass rate will be differentially affected by the scoring changes in the California bar exam beginning in July 2017.<sup>298</sup>

Data are essential to determine the validity of the equating process. Dr. Nancy Johnson explains that “[t]here are two basic assumptions that must be met in order to get equated scores (assuming [the NCBE uses] a technique called chained equipercentile method): the relationship between the anchor (the subset of MBE items used as the anchor) and the total scores is invariant across populations, and the same thing is true on the new form.”<sup>299</sup> As Dr. Johnson further explains, “[i]f you do not have data on populations (ethnic sub populations, gender, jurisdiction etc.), then you cannot know if those assumptions are met and you therefore do not know if the technique is invariant across populations. Apparently, NCBE doesn’t know.”<sup>300</sup>

But figuring out whether there is bias across groups is a complex thing to do, and you would need to know not just correlations, but also effect sizes—how much did the test takers differ in average proficiency from one administration to the next? We know they differ, because NCBE repeatedly tells us they do. February takers are less proficient than July takers, and recent takers are less proficient than previous takers.<sup>301</sup> Equating tends to be more accurate when those

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<sup>295</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 187-88.

<sup>296</sup> *See id.* at 190.

<sup>297</sup> *Id.*; *see generally* Kim & Walker, *supra* note 268.

<sup>298</sup> *See* Dennis P. Saccuzzo & Nancy E. Johnson, *California’s New Bar Exam Format and ABA’s Proposed 75% Bar Passage Requirement Will Adversely Impact Diversity, Women, and Access to the Legal Profession*, TAXPROF BLOG, (Jan. 30, 2017), <http://taxprof.typepad.com/files/taxprof-blog-op-ed-adverse-impact-on-diversity.pdf> l.

<sup>299</sup> Darrow-Kleinhaus Reply, *supra* note 254 at 191.

<sup>300</sup> *Id.*

<sup>301</sup> *See* Gundersen, *supra* note 259 at 41. As an example of the variation in examinee proficiency, Gundersen states that “in the February administration, examinee proficiency tends to be lower due to a larger proportion of

differences are very small. The magnitude of the error in equating increases as the correlation between two constructs (for example, MBE versus written) decreases, but the error in equating also increases as the group difference increases. “In general, a higher correlation is needed as the group difference increases to achieve adequate equating.”<sup>302</sup>

#### **D. The Loss of Meaningful New York Testing**

There is no longer a New York portion of the bar exam: there is the UBE and the NYLE, which is not a bar exam. Previously, the NYBE was “designed to assess minimum competence” in several subjects, including New York law.<sup>303</sup> The loss of New York testing on the main bar examination, the UBE, was supposed to be made up by the NYLC and NYLE, which were touted to ensure “that applicants for admission in this state have sufficient competence in fundamental legal principles and New York-specific law” and “that new attorneys are competent in general legal principles and important New York distinctions.”<sup>304</sup> Chief Judge Lippman promised that the NYLE would be “thorough and rigorous” to “ensure the integrity of the state’s licensing structure.” His promises have failed. The NYLE was not designed to be rigorous. The BOLE has conceded that the NYLE was initially “overly simplistic,” and even if the BOLE claims it has tried to make the NYLE more challenging, it is nothing more than a low-height speed bump “whereby people . . . get some exposure to fundamental principles of New York law.”

The BOLE admits that the NYLC is “merely to present important New York rules and distinctions, to introduce candidates to the relevant New York statutory scheme, and to provide some additional information important for lawyers seeking to practice in New York . . .,”<sup>305</sup> and that the NYLE is “in the nature of a notice test, to assure that, before becoming licensed in New York, candidates will have been exposed to important principles of New York law and required to demonstrate sufficient knowledge of the material taught in the NYLC.”<sup>306</sup>

Are “notice” and “exposure” to the law the criteria for admission to the bar? What does it mean to be “exposed to the law”? Clearly, it is not the same as “knowing the law.” Is this the new standard for minimum competency to practice law in New York? Can someone become a New York lawyer by having “notice” of and “exposure” to the law? Such concepts fly in the face of the century-old precept that law licensing is meant to protect the public from ignorance, inexperience, and unscrupulousness.

For example, applicants sitting for the NYLC will likely be provided with “notice” and “exposure” to the notice-of-claim requirements in General Municipal Law section 50-e. Is this “notice” and “exposure” sufficient to jar a young lawyer’s memory when multiple tortfeasors cause the client harm, and one of them is a municipal entity? Probably not, and if the young

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repeat test takers. We see this lower performance reflected on the MBE in February and expect to see lower scores on the MEE and MPT as well.” *Id.*

<sup>302</sup> Michael J. Kolen & Won-Chan Lee, CENTER FOR ADVANCED STUDIES IN MEASUREMENT AND ASSESSMENT, *Mixed-Format Tests: Psychometric Properties with a Primary Focus on Equating (Volume 2)* (Dec. 2012).

<sup>303</sup> See Bosse, *supra* note 22 at 26.

<sup>304</sup> ADVISORY COMMITTEE REPORT, *supra* note 15 at 71.

<sup>305</sup> BOLE Letter, *supra* note 16 at 6.

<sup>306</sup> *Id.* at 8-9.

lawyer cannot negotiate this statute, the client's recovery can be compromised. Before the UBE, the notice-of-claim requirements in General Municipal Law section 50-e were taught in New York Practice courses and all bar exam courses. They were tested in essay questions on the New York bar exam. This was more than "notice" and "exposure." A young lawyer would more likely remember these requirements and consult the statute to ensure compliance with them.

The fault with the NYLE is not necessarily that it is an open-book exam. It is simply not designed to assess students' abilities to find relevant law and apply that law in a contextualized setting. And students know it, and do not take it seriously.

Moreover, while we do not doubt the BOLE's good faith, the evidence that the NYLC and NYLE are colossal failures is too significant to ignore. We have repeatedly heard from law school deans, law school faculty, admitted attorneys and from the applicants themselves that the majority of applicants do not take the NYLC or the NYLE seriously. The NYLC and the NYLE are described as a "joke" and a "farce."

We have also heard substantial reports of cheating on the NYLE—despite the BOLE's remonstrations. Applicants have taken the NYLE in groups, sharing their responses to the questions. Though questions are posed in different sequences to different test takers, law students ingenuity has readily overcome this attempt at examination security by such ruses as using double computer screens, taking screen shots, or simply writing down the answers for others to use when they eventually get the questions. When students then complete an affirmation attesting to their honesty, they lie as one of their first steps into the practice of law. We must change the current administration of the exam.

Given the low standards required to complete the NYLC and pass the NYLE (30 correct answers out of 50 questions), it is even more troubling that students resort to cheating. In light of the "more than adequate time allowed for completion," all candidates might be expected to achieve perfect scores. In the most recent administrations, the average score has been approximately 70% and more than 80% of the candidates have passed.<sup>307</sup> Compare this to the 65% pass rate achieved on the July 2019 administration of the UBE in New York.<sup>308</sup> "In light of the minimal knowledge required to successfully complete the NYLC and NYLE, it is reasonable to question whether the UBE regime will further the laudable goal of ensuring that newly-admitted lawyers are 'practice ready' in New York State."<sup>309</sup>

Students are not learning New York law. As rational, goal-oriented actors, students want to learn the information they need to pass the bar examination. The subject matter is almost irrelevant. If the bar examination tested the Hammurabi Code, students would seek to learn it. Many law schools, whose accreditations and rankings focus on bar pass rates, focus their efforts on aiding students to pass the bar rather than preparing them for the practice of law.

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<sup>307</sup> See *id.* at 8.

<sup>308</sup> See Tom McParland, *New York State Bar Exam Pass Rate Edges Upward, to 65% in 2019*, N.Y.L.J. (Oct. 24, 2019), <https://www.law.com/newyorklawjournal/2019/10/24/ny-state-bar-exam-pass-rates-edge-upward-to-65-in-2019/>.

<sup>309</sup> Connors, *supra* note 23.

This phenomenon was recognized by the NYCLA report on the adoption of the UBE. The report pointed to a 2014 Massachusetts Law Review article describing how law schools changed their curricula in response to bar examination changes.<sup>310</sup> Likewise, the MacCrate Report noted that bar examinations influence law schools to develop curricula that overemphasize courses in the subject matter tested by the exam and that law students choose courses in areas tested by the bar exam.<sup>311</sup> In some Michigan law schools, enrollments in no-fault automobile insurance and workers' compensation classes spiked when those subjects were added to the Michigan bar exam.<sup>312</sup>

There is little doubt that in most New York law schools, the UBE is driving the curriculum, just as, prior to its adoption, New York law drove at least parts of the curriculum. Since the UBE, students focus on learning the uniform rules, not on New York specific subjects. With fewer students taking New York law oriented courses, the law schools are constricting or eliminating courses in New York specific subjects. The teaching of New York distinctions in courses such as Torts, Contracts, Evidence, and Criminal Law and Procedure has similarly diminished.

New York subjects have been displaced by material that may prove useless to students once they begin to practice in New York. For example, the UBE tests generic rules relating to Trusts and Estates; students are not taught the EPTL or Surrogate's Court Procedure Act (SCPA), which were both heavily tested on the NYBE. Once in practice in New York, of course, the attorney will have little use for the "law of nowhere" but will need to know the EPTL and SCPA. How does it help the public for a lawyer to be admitted in New York without demonstrating knowledge that is relevant to what that lawyer will be doing to assist a client?

Similarly, professors have less time to focus on important New York distinctions. In key courses such as Family Law, Evidence, Torts, Contracts, and Criminal Law and Procedure, where faculty once taught the governing New York statutes alongside nationally recognized concepts, the need to teach to the UBE (and to the "law of nowhere") has crowded out the New York material. Consequently, students are not building a foundation of New York law throughout their law school experience.

The NYLC and NYLE simply do not supply the necessary foundation for lawyers to practice in New York State. Because they are designed only to give examinees exposure to New York law, the new lawyer barely understands New York law. This weakness has been noted by practitioners and judges across the state. The BOLE acknowledges the need to make the NYLE more difficult, but more is needed. "The practicing bar should be interested in having a licensing requirement that requires a competent lawyer, not one that keeps out the competition."<sup>313</sup>

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<sup>310</sup> See NYCLA REPORT, *supra* note 62 at 11 (citing Andrea A. Curcio et al., *Testing, Diversity, and Merit: A Reply to Dan Subotnik and Others*, 9 U. Mass. L. Rev. 206, 276 (2014)).

<sup>311</sup> See ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR. ASSOCIATION REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 279 (1992).

<sup>312</sup> See Byron D. Cooper, *The Bar Exam and Law Schools*, 80 MICH. B.J. 72, 73 (2001).

<sup>313</sup> Stephanie Francis Ward, *A Better Bar Exam? Law Profs Weigh in on Whether Test Accurately Measures Skills Required for Law Practice*, ABA JOURNAL, (Jan. 8, 2020), <http://www.abajournal.com/web/article/building-a-better-bar-exam>.

The studies conducted by the NCBE did not address the impact of the UBE on the readiness of candidates to practice law in New York or the impact that the UBE has had on New York in general. The responses we received from the BOLE did not address these issues either. Stuningly, the BOLE informed us that the prior NYBE did not actually require candidates to know New York law in order to pass.

We made no concerted effort to test New York distinctions in most doctrinal areas. While we did test specific New York statutes, we did not seek to determine if the particular statute was in accord with prevailing views or any applicable model rule or code. General principles of law were necessarily intertwined with some New York specific rules. *Consequently, a candidate who had no knowledge of New York specific law but who was adequately educated in general principles of law could apply those principles and easily pass the exam. The point to be made is that it is error to assume that the [NYBE] was a test solely of New York law and that the UBE is a test of some unidentified fictional law that is antithetical to New York.*<sup>314</sup>

We disagree. The prior NYBE was not exclusively based on New York law. But the fact is undeniable that the UBE does test “the law of nowhere,” such as the Model Probate Code. Such “fictional law” may or may not have similarities to New York law. The BOLE obfuscates the true question, which is not whether New York should have a bar examination that tests only New York law; it is whether New York should have a bar examination that tests New York law to a degree necessary to ensure that applicants are competent to represent their clients in New York.

The Task Force asked the BOLE whether it had “any views on the desirability of testing New York bar applicants on New York specific subject matter.” The BOLE answered that the general principles of law tested on the UBE and the New York law tested in the fifty multiple-choice questions on the NYLE is sufficient. The BOLE repeated, without any supporting data, “[t]his is because a candidate could pass the prior exam without knowing or demonstrating any specific knowledge of New York law by scoring highly enough on the MBE and MPT and by using general principles to answer the New York essays and the New York multiple choice questions.”<sup>315</sup>

It is a shocking, disturbing statement about the NYBE, that candidates could pass the bar exam, including its five essays and the 50 New York multiple-choice questions, without knowledge of any specific New York law. This revisionist history defies what had long been considered the importance of the “New York Day” precisely because it tested New York law. Candidates attending New York law schools studied New York law in all of the tested subjects and all candidates studied New York law extensively in their bar review courses. While a candidate might have scored well on essays in Property, Contracts, Criminal Law, and Constitutional Law without noting specific New York distinctions, they would not have done so in such New York specific subjects as Business Corporations, Evidence, Family Law, Torts, Trusts and Estates, Wills, Professional Responsibility, New York Civil Practice, Workers’

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<sup>314</sup> BOLE Letter, *supra* note 16 at 4-5 (emphasis added).

<sup>315</sup> *Id.* at 10 (emphasis added).

Compensation, and No-fault Insurance. New York rules are specific in these areas and often differ markedly from other jurisdictions' rules. It strains credulity to believe that mere statements of general principles would be sufficient to answer these questions on anything but the most basic level.

The New York multiple-choice questions tested specific New York statutes and rules of law. A candidate either knew the answer or did not. There was no reasoning your way through these multiple-choice questions by applying general principles of law. They were not testing general principles of law, but specific New York law. To state otherwise now is disingenuous.

In fact, if this were true then we never needed the NYBE. New York could have adopted the MEE years ago and not spent the time and effort to create its own essay questions.

Further, the NYBE would not have been any different from the New Jersey bar exam, which many New York candidates took the day after the NYBE, since New Jersey did not test New Jersey law, but only the multi-state subjects covered on the MBE. Taking the NYBE based merely on bar review preparation in another jurisdiction was a sure way to fail it. Conversely, many students took the New Jersey, Connecticut, or Massachusetts bar exams based merely on taking a New York bar review course.

In brief, we must test New York subject matter to realign the bar exam with its fundamental purpose of protecting clients. We need a bar examination “designed to test knowledge and skills that every lawyer should be able to demonstrate prior to becoming licensed to practice law [in New York].”<sup>316</sup>

The bar examination need not be intentionally pitched to pressure schools to offer courses with a focus on New York practice. New York welcomes and tries to draw lawyers from non-New York schools, and many schools outside New York view New York as a target area. But having no meaningful New York component to the exam is minimizing the New York element of many curricula. Thus, we make what we think is a narrower point, that a renewed focus on New York practice in the exam would have the desirable effect of reinvigorating the teaching of New York Practice in law schools.

#### **E. The Devaluation of New York Law and the Teaching of New York Law**

The adoption of the UBE has led to a devaluation of the importance of New York law, both within and without New York's own law schools.

In recommending the UBE's adoption, the Advisory Committee, based on what it heard from law professors and law school administrators, opined that “to the extent that any curricular changes are necessary, these changes would be minor,” and that “[t]here seems to be no basis for the contention that if the Court of Appeals adopts [the UBE], New York law schools will no longer teach New York law.”<sup>317</sup> That has proven to be spectacularly wrong.

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<sup>316</sup> Cf. *Jurisdictions That Have Adopted the UBE*, NATIONAL CONFERENCE OF BAR EXAMINERS, <http://www.ncbex.org/exams/ube/> (last visited Feb. 9, 2020).

<sup>317</sup> ADVISORY COMMITTEE REPORT, *supra* note 15 at 49.

The overwhelming majority of Deans of New York Law Schools, as well as the law faculty we have heard from, report that the teaching of New York law in their schools has dropped dramatically. While in some of the more elite law schools (e.g., Columbia, New York University) a lack of student interest reduced or eliminated a course in New York Civil Practice before the UBE, there is stronger evidence that after the UBE, a New York Civil Practice course became optional, rather than mandatory, that the course was reduced in credit hours, and that fewer and fewer students have elected to take it. The evidence is also substantial that teaching New York law within a broader course (such as Contracts, Criminal Law, and Trusts and Estates) has diminished due to the need to teach UBE-tested law.

The Advisory Committee suggested that New York law schools would continue to teach New York law in tandem with teaching of general legal principles, motivated by the need to prepare their students for practice here, or at least to prepare them for the online New York test.<sup>318</sup> This suggestion proved wrong. The NYLE does not require law school preparation, as evident from the fact that students from a myriad of law schools that offer no New York courses easily pass it. Further, the UBE incentivizes New York law schools to alter their curricula to teach to the UBE, and it incentivizes students to study those principles that help them pass the UBE. Concerns about actual law practice are more distant.

New York law has been devalued within its own law schools. With enrollments in New York law specific courses dropping like a rock, fewer faculty are needed to teach such courses, and more faculty are needed to teach courses laden with material tested on the UBE. As the “New York law-oriented” faculty matures into retirement, it is likely that their number will decline and the teaching of New York law will become a lost art. While the days of Jack Weinstein and Arthur Miller teaching New York Civil Practice at Columbia are long gone, unless we focus anew on teaching New York law in New York’s law schools, more recent losses, such as that of David Siegel at Albany Law School and Vincent Alexander at St. John’s, will not be replaced. With loss of distinguished faculty well versed in New York law, the learned treatises, practice commentaries, and law review articles that illuminate important New York specific subjects will simply go unwritten.

In urging the adoption of the UBE, the Advisory Committee commented that New York’s well-earned “gold standard reputation” results “not from the difficulty of the bar exam, but from the rigorous demands of practice in New York State.”<sup>319</sup> The unavoidable fact is that law students are not being taught what they need to know to meet those rigorous demands.

#### **F. The Undue Predominance of Multiple-Choice Questions and its Disparities**

We have heard from lawyers, judges, and law faculty that law students and newly-admitted attorneys often lack the writing skills they need to practice law. We believe that part of the reason lies in the UBE’s dependence on multiple-choice questions: the number of them, the weight given to them (as opposed to essays and short answers), and the scaling of the UBE. Because some law schools seek to familiarize their students with the form of test that they will encounter when they take the bar exam, law school exams often mimic the UBE’s structure.

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<sup>318</sup> *Id.* at 49-50.

<sup>319</sup> *Id.* at 52.

Multiple-choice questions test a specific type of skill. To know something is not to be able to express it. That is, “the ability to recognize the applicable legal rule when it presents itself in a structured array [is not] the same skill as the ability to summon it forth from a body of facts. The answer to a multiple-choice question is quite literally on the page; the answer to an essay question is in the student’s mind waiting to be born.”<sup>320</sup>

Answering an essay or a question calling for a short, written answer requires the test taker to contemplate the appropriate answer and then express it clearly and concisely. This is a key skill for lawyers—the knowledge to answer a question and the ability to communicate that answer effectively. The absence of, or lack of weight given to, essay or short answer questions leaves this fundamental ability untested.

Numerous studies find gender differences in performance on multiple-choice and essay exams, and the NCBE study on the Impact of Adoption of the UBE in New York (“the Study”) confirms it. According to the Study, males outperform females on multiple-choice exams while females take the lead on the written portion. Average MBE scores for domestic-educated first-time male candidates were higher than females at each bar exam administration in the Study.<sup>321</sup> Average written scores for domestic-educated first-time female candidates were higher than males in “February 2016 and February 2017 by 0.8 and 1.1 points, respectively. In July, females had higher average written scores in 2015 and 2017 (by 1.1 points) but lower average written scores in 2016 (by 0.75 points).”<sup>322</sup>

It does not appear that the bar examiners considered these differences when they decided to make the NYLE multiple-choice. Nor has anyone questioned the differences based on race/ethnicity; according to the Study, “[a]verage MBE scores differed by racial/ethnic group, particularly for the Caucasian/White group compared to other groups (see Figures 4.2.22 and 4.2.23). The Caucasian/White group had the highest average scores, followed by the Hispanic/Latino group (in all but July 2017) or Asian/Pacific Islander group, and then Black/African American group.”<sup>323</sup> The same differences occurred with respect to average written scores (see Table 4.2.14, Figure 4.2.24, and Figure 4.2.25). “The Caucasian/White group had the highest means, followed by the Hispanic/Latino or Asian/Pacific Islander (in July 2017) groups, and the Black/African American group.”<sup>324</sup> New York, and all states that have local tests using solely multiple-choice questions, set the stage for disparate treatment of females and minorities.

The UBE itself creates this disparity. In assessing the UBE over the prior NYBE, the Study concluded:

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<sup>320</sup> Herbert T. Krimmel, *Dear Professor: Why Do I Ace Essay Exams but Bomb Multiple Choice Ones?*, 63 J. OF LEGAL EDUC. 433, 433 (2014).

<sup>321</sup> See BOLE Study, *supra* note 218 at 133.

<sup>322</sup> *Id.* at 135. The Study found the same difference in performance on the LSAT: “males at each bar exam administration had higher average LSAT scores than females.” *Id.* at 54. These administrations included July 2015, 2016, and 2017 as well as February 2016 and 2017. *Id.* at 53 Table 3.3.3.

<sup>323</sup> *Id.* at 141.

<sup>324</sup> *Id.* at 144.

- “Average MBE scores, written scores, bar exam scores and pass rates tended to differ by groups defined by gender or race/ethnicity.”
- “Males tended to have consistently higher average scores on the MBE than females. Females tended to have slightly higher scores on the written component than males, although this pattern did not always hold.”
- “Differences in performance on the bar exam across groups were observed before and after UBE adoption. These differences tended to be of similar magnitude before and after UBE adoption.”<sup>325</sup>

This is stunning, but for now, we are focusing on the NYLE. The gender and race differential provides a rational basis for inclusion of an essay test instead of or in addition to the multiple-choice exam. If an essay component is added, the multiple-choice component can be reduced from 50 to 30 questions. This would level the playing field to allow females to use their written skills to offset their multiple-choice test-taking skills. A stronger performance on one component could offset a weaker performance on the other.

Other arguments against essay questions will persist, such as the administration costs and the limited number of topics that can be tested by essays. While it takes more time to grade essays than to run a scantron, this should not be the criterion for selecting a test instrument that regulates law licensure.

Moreover, administrative costs did not motivate the move to the UBE/NYLE. In the 2015-2016 state fiscal year, the last year before the UBE, the BOLE spent \$4,897,864, of which \$3,161,181 was for contractual services and \$1,736,683 was for personnel costs. In contrast, in 2018-19, the BOLE spent \$5,183,074, of which \$3,320,910 was for contractual services and \$1,862,164 was for personnel costs. On the other side of the ledger, in 2018-2019, the bar exam fees generated \$6.8 million in revenue, which was deposited into the State’s General Fund. That amount has remained constant over the past several years; the BOLE reported \$6.9 million in bar examination fees in 2015-2016<sup>326</sup>. The dropping of the former New York Day essays had no significant impact on the BOLE’s budget. Even without any increase in the low New York test fee, the bar exam generates a “profit” for the State.

### **G. The Portability Issue**

The most significant argument for the adoption of the UBE was that it would make it easier for prospective attorneys to have career portability. An attorney could seek employment in multiple states without having to take multiple bar examinations. We have studied this question, and we conclude that portability provides only a small benefit to only a minority of test takers.

The BOLE does not permit people to take the UBE in New York unless they intend to practice here. Each candidate must certify that he or she is a bona fide candidate for admission in New York. The BOLE assumes that the “vast majority” of candidates taking the UBE in New

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<sup>325</sup> The Executive Summary, *supra* note 220 at 4.

<sup>326</sup> Appendix B.

York intend to practice here.<sup>327</sup> The Law School Deans unanimously believe that the overwhelming majority of their students remain in New York.

The BOLE has no information on whether candidates actually used their New York UBE score to obtain admission in another UBE jurisdiction. Such information resides with the NCBE, but the NCBE has no information on what law school a candidate attended. On transfers into New York, the BOLE has no information on where candidates attended law schools until applicants demonstrate that they have satisfied New York's educational eligibility requirements.<sup>328</sup>

The BOLE did report that, in 2019, there were 14,200 UBE scores earned in New York. Of these scores, 1,981 were transferred out and 754 transferred in. The 2019 figures are roughly comparable to those in 2018 and 2017.<sup>329</sup> In 2017, there were 14,093 New York UBE scores earned, with 1,373 being transferred out and 517 transferred in.<sup>330</sup>

This is complicated. A person who attends law school in New York may not intend to become a New York attorney, and a person who attends law school outside of New York may intend to become a New York attorney. Of the 685 2019 UBE scores transferred into New York and certified to the Appellate Divisions, only 69 were from graduates of New York law schools and 616 were from out of state law schools.

In other words, the overwhelming majority of New York UBE score earners do not transfer the scores to other UBE jurisdictions. Only those who intend to practice here are permitted to take the test here, and the score is usable only for 3 years. We therefore conclude that no meaningful "portability" benefit enures to most law school graduates who take the bar examination in New York to gain admission here. Thus, the portability issue is relevant only to two subsets of test takers; (1) those who seek to come here to practice within the first 3 years after taking the test; and (2) those who decided, within the first 3 years after the test, to seek to practice in another UBE jurisdiction.

The first subset (UBE test takers who take the exam outside New York and seek to be admitted here) need meaningful knowledge of New York law. They seek admission in New York because that they have decided that, after taking the test in another jurisdiction, they wish to practice law here. For the second subset (New York UBE test takers who decide, within the first 3 years, to practice in another UBE jurisdiction), their knowledge of New York law will benefit them, because they will retain their New York Bar admission. Indeed, to retain their New York Bar admission, they will have to take New York approved CLE classes and pay New York's registration fee.

But most importantly, the majority of New York UBE test takers stay in New York to represent clients here. We are failing to protect the public unless we ensure that these lawyers know New York.

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<sup>327</sup> BOLE Letter, *supra* note 16 at 11.

<sup>328</sup> *See id.* at 13-14.

<sup>329</sup> *Id.* at 14.

<sup>330</sup> *Id.*

Of some interest, among the non-New York law schools that have had the largest number of graduates pass the bar examination in New York, since the adoption of the UBE, there has been a consistent decline in the number of graduates passing the UBE in New York:

<u>SCHOOL</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Harvard	313	288	287
Georgetown	249	227	198
Rutgers/Newark	173	36	27
Seton Hall	142	32	27
U. Pennsylvania	137	139	133
American U.	117	93	50
U. Virginia	113	108	99
U. Michigan	107	124	111
George Washington	106	144	118
Yale	105	128	101
Duke	103	101	88
Northwestern	70	71	68
Emory	67	66	76
Boston U.	66	92	47
U. Chicago	61	55	57
Washington/St. Louis	57	63	32
Boston College	55	83	56
UC/Berkeley	49	47	55
Stanford	44	51	38
Vanderbilt	41	42	43
U. Texas	38	45	40
Howard	35	32	33
U. Miami	35	34	34
William and Mary	32	32	34
New England	31	47	33
Tulane	29	40	49
Vermont	28	32	46
Notre Dame	27	26	30 <sup>331</sup>

#### **H. Foreign Law School Graduates**

The “portability” issue is driven almost entirely by foreign law graduates. The UBE in New York was intended to, and did, primarily benefit the pool of foreign law graduates (especially those who obtain their LL.M.s from New York-based law schools). The number of foreign law school graduates taking the UBE in New York represented 35% of all candidates who sat for the July 2019 test administration.<sup>332</sup> When the number and quality of law school applicants decreased, some law schools made the economic decision to develop and expand

<sup>331</sup> This information was provided by the BOLE.

<sup>332</sup> Press Release, NEW YORK STATE BOARD OF LAW EXAMINERS (Oct. 23, 2019) (available at [https://www.nybarexam.org/press/Press%20Release\\_July2019exam.pdf](https://www.nybarexam.org/press/Press%20Release_July2019exam.pdf)).

LLM programs catering to foreign law school graduates. When some Law Deans speak of the economic boon fostered by the UBE, they are referring to the increasing numbers of foreign students attending their law schools. However, this is not a benefit that is exclusive to New York.

According to information provided by the BOLE, the total number of foreign-educated attorneys sitting for the bar examination in New York increased from 4,601 in 2013 to 5,445 in 2019. Most of these attorneys had both a foreign degree and an LLM (3,547 in 2013 and 4,176 in 2019). However, most of the foreign attorneys with LLM degrees attained them from out-of-state law schools. In 2019, there were 2,879 foreign-educated attorneys with LLMs from out-of-state as compared with 1,297 with in-state LLMs. In 2013, there were 2,487 with out-of-state LLMs and 1,060 with in-state LLMs.<sup>333</sup>

New York's admission policy for foreign law graduates is one of the most favorable such policies in the nation.

Even though the BOLE requires a person who seeks to take the UBE in New York to certify that she intends to practice in New York, many of the foreign law graduates do not intend to. The BOLE has acknowledged that some "foreign-educated candidates . . . seek admission as an employment credential for use in their home or other country."<sup>334</sup>

Foreign law graduates had historically low passage rates on the NYBE, with first-time foreign-educated graduates having a pass rate of 46%, 46%, and 44%, on the July 2012, 2013, and 2014 NYBE, respectively.<sup>335</sup> The UBE changed that. The passing rate for all first-time foreign-educated candidates who sat for the July 2019 examination was 53%;<sup>336</sup> that rate was 50% in 2018<sup>337</sup> and 57% in 2017.<sup>338</sup> Perhaps it is easier for foreign law school graduates to pass a test that focuses solely on general legal principles than one that includes state-specific laws. It also benefits law schools to teach only general legal concepts and not be burdened with any obligation to teach local law.

A foreign law graduate who does not intend to practice law here but views admission to New York as a résumé enhancement has no need to learn New York law, which is practically useless to him or her, just as it useless to teach an attorney who intends to practice in New York the "law of nowhere" instead of New York law. However, it is impossible to distinguish between those admitted attorneys who are truly practicing in New York and those who are not. We have learned that in foreign law firms, attorneys do not rely on advice on New York law given by firm members admitted in New York without making sure that they truly know New

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<sup>333</sup> See BOLE Letter, *supra* note 16 at 13.

<sup>334</sup> *Id.* at 11.

<sup>335</sup> See ADVISORY COMMITTEE REPORT, *supra* note 15 at 52 & n.44.

<sup>336</sup> Press Release, *supra* note 332.

<sup>337</sup> Press Release, NEW YORK STATE BOARD OF LAW EXAMINERS (Oct. 23, 2018) (available at [https://www.nybarexam.org/press/Press%20Release\\_July2018exam.pdf](https://www.nybarexam.org/press/Press%20Release_July2018exam.pdf)).

<sup>338</sup> Press Release, NEW YORK STATE BOARD OF LAW EXAMINERS (Oct. 24, 2017) (available at [https://www.nybarexam.org/press/Press\\_Release\\_July2017.pdf](https://www.nybarexam.org/press/Press_Release_July2017.pdf)).

York law. If it is difficult for attorneys to make this distinction, it is impossible for members of the public.

The UBE's portability does not appear to benefit foreign educated lawyers; it does not appear that many of them use their UBE score to gain admission to another UBE jurisdiction. As above noted, in 2019, only 1,981 UBE New York scores transferred out, whereas 5,445 foreign educated attorneys took the New York UBE. Even if we assume that all 1,981 score transferees out of New York were foreign law graduates (most likely not the case), only about one-quarter of that cohort sought to use their New York UBE score elsewhere.

As of the end of 2019, there were 30,827 attorneys registered with the Office of Court Administration with out-of-country addresses. This contrasts with 184,662 attorneys with New York addresses and 117,326 with out of state addresses.

## **I. Employment and Employers**

We begin our review of this issue by reflecting on the fact that since the Great Recession of this century both law school enrollment and legal employment have declined greatly. Fewer law graduates are being hired than in 2007. While employment rates of recent law school classes have increased, this is because, with smaller class sizes, there are fewer students seeking legal employment.<sup>339</sup>

The advent of the UBE has not, by itself, increased or decreased the number of positions available for new lawyers. Nevertheless, we conclude that the UBE's adoption in New York has negatively affected the employability of new law graduates by New York mid-size and small law firms. We have heard repeatedly that these firms prefer to hire attorneys with experience. A matrimonial lawyer and leader of a large county bar association told us, as did several others, that she cannot teach newly-admitted attorneys about affidavits, return dates, court rules and procedures. It is easier for her to do the work herself and not worry about billing clients for a new law graduate's practical skills education. We have not heard the same about the large elite law firms, prosecutorial agencies, institutional criminal defense providers, or in-house counsel.

The UBE has not affected the number of attorneys employed in New York. The type of bar examination does not increase or decrease the job market. It does, to some degree, change the competition for jobs. Graduates from out of state may compete for jobs in New York, and graduates from New York law schools may compete for out-of-state jobs. This competition does not seem to have changed since the UBE, except that it may be easier for New York educated attorneys to gain admittance elsewhere in the country. It also may be easier for out-of-state attorneys to gain admittance to the New York Bar, but the transfers out appear to be substantially greater than the transfers in.

## **VI. OPTIONS AND RECOMMENDATIONS**

As set forth above, we have identified serious concerns with both the UBE and the NYLE. After a thorough review of the available data and the various recommendations

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<sup>339</sup> See Boise, *supra* note 2.

proposed by experts and stakeholders across the state over our eleven months of study, we recommend the following:

- The NYLE be eliminated;
- Passage of a rigorous examination on New York law should be made a prerequisite to admission to the New York Bar;
- An independent psychometric analysis should be conducted on the grading and scaling of the UBE;
- Pending such analysis, the UBE should be retained to accommodate law graduates, especially foreign law school graduates, who seek admission to American UBE jurisdictions; however, any graduates who seek New York admission should pass a separate, rigorous New York based test. Those who pass the UBE in New York should receive from the BOLE an appropriate certification that they passed.
- While the Multi-State Bar Examination (MBE) and the Multistate Performance Test (MPT) should be re-examined, pending their revision, law graduates who intend to practice only in New York would need to take the MBE and MPT and pass a separate, rigorous New York based test;
- Alternatively, if the UBE continues as it is now, no candidate should be admitted in New York without passing a separate, rigorous New York law-based examination. We acknowledge that this would require an additional day of testing but we cannot endorse perpetuating the current system, which favors a minority of test-takers and disadvantages New York consumers of legal services who do not benefit if we continue to admit attorneys who have not demonstrated any meaningful knowledge of New York law. Furthermore, there are means readily available to mitigate any hardship;
- We urge consideration of a New York Law Certification program that would permit people to forego the bar exam entirely. Under this path, ABA-accredited law schools inside and outside New York would offer courses meeting defined criteria as to New York-law based content. For example, a course on New York Civil Procedure would be entirely credited towards a New York certification, while a course on Evidence could give partial credit if the curriculum contained a specific amount of New York law content. Students have to graduate with a sufficient grade point average in a sufficient number of New York course credits; and
- We also recommend consideration of an experiential learning pilot program, modeled on New Hampshire's Daniel Webster Scholars Honors Program. Students would be permitted to enter the program after their first year of law school and spend their second and third years counseling clients, working with practicing lawyers, conducting depositions, participating in court appearances, negotiating business documents, thus creating a portfolio of work to be assessed every semester.

In reaching these recommendations, we have considered an array of options.

1. *Do Nothing*

One option is to do nothing and leave the current testing regime alone indefinitely. The only apparent advantage to inaction is to benefit foreign law school graduates who can gain admission to New York to use as an employment credential, without having to know anything significant about New York law. The principal disadvantages are the perpetuation of the NYLC and NYLE, which are regarded as a “joke” and a “farce,” and serve only to diminish the seriousness of the admissions process and mislead newly-admitted attorneys regarding the importance of knowledge of New York law while in practice. Keeping the status quo is injurious to the public. The vast majority of law graduates who take the UBE in New York stay in New York to practice. By not requiring them to demonstrate a true working knowledge of New York law, we are failing the public. We are also failing the New York bench and the bar by diminishing the status of New York law, as well as the stature of New York lawyers. By doing nothing we would also continue the perpetuation of disparities in the test against minorities and females.

The Task Force rejected this option.

2. *Eliminate the NYLC and NYLE*

Another option is just to eliminate the NYLC and NYLE. This would eradicate the most troublesome part of the current testing regime, which has little to commend itself on and is widely regarded as ineffectual, at best. However, this option would leave us with no New York component at all and cause us to rely exclusively upon the UBE with its reliability and fairness issues.

The Task Force also rejected this option, which would not help the practice readiness of newly-admitted attorneys.

3. *A More Robust New York Test Component*

In the Task Force’s view, the best option would be to have a true New York bar examination once again.

It is not possible to sever the MEE portion of the UBE and substitute New York questions and remain a UBE jurisdiction. The BOLE touts the UBE because of the portability of the scores.<sup>340</sup> However, only a small number of candidates benefit from portability of scores out of New York, while the public is injured by the admission of attorneys who do not know the New York law relevant to their practice. This also costs candidates jobs in small and mid-sized law firms and necessitates additional CLE courses to learn what they should have learned in law school. The State Bar Association, among other CLE providers, have had to offer basic courses on elemental subjects, such as the structure of the New York court system.

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<sup>340</sup> BOLE Letter, *supra* note 16 at 12.

The BOLE expresses its concern that elimination of a portion of the UBE would compromise the reliability of the test.<sup>341</sup> This, however, is based on an unwarranted assumption—that the UBE is itself reliable. As we report, there are serious issues with the reliability of the UBE and with its perpetuation of disparities against females and minorities.

We can leave the UBE and return to having a more robust New York test component—a new New York bar examination. The UBE’s scaling and scoring practices make a UBE score questionable and therefore may not be an appropriate measure of an individual’s minimum competency to practice law. This is especially problematic when the UBE score is earned in another jurisdiction and then transported to New York. Although Chairwoman Bosse assured the Task Force at our meeting that a passing score earned in any UBE jurisdiction is a reliable test of competency, despite differences in cut scores, because of the validity of the test itself, this is only true if one accepts NCBE’s basic assumption that the MBE controls the uniformity of the candidates’ scores across jurisdictions and over time. This assumption appears to be flawed, as we have discussed.

We have heard numerous suggestions for improving the bar examination so as to make it a better measure of minimum competence to practice law. These suggestions include enhanced use of a case-file approach to testing which is less dependent upon rote memorization and more reflective of the skills required in actual practice. However, the work in this area is ongoing and we cannot recommend at this time what a new bar examination would look like and whether such a new bar examination would include portions prepared by the NCBE or, if New York is dissatisfied with a national revision, would be an entirely New York product.

Pending a redesign of the testing components of the bar exam to ensure that lawyer competency is properly gauged, we should return to a New York law licensing exam which includes a mix of the components—the MBE, New York specific questions, and the MPT—but without relative grading of the written component and without scaling the written score to the MBE score. Relative grading has no place in a licensing test to determine an individual’s minimal competency for the practice of law. Only a criterion-based exam for the New York bar exam would ensure that the result is fundamentally fair because it measures the individual’s performance and not how that individual performed in relation to others.

The UBE as currently administered does not meet the requirements for what has long been the standard for licensure in New York: a reliable assessment of minimum competency to practice law in our State. A UBE score earned in another jurisdiction does not have the same meaning as one earned in New York. Although NCBE claims that all UBE-earned scores are consistent because the UBE is “uniformly administered, graded, and scored by the jurisdiction that adopt it,” the scoring process can result in a different numerical score for the exact same performance depending on where the examinee wrote the test. “The only way for the UBE to be truly portable is to get every jurisdiction to agree to use and pay a centralized scoring service to grade it and standardize it based wholly on a national distribution. That scoring service would, of course, be NCBE.”<sup>342</sup>

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<sup>341</sup> See *id.*

<sup>342</sup> Suzanne Darrow-Kleinhaus, *Testing the UBE: Portable But Inaccurate Bar Exam Scores*, Law 360 (July 26, 2016), <https://www.law360.com/articles/806049/testing-the-ube-portable-but-inaccurate-bar-exam-scores>.

This raises an important question: do we want “centralized control” over the licensing process? Is the next step a national law license? Is this what we want for the state of New York?

While we do not have answers to such questions about the future, we do know what has happened in New York since implementation of the UBE. We know that:

- New York law schools have substantially changed their curriculums to focus on general principles of law, and not New York law;
- Enrollment in New York Civil Practice courses has dropped precipitously, and many law schools have reduced the number of credits in the course or discontinued it entirely, whereas almost all former students at New York law schools had taken this course for generations;
- The BOLE does not know the law schools attended by candidates who transfer scores unless the transferee actually uses the UBE score to obtain admission in New York, nor does the BOLE have any way of knowing if the New York candidate actually uses the UBE score to obtain admission in another jurisdiction;
- The grading leads to a “local” score which is transported to another jurisdiction where that score does not and cannot have the same meaning as the scores earned by the candidates to which the score is transferred; and
- Lawyers who are newly admitted in New York, most of whom stay in New York, lack fundamental practice skills necessary to practice law in New York.

The bar examination in New York is one of the final hurdles to law licensure for most candidates seeking admission to practice law in New York. As conceived and administered, therefore, the bar exam must be a fair and reliable assessment of that candidate’s minimum competency to practice law. Currently, it is our view that UBE and the NYLC and NYLE do not satisfy this basic requirement.

We do not recommend simply returning to the NYBE, which had its own flaws. Rather, we should take the opportunity to design a new New York bar examination, one that better measures the competence of applicants to practice law in New York. Formulating a new examination would also provide New York with the opportunity to assess the potential benefits of including new subjects, not currently tested on the UBE, such as compliance, cybersecurity, and healthcare. In turn, this would allow law schools to focus more on these subjects of increased importance in our rapidly-evolving world.<sup>343</sup> The development of a new New York bar examination may be undertaken in conjunction with on-going national bar exam reform efforts or as an entirely New York enterprise.

The disadvantage to returning to a more New York-oriented examination would be that it would undoubtedly cause some dislocation among law schools and law students in re-adjusting curricular choices. A phase-in period would allow current law students to complete their studies and take the examination that they have been trained to take, while giving the law schools time to make adjustments as new classes enter. The advantages are clear: we would again have a New York examination and we would not be entirely dependent upon the NCBE and a consortium of

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<sup>343</sup> See Boise, *supra* note 2.

other states to reform the examination. The concerns with the NCBE's grading and scaling processes would be mitigated by the presence of a separate New York component. Since the BOLE budget did not change materially from the transition to the UBE, a transition back should not have any meaningful budgetary implications.

#### 4. *UBE and New York Choices*

Another viable alternative, that would minimize disruption occasioned by elimination of the UBE, as well as avoid the loss of "portability" to that minority of individuals who seek to transport their score, is to offer test takers a choice.

To accommodate those law school graduates, and in particular foreign law school graduates, who do not intend to practice in New York, and those law school graduates who wish to gain admission in UBE jurisdictions other than New York, New York could continue to offer the UBE. These students would then have a portable score that they can use elsewhere and could receive a certification from the BOLE that they attained a passing score on the UBE. This would satisfy the demand of these categories of students for a credential, without conveying admission and without the concomitant administrative burden. Admission to the New York Bar would not be forthcoming without passing a true New York-law test. Those who pass only the UBE would be able to utilize their score in other UBE jurisdictions and could be given a certificate attesting to the attainment of knowledge in American law (somewhat equivalent to a Regents diploma upon high school graduation and completion of the Regents examination). These graduates would not be obligated, unless they chose to, to study and take a separate New York examination.

On the other hand, those law school graduates who wish to gain admission in New York could take a New York law licensing exam which includes a mix of the components—the MBE, New York essays, and the MPT—but without relative grading of the written component and without scaling the written score to the MBE score.

This approach would give law graduates the option as to what path they wish to pursue—New York admission or something else. Foreign law graduates and others with no interest in practicing in New York would not be required to study New York law or pass a New York based test. On the other hand, those who are determined to practice in New York would have the option to study New York law and gain admittance here without having to learn the useless "law of nowhere."

The BOLE opined that substituting a New York test for one of the components of the UBE would deprive candidates of portability.<sup>344</sup> However, this assumes that all candidates benefit from portability and, in any event, this downside can be avoided if the candidate is given the option as to which pathway to pursue. The BOLE also told us that "depending on what component part of the UBE was eliminated in favor of the New York test, we could imperil the reliability of the test."<sup>345</sup> The assumption that the UBE, as now constructed, is reliable, appears

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<sup>344</sup> See BOLE Letter, *supra* note 16 at 12.

<sup>345</sup> *Id.*

unwarranted. Moreover, the BOLE formerly administered the MPT and MBE, for several decades, without significant complaint as to reliability.

### 5. *UBE Plus New York Test*

Fifteen of the thirty-six UBE jurisdictions (including New York) presently require completion of a state-law component. The formats vary but are alike in that they include video courses with embedded quizzes and online multiple-choice questions as the test component. They are also alike in that they are consistent in their objective to provide “the best method to serve the public without placing any unnecessary additional burden on applicants.”<sup>346</sup>

It seems that “unnecessary additional burdens on applicants” means the absence of rigor and the absence of essay exams. Not one jurisdiction has chosen an essay format for its state component. According to Missouri’s Board of Law Examiners, the local law essay question option was rejected for several reasons: “the time it would add to the administration of the exam, the increased costs involved, and the fact that it could only test a limited number of topics.”<sup>347</sup>

These reasons reflect the hardship on the state, not the candidate. Apparently, these UBE jurisdictions are satisfied that a few embedded multiple-choice questions on videos and a passing score on a multiple-choice test is sufficient “to assure that newly[-]admitted attorneys are familiar with key distinctions of Maryland law and procedure not tested in the components of the UBE[.]”<sup>348</sup>

Under a UBE-Plus model, students would still be able to take the UBE. A satisfactory score on the UBE will still allow test-takers to use that score to seek admission in any UBE state where they satisfy the state admission requirements. New York will maintain the same cut score of 266 for examinees to seek admission in this state. However, to practice here, there will be additional requirements to ensure a minimum competency in New York law. An individual will need to complete a more thorough and rigorous exam on New York law. If a student was not interested in practicing in New York, the student would not have to take the examination.

A new “New York Examination” would replace the NYLE. Like the current NYLE, the New York Exam could be offered multiple times throughout the year. Candidates will be eligible to sit for the New York Exam any time after their second year of law school, and even after the UBE. There is merit to the idea of staging the bar examination such that components could be taken as the applicant progresses along the path to graduation.

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<sup>346</sup> Jeffrey M. Ward & Lisa Perlen, *Testing Knowledge of Local Law: What Are UBE Jurisdictions Doing?, Development of the Tennessee Law Course*, THE BAR EXAMINER, Fall 2019 (available at <https://thebarexaminer.org/article/fall-2019/testing-knowledge-of-local-law-ube-jurisdictions-part-one/>).

<sup>347</sup> Hon. Cindy L. Martin & Hon. Zel M. Fischer, *The Missouri Educational Component Test*, THE BAR EXAMINER, Sept. 2016, at 38 (available at <https://thebarexaminer.org/wp-content/uploads/PDFs/BE-UBE-JurisdictionSpecific-850316.pdf>).

<sup>348</sup> Jonathan A. Azrael & Jeffrey C. Shipley, *Testing Knowledge of Local Law: What are UBE Jurisdictions Doing? Part One: The Maryland Law Component*, THE BAR EXAMINER, Fall 2019 (available at <https://thebarexaminer.org/article/fall-2019/testing-knowledge-of-local-law-ube-jurisdictions-part-one/>).

We considered the proposal to retain the NYLE but administer it at testing sites. The BOLE rejects the concept of administering the NYLE at test centers. Moreover, this step alone would not address the root of the problem.

To mitigate the gender and race differentials identified with the UBE, the new New York examination should have essays exclusively or essays in addition to the multiple-choice questions. The inclusion of a meaningful essay component would level the playing field to allow females to use their written skills to offset their multiple-choice test-taking skills. The essay and any multiple-choice scores would be added together so a stronger performance on one component could offset a weaker performance on the other.

Still, the other arguments against essay questions will persist, that is, the administration costs and the limited number of topics that can be tested by essays. While it takes more time to read and grade essays than it does to run a scantron, this should not be the criterion for selecting a test instrument that regulates law licensure.

We would suggest four essays for the new examination. Each essay would be 30 minutes in length and cover the topics not covered by the MBE (Contracts and UCC Article 2, Torts, Civil Procedure, Property, Criminal Law and Procedure, Evidence, and Constitutional Law). Instead, the new New York test would test New York Civil Practice, No-fault insurance, Workers' Compensation, Family Law, Professional Ethics, Business Associations, and Trusts and Estates. It is easy to combine a Civil Practice question with Workers' Compensation or No-fault insurance. It is easy as well to combine Professional Ethics with Family Law and Trusts and Estates. The BOLE followed the practice of combining these areas into a single essay for many years in drafting the New York essays.

A single essay might cover three to four issues within that area so that even four essays would test between 16 discrete areas of law. A test of four essays, therefore, might well yield 16 legal issues that includes an identification of the issue, the controlling rule, and an analysis of the relevant facts. This number does not include further breakdowns as would be appropriate on a scoring sheet for rules and facts where there are individual factors, elements, etc. for rules and several relevant facts for an analysis. The final yield of tested items, therefore, would be much greater than just four essays and more like 100-line items.

Candidates could still view the online videos and be exposed to critical New York distinctions in Contracts, Property, Torts, etc., but they would have to really "learn" the law to write the essays. Including thirty multiple-choice questions could test the New York "distinctions" in areas not covered in the essays and test important subjects not currently on the UBE, such as health care, cybersecurity, and data privacy.

Assuming four essays at thirty minutes each and thirty multiple-choice questions at two minutes each, the new exam would take three hours. Even three and a half hours would not create an undue hardship for candidates, but they would have to take it more seriously and actually study for the exam in order to obtain a passing score, thus aligning it more closely with the former "New York Day" of the NYBE.

The New York specific examination could also include performance tests, predicated upon New York law, that measure lawyering skills.

For attorneys who wish to waive into the state after five years of practice in another state, this New York test should also be required. Currently, there is no requirement for these attorneys to demonstrate any knowledge of New York law. A three and a half hour test would be reasonable. Education for it could readily be obtained through law schools and/or bar review courses and obtained on-line.

The adoption of an additional, but rigorous, New York test could obligate a candidate who desires portability and to be admitted in New York to sit for an additional test. We view the protection of the New York public as the paramount concern. That said, as Dean Wegner has reported to us, we should not necessarily be thinking about a test at the end of the last year of law school but about staging different assessments as a student progress through law school. We see no reason why, for example, students could not take the UBE (or some iteration of it) after the second year of law school and use their third year of law school focus on New York specific content, and take a New York-oriented test at the end.

The Advisory Committee argued that imposing a third day of testing, to accommodate a New York specific test, would place a greater burden on New York test-takers than that placed on applicants in other jurisdictions,<sup>349</sup> we believe that the more appropriate inquiry is whether applicants to the New York Bar are qualified to practice here and are treated fairly in relation to each other.

And any hardship can be mitigated. Historically, New York bar candidates took the New Jersey essay component on the Thursday after completing the New York bar examination. We could offer the new New York bar examination either on the Monday before the UBE or on the Thursday following the MBE day. For the candidate not interested in taking the UBE, scheduling the new New York test for Monday would provide an extra day to rest and review before taking the MBE. For the student wishing to take the UBE, taking the written component following the New York day will not be an undue hardship—except for the day of taking the exam.

Taking the UBE will not require additional preparation. A minimum of two out of the six MEE questions will be MBE subjects for which they have already prepared. Further, it is more likely to be three, or even four, MBE subjects, based on the average number of MBE subjects tested on the MEE since 2007. For the remaining subjects where general principles of law are tested, it is possible to answer those questions based on knowledge of New York law and state something that “some jurisdictions, although perhaps a minority rule, apply the following . . .” It should be possible to get passing scores in these subjects by doing exactly what Diane Bosse said could be done in taking the New York Bar Exam—only in this case, it would be true. “General principles” would include the law of a minority jurisdiction. And it could be stated that way.

## 6. *New York Law Certification*

Alternatively, a New York Law Certification would allow individuals to forego a New York bar examination entirely. Under this path, ABA-accredited law schools, both in and out of New York, would offer courses meeting defined criteria that ensure they are focused on New York law or New York practice. For example, a course on New York Civil Practice would be

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<sup>349</sup> ADVISORY COMMITTEE REPORT, *supra* note 15 at 46.

entirely credited towards a New York certification. A course on Evidence could partially be credited to a New York certification if the curricula contains a certain amount of New York content. Students would be required to obtain a specific amount of such New York credits and receive a certain passing grade in order for the law school to certify to the BOLE that that student has obtained the competence necessary to practice law in New York. For out of state law schools, students could obtain the necessary certification either through taking courses during summers at New York law schools or taking courses on-line.

This certification process will also be a more accurate assessment of a student's ability to practice law as it will feature sequential assessments from those with the opportunity to observe the student in a controlled setting. This option will also give students who wish to practice in New York after graduation a reason to more thoroughly focus on New York law throughout their law school enrollment. In return, students who obtain a New York Law Certificate will be more likely to be competent to practice in New York. This would not interfere with students who wish to proceed for admission via the UBE (with or without a New York test).

We offer this recommendation with the expectation that it will have to be built upon to ameliorate the current issues with the bar examination. We acknowledge the necessity of further deliberation concerning the certification process, including whether performance-based testing should be a component.

#### 7. *New York CLEs*

Another option, as the BOLE suggested, would be to simply require newly-admitted attorneys to take a certain number New York-specific CLE courses in order to practice law in the State.<sup>350</sup> A benefit of this option would be that it would give newly-admitted attorneys additional exposure to New York law. However, in practice, these CLE courses would offer the same instruction currently provided by the NYLC—arguably less. Such a requirement would be an increased burden on newly-admitted attorneys without providing much of a return to the State. For instance, it would not help to solve any of the troubling curricula trends away from New York specific law. Without some reliable method of assessment, it would be error to rely on CLEs to safeguard for New York citizens from attorneys who are not competent in New York law. After all, CLEs are supposed to be a continuation of one's legal education, not the beginning of it.

#### 8. *Study and Reform the UBE*

If nothing else, we have seen that there are serious issues with the reliability of the UBE. Having New York as a UBE state was a compelling draw for the NCBE that led a considerable number of other states to adopt the UBE. Because of the large volume of New York test-takers, and the licensing fees paid to the NCBE, New York should have considerable influence with the NCBE. At a minimum, New York should use its influence to compel a serious, and independent, examination of the reliability of the UBE as a bar admission test.

In this regard, we note that in 2018, NCBE appointed a Testing Task Force “charged with undertaking a three-year study to ensure that the bar examination continues to test the

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<sup>350</sup> See BOLE Letter, *supra* note 16 at 26.

knowledge, skills, and abilities required for competent entry-level legal practice in a changing profession.” The study is scheduled to be completed by the end of 2020.<sup>351</sup>

The Testing Task Force is investigating and evaluating the content, format, and delivery of each component of the bar exam. In Phase One of the study, the Testing Task Force met with stakeholders and reported its findings from the listening sessions. Among other things, a new approach is being considered for administration of the bar exam which is referred to as “step testing.” Here, the MBE would be the first step (test of legal knowledge) and could be completed while candidates are still in law school, when it would be closer to when they take core foundational courses. The second step would be taken upon graduation (test of legal skills) which could be an enhanced MPT and/or an essay exam.

There is support for separating the components of the bar exam and presenting them in “steps,” although there are downsides to this option. Still, it is a viable option and will receive significant attention. If it were to be adopted, then the UBE as we know it would be significantly altered. If the time when a candidate takes the MBE is separated from the written component of the exam, then the NCBE can no longer even pretend to claim that the scaling to the MBE is what makes the UBE a reliable, and thus portable, test score.

The question becomes clear: how is a UBE score achieved under these conditions “uniform”? And if it is not “uniform”, then why would New York, or any jurisdiction, accept such a score as a valid and reliable measure of the individual’s minimum competency to practice law in its jurisdiction? Uniform reciprocity rules based on bar passage and a reasonable number of years in practice would make more sense for the protection of the public and the practitioner. Since a UBE score is only “portable” for a limited period of time, jurisdictions could set a similar window for reciprocity.

### 9. *Experiential Learning Pilot Program*

Lastly, whatever the future of the bar exam looks like, New York should consider developing a pilot program that models New Hampshire’s Daniel Webster Scholar Honors Program. This program has been demonstrated to produce truly practice-ready attorneys. Moreover, this option would have the most profound effect on addressing the gender and racial gap in New York’s legal profession.

The admissions criteria for this program should reflect a holistic approach aimed at assessing the full range of an applicant’s education and dedication. That is, the selection criteria will consider each applicant’s qualifications as well as their personal experiences including, but not limited to urban/rural background, education, culture, life/work experience, travel, extra-curricular activities before and during law school, community service, hobbies, and goals for the applicant’s legal career. Special attention should also be given to whether the applicant intends to use his or her law license to practice in New York and whether he or she intends to pursue a career in public service.

This option would produce practice ready graduates, who would have already practiced in counseling clients, working with lawyers, conducting depositions, appearing before judges,

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<sup>351</sup> See *About*, TESTING TASK FORCE, <https://testingtaskforce.org/about/> (last visited Feb. 16, 2020).

negotiating, mediating, and drafting legal documents under the close supervision of a professor or legal mentor. Additionally, it would be a financial asset to law students who could forego the bar examination and get admitted to practice shortly after graduation. If these students wish to obtain a portable score, they would also be able to sit for the UBE to obtain admission in another jurisdiction.

Adopting these recommendations would be a step towards fixing the current problem created by New York's transition to the UBE. To be sure, this is merely the first report to help ensure that the state bar examination is best suited to serve the interests of New Yorkers and protect the gold standard of New York's legal profession. The Task Force will continue to assess developments in this sphere and examine areas of improvement for the current attorney licensing system in New York.

## **VII. CONCLUSION**

It has been our distinct privilege to have had the opportunity to work on this important issue and we hope that this Report will be a catalyst for needed change so that New York again can have a bar examination that meets its fundamental purpose—that the public is protected by assuring that attorneys admitted to practice law in New York have the basic knowledge required to do so successfully.

Dated: March 5, 2020

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<sup>352</sup> The Task Force wishes to acknowledge the contributions made by Eileen Millett, Esq., who was originally a Co-Chair of the Task Force but who resigned from the Task Force shortly after the completion of the public hearings due to a change in her professional affiliation. The Task Force wishes to express its appreciation to Michael McNamara and Andrew Matott for their major contributions to the draft of this Report. The Task Force notes that Court of Appeals Associate Judge Michael Garcia attended several meetings, as did some members of the Court of Appeals non-judicial staff, but they took no part in the preparation of this Report.



# Appendix A



# New York State Board of Law Examiners

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To: Hon. Alan D. Scheinkman, Chair  
NYSBA Task Force on the New York Bar Examination

From: NYS Board of Law Examiners

RE: Response to Questions and Concerns

Date: December 16, 2019

## **INTRODUCTION**

Thank you for the opportunity for the Board of Law Examiners to provide information to the Task Force as it pursues its mission to investigate the impact of New York's adoption of the Uniform Bar Examination (UBE).

In this memo, we will first provide some background information regarding the UBE, including a description of what it is, why it was adopted in New York, and how it compares to the prior New York bar exam. We will similarly describe the New York Law Course (NYLC), and the New York Law Exam (NYLE), and outline the purpose of those components. Where appropriate, we will include a response to some of the comments we heard at the public hearings conducted by the Task Force. We will then respond specifically to the questions posed by Justice Sheinkman in his November 26, 2019 e-mail to Board Chair Diane Bosse. Following that, we will summarize the findings of the recent study conducted by the National Conference of Bar Examiners (NCBE) of the impact of the transition from the prior New York bar exam to the UBE. We will

specifically highlight the findings regarding the performance of various racial and ethnic groups on the two tests. Finally, we will offer some additional observations relevant to the matter under consideration and hopefully helpful to the Task Force as it deliberates on the issues.

### **THE UNIFORM BAR EXAMINATION**

As the Task Force is aware, the UBE is a uniformly administered, graded, and scored bar examination that results in a portable score. Candidates who take the UBE may transfer their scores to seek admission in other UBE jurisdictions within the amount of time determined by the relevant transferee jurisdiction. The UBE has been adopted in 36 jurisdictions as identified on the map attached as Exhibit A.

The UBE consists of three test components – the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT). These components are described in Exhibit B.

The UBE was adopted in New York, effective with the July 2016 administration of the bar exam. The UBE was adopted on the recommendation to the Court of Appeals of the Advisory Committee on the Uniform Bar Examination appointed in November 2014 by then Chief Judge Jonathan Lippman. The work of the Advisory Committee and the reasons for its recommendation are detailed in the Advisory Committee's Final Report, attached as Exhibit C. As summarized in the Executive Summary:

A significant advantage of adopting the UBE is that passage of the test would produce a portable score that could be used by the bar applicant to gain admission in other UBE states, assuming the candidate satisfies any other jurisdiction-specific requirements. This portability is crucial in a legal marketplace that is increasingly mobile and requires more and more attorneys to engage in multi-

jurisdictional practice. An additional benefit of the UBE is that it includes two MPT tasks, as opposed to the one used on the current New York bar exam. These MPT questions, which require applicants to use fundamental lawyering skills to perform a legal task, will help better assess whether applicants possess the skills that are necessary to enter practice.

Exhibit C, at p. 2.

The UBE tests knowledge of general principles of law, legal analysis and reasoning, factual analysis, and communication skills to determine readiness to enter legal practice in any jurisdiction. The questions are created by drafting committees recruited by NCBE. The drafting committees are composed of professors from 30+ law schools and lawyers and judges from around the country who are experts in the subjects tested. External professors and practitioners review the questions for validity and fairness. Measurement experts at NCBE assure that the test is assembled in accord with industry principles applicable to high stakes testing and is psychometrically reliable, reliability being the extent to which a group of examinees would be rank-ordered in the same way over multiple testing sessions. All questions are pre-tested before use, and the jurisdictions using the tests review the MEE and MPT items before they are administered.

The structure of the prior New York bar exam as compared to the UBE is outlined in Exhibit D. The essential difference is that an additional MPT item was added, largely in response to comments received regarding the need for more skills assessment, and the MEE was substituted for the former New York essays. While the New York Multiple Choice portion of the prior New York bar exam was dropped, it was replaced by the NYLE, described below. The MBE and MPT, which accounted for 50% of the prior New

York exam by weight, continue as features of the exam in New York, now accounting for 70% of the test.

The content of the prior New York bar exam as compared to the UBE is detailed in Exhibit E. Notably, the UBE does not test Administrative Law, Professional Responsibility, or New York Civil Practice and Procedure. Those topics are now covered by the NYLE.<sup>1</sup> The UBE tests Federal Civil Procedure, a content area that was dropped from the prior New York bar exam when it was added to the MBE in 2015.

The general principles tested on the UBE are principles taught in New York law schools and in law schools across the country from national casebooks. The concept of testing general principles is not a novel concept. New York has been testing general principles and federal law for 40 years, in its use of the MBE as the anchor of its bar exam. The MBE tests general principles in Contracts, Criminal Law, Real Property, and Torts, and tests federal Constitutional Law, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence. That is unchanged with the adoption of the UBE.

In terms of the specific legal principles tested on the UBE as compared to the prior New York bar exam, it is important to appreciate that, although the Board supported the answers to the multiple choice and essay questions it drafted for the prior New York exam with New York authorities, we made no concerted effort to test New York distinctions in most doctrinal areas. While we did test specific New York statutes, we did not seek to determine if the particular statute was in accord with prevailing views or any applicable model rule or code. General principles of law were necessarily

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<sup>1</sup> Professional Responsibility is also tested on the Multistate Professional Responsibility Examination.

intertwined with some New York specific rules. Consequently, a candidate who had no knowledge of New York specific law but who was adequately educated in general principles of law could apply those principles and easily pass the exam.

The point to be made is that it is error to assume that the prior New York bar exam was a test solely of New York law and that the UBE is a test of some unidentified fictional law that is antithetical to New York. We invite the Task Force to review the MEE questions asked on recent exams and sample candidate answers, which can be found on our website<sup>2</sup> at: <https://www.nybarexam.org/ExamQuestions/ExamQuestions.htm>

### **THE NEW YORK LAW COURSE**

The NYLC is an online, on demand course on important and unique principles of New York law in the subjects of Administrative Law, Business Relationships, Civil Practice and Procedure, Conflict of Laws, Contracts, Criminal Law and Procedure, Evidence, Matrimonial and Family Law, Professional Responsibility, Real Property, Torts and Tort Damages, and Trusts, Wills and Estates. The NYLC consists of approximately 17 hours of recorded lectures, each lecture having embedded questions which must be answered correctly before a candidate may continue viewing the lecture. The Civil Practice and Procedure lectures extend over two hours. A candidate must complete all of the videos before the candidate may register for the NYLE.

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<sup>2</sup> At the Albany public hearing, a comment was made that the Board previously posted essay questions and model answers and no longer does so. The Board never posted model answers, but has for many years posted essay questions and sample candidate answers. That practice has not changed with the adoption of the UBE. MEE questions and sample candidate answers are available on our website, as are summaries of MPT items and sample candidate answers to those items.

A comment was made during the Albany public hearing that these content areas cannot be taught in the number of hours comprising the NYLC. The Board does not disagree. However, it is not the intent of the NYLC to be a full course in the content areas that are included. Rather, the intent is merely to present important New York rules and distinctions, to introduce candidates to the relevant New York statutory scheme, and to provide some additional information important for lawyers seeking to practice in New York. For example, information is provided on the structure of the New York courts, together with a listing of the counties in each judicial department and a map of the judicial districts. A glossary of state statutes is included. Important information on attorney registration, CLE and other licensing requirements, pro bono obligations, and the Lawyers Assistance Program is provided. These matters, critical for new lawyers to know, would not have been taught in a traditional bar review course or tested on the prior bar exam.

The Course Materials for the NYLC, currently 158 pages in length, are posted on the Board's website and are available to all at no charge. They are constantly being revised and updated versions are posted at appropriate intervals, the most recent version being September 2019. The Course Materials are attached as Exhibit F and may be found at: <https://www.nybarexam.org/Content/NewYorkCourseMaterials.pdf>

The lecturers are 18 volunteer judges, professors and practitioners, all experts in their subject matters. The roster of lecturers is attached as Exhibit G and may be found on our website at:

[https://www.nybarexam.org/Content/NYLC\\_Faculty\\_ListandFaculty\\_Bios.pdf](https://www.nybarexam.org/Content/NYLC_Faculty_ListandFaculty_Bios.pdf).

In order to keep the course current and to reflect changes in the law since the original iteration of the NYLC, several of the lectures were redone, and the new version of the course was presented as of spring 2019.

The Board is aware that there have been abuses by candidates, and we have been vigilant in addressing them. The Board has promulgated rules requiring that candidates comply with all instructions for the course and that they must view each lecture in its entirety and at its normal speed. Advancing or speeding up the video by any means is strictly prohibited, as is attempting to watch more than one video at one time. Candidates are constantly reminded of these prohibitions and the penalties for violation as they take the course. The time candidates spend viewing each video segment is audited by the Board, and the Board institutes misconduct charges and imposes penalties on candidates who violate those rules. When a candidate is charged with a violation, the candidate is automatically withdrawn from taking any NYLE for which the candidate has applied. If the candidate is found guilty, the penalties imposed include requiring the candidate to re-watch the NYLC in its entirety, notifying the Appellate Division for consideration of the violation by the Character and Fitness Committee, and, depending on the severity of the violation, prohibiting the candidate from taking one or more administrations of the NYLE.

### **THE NEW YORK LAW EXAM**

The NYLE is a 50 item, two-hour, open book, multiple choice test administered online four times per year. Candidates have two hours to complete it, except that candidates may be granted extended time by reason of disabilities. Candidates are permitted to have access to the Course Materials and their notes during the exam. All

of the material tested on the NYLE is in the Course Materials or in the videos. The order of the questions is scrambled so that candidates receive the questions in different orders. No backward navigation is allowed, so once a candidate has navigated to the next question, the candidate may not return to the prior question. Consequently, if a group of candidates take the NYLE together, they cannot be of much assistance to each other. The Course Materials posted on the Board's website are not a computer-searchable version, and electronically searching the Course Materials while taking the NYLE by using a searchable version of the Course Materials is prohibited. The passing score on the NYLE is 60% (a candidate must answer 30 out of the 50 items correctly). A candidate who fails the NYLE is required to retake both the NYLC and the NYLE.

The NYLE is intended both as a motivation for candidates to pay attention to the NYLC lectures while thoroughly reviewing the Course Materials and as a continuation of the learning process by having them utilize the Course Materials to answer specific questions. Because the NYLE is an open book test with more than adequate time allowed for completion, it might be expected that all candidates would achieve near perfect scores. However, in the most recent administrations, the average score has been approximately 70% and almost 20% of the candidates have actually failed.

Statements made during the public hearings conducted by the Task Force indicated skepticism regarding the NYLE. Some of the negative views of the NYLE may be a function of a misunderstanding of its nature and purpose. If it is the view of the Task Force that the NYLE should be akin to the former New York bar exam, we will come up short every time. This test is not intended to mimic a true bar exam. It is in the nature of a notice test, to assure that, before becoming licensed in New York,

candidates will have been exposed to important principles of New York law and required to demonstrate sufficient knowledge of the material taught in the NYLC. It is not intended to be a high stakes test or to establish a significant hurdle to admission. As the Advisory Committee explained in its Final Report:

The Committee stresses that the purpose of [the NYLC and the NYLE] is to ensure that applicants are sufficiently versed in New York law and to provide them with opportunities to learn the intricacies of New York law, not to erect unnecessary or unduly burdensome protectionist barriers.

At p. 3-4.

The Board recognizes that in striving to comply with the Advisory Committee's direction that the NYLE not be "unduly burdensome," we may have prepared some questions for the initial versions of the NYLE which were overly simplistic. The Board has modified the questions to require more analysis and to require, in some instances, synthesis of two or more sections of the Course Materials. We track performance of every question individually and every exam as a whole, and we are seeing results that indicate the exam has become more challenging overall, while success remains attainable for candidates who diligently prepare by attending to the NYLC and studying the Course Materials.

### **QUESTIONS AND CONCERNS OF THE TASK FORCE**

With that introduction, we turn to answering the questions posed by Justice Scheinkman in his e-mail to Board Chair Diane Bosse of November 26, 2019. We will repeat each question for ease of reference.

1. Do you have any views on the desirability of testing New York bar applicants on New York specific subject matter?

Answer: First, we do test New York bar applicants on New York specific subject matter, both to the extent that New York law aligns with general principles tested on the UBE and additionally on the NYLE. To that extent, we do think such testing is desirable. Second, if the question is directed to whether or not we believe that New York law should again be tested as it was on the prior New York bar exam, we believe that the current scheme may more effectively test specific distinctions and unique and important New York rules than did the prior New York bar exam. This is because a candidate could pass the prior exam without knowing or demonstrating any specific knowledge of New York law by scoring highly enough on the MBE and MPT and by using general principles to answer the New York essays and the New York multiple choice questions. The NYLE requires demonstration of knowledge on a sampling of the New York specific law taught in the NYLC. The current scheme requires independent demonstrations of knowledge of general principles and unique New York rules. Finally, we do not believe that any return to traditional testing of New York law would impact the concerns raised by the Task Force regarding the preparedness of lawyers to practice in New York, as further discussed below.

2. In light of the experience to date, do you believe that the current New York Law Exam should be continued in its present form and as presently administered or should it be eliminated entirely or modified in some way?

Answer: At the present time, the Board believes that the NYLE should continue in its present form and as presently administered. We believe that having an open book test for a test of this nature contributes to the learning process and more closely represents what lawyers do in practice – they look it up.

Because this test is not intended to be a high stakes test or barrier to admission, offering the test four times per year, as recommended by the Advisory Committee and adopted by the Court of Appeals, is appropriate. Continuing the test on-line is the only feasible way it can be administered. This test is routinely taken by thousands of people all over the world. The burden and expense of offering the test in an on-site proctored format is both administratively and economically infeasible.

3. Would it be feasible to create an option whereby NY test takers who wish to practice elsewhere would take only the UBE and those test takers who wish to be admitted in New York would take either (i) the UBE plus an additional NY test to be administered on a third day (either half or whole); or (ii) an additional NY test to be administered in lieu of some portion of the UBE?

Answer: The Board does not permit candidates who are not seeking admission in New York to sit for the bar exam here. Every candidate taking the UBE in New York is required to certify that they are a bona fide candidate for admission in New York. We assume that the vast majority of candidates sitting for the UBE in New York intend to practice here. There are some test-takers who do not intend to practice in New York, primarily foreign-educated candidates who seek admission as an employment credential for use in their home or other country. There is no benefit to establishing a separate administration of the UBE for them, separate from the test administered to applicants intending to practice in New York. Moreover, it would create scaling issues, that would be difficult to overcome.

The idea of having a test of New York law on a third day following the UBE was considered and soundly rejected by the Advisory Committee. That would put New York

UBE-takers at a significant disadvantage to UBE-takers in other jurisdictions because they would be required to prepare for an additional test while simultaneously preparing for the UBE. Furthermore, a third day of testing would create an administrative burden and additional cost that would not justify the effort.

The question appears to assume that most test-takers in New York who intend to practice here do not intend to seek admission in another jurisdiction. For many years prior to the time New York adopted the UBE, followed later by New Jersey and Massachusetts, we had many candidates who would transfer their MBE scores between New York and those other jurisdictions. Candidates would then take the state day of the exam in each jurisdiction in order to seek multiple admissions. We assume many of the score transfers discussed below are transfers that would have been MBE score transfers under the prior scheme, and many more will seek transfer before the score achieved on the UBE expires. The difference is those candidates no longer have the burden and expense of taking another bar exam.

We cannot substitute a New York test for some component of the UBE and remain a UBE jurisdiction with the benefits it offers to candidates taking the test today. It would deprive candidates of the portability of their scores. Moreover, depending on what component part of the UBE was eliminated in favor of the New York test, we could imperil the reliability of the test. We would strongly urge against such a proposal.

4. Can you provide information as to the number of foreign law graduates who have taken the test in New York just before and then after the adoption of the UBE and if so, provide information as to the number of such graduates who attended programs at New York-based law schools?

Answer: See chart below. Note the shaded areas represent tests administered after the adoption of the UBE.

	All Foreign-Educated			Foreign Degree Only [common law graduates]			Foreign Degree and LLM Degree			LLM from New York School			LLM from Out of State School		
	Feb Exam	July Exam	Feb & July Combined	Feb Exam	July Exam	Feb & July Combined	Feb Exam	July Exam	Feb & July Combined	Feb Exam	July Exam	Feb & July Combined	Feb Exam	July Exam	Feb & July Combined
<b>2013</b>	1620	2981	4601	449	605	1054	1171	2376	3547	348	712	1060	823	1664	2487
<b>2014</b>	1761	3052	4813	520	650	1170	1241	2402	3643	337	716	1053	904	1686	2590
<b>2015</b>	1600	3154	4754	457	598	1055	1143	2556	3699	306	745	1051	837	1811	2648
<b>2016</b>	1848	3005	4853	539	612	1151	1309	2393	3702	372	693	1065	937	1700	2637
<b>2017</b>	1792	3156	4948	521	661	1182	1271	2495	3766	372	792	1164	899	1703	2602
<b>2018</b>	1632	3232	4864	499	584	1083	1133	2648	3781	355	788	1143	778	1860	2638
<b>2019</b>	1885	3560	5445	545	724	1269	1340	2836	4176	412	885	1297	928	1951	2879

5. Do you have information as to the number of New York law school graduates who have used the UBE to gain admission elsewhere, for each year since the adoption of the UBE?

6. Do you have information as to the number of graduates of non-New York law schools who have used the UBE to gain admission in New York, for each year since the adoption of the UBE?

We take these Questions together as the Answers to both of these questions, to the extent available, are contained in the chart below.

Answer to Question 5: The chart below shows, among other data, by year, the number of UBE scores earned in New York that were transferred to other jurisdictions. We have no way of knowing if the candidate actually used the score to obtain admission in the transferee jurisdiction. All UBE score transfers are handled by NCBE, and NCBE has no information as to the law school attended by the candidate.

We have no knowledge of whose scores are being transferred out, so we have no way of knowing how many of those candidates are graduates of New York law schools.

It should be noted that many of the scores transferred out were likely earned by candidates who are intending to practice in New York, but because of job requirements or opportunities, also seek admission in another state, such as New Jersey.

Answer to Question 6: The chart below shows, among other data, by year, the number of UBE scores transferred into New York. NCBE transfers the UBE scores to us upon request, but candidates must then apply to the Board for admission by examination by transferred UBE score. Accordingly, the chart below shows more scores transferred into New York than candidates certified to the Appellate Division for admission. Also, as noted above, NCBE does not know the law schools attended by the candidates for whom they transfer scores, and we do not have that information until the candidate files an application with us demonstrating that the candidate satisfies New York’s educational eligibility requirements.

<b>UBE Score Transfers In and Out of New York</b>							
Jurisdiction	Year	UBE Scores Earned in NY	UBE Scores Transferred OUT	UBE Scores Transferred IN	UBE Score Transfers Into NY Certified by BOLE to AD	Graduates of NY Law Schools	Graduates of Out of State Law Schools
NY	2019	14,200	1981	754	685	69	616
NY	2018	13,438	1,663	747	664	79	585
NY	2017	14,093	1,373	517	457	61	396
NY	2016 (July only)	10,297	526	270	255	59	196
<b>NY Total</b>		<b>52,028</b>	<b>5,543</b>	<b>2,288</b>	<b>2061</b>	<b>268</b>	<b>1793</b>

7. Do you have a view as to whether attorneys who wish to gain admission in New York on the basis of reciprocity should be required to take a New York specific test as a condition of admission?

Answer: The Board does not have a position on this.

8. It has been pointed out that a candidate who completed the same UBE exam in two different jurisdictions could receive different scores because of variations in the strength of the pools of other test takers. Do you agree that such could occur and, if you agree that this could occur, is it a matter of concern? To this point, is it possible to provide an explanation of the manner in which raw scores are adjusted based on the state in which test-takers are seated? Is it possible to chart for a recent testing date or dates that shows how several sample raw scores would have been converted to respective final scores in NY and in other jurisdictions in which the examination was given. The concern being articulated is whether it is possible to see empirical results so that we can analyze possible manipulation by test-takers under the current system and otherwise address fairness concerns that have been expressed by some.

Answer: We understand this question to inquire whether a candidate might get an advantage depending on in what jurisdiction the candidate sat for the UBE. The idea of forum-shopping to take the bar exam is complicated. First, presumably the candidate would get the same MBE score in whatever jurisdiction the test was taken, so it is the written score that might vary. Scores on the written portion of the test are scaled to the MBE scores achieved in that same jurisdiction. That means the written scores are placed on a scale with the same mean and standard deviation as the MBE scores. Thus, while a candidate might score better on the written portion of the test

than other test-takers in a lower-performing jurisdiction, the candidate's written score would be put on that lower jurisdiction's MBE scale, compromising the intended advantage. While it is a theoretical possibility that a candidate might receive different scores in two different UBE jurisdictions, figuring out which jurisdiction might offer the candidate an advantage is so complex that the possibility of this occurring is no basis for concern.

We refer you to an article that appeared in *The Bar Examiner* (a publication of the NCBE) in September 2016 addressing this issue. The article, authored by Mark A. Albanese, Ph.D., NCBE Director of Testing and Research and Professor Emeritus, U. Wisconsin-Madison, is entitled *The Testing Column Let the Games Begin: Jurisdiction-Shopping for the Shopaholics (Good Luck With That)*. It is attached as Exhibit H.

As to how raw scores are adjusted based on the state in which the test-takers are seated, we have pasted in below an answer provided by the NCBE Testing and Research Department Staff Members to the question of what is essay scaling. This is taken from *The Testing Column: Q&A: NCBE Testing and Research Department Staff Members Answer Your Questions*, By Mark A. Albanese, Ph.D., et al, Winter 2017-2018 (Vol. 86, No. 4).<sup>3</sup>

As with MBE items, the written components of the bar exam (essay questions and performance test items) change with every administration. The difficulty of the questions/items, the proficiency of the group of examinees taking the exam, and the graders (and the stringency with which they grade) may also change. All three of these variables can affect the grades assigned by graders to examinees' responses to these written components of the exam and

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<sup>3</sup> Found online at: <https://thebarexaminer.org/article/winter-2017-2018/the-testing-column-ga-ncbe-testing-and-research-department-staff-members-answer-your-questions/>. Site last visited on December 11, 2019.

can have the potential to cause variation in the level of performance the grades represent across administrations. Unlike the MBE, the answers to the written questions/items of the bar examination cannot be equated, because previously used questions/items can't be reused or embedded in a current exam—there are too few written questions/items on the exam and they are too memorable. If essay questions or performance test items were reused, any examinee who had seen them on a previous administration would be very likely to have an unfair advantage over examinees who had not seen them previously.

Because directly equating the written components is not possible, most jurisdictions use an indirect process referred to as *scaling the written component to the MBE*. This process has graders assign grades to each question/item using the grading scale employed in their particular jurisdiction (e.g., 1 to 6). The individual grades on each written question/item are typically combined into a raw written score for each examinee. These raw written scores are then statistically adjusted so that collectively they have the same mean and standard deviation as do the scaled scores on the MBE in the jurisdiction. (*Standard deviation* is the measure of the spread of scores—that is, the average deviation of scores from the mean. The term *scaled score* refers to the score as it has been applied to the scale used for the test—in the case of the MBE, the 200-point MBE scale.)

Conceptually, this process is similar to listing MBE scaled scores in order from best to worst and then listing raw written scores in order from best to worst to generate a rank-ordering of MBE scores and written scores. The best written score assumes the value of the best MBE score; the second-best written score is set to the second-best MBE score, and so on. Functionally, the process yields a distribution of scaled written scores that is the same as the jurisdiction's distribution of the equated MBE scaled scores. Another way to think about the process is that the raw written scores are used to measure how far each examinee's written performance is from the group's average written performance, and then the information from the distribution of the group's MBE scores is used to determine what "scaled" values should be associated with those distances from the average.

This conversion process leaves intact the important rank-ordering decisions made by graders, and it adjusts them so that they align with the MBE scaled score distribution. Because the MBE scaled scores have been equated, converting the written scores to the MBE scale takes advantage of the MBE equating process to indirectly equate the written scores. The justification for scaling the written scores to the MBE has been anchored on the facts that the content

and concepts assessed on the MBE and written components are aligned and performance on the MBE and the written components is strongly correlated. The added benefit of having scores of both the MBE and the written component on the same score scale is that it simplifies combining the two when calculating the total bar examination score. In the end, the result of scaling (like equating) is that the scores represent the same level of performance regardless of the administration in which they were earned.

We are not able to provide you with the chart you requested showing the raw score conversions to final scores in New York and other jurisdictions. We do not have raw score data for other jurisdictions to make the comparison you request. Moreover, given the stated intent to analyze possible manipulation by test-takers, we do not believe any such chart would enable such an analysis. The problem is that when a candidate goes to another jurisdiction and takes the test, the performance is judged in that context – meaning the written performance is evaluated with the specific group of papers produced for that exam. It can't be assumed that the written score achieved on one exam would be the same as a written score achieved on another. It would be mere speculation to assume that a written score would increase by a given amount because of the perceived ability of the population with which the test was taken.

**STUDY OF THE IMPACT OF THE TRANSITION TO THE UBE  
FROM THE FORMER NEW YORK BAR EXAM**

On August 20, 2019, the Court of Appeals released the report of a three-year study on the impact of the transition from the former New York bar exam to the UBE. In its April 2015 report, the Advisory Committee on the UBE recommended that the Court explore whether adopting the UBE would have an adverse impact on bar passage rates overall or affect differences in passing rates among various test-taker subpopulations. The study concluded that there was a small, at most, and generally positive impact on

the performance of candidates taking the bar exam, overall and grouped by race, ethnicity, and gender.

Researchers at the NCBE conducted the study at the request of the Board of Law Examiners. Performance on the bar exam was analyzed in comparison to other metrics, including undergraduate grade point average (UGPA), Law School Admission Test (LSAT) scores, and law school grade point average (LGPA). The study looked at bar passage rates overall and by race, ethnicity and gender on the former exam, comparing them with the bar passage rates for various groups on the UBE.

Candidates sitting for the bar exam in New York are traditionally diverse in many respects. First, there are 203 ABA-approved law schools granting a J.D. degree in the United States, 15 of which are located in New York. Typically, one-third of the candidates taking the bar exam in New York are graduates of the New York law schools, and one-third are J.D. graduates of ABA-approved law schools outside of New York. The study refers to those candidates as “domestic-educated”. Most years, the number of law schools represented in the cohort taking the bar exam in New York is 190 or more. The other one-third of candidates sitting for the bar exam in New York are foreign-educated candidates who qualify to take the bar exam based upon their foreign education alone or their foreign education as supplemented by an LL.M. degree obtained at an ABA-approved law school in the United States. Each year, candidates from over 100 countries take the bar exam in New York. In addition to the source of their education, the candidate pool taking the New York bar exam is racially and ethnically diverse.

The study looked at the performance of all groups of candidates, first-time and repeat takers, domestic and foreign-educated, and by subgroups based on gender, race, and ethnicity. It also looked closely at the cohort of domestic-educated first-time takers, with the data as to the July test-takers deemed most reliable. The study included two former New York bar exams (July 2015 and February 2016) and three administrations of the UBE (July 2016, February 2017, and July 2017). Based on New York's passing score of 266, overall, mean scores and passing rates increased after the adoption of the UBE, which was effective with the July 2016 exam. The results for the February and July exams for all candidates, including first-time and repeat takers, and both domestic-educated and foreign-educated candidates, were as follows:

<b>FEBRUARY EXAMS</b>	<b>MEAN SCORE (266 REQUIRED TO PASS)</b>	<b>PASSING RATE</b>
<b>FEBRUARY 2016 - (PRE-UBE)</b>	258	40.5%
<b>FEBRUARY 2017 - (UBE)</b>	261	43.8%
<b>JULY EXAMS</b>	<b>MEAN SCORE (266 REQUIRED TO PASS)</b>	<b>PASSING RATE</b>
<b>JULY 2015 - (PRE-UBE)</b>	274	60.8%
<b>JULY 2016 - (UBE)</b>	277	63.9%
<b>JULY 2017 - (UBE)</b>	282	68.5%

This improved performance holds for domestic-educated candidates taking the bar exam for the first time:

<b>FEBRUARY EXAMS</b>	<b>MEAN SCORE (266 REQUIRED TO PASS)</b>	<b>PASSING RATE</b>
<b>FEBRUARY 2016 - (PRE-UBE)</b>	277	67.1%
<b>FEBRUARY 2017 - (UBE)</b>	281	70.5%
<b>JULY EXAMS</b>	<b>MEAN SCORE (266 REQUIRED TO PASS)</b>	<b>PASSING RATE</b>
<b>JULY 2015 - (PRE-UBE)</b>	288	79.3%
<b>JULY 2016 - (UBE)</b>	293	82.8%
<b>JULY 2017 - (UBE)</b>	297	86.0%

Notably, the performance of candidates over the course of the study was generally comparable or showed improvement for all gender, racial, and ethnic groups. The increases seen in mean bar exam scores and passing rates, as well as differences in performance by gender and racial and ethnic groups were generally, but not exclusively, found to be attributable to differences in the metrics considered in the study, including UGPA, LSAT scores and LGPA. Other factors noted by the study as possibly affecting performance include differences in law school experiences and in how candidates prepared for the bar exam, as well as changes in the population taking the bar exam in New York given the portability of UBE scores.

Other important findings in the study relate to the correlation of UGPA, LSAT scores, and LGPA with bar exam performance, the relative performance of subgroups on different parts of the test, and the persistence of candidates in re-taking the exam.

The results of the study are presented in a comprehensive report which, along with its executive summary and appendices, is available on the website of the State Board of Law Examiners at: <https://www.nybarexam.org/UBEReport.html>

## **FURTHER THOUGHTS AND OBSERVATIONS**

### **Passing Score**

One of the concerns expressed in the public hearings was the variation in passing scores on the UBE in the jurisdictions administering the test. Establishing the passing score for the test is a task left to the jurisdictions that administer it. Obviously, NCBE has no authority to impose a passing score.

New York's passing score did not change with the adoption of the UBE. It remained at a 133 MBE scaled score equivalent. The only difference is that on the prior New York bar exam, scores were multiplied by five, setting a passing score of 665; now MBE and written scores are weighted at 50% each and added together to determine the score, with the passing score now set at 266 or twice the MBE scaled score of 133.

New York's passing score is among the lowest of the UBE jurisdictions, as can be seen from the attached map, Exhibit I. Twenty of the 36 UBE jurisdictions have established passing scores above New York's score of 266. Ten jurisdictions have the same score as New York, and five have a lower score. A score is portable and relieves the candidate from taking an additional bar exam provided the score achieved meets the minimum passing score in the jurisdiction to which admission is sought.

We heard comments in the public hearings questioning the fairness of UBE scores given that each state may select its own passing score. The concern expressed

was a concern that reliability of scores was somehow compromised because a different score was required to pass in different jurisdictions. The issue of reliability has no relationship to the passing score. Reliability relates to the reproducibility of scores, not to whether the score is a passing one. The score achieved by a candidate on the test is a reliable score, wherever it is achieved, based on the psychometric properties of the test itself. But whether or not it is sufficient for admission is a state-by-state decision that has no bearing on reliability.

In this context, we heard comments questioning the fairness of the exam due to “curving” of scores. How the scaling process works is described above. Scaling relates to putting written scores onto a distribution with the same mean and standard deviation as the MBE scores of a given group of test-takers. Scaled scores are not “curved,” and no part of the UBE is “curved.” We understand that term to relate to, for example, in a law school class where it is pre-determined that a certain percentage of students will get a given grade. No such process is undertaken in scoring the bar exam.

#### “Practice-ready” lawyers

We heard several complaints in the public hearings suggesting that new lawyers are no longer “practice-ready,” however that term is defined. It is a false premise that passing the former New York bar exam demonstrated practice-readiness, while passing the UBE and the NYLE does not so demonstrate. Preparedness to practice is not a function of what bar exam a person took, nor is the purpose of the bar exam to assure practice-readiness. Preparedness to practice develops on a continuum beginning with a sound program of legal education, consisting of training in doctrinal law and legal skills, followed by on-the-job training and continuing legal education.

Law schools have always taught legal principles and have strived to teach law students how to think like lawyers. Whether or not they have taught the specific skills needed to be “practice-ready” or would even view that as their function is debatable. The American Bar Association Standards for Approval of Law Schools now require that law schools offer a curriculum that requires each student to satisfactorily complete at least one or more experiential course(s) totaling at least six credit hours [Standard 303(a)(3)]. Law schools perhaps now offer more experiential courses than they did in the past, and those courses will presumably assist in preparation for practice. Additionally, Rule §520.18 of the Rules of the Court of Appeals now requires that applicants for admission to practice “demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal services in this State.” Satisfaction of one of five pathways is required.

These requirements may impact the “practice-readiness” of new lawyers going forward, but as of yet, any change has not been significant, based on the anecdotal complaints the Task Force has reported hearing from practitioners and judges. What has changed in recent years is that clients are refusing to pay for providing new lawyers with the training they need, causing the frequency and volume of such complaints to rise. Additionally, in the recent past there was a precipitous decline in law school applications, with the consequent admission to some law schools of some students whose scores on the LSAT were not as strong as those of students applying for admission when applications were at record highs. Some of those students with lower entering credentials have now completed law school and are being admitted to practice with perhaps a weaker grasp of the requirements of law practice. Additionally,

we heard during the public hearings concerns about the generational differences between new lawyers of the past and those entering the practice today. None of that is attributable to the bar exam, and the bar exam cannot be expected to solve whatever problem is perceived.

### New York Civil Procedure

We heard the complaints raised in the public hearings regarding new lawyers' lack of understanding of New York civil procedure. We heard that registration in courses in New York Practice is down (and was down before the adoption of the UBE) and concern that new lawyers are not learning the essentials of New York civil procedure, allegedly because they are not tested on it in the traditional way of the former New York bar exam.

First, two-thirds of our candidate population did not go to New York law schools, such that they never had the opportunity to take a course in New York civil procedure. While they may have previously learned some New York civil procedure from their bar review courses, in many respects, the testing of New York civil procedure under the NYLE is more effective than was the testing on the prior New York bar exam because it is specific, and a lack of knowledge of New York procedure could be masked on the prior exam by a strong performance on the MBE and answering questions based on general principles. On the NYLE, 20 of the 50 questions are routinely taken from the Course Materials and lectures on New York Civil Practice and Procedure.

New York law schools presumably counsel their students who wish to engage in civil litigation in New York of the availability and desirability of taking a course in New York civil procedure for purposes of practice, and if they believe it is necessary, could

require the course. If employers are concerned that new lawyers aren't suitably schooled in New York practice, they could require it as well. New lawyers could be required to take New York practice-specific CLE courses, pre or post admission, with graduates of New York law schools exempt from the requirement to the extent they have taken and passed a New York practice course in law school.

In any event, bar exam content has never seemed to significantly drive curricular offerings or choices at most law schools. The MBE subjects are mostly required courses in law schools, and were required courses long before the MBE came into existence.

The Board respectfully disagrees that the UBE is the cause of any alleged lack of preparedness of new lawyers for practice or that a return to the exam of the past or some proxy for it would solve the perceived problem.

#### New York as the "Gold Standard"

We heard comments in the public hearings that the prior New York bar exam was the "gold standard" for bar examinations and a suggestion that switching to the UBE diminished that standard. This is a repetition of comments made to the Advisory Committee on the UBE and directly addressed in the Committee's Final Report (Exhibit C at p. 51-53.)

New York law may be admired as the law of choice in many international contracts, and deservedly so. As a center of international commerce, New York attracts lawyers of extraordinary skill and competence. But it is difficult to believe that passing the prior New York bar exam, with its comparatively low passing standard, was ever a

mark of some superior achievement. In any event, we see no diminishment in the reputation of New York law or its lawyers as a consequence of adoption of the UBE.

### Multistate Performance Test

We were surprised to hear criticism of the MPT in one of the public hearings. The comment made was that the test assessed “test speediness” and not analytical skills. We strongly disagree and question the basis for such a statement. The MPT is a timed test, and no doubt candidates may feel that they could do a better job at the task presented if given more time. But everyone is under the same time pressure, and the graders, in grading the papers, are well-aware that the task was required to be completed within 90 minutes or more specifically, that two tasks were required to be completed in three hours. Reviewing the answers given by candidates over the 18 years we have given the test as part of our bar exam convinces the Board that the test is a meaningful assessment of lawyering skills and not a test of speed.

### **CONCLUSION**

We hope that the information provided in this memo is useful to the Task Force as it proceeds with its work. We look forward to meeting with you on January 13, 2020, and will be happy to offer additional thoughts and answer additional questions. Again, thank you for the opportunity to provide this information to you for your consideration.



# **Appendix B**



State Board of Law Examiners Budget and Expenditure History

Object Description	2015-16		2016-17		2017-18		2018-19		2019-20		2020-21 Budget Req
	Budget	Expend	Budget	Expend	Budget	Expend	Budget	Expend	Budget	Expend thru 2/5	
41100 PERSONAL SERVICE REG	0	1,702,361	0	2,010,390	0	1,954,696	0	1,848,744	0	1,716,676	0
41103 PERMANENT POSITION -NU	1,586,300	0	1,529,611	0	2,033,455	0	1,992,524	0	2,159,440	0	2034644
41114 GENERAL SALARY INCR -NU	35,733	0	41,489	0	15,827	0	33,071	0	56,013	0	52292
41126 OTHER	9,900	0	34,050	0	19,700	0	33,750	0	24,238	0	19775
42100 TEMPORARY SERVICE	0	19,860	0	0	0	0	0	0	0	0	0
41300 OVERTIME	16,000	14,462	16,000	17,230	16,000	16,036	16,000	13,420	16,000	8,540	16,000
<b>Personal Service Total</b>	<b>1,647,933</b>	<b>1,736,683</b>	<b>1,621,150</b>	<b>2,027,620</b>	<b>2,084,982</b>	<b>1,970,732</b>	<b>2,075,345</b>	<b>1,862,164</b>	<b>2,255,691</b>	<b>1,725,216</b>	<b>2,122,711</b>
53660 OFFICE SUPPLIES	30,000	13,640	15,000	20,729	14,200	7,574	13,500	7,139	13,500	5,438	12000
53661 EDP SUPPLIES	12,000	7,542	8,000	13,008	8,800	2,226	7,200	3,211	7,200	0	6200
53663 POSTAGE ONLY	40,000	215	10,000	0	10,000	254	10,000	5,000	10,000	0	5000
<b>Supplies and Mats Total</b>	<b>82,000</b>	<b>21,397</b>	<b>33,000</b>	<b>33,737</b>	<b>33,000</b>	<b>10,054</b>	<b>30,700</b>	<b>15,350</b>	<b>30,700</b>	<b>5,438</b>	<b>23,200</b>
<b>54150 Travel Total</b>	<b>50,000</b>	<b>40,627</b>	<b>47,000</b>	<b>43,661</b>	<b>47,000</b>	<b>32,573</b>	<b>47,000</b>	<b>31,833</b>	<b>47,000</b>	<b>24,560</b>	<b>40,000</b>
55100 RENTALS OF EQUIPMENT	125,000	92,511	100,000	106,642	100,000	99,403	100,000	72,089	100,000	63,756	100000
55200 REPAIRS OF EQUIPMENT	53,000	17,294	25,000	20,277	25,000	20,691	25,000	22,960	25,000	17,751	20000
55400 REAL ESTATE RENTALS	1,300,000	736,956	775,000	667,215	775,000	580,364	775,000	623,136	765,000	404,451	685000
55450 CONFERENCES/TRAINING	0	625	0	275	0	153	0	825	0	450	0
55601 SHIPPING	7,500	6,995	7,500	5,487	7,500	5,601	7,500	7,701	7,500	2,597	6000
55700 PRINTING - GENERAL	90,000	76,287	40,000	66,633	40,000	19,355	40,000	16,469	40,000	10,206	35000
55800 TELEPHONES	50,000	27,213	32,000	22,885	32,000	20,560	32,000	20,223	27,000	15,739	24000
55915 IT SERVICES	10,000	6,673	7,500	4,621	7,500	8,377	7,500	19,765	7,500	16,717	25000
55920 ACTG & AUDIT SERVICES	100,000	108,258	115,000	116,408	115,000	115,327	115,000	112,854	115,000	127,383	125000
55961 OTHER GENERAL SERVICES	1,899,500	1,997,723	2,880,000	1,738,379	2,380,000	2,444,421	2,380,000	2,346,493	2,380,000	1,727,094	2500000
55962 PER DIEM COURT REPORTERS	10,000	0	5,000	0	5,000	0	5,000	0	5,000	0	5000
<b>Contractual Services Total</b>	<b>3,645,000</b>	<b>3,070,535</b>	<b>3,987,000</b>	<b>2,748,822</b>	<b>3,487,000</b>	<b>3,314,252</b>	<b>3,487,000</b>	<b>3,242,515</b>	<b>3,472,000</b>	<b>2,386,144</b>	<b>3,525,000</b>
<b>57220 Equipment Total</b>	<b>0</b>	<b>28,622</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10,410</b>	<b>0</b>	<b>31,212</b>	<b>0</b>	<b>8,496</b>	<b>0</b>
<b>Total NPS</b>	<b>3,777,000</b>	<b>3,161,181</b>	<b>4,067,000</b>	<b>2,826,220</b>	<b>3,567,000</b>	<b>3,367,289</b>	<b>3,564,700</b>	<b>3,320,910</b>	<b>3,549,700</b>	<b>2,424,638</b>	<b>3,588,200</b>
<b>Grand Total*</b>	<b>5,424,933</b>	<b>4,897,864</b>	<b>5,688,150</b>	<b>4,853,840</b>	<b>5,651,982</b>	<b>5,338,021</b>	<b>5,640,045</b>	<b>5,183,074</b>	<b>5,805,391</b>	<b>4,149,854</b>	<b>5,710,911</b>

\* This analysis excludes fringe benefit costs which are paid centrally. On average, the fringe cost for this program is approximately \$600,000 annually. The budget supports 15 FTE plus 5 Board members who are paid NS salaries.

2015-16

**APPELLATE AUXILIARY OPERATIONS  
CANDIDATE EXAMINATION PROGRAM**

**2015-16 Budget Request: \$5,424,933**

**Program Description**

This Program provides funding for the operation of the State Board of Law Examiners.

*State Board of Law Examiners:* All applicants for admission to practice law in New York State are required by law to demonstrate their fitness by successful performance on the NYS Bar Examination and by demonstrating good moral character on a credential review. The State Board of Law Examiners develops and administers the NYS Bar Examination twice annually, and the Appellate Divisions, through their Committees on Character and Fitness, conduct the requisite character review of each candidate for admission. The Committees on Character and Fitness are funded through the Candidate Fitness program.

**Summary of 2015-16 Funding Request:**  
**Candidate Examination**

<b>2015-16 Budget Request:</b>	<b>\$5,424,933</b>
<i>Personal Service:</i>	<i>1,647,933</i>
<i>Nonpersonal Service:</i>	<i>3,777,000</i>
<i>Maintenance Undistributed:</i>	<i>0</i>

The Candidate Examination Miscellaneous Special Revenue Fund budget request is \$5.4 million or an increase of \$133,943 (2.5%) over the current year adjusted appropriation.

The personal service request of \$1.6 million represents an increase of \$133,943 (8.8%) over the current year adjusted appropriation. This includes funding for all filled nonjudicial positions. Funding is also included for collectively negotiated salary increases as well as the payment of increments and longevity bonuses as required by law, for all eligible employees.

The personal service budget also includes \$16,000 for overtime to support current levels of operations.

The nonpersonal service funding supports expenses associated with the administration of the Bar Examination including: other professional services for fees paid to the national association for the multi-state portion of the exam, consultant fees, security costs and proctor and grader payments. The nonpersonal service funding also includes real estate rentals for testing locations and accounting and auditing services for credit card payments.

The nonpersonal service request of \$3.8 million reflects no change from current year funding.

The Candidate Examination program collects revenue of approximately \$6.9 million annually in Bar Examination fees which is deposited into the General Fund.

**Appellate Auxiliary Operations  
Budget Summary - Miscellaneous Special Revenue Fund**

**Candidate Examination Program**

**2015-16 Request**

<b>Candidate Examination</b>	<b>Personal Service</b>	<b>Nonpersonal Service</b>	<b>Total</b>
<b>Board of Law Examiners</b>	<b>\$1,647,933</b>	<b>\$3,777,000</b>	<b>\$5,424,933</b>
<b>Total:</b>	<b>\$1,647,933</b>	<b>\$3,777,000</b>	<b>\$5,424,933</b>

State of New York - Judiciary  
Budget Summary for Fiscal Year 2015-2016

**BOARD OF LAW EXAMINERS  
MISCELLANEOUS SPECIAL REVENUE  
FUND**

	<u>Current Appropriation as Adjusted</u>	<u>UCS Recommended</u>	<u>Changes to Current Appropriation</u>
<u>Personal Service</u>			
PS Regular	1,497,990	1,631,933	133,943
PS Overtime	16,000	16,000	0
<b>Total Personal Service</b>	<b>1,513,990</b>	<b>1,647,933</b>	<b>133,943</b>
<u>Nonpersonal Service</u>			
Supplies and Materials	42,000	42,000	0
Travel	50,000	50,000	0
Equipment Rental and Repairs	178,000	178,000	0
Real Estate Rentals	1,300,000	1,300,000	0
Postage and Printing	137,500	137,500	0
Telecommunications	50,000	50,000	0
Information Technology Services	10,000	10,000	0
Accounting and Auditing Services	100,000	100,000	0
Other Professional Services	1,899,500	1,899,500	0
In-Part Services	10,000	10,000	0
<b>Total Nonpersonal Service</b>	<b>3,777,000</b>	<b>3,777,000</b>	<b>0</b>
<b>Grand Total</b>	<b>5,290,990</b>	<b>5,424,933</b>	<b>133,943</b>

**APPELLATE AUXILIARY OPERATIONS  
Candidate Examination Program**

<b>2016-17 Budget Request:</b>	<b>\$5,688,150</b>
<i>Personal Service:</i>	<i>1,621,150</i>
<i>Nonpersonal Service:</i>	<i>4,067,000</i>
<i>Maintenance Undistributed:</i>	<i>0</i>

**Program Description**

This Program provides funding for the operation of the State Board of Law Examiners.

*State Board of Law Examiners:* Applicants for admission to practice law in New York State are required by law to demonstrate their fitness by successful performance on the NYS Bar Examination and by demonstrating good moral character on a credential review. Applicants who are admitted to practice in a reciprocal jurisdiction, have graduated from an ABA approved law school and have practiced for five of the preceding seven years may be admitted on motion without examination.

The State Board of Law Examiners develops and administers the bar examination twice annually. Beginning in July 2016, as adopted by the Court of Appeals, the Uniform Bar Examination (UBE) will be administered in New York. The UBE is a high quality, uniform battery of tests that are administered simultaneously in the UBE jurisdictions. Applicants will also be required to complete an online course and pass an online examination on New York law, as a requirement for admission.

The Appellate Divisions, through their Committees on Character and Fitness, conduct the requisite character review of each candidate for admission. The Committees on Character and Fitness are funded through the Candidate Fitness program.

**Summary of 2016-17 Funding Request**

The Candidate Examination Miscellaneous Special Revenue Fund budget request is \$5.7 million or an increase of \$263,217 (4.9%) over the current year adjusted appropriation.

The personal service request of \$1.6 million represents a slight decrease of \$26,783 (-1.6%) from the current year adjusted appropriation. This includes funding for all filled nonjudicial positions. Funding is also included for collectively negotiated salary increases as well as the payment of increments and longevity bonuses, as required by law, for all eligible employees. Additionally, funding is included for a one-time lump sum payment of \$750 for eligible employees in active status on March 31, 2017. The net increase in these funding requirements is offset by savings associated with turnover.

The personal service budget also includes \$16,000 for overtime to support current levels of operations.

The nonpersonal service funding supports expenses associated with the administration of the Bar Examination including: other professional services for fees paid to the national association for the exam, consultant fees, security costs and proctor and grader payments; real estate rentals for testing locations and accounting and auditing services for processing credit card payments.

The nonpersonal service request of \$4.1 million reflects an increase of \$290,000 (7.7%) over the current year adjusted appropriation. The increase is attributable to other professional services for the purchase of UBE examinations from the National Conference of Bar Examiners and for additional grading services. The increase is partially offset by an expenditure-based reduction in real estate rentals for test locations as well as cost-saving initiatives for postage and printing, equipment rental and repairs, telecommunications and supplies and materials.

The Candidate Examination program collects revenue of approximately \$6.9 million annually in Bar Examination fees which is deposited into the General Fund.

**Appellate Auxiliary Operations  
Budget Summary - Miscellaneous Special Revenue Fund**

**Candidate Examination Program**

**2016-17 Request**

<b>Candidate Examination</b>	<b>Personal Service</b>	<b>Nonpersonal Service</b>	<b>Total</b>
Board of Law Examiners	\$1,621,150	\$4,067,000	\$5,688,150
<b>Total:</b>	<b>\$1,621,150</b>	<b>\$4,067,000</b>	<b>\$5,688,150</b>

State of New York - Judiciary  
Budget Summary for Fiscal Year 2016-2017

**BOARD OF LAW EXAMINERS  
MISCELLANEOUS SPECIAL REVENUE  
FUND**

	<u>Current Appropriation as Adjusted</u>	<u>UCS Recommended</u>	<u>Changes to Current Appropriation</u>
<b><u>Personal Service</u></b>			
PS Regular	1,631,933	1,605,150	(26,783)
PS Overtime	16,000	16,000	0
<b>Total Personal Service</b>	<b>1,647,933</b>	<b>1,621,150</b>	<b>(26,783)</b>
<b><u>Nonpersonal Service</u></b>			
Supplies and Materials	42,000	23,000	(19,000)
Travel	50,000	47,000	(3,000)
Equipment Rental and Repairs	178,000	125,000	(53,000)
Real Estate Rentals	1,300,000	775,000	(525,000)
Postage and Printing	137,500	57,500	(80,000)
Telecommunications	50,000	32,000	(18,000)
Information Technology Services	10,000	7,500	(2,500)
Accounting and Auditing Services	100,000	115,000	15,000
Other Professional Services	1,899,500	2,880,000	980,500
In-Part Services	10,000	5,000	(5,000)
<b>Total Nonpersonal Service</b>	<b>3,777,000</b>	<b>4,067,000</b>	<b>290,000</b>
<b>Grand Total</b>	<b>5,424,933</b>	<b>5,688,150</b>	<b>263,217</b>

2017-18

**APPELLATE AUXILIARY OPERATIONS  
Candidate Examination Program**

<b>2017-18 Budget Request:</b>	<b>\$5,651,982</b>
Personal Service:	2,084,982
Nonpersonal Service:	3,567,000
Maintenance Undistributed:	0

**Program Description**

This Program provides funding for the operation of the State Board of Law Examiners.

*State Board of Law Examiners:* Applicants for admission to practice law in New York State are required by law to demonstrate their fitness by successful performance on the NYS Bar Examination and by demonstrating good moral character on a credential review. Applicants who are admitted to practice in a reciprocal jurisdiction, have graduated from an ABA approved law school and have practiced for five of the preceding seven years may be admitted on motion without examination.

The State Board of Law Examiners develops and administers the bar examination twice annually. Beginning in July 2016, as adopted by the Court of Appeals, the Uniform Bar Examination (UBE) was first administered in New York in place of the Multi-State Bar Exam (MBE). The UBE is a high quality, uniform battery of tests that are administered simultaneously in the UBE jurisdictions. Applicants are also required to complete an online course and pass an online examination on New York law, as a requirement for admission.

The Appellate Divisions, through their Committees on Character and Fitness, conduct the requisite character review of each candidate for admission. The Committees on Character and Fitness are funded through the Candidate Fitness program.

**Summary of 2017-18 Funding Request**

The Candidate Examination Miscellaneous Special Revenue Fund budget request is \$5.7 million or a slight decrease of \$36,168 (-0.6%) from the current year adjusted appropriation.

The personal service request of \$2.1 million represents an increase of \$0.5 million (28.6%) over the current year adjusted appropriation. This includes funding for all filled nonjudicial positions. Funding is also included for the payment of increments and longevity bonuses, as required by law, for all eligible employees. The personal service request also reflects an increase of \$0.5 million for payments to examination proctors with a corresponding offset to the other professional services category.

The personal service budget also includes \$16,000 for overtime to support current levels of operations.

The nonpersonal service funding supports expenses associated with the administration of the Bar Examination including: other professional services for fees paid to the national association for the UBE exam, consultant fees and security costs; real estate rentals for testing locations and accounting and auditing services for processing credit card payments.

The nonpersonal service request of \$3.6 million reflects a decrease of \$0.5 million (-12.3%) in the other general services category for payments to proctors. This funding requirement is now reflected in the personal service request. The remaining nonpersonal service request is flat.

The Candidate Examination program collects revenue of approximately \$6.9 million annually in Bar Examination fees which is deposited into the General Fund.

**Appellate Auxiliary Operations  
Budget Summary - Miscellaneous Special Revenue Fund**

**Candidate Examination Program**

<u>Candidate Examination</u>	<u>Personal Service</u>	<u>Nonpersonal Service</u>	<u>Total</u>
Board of Law Examiners	\$2,084,982	\$3,567,000	\$5,651,982
<b>Total:</b>	<b><u>\$2,084,982</u></b>	<b><u>\$3,567,000</u></b>	<b><u>\$5,651,982</u></b>

**State of New York - Judiciary  
Budget Summary for Fiscal Year 2017-2018**

**BOARD OF LAW EXAMINERS  
MISCELLANEOUS SPECIAL REVENUE  
FUND**

	<u>Current Appropriation as Adjusted</u>	<u>UCS Recommended</u>	<u>Changes to Current Appropriation</u>
<b><u>Personal Service</u></b>			
PS Regular	1,605,150	2,068,982	463,832
PS Overtime	16,000	16,000	0
<b>Total Personal Service</b>	<b>1,621,150</b>	<b>2,084,982</b>	<b>463,832</b>
<b><u>Nonpersonal Service</u></b>			
Supplies and Materials	23,000	23,000	0
Travel	47,000	47,000	0
Equipment Rental and Repairs	125,000	125,000	0
Real Estate Rentals	775,000	775,000	0
Postage and Printing	57,500	57,500	0
Telecommunications	32,000	32,000	0
Information Technology Services	7,500	7,500	0
Accounting and Auditing Services	115,000	115,000	0
Other Professional Services	2,880,000	2,380,000	(500,000)
In-Part Services	5,000	5,000	0
<b>Total Nonpersonal Service</b>	<b>4,067,000</b>	<b>3,567,000</b>	<b>(500,000)</b>
<b>Grand Total</b>	<b>5,688,150</b>	<b>5,651,982</b>	<b>(36,168)</b>

2018-19

**APPELLATE AUXILIARY OPERATIONS  
Candidate Examination Program**

<b>2018-19 Budget Request:</b>	<b>\$5,640,045</b>
Personal Service:	2,075,345
Nonpersonal Service:	3,564,700
Maintenance Undistributed:	0

**Program Description**

This Program provides funding for the operation of the State Board of Law Examiners.

*State Board of Law Examiners:* Applicants for admission to practice law in New York State are required by law to demonstrate their fitness by successful performance on the NYS Bar Examination and by demonstrating good moral character on a credential review. Applicants who are admitted to practice in a reciprocal jurisdiction, have graduated from an ABA approved law school and have practiced for five of the preceding seven years may be admitted on motion without examination.

The State Board of Law Examiners develops and administers the Bar Examination twice annually. Beginning in July 2016, as adopted by the Court of Appeals, the Uniform Bar Examination (UBE) was first administered in New York in place of the Multi-State Bar Exam (MBE). The UBE is a high quality, uniform battery of tests that are administered simultaneously in the UBE jurisdictions. Applicants are also required to complete an online course and pass an online examination on New York law, as a requirement for admission.

The Appellate Divisions, through their Committees on Character and Fitness, conduct the requisite character review of each candidate for admission. The Committees on Character and Fitness are funded through the Candidate Fitness Program.

**Summary of 2018-19 Funding Request**

The Candidate Examination Miscellaneous Special Revenue Fund budget request is \$5.6 million or a slight decrease of \$14,237 (-0.3%) from the current year adjusted appropriation.

The personal service request of \$2.1 million represents a decrease of \$9,637 (-0.5%) from the current year adjusted appropriation. This includes funding for all filled nonjudicial positions. Funding is also included for collectively negotiated salary increases as well as the payment of increments and longevity bonuses as required by law, for all eligible nonjudicial employees. The net increase in these funding requirements is offset by savings associated with turnover.

The personal service budget also includes \$16,000 for overtime to support current levels of operations.

The nonpersonal service funding supports expenses associated with the administration of the Bar Examination including: other professional services for fees paid to the national association for the UBE exam, consultant fees and security costs; real estate rentals for testing locations and accounting and auditing services for processing credit card payments.

The nonpersonal service request of \$3.6 million reflects a slight decrease of \$4,600 (-0.1%) over the current year adjusted appropriation attributable to expenditure-based decreases in office supplies and EDP supplies.

The Candidate Examination Program collects revenue of approximately \$6.8 million annually in Bar Examination fees which is deposited into the General Fund.

**Appellate Auxiliary Operations  
Budget Summary - Miscellaneous Special Revenue Fund**

**Candidate Examination Program**

<b>Candidate Examination</b>	<b>Personal Service</b>	<b>Nonpersonal Service</b>	<b>Total</b>
Board of Law Examiners	\$2,075,345	\$3,564,700	\$5,640,045
<b>Total:</b>	<b><u>\$2,075,345</u></b>	<b><u>\$3,564,700</u></b>	<b><u>\$5,640,045</u></b>

State of New York - Judiciary  
Budget Summary for Fiscal Year 2018-2019

BOARD OF LAW EXAMINERS  
MISCELLANEOUS SPECIAL REVENUE  
FUND

	<u>Current Appropriation as Adjusted</u>	<u>UCS Recommended</u>	<u>Changes to Current Appropriation</u>
<b><u>Personal Service</u></b>			
PS Regular	2,068,982	2,059,345	(9,637)
PS Overtime	16,000	16,000	0
<b>Total Personal Service</b>	<b>2,084,982</b>	<b>2,075,345</b>	<b>(9,637)</b>
<b><u>Nonpersonal Service</u></b>			
Supplies and Materials	25,300	20,700	(4,600)
Travel	47,000	47,000	0
Equipment Rental and Repairs	125,000	125,000	0
Real Estate Rentals	775,000	775,000	0
Postage and Printing	57,500	57,500	0
Telecommunications	32,000	32,000	0
Information Technology Services	7,500	7,500	0
Accounting and Auditing Services	115,000	115,000	0
Other Professional Services	2,380,000	2,380,000	0
In-Part Services	5,000	5,000	0
<b>Total Nonpersonal Service</b>	<b>3,569,300</b>	<b>3,564,700</b>	<b>(4,600)</b>
<b>Grand Total</b>	<b>5,654,282</b>	<b>5,640,045</b>	<b>(14,237)</b>

2019-20

**APPELLATE AUXILIARY OPERATIONS  
Candidate Examination Program**

<b>2019-20 Budget Request:</b>	<b>\$5,805,391</b>
Personal Service:	2,255,691
Nonpersonal Service:	3,549,700
Maintenance Undistributed:	0

**Program Description**

This Program provides funding for the operation of the State Board of Law Examiners.

*State Board of Law Examiners:* Applicants for admission to practice law in New York State are required by law to demonstrate their fitness by successful performance on the NYS Bar Examination and by demonstrating good moral character on a credential review. Applicants who are admitted to practice in a reciprocal jurisdiction, have graduated from an ABA approved law school and have practiced for five of the preceding seven years, may be admitted on motion without examination.

The State Board of Law Examiners develops and administers the Bar Examination twice annually. Beginning in July 2016, as adopted by the Court of Appeals, the Uniform Bar Examination (UBE) was first administered in New York in place of the Multi-State Bar Exam (MBE). The UBE is a high quality, uniform battery of tests that are administered simultaneously in the UBE jurisdictions. Applicants are also required to complete an online course and pass an online examination on New York law, as a requirement for admission.

The Appellate Divisions, through their Committees on Character and Fitness, conduct the requisite character review of each candidate for admission. The Committees on Character and Fitness are funded through the Candidate Fitness Program.

**Summary of 2019-20 Funding Request**

The Candidate Examination Miscellaneous Special Revenue Fund budget request is \$5.8 million or a slight increase of \$0.2 million (2.9%) over the current year adjusted appropriation.

The personal service request of \$2.3 million represents an increase of \$0.2 million (8.7%) over the current year adjusted appropriation. This includes funding for all filled nonjudicial positions. Funding is also included for collectively negotiated salary increases, as well as the payment of increments and longevity bonuses, as required by law, for all eligible nonjudicial employees.

The personal service budget also includes \$16,000 for overtime to support current levels of operations.

The nonpersonal service funding supports expenses associated with the administration of the Bar Examination including: other professional services for fees paid to the national association for the UBE exam, consultant fees and security costs, real estate rentals for testing locations and accounting and auditing services for processing credit card payments.

The nonpersonal service request of \$3.5 million reflects a slight decrease of \$15,000 (-0.4%) from the current year adjusted appropriation attributable to expenditure-based decreases in real estate rentals and telephones.

The Candidate Examination Program collects revenue of approximately \$6.9 million annually in Bar Examination fees, which is deposited into the General Fund.

**Appellate Auxilliary Operations  
Budget Summary - Miscellaneous Special Revenue Fund**

**Candidate Examination Program**

<u>Candidate Examination</u>	<u>Personal Service</u>	<u>Nonpersonal Service</u>	<u>Total</u>
Board of Law Examiners	\$2,255,691	\$3,549,700	\$5,805,391
<b>Total:</b>	<b><u>\$2,255,691</u></b>	<b><u>\$3,549,700</u></b>	<b><u>\$5,805,391</u></b>

**State of New York - Judiciary  
Budget Summary for Fiscal Year 2019-2020**

**BOARD OF LAW EXAMINERS  
MISCELLANEOUS SPECIAL REVENUE  
FUND**

	<u>Current Appropriation as Adjusted</u>	<u>UCS Recommended</u>	<u>Changes to Current Appropriation</u>
<b><u>Personal Service</u></b>			
PS Regular	2,059,345	2,239,691	180,346
PS Overtime	16,000	16,000	0
<b>Total Personal Service</b>	<b>2,075,345</b>	<b>2,255,691</b>	<b>180,346</b>
<b><u>Nonpersonal Service</u></b>			
Supplies and Materials	20,700	20,700	0
Travel	47,000	47,000	0
Equipment Rental and Repairs	125,000	125,000	0
Real Estate Rentals	775,000	765,000	(10,000)
Postage and Printing	57,500	57,500	0
Telecommunications	32,000	27,000	(5,000)
Information Technology Services	7,500	7,500	0
Accounting and Auditing Services	115,000	115,000	0
Other Professional Services	2,380,000	2,380,000	0
In-Part Services	5,000	5,000	0
<b>Total Nonpersonal Service</b>	<b>3,564,700</b>	<b>3,549,700</b>	<b>(15,000)</b>
<b>Grand Total</b>	<b>5,640,045</b>	<b>5,805,391</b>	<b>165,346</b>

<b>APPELLATE AUXILIARY OPERATIONS Candidate Examination Program</b>	<b>2020-21 Budget Request:</b>	<b>\$5,710,911</b>
	Personal Service:	2,122,711
	Nonpersonal Service:	3,588,200
	Maintenance Undistributed:	0

### Program Description

This Program provides funding for the operation of the State Board of Law Examiners.

*State Board of Law Examiners:* Applicants for admission to practice law in New York State are required by law to demonstrate their fitness by successful performance on the NYS Bar Examination and by demonstrating good moral character on a credential review. Applicants who are admitted to practice in a reciprocal jurisdiction, have graduated from an ABA approved law school, and have practiced for five of the preceding seven years, may be admitted on motion without examination.

The State Board of Law Examiners develops and administers the Bar Examination twice annually. Beginning in July 2016, as adopted by the Court of Appeals, the Uniform Bar Examination (UBE) was first administered in New York in place of the Multi-State Bar Exam (MBE). The UBE is a high quality, uniform battery of tests that are administered simultaneously in the UBE jurisdictions. Applicants are also required to complete an online course and pass an online examination on New York law, as a requirement for admission.

The Appellate Divisions, through their Committees on Character and Fitness, conduct the requisite character review of each candidate for admission. The Committees on Character and Fitness are funded through the Candidate Fitness Program.

### Summary of 2020-21 Funding Request

The Candidate Examination Miscellaneous Special Revenue Fund budget request is \$5.7 million or a decrease of \$94,480 (-1.6%) from the current year adjusted appropriation.

The personal service request of \$2.1 million represents a decrease of \$0.1 million (-5.9%) from the current year adjusted appropriation. This includes funding for all filled nonjudicial positions. Funding is also included for collectively negotiated salary increases as well as the payment of increments and longevity bonuses, as required by law, for all eligible nonjudicial employees. The net increase in these funding requirements is offset by savings associated with turnover.

The personal service budget also includes \$16,000 for overtime to support current levels of operations.

The nonpersonal service funding supports expenses associated with the administration of the Bar Examination including: other professional services for fees paid to the national association for the UBE exam, consultant fees and security costs, real estate rentals for testing locations, and accounting and auditing services for processing credit card payments.

The nonpersonal service request of \$3.5 million reflects an increase of \$38,500 (1.1%) over the current year adjusted appropriation attributable to inflationary cost increases in the rental of test sites and an increase in the UBE materials purchased from the National Conference of Board Examiners.

The Candidate Examination Program collects revenue of approximately \$6 million annually in Bar Examination fees, UBE score transfer fees, and admission on motion registration fees, which are deposited into the General Fund.

**Appellate Auxiliary Operations  
Budget Summary - Miscellaneous Special Revenue Fund**

**Candidate Examination Program**

<b>Candidate Examination</b>	<b>Personal Service</b>	<b>Nonpersonal Service</b>	<b>Total</b>
Board of Law Examiners	\$2,122,711	\$3,588,200	\$5,710,911
<b>Total:</b>	<b><u>\$2,122,711</u></b>	<b><u>\$3,588,200</u></b>	<b><u>\$5,710,911</u></b>

State of New York - Judiciary  
Budget Summary for Fiscal Year 2020-2021

BOARD OF LAW EXAMINERS  
MISCELLANEOUS SPECIAL REVENUE  
FUND

	<u>Current Appropriation as Adjusted</u>	<u>UCS Recommended</u>	<u>Changes to Current Appropriation</u>
<u>Personal Service</u>			
PS Regular	2,239,691	2,106,711	(132,980)
PS Overtime	16,000	16,000	0
Total Personal Service	<u>2,255,691</u>	<u>2,122,711</u>	<u>(132,980)</u>
<u>Nonpersonal Service</u>			
Supplies and Materials	20,700	18,200	(2,500)
Travel	47,000	40,000	(7,000)
Equipment Rental and Repairs	125,000	120,000	(5,000)
Real Estate Rentals	765,000	685,000	(80,000)
Postage and Printing	57,500	46,000	(11,500)
Telecommunications	27,000	24,000	(3,000)
Information Technology Services	7,500	25,000	17,500
Accounting and Auditing Services	115,000	125,000	10,000
Other Professional Services	2,380,000	2,500,000	120,000
In-Part Services	5,000	5,000	0
Total Nonpersonal Service	<u>3,549,700</u>	<u>3,588,200</u>	<u>38,500</u>
 Grand Total	 <u>5,805,391</u>	 <u>5,710,911</u>	 <u>(94,480)</u>

# Appendix C

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October 23, 2019

The Honorable Alan Sheinkman and Eileen D. Millet  
Co-Chairs, Task Force on the New York Bar Examination/Uniform Bar Examination  
New York State Bar Association  
One Elk Street  
Albany, NY 12207

Dear Justice Sheinkman and Ms. Millet,

New York Law School ("NYLS") writes in response to the New York State Bar Association's Task Force on the New York State Bar Examination/Uniform Bar Exam request for comments. The Task Force was established by NYSBA to "investigate and report on the experience and impact of New York's adoption in May 2015 of the Uniform Bar Examination ("UBE"). Among the matters the Task Force will consider are: the impact that the UBE has had upon applicants, upon the qualifications and relevant knowledge of newly admitted New York attorneys, upon potential employers, and upon diversity in the profession. Based upon its investigation, the task force will make recommendations as to the future content and form of the New York Bar examination."

The Task Force has requested input from the State's law schools on specific topics related to the above mission statement. It also has specifically referenced the National Conference of Bar Examiners ("NCBE") Task Force Phase I Report, released August 16, 2019, critiquing the UBE and suggesting the following:

- The UBE should emphasize more lawyering skills and less subject matter knowledge.
- The UBE should utilize more writing and less multiple choice, and use additional methods like simulation.
- Jurisdictions should consider breaking the exam into different parts over more than just a few days.

NYLS is one of the State's oldest and largest law schools and prides itself on being *New York's law school*. It is deeply committed to diversity and inclusion in its program of legal education and in the profession, and to preparing students to engage in a life of service and excellence in the law. In 2015, NYLS provided commentary on New York State's proposal to move to the UBE. At that time, NYLS expressed to the State Judiciary's Advisory Committee on the Uniform Bar Examination the concerns raised and shared by many in legal education and the profession about the impact of the move to the UBE on law graduates of color. We also expressed concern about the impact that the change could have on the teaching and understanding of New York law for those who seek to practice law in New York State.

NYLS submits brief responses keyed mainly to the three areas bulleted above, as well as the two additional areas of concern identified in 2015 when NYLS submitted comments to the State Judiciary about the proposed adoption of the UBE.

#### Impact of UBE on Law Graduates of Color

In 2019, NCBE published a research report entitled “Impact of Adoption of the Uniform Bar Examination in New York.” That report addressed issues previously raised by NYLS. It concluded that in regard to the relatively small number of administrations since the adoption of the UBE in New York, the impacts of the move on graduates of color was “small and positive.”

*Recommendation No. 1: The Task Force should encourage New York State and the NCBE to continue to study the impact of the UBE, and any potential changes to be made in the future, on law graduates of color over a longer period. Considering the short period since UBE implementation, the goals of diversity and inclusion in legal education and the profession will not be well served without a methodical longitudinal study of how the design and administration of the UBE truly impacts law graduates of color. The study should be conducted by an independent organization and not the NCBE.*

#### State-Specific Law

The move away from state-specific law resulting from the adoption of the UBE, in NYLS’s view, has undermined the importance that New York law plays in both the global and local economies and in resolving cases and conflicts. Accordingly, like many law schools in New York State, NYLS has historically prided itself on offering a rich curriculum that is not only national and international in scope, but also celebrates and emphasizes the value of knowing New York law, and its practical application to cases and controversies in New York’s courts. The vast majority of NYLS graduates who enter the profession historically have relied on their knowledge of New York law to serve New York’s communities, including those with vulnerable populations in need of representation and access to justice.

In 2015, NYLS posited that a change in emphasis away from New York law by the New York bar examination, in favor of the UBE, could result in the unintended consequence of those students most likely to serve New York’s communities being less knowledgeable about New York law. This is because faculty who teach bar-tested subjects have needed to move away from a traditional focus on New York State law (e.g., wills and trusts) to a more balanced approach incorporating law that will be tested on the UBE, which may not be the law found in any particular state. This pedagogical shift has required students to focus on law that they may never need to know except for the purposes of the UBE. This may be a problem that is more acute in some subjects than others, but there is little doubt that the most glaring example of the problem, as reported by many schools across the state, is the change in enrollment in courses focused on New York Practice.

Once among the most heavily subscribed courses at NYLS, New York Practice has seen dramatically declining enrollment in favor of courses that now have more direct application to the UBE rather than the pre-UBE exam’s New York-specific essays and multiple choice questions. Indeed, although the New York Law Exam (“NYLE”) is designed to test state-specific subjects, the weight and value of an open book test after completion of an online course as a measure of any true knowledge or competency can, at best, be described as limited. In addition, it is problematic that the results of the NYLE are not made available to law schools in the state, leaving us without any way to gauge the success of our students.

***Recommendation No. 2: The Task Force should identify ways to make testing of New York State law a more relevant and meaningful component of admission to the New York State Bar. The Task Force should work with the state to examine the format, relevancy, transparency, and necessity of the New York Law Examination. The Task Force should explore options to require that UBE takers answer written questions applying the law of the state in which they take the exam.***

***The UBE should assess lawyering skills by requiring more meaningful writing and analysis through simulations, specifically an expanded MPT.***

In the years leading up to, and after, the adoption of the UBE, the ABA and law schools generally have changed their programs of legal education, placing greater emphasis on the development of legal skills alongside critical doctrinal learning. This shift in emphasis is designed, among other things, to drive professionalism and practice readiness in new lawyers. Accordingly, NYLS believes the UBE should be redesigned to embrace this change in American legal education. To that end, NYLS recommends that the Task Force should examine the feasibility of eliminating the MEE. Instead, NYLS believes there would be great benefit in requiring graduates applying to the bar to demonstrate, as part of their exam, the skills used every day by lawyers. The current essay answer format of the MEE does not relate to the ways in which lawyers are asked to generate work product. Therefore, we specifically suggest combining the MEE and the MPT, thus making all written work for the bar exam conform to MPT style questions that not only test the analytical and writing skills of bar takers, but also require them to apply their substantive knowledge of the law, including New York State-specific law, in the process. The alternate approach we recommend would be a better, more useful, and more accurate way to assess how well a test taker will perform as a lawyer. In addition, the effectiveness of any reform would be enhanced if the NCBE would publish the list of subjects that will be tested.

***Recommendation No. 3: The Task Force should review the feasibility of combining the MEE and the MPT, making all written work for the UBE an expanded MPT that not only tests the analytical and writing skills of bar takers, but also requires them to apply their substantive knowledge of the law, including relevant state law, in the process. The Task Force should explore whether the NCBE could publish, before the bar exam, the subject matter that will be tested as a means to focus bar takers.***

***The scope of the MBE should be reduced.***

The Multistate Bar Examination ("MBE") generally provides an efficient means to test bar takers' knowledge of a wide range of subjects, and to evaluate how well they think like a lawyer, including how well they read, analyze, make critical distinctions, and choose from among competing options. It is fair to say that the breadth and complexity of the MBE is, in some ways, counterproductive if the bar exam aims at evaluating the minimum competency needed to be a lawyer. To that end, NYLS recommends that the Task Force review the feasibility of refining the scope and complexity, without compromising the rigor, of the MBE.

***Recommendation No. 4: The Task Force should review the feasibility of refining the scope and complexity, but keeping the rigor, of the MBE.***

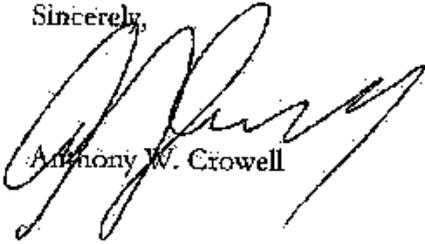
**The administration of the various tests required for bar admission should be more rationally sequenced.**

NYLS believes that reordering the sequence of the various tests required for bar admission may present a more rational and beneficial approach to testing and credentialing. NYLS proposes that the Task Force review whether bar testing could take place in a three-stage sequence. First, the MPRE could be taken by all students in the summer of their first year. This would suggest that law schools begin to prioritize Professional Responsibility as a first-year required course, underscoring the profound importance of legal ethics and integrity as a baseline for all activities in law school and the profession. Second, the MBE could be taken after the second year of study, once students have completed all core doctrinal courses, appropriately testing how well they have mastered the subject matter. And third, a reformatted and expanded MPT could be administered during or after the third year of study, bringing together all skills and substantive doctrinal knowledge, including New York State-specific law, in a more heavily-weighted summative assessment.

***Recommendation No. 5: The Task Force should explore whether the bar exam can be disaggregated and re-sequenced in three stages as follows: MPRE after the 1L year, MBE after the 2L year, and a newly expanded MPT during or after the 3L year.***

Thank you for your consideration of these recommendations. NYLS stands ready to further discuss with you the options for reform outlined above.

Sincerely,



Anthony W. Crowell



# Appendix D



## QUESTIONNAIRE FOR APPLICANTS TO THE BAR

Name: [Click or tap here to enter text.](#) Date: [Click or tap to enter a date.](#)

CCF Office: [Second Department](#) Law School: [Click here to choose from drop down list](#)

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The New York State Bar Association created a task force to study the Uniform Bar Exam and its impact on applicants to the bar, newly admitted attorneys, potential employers, current members of the bar, and diversity in the profession. The Appellate Division has been asked to assist that task force by gathering some data from bar applicants. Please take a few moments to complete the questionnaire, save it and submit it via return e-mail. The information contained in the questionnaire is confidential and will be compiled anonymously. Thank you.

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1. Date most recent Bar Exam was taken: [Click or tap to enter a date.](#)
  
2. Did your law school offer any courses focused exclusively on New York law, such as New York Practice? [Yes \(  \)](#) [No \(  \)](#) [Not Sure \(  \)](#)
  - a. If yes, did you take any such course? [Yes \(  \)](#) [No \(  \)](#) [Not Sure \(  \)](#)
  - b. What was the reason for decision to take (or not take) such classes?  
[Click or tap here to enter text.](#)
  
3. How did you prepare for the New York Law Examination, i.e. the New York component of the Bar exam? [Click here to choose from drop down list](#)
  
4. Did you find that the New York Course was a helpful educational experience?  
[Yes \(  \)](#) [No \(  \)](#) [Somewhat \(  \)](#) [Not Sure \(  \)](#)
  
5. Did you find the New York Law Examination to be a challenging test?  
[Yes \(  \)](#) [No \(  \)](#) [Somewhat \(  \)](#) [Not Sure \(  \)](#)
  
6. Do you have law employment in New York?  
[Yes \(  \)](#) [No \(  \)](#) [Maybe \(  \)](#)
  
7. Do you intend to practice in New York?  
[Yes \(  \)](#) [No \(  \)](#) [Maybe \(  \)](#)
  - a. If no, why have you applied for admission in New York? [Click or tap here to enter text.](#)
  
8. Have you applied, or do you intend to apply within the next 3 years, for admission in any other American jurisdiction? [Yes \(  \)](#) [No \(  \)](#) [Maybe \(  \)](#) [Not Sure \(  \)](#)



Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Maybe	Yes	No Response	Yes	Second Dept.
Yes	Yes	Other	Individual Study	No	No	Yes	Maybe	No Response	Yes	Second Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Not Sure	Not Sure	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	No	Yes	No Response	Maybe	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Maybe	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Not Sure	No	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Somewhat	No	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	No	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	No	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Other	Individual Study	No	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Somewhat	Somewhat	No	Yes	No Response	Maybe	Second Dept.
Not Sure	No	Other	Individual Study	No	No	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No	Not relevant to future area of p	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Yes	No	No	Yes	No Response	Maybe	Second Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Second Dept.
Yes	No	Schedule did not permit	Other	No	No	No	Yes	No Response	Not Sure	Second Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	Second Dept.
Yes	Yes	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
No	No	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Somewhat	No	Maybe	Helpful for career	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Not required for Exam	Study Group	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	No	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Other	Bar Prep Course	No	No	Yes	Yes	No Response	No	Second Dept.
Yes	No	Interested in other courses	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Not applicable	Bar Prep Course	Not Sure	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	No	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Not required for Exam	Individual Study	No	No	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
No	Yes	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Bar Prep Course	No Response	Somewhat	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	No	No	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	No	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	No Response	Individual Study	Yes	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Schedule did not permit	Individual Study	No	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	Not offered/promoted	Combination of Methods	No	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No Response	Beneficial for practice in NY	Combination of Methods	Yes	Yes	Maybe	Yes	No Response	Maybe	Second Dept.
Yes	No	Not required for Exam	Individual Study	No	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	No	Schedule did not permit	Individual Study	No	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Yes	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Not Sure	Second Dept.
Not Sure	No	Interested in other courses	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	Interested in other courses	Individual Study	Yes	No	No	Maybe	No Response	No	Second Dept.
Yes	No	Not relevant to future area of p	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	No Response	No Response	Yes	Second Dept.
Yes	No	No Response	Individual Study	Yes	No	Maybe	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Bar Prep Course	Not Sure	Somewhat	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Bar Prep Course	No	Yes	Yes	Yes	No Response	No	Second Dept.
No	No	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	Other	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Study Group	No	No	Yes	Yes	No Response	Yes	Second Dept.
No	No	Not relevant to future area of p	Individual Study	Yes	Yes	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Combination of Methods	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Not required for Exam	Combination of Methods	Somewhat	No	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Yes	Yes	No	Helpful for career	No	Second Dept.
Not Sure	No	Not relevant to future area of p	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Required/Recommended	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Yes	Not Sure	Yes	Yes	No Response	No	Second Dept.
Yes	No	Not required for Exam	Study Group	No	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	No	Maybe	No Response	Maybe	Second Dept.
Not Sure	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Other	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No	Not offered/promoted	Combination of Methods	Somewhat	No	Yes	Yes	No Response	No Response	Second Dept.
No	No Response	No Response	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Combination of Methods	Somewhat	Yes	Yes	Yes	No Response	No Response	Second Dept.
No	No Response	No Response	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	No	Yes	No Response	No	Second Dept.
No	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	No	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Combination of Methods	Not Sure	Somewhat	No	Yes	No Response	Not Sure	Second Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	No	No	Yes	No Response	No Response	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	No Response	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	No	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	No	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	Second Dept.
No	No Response	Not offered/promoted	Individual Study	No	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Other	Yes	Yes	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Other	Combination of Methods	No	Somewhat	Yes	Yes	No Response	No	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Combination of Methods	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	No Response	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Second Dept.
Not Sure	Not Sure	Other	Combination of Methods	Yes	Somewhat	Maybe	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	No Response	Individual Study	No	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Individual Study	No	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Other	Bar Prep Course	Yes	No	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	No	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Second Dept.
No	No Response	No Response	Combination of Methods	No Response	No	No Response	Yes	No Response	No	Second Dept.
Yes	No Response	Other	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	No	Somewhat	No	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	No Response	Not Sure	Second Dept.
Not Sure	No	Interested in other courses	Other	Yes	No	Yes	Yes	No Response	Not Sure	Second Dept.
No	No	No Response	Combination of Methods	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	No	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Other	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Second Dept.
Yes	No	Other	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Not Sure	Somewhat	No	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	No Response	Interested in other courses	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Schedule did not permit	Individual Study	No	Yes	Yes	Yes	No Response	No	Second Dept.
No Response	No	Schedule did not permit	Combination of Methods	Yes	Somewhat	No	Yes	No Response	Maybe	Second Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Yes	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	Yes	Yes	No Response	No	Second Dept.
No	No Response	Schedule did not permit	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	No	Not Sure	No	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	Yes	No	Yes	No Response	No	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Other	Bar Prep Course	Yes	Yes	No	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Not Sure	No	Not required for Exam	Bar Prep Course	No	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Somewhat	Not Sure	No	Yes	No Response	Yes	Second Dept.
No	No	Not offered/promoted	Combination of Methods	Yes	No	No	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	Not offered/promoted	Individual Study	Yes	Somewhat	Yes	Maybe	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	Other	Combination of Methods	Yes	No	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	No	No	Yes	No	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	No Response	Somewhat	No	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	No Response	Somewhat	No	No	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	No Response	Somewhat	No	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No Response	Beneficial for practice in NY	Individual Study	Not Sure	No	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	Schedule did not permit	Individual Study	Yes	Not Sure	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	Other	Individual Study	No	No	No	Yes	No Response	No	Second Dept.
Yes	No	Interested in other courses	Individual Study	No	Somewhat	Yes	Maybe	Other	Yes	Second Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Not Sure	No	Maybe	No Response	Yes	Second Dept.
No	No Response	No Response	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	No	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Second Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Somewhat	No	Yes	Maybe	Other	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	No	Yes	No Response	Not Sure	Second Dept.
Yes	No	Schedule did not permit	Individual Study	No	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	No	Interested in other courses	Bar Prep Course	Somewhat	Somewhat	Yes	Maybe	No Response	No	Second Dept.
Not Sure	No	Other	Individual Study	Yes	Yes	No	Yes	No Response	No	Second Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Not Sure	Second Dept.
No Response	No Response	No Response	Individual Study	Not Sure	No Response	No Response	No Response	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Yes	Yes	Maybe	Yes	No Response	Yes	Second Dept.
No	No	No Response	Individual Study	No	No	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No Response	No Response	Other	Individual Study	No	Yes	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Not required for Exam	Individual Study	No	Yes	No	Yes	No Response	Yes	Second Dept.
Yes	No	Not relevant to future area of p	Combination of Methods	Somewhat	Yes	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	No	Maybe	Maybe	No Response	Not Sure	Second Dept.
Yes	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Other	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	Maybe	No Response	Yes	Second Dept.
No	No Response	No Response	Law School Resources	No	Somewhat	No	Maybe	No Response	Yes	Second Dept.
Yes	Yes	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	Somewhat	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Yes	No	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	No	Second Dept.
Not Sure	No	Schedule did not permit	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No	Not offered/promoted	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Yes	Yes	Yes	No Response	No Response	Second Dept.
Not Sure	No	Other	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Other	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Second Dept.
No	No	Not required for Exam	Individual Study	Yes	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	No	Interested in other courses	Bar Prep Course	Somewhat	No Response	Yes	Yes	No Response	No	Second Dept.
Not Sure	No	Other	Other	No Response	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Other	Combination of Methods	Yes	Yes	No	Maybe	No Response	No	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	No Response	Not relevant to future area of p	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Yes	No	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Not required for Exam	Study Group	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No	No Response	Individual Study	Not Sure	No	No	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No	Interested in other courses	Individual Study	Somewhat	No	Maybe	Yes	No Response	Maybe	Second Dept.
Not Sure	No	Interested in other courses	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	No	Yes	No Response	Yes	Second Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	Yes	No Response	Yes	No Response	Maybe	Second Dept.
No Response	No	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Combination of Methods	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Individual Study	No	Somewhat	Yes	Yes	No Response	No	Second Dept.
Not Sure	No Response	No Response	Bar Prep Course	No	Somewhat	No	No	No Response	Yes	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Not offered/promoted	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Bar Prep Course	Yes	Not Sure	No	Yes	No Response	Maybe	Second Dept.
Not Sure	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Second Dept.
Yes	No	Not required for Exam	Study Group	Somewhat	No	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No Response	Not relevant to future area of p	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	Somewhat	No	Yes	No Response	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	Somewhat	No	Yes	No Response	Maybe	Second Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	Somewhat	No	Yes	No Response	No	Second Dept.
No	No Response	No Response	Combination of Methods	Yes	No	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Study Group	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Second Dept.
Yes	No Response	Required/Recommended	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Bar Prep Course	No	Somewhat	Yes	Maybe	No Response	Yes	Second Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	No	No	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Yes	No	Yes	Yes	No Response	No	Second Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	No	Yes	No Response	Maybe	Second Dept.
Yes	Yes	Required/Recommended	Individual Study	No	Yes	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	No	Yes	Yes	Yes	No Response	No	Second Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Yes	No Response	No	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	No	No	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	Maybe	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	Maybe	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	No Response	Combination of Methods	No Response	Yes	Maybe	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Bar Prep Course	Not Sure	Yes	No	Maybe	No Response	Not Sure	Second Dept.
No	No Response	Not offered/promoted	Combination of Methods	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Not offered/promoted	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
Not Sure	No	Not relevant to future area of p	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	No	Not required for Exam	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Not Sure	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Not Sure	Second Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Not Sure	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	No	Second Dept.
No	No Response	No Response	Individual Study	Yes	No	Yes	Yes	No Response	Yes	Second Dept.
Not Sure	No	Not relevant to future area of p	Study Group	No	No	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Schedule did not permit	Bar Prep Course	No	Yes	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Not Sure	Second Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	No	Maybe	No Response	Yes	Second Dept.
Yes	No	No Response	Individual Study	Somewhat	No	No	Yes	No Response	Not Sure	Second Dept.
No Response	No	Interested in other courses	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Somewhat	No	Yes	No Response	Maybe	Second Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Second Dept.
Yes	No	Schedule did not permit	Combination of Methods	Not Sure	Yes	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No Response	Interested in other courses	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Second Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	No	Not required for Exam	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Second Dept.
Yes	Yes	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No Response	No Response	Individual Study	Yes	Yes	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	No	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	No	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	No Response	No Response	No	Yes	Yes	Yes	No Response	No	Fourth Dept.
No	No	Not offered/promoted	Individual Study	No	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	Schedule did not permit	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Other	Study Group	No	Yes	Yes	Yes	Not applicable	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	Yes	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Other	Individual Study	No	No	Yes	Yes	No Response	No	Fourth Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Required/Recommended	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Other	Individual Study	Not Sure	Somewhat	No	Maybe	Other	Not Sure	Fourth Dept.
Yes	Yes	No Response	Bar Prep Course	No	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
No	No	No Response	Bar Prep Course	Yes	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Other	Bar Prep Course	Yes	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	No	Maybe	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	Other	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	Schedule did not permit	No Response	Yes	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	Other	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Interested in other courses	Individual Study	No	Somewhat	No	Yes	No Response	Not Sure	Fourth Dept.
Yes	Yes	No Response	Other	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	No Response	Bar Prep Course	Yes	Somewhat	Maybe	Yes	No Response	Not Sure	Fourth Dept.
No	No	No Response	Individual Study	Somewhat	Somewhat	No	Yes	No Response	Maybe	Fourth Dept.
No	No Response	No Response	Bar Prep Course	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Other	No Response	No Response	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	No	No	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No Response	No Response	Individual Study	No	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No Response	No Response	Individual Study	No	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No Response	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	No	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	No	No Response	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	No Response	Combination of Methods	Yes	Yes	No	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Bar Prep Course	Yes	Yes	No	Yes	No Response	Maybe	Fourth Dept.
No	Yes	Other	Individual Study	Yes	Somewhat	No	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
No	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	Yes	Other	Combination of Methods	Somewhat	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
Not Sure	No Response	No Response	Law School Resources	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Yes	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	Yes	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	No	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	No	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	No Response	Yes	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	No	Yes	No Response	No	Fourth Dept.
Yes	No	Other	Individual Study	Yes	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Not offered/promoted	Individual Study	Yes	Yes	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Not required for Exam	Combination of Methods	Yes	No	Yes	Yes	No Response	No	Fourth Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	Schedule did not permit	Combination of Methods	No	No	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Yes	No	No	Yes	No Response	No	Fourth Dept.
Yes	No	Other	Study Group	No	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	No	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No Response	No Response	No Response	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	Interested in other courses	Bar Prep Course	No Response	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	No Response	Bar Prep Course	Yes	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
Not Sure	No	Not relevant to future area of p	Individual Study	Yes	No	No	Maybe	No Response	Yes	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	No Response	No Response	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Bar Prep Course	Not Sure	Somewhat	Maybe	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Bar Prep Course	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
No	No	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Other	Somewhat	No	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	Not offered/promoted	Individual Study	No	No	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	Not required for Exam	Combination of Methods	No	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Other	Combination of Methods	No	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No	Not offered/promoted	Bar Prep Course	No	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
No	No	No Response	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	No Response	Individual Study	No	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	No Response	Other	Somewhat	No	Yes	Yes	No Response	No	Fourth Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	No Response	Combination of Methods	No	No	No	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	No	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Bar Prep Course	Yes	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
Not Sure	No	No Response	Individual Study	Somewhat	No	Maybe	Maybe	No Response	Maybe	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No	Not applicable	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	No Response	Bar Prep Course	Somewhat	No	No	Maybe	No Response	Maybe	Fourth Dept.
Yes	Yes	No Response	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Other	Yes	Yes	No	Yes	No Response	Yes	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	No	Maybe	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	No Response	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Fourth Dept.
Not Sure	No	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Other	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	No	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Interested in other courses	Combination of Methods	Yes	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Other	No Response	No Response	Yes	Yes	No Response	Yes	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	Other	Study Group	Somewhat	Yes	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	No	No Response	Individual Study	No	No	Yes	Yes	No Response	Not Sure	Fourth Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
No	No Response	Not offered/promoted	Bar Prep Course	Somewhat	Yes	Yes	Yes	No Response	Maybe	Fourth Dept.
Not Sure	No	Not offered/promoted	Individual Study	Somewhat	No	No	Yes	No Response	Yes	Fourth Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Somewhat	Somewhat	Maybe	Yes	No Response	No	Fourth Dept.
Yes	Yes	No Response	Combination of Methods	Not Sure	Yes	No	Maybe	No Response	Yes	Fourth Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	Yes	Required/Recommended	Individual Study	Yes	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Required/Recommended	Individual Study	Yes	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Individual Study	Somewhat	No	No	Yes	No Response	Yes	Fourth Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	No	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Not required for Exam	Individual Study	Yes	Yes	No	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Yes	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	Not relevant to future area of p	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Yes	Fourth Dept.
Yes	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
No	No Response	No Response	Combination of Methods	Somewhat	Somewhat	No Response	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	No	No Response	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Study Group	No	Somewhat	Yes	Yes	No Response	Maybe	Fourth Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Somewhat	Somewhat	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	No	No	Yes	Yes	No Response	No	Fourth Dept.
Yes	No	Schedule did not permit	Bar Prep Course	No	Somewhat	Yes	Yes	No Response	Not Sure	Fourth Dept.
Not Sure	No	Not required for Exam	Combination of Methods	Somewhat	Yes	No	Maybe	No Response	Yes	Fourth Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Somewhat	No	No	Other	Maybe	Fourth Dept.
Not Sure	No	No Response	Other	No	No	Yes	Yes	No Response	No	Second Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	Helpful for career	Yes	Third Dept.
Not Sure	Not Sure	No Response	Individual Study	Not Sure	Yes	No	No	Helpful for career	No	Third Dept.
No	No	Not applicable	Individual Study	Not Sure	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Other	Not Sure	Not Sure	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	No Response	No	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	Not applicable	Combination of Methods	Yes	Yes	No	No	Helpful for career	No	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Yes	Yes	Beneficial for practice in NY	No Response	Yes	Yes	No	Maybe	No Response	No	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	No	Maybe	Helpful for career	Maybe	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	No	Schedule did not permit	Bar Prep Course	Yes	No	No	Maybe	No Response	No	Third Dept.
Yes	No	Schedule did not permit	Study Group	Somewhat	No	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	No Response	No Response	No Response		Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	Yes	No	Maybe	No Response	No	Third Dept.
Not Sure	No	Interested in other courses	Other	Not Sure	No	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Not Sure	Yes	Yes	Maybe	Helpful for career	No	Third Dept.
No	No Response	Not applicable	Other	Not Sure	Not Sure	No	No	No Response	No	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	No	Maybe	No Response	Yes	Third Dept.
No Response	No Response	No Response	Combination of Methods	Yes	No	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Maybe	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Other	Not Sure	Not Sure	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Not Sure	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	No	Maybe	No Response	No	Third Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	No	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Not Sure	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No	Not applicable	Individual Study	Not Sure	Not Sure	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	Other	Maybe	Third Dept.
Not Sure	No Response	Not applicable	Law School Resources	Yes	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	No	Recognized accreditatic	Maybe	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Study Group	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No	Not relevant to future area of p	Bar Prep Course	No	Yes	No	Maybe	Other	No	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No Response	No Response	No Response	No Response	No	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	Yes	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Study Group	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No	Not relevant to future area of p	Bar Prep Course	No	Yes	No	Maybe	Other	No	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No Response	No Response	No Response	No Response	No	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	Yes	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	Somewhat	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Yes	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Yes	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	Somewhat	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	No Response	No Response	No Response	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Maybe	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	No Response	No Response	No Response	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	No	Third Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	Maybe	Maybe	No Response	Not Sure	Third Dept.
Not Sure	No	No Response	Individual Study	No	No	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	Somewhat	No	No	Not applicable	No	Third Dept.
Not Sure	No	No Response	Bar Prep Course	Yes	No	No	Maybe	May need in future	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	No Response	No	Third Dept.
Yes	Yes	Other	Bar Prep Course	Yes	Yes	No	No	Helpful for career	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No	Not applicable	Law School Resources	Yes	Somewhat	Maybe	Maybe	May need in future	Maybe	Third Dept.
No	No	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Not Sure	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Maybe	No Response	No	Third Dept.
Yes	No	Schedule did not permit	Combination of Methods	Yes	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	Other	No Response	No Response	No Response	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Somewhat	Somewhat	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	Not applicable	Yes	Third Dept.
Not Sure	No	Interested in other courses	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	Other	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	No	Helpful for career	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Maybe	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Yes	No	No	Helpful for career	No	Third Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	May need in future	Not Sure	Third Dept.
Not Sure	No	Not offered/promoted	Individual Study	Somewhat	No	No	Maybe	No Response	No	Third Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	No	Helpful for career	No	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Somewhat	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Maybe	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Other	No Response	No Response	No	Yes	Not applicable	Not Sure	Third Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	Yes	No	Maybe	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	No	Yes	No	Maybe	No Response	Yes	Third Dept.
Yes	No Response	No Response	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	Somewhat	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	No	Maybe	May need in future	Maybe	Third Dept.
Yes	Yes	Required/Recommended	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	No	Helpful for career	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
No Response	No Response	No Response	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No Response	No Response	No Response	Combination of Methods	Yes	Somewhat	Yes	Yes	No Response	No	Third Dept.
Yes	Yes	Required/Recommended	Law School Resources	Somewhat	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	Schedule did not permit	Individual Study	Somewhat	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not offered/promoted	Bar Prep Course	No Response	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	No	No	Required by Employer	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No	Not applicable	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Not required for Exam	Combination of Methods	Not Sure	Yes	No	Maybe	No Response	No	Third Dept.
Yes	No Response	No Response	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	No	Maybe	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Other	Yes	No Response	No	Maybe	No Response	Yes	Third Dept.
No	No	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	No Response	No	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	No	Yes	Not applicable	Yes	Third Dept.
No	No	Not offered/promoted	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	No	Required by Employer	Maybe	Third Dept.
No	No	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Yes	No	Maybe	No Response	Maybe	Third Dept.
Yes	No	Interested in other courses	Study Group	Yes	No	Maybe	Yes	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Yes	No	Yes	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	No	No	Maybe	No Response	Not Sure	Third Dept.
Yes	No	No Response	Law School Resources	No	No	Yes	Yes	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	No	No	Other	No	Third Dept.
Not Sure	No	No Response	Bar Prep Course	Yes	No	No	Maybe	No Response	No	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Yes	No	Maybe	No Response	No	Third Dept.
Yes	Yes	Other	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	Yes	No	Maybe	No Response	Maybe	Third Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Somewhat	Somewhat	Maybe	Yes	Not applicable	Yes	Third Dept.
Yes	No	Other	Individual Study	Not Sure	Not Sure	Maybe	Yes	Not applicable	Yes	Third Dept.
Yes	No	No Response	No Response	No Response	No Response	No	Yes	Not applicable	No	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Maybe	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Maybe	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	No	Required by Employer	No	Third Dept.
Not Sure	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Interested in other courses	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Study Group	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Maybe	No Response	No	Third Dept.
Not Sure	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Not required for Exam	Combination of Methods	Somewhat	Somewhat	Maybe	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	No	No	Maybe	No Response	Yes	Third Dept.
Yes	No	Schedule did not permit	Bar Prep Course	No Response	Yes	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	No Response	Individual Study	Somewhat	No	No	Maybe	No Response	Not Sure	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Study Group	Yes	No	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No	No Response	No Response	No Response	No Response	No	Maybe	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	No	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
Yes	No	Schedule did not permit	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No	No Response	Bar Prep Course	Not Sure	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	No Response	Somewhat	No	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No Response	Not applicable	No Response	Somewhat	Somewhat	No	Maybe	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Not Sure	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	No Response	Somewhat	Somewhat	No	Maybe	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Not Sure	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
Yes	No	Not required for Exam	Law School Resources	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Yes	No	Not applicable	Law School Resources	Somewhat	No	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No	Not offered/promoted	Law School Resources	No	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	May need in future	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	No	Yes	No	Yes	Required by Employer	Not Sure	Third Dept.
Yes	Yes	Other	Individual Study	Yes	Yes	No	No	Required by Employer	No	Third Dept.
Yes	No Response	No Response	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	Maybe	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	No	Required by Employer	No	Third Dept.
No	No	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	No	Maybe	Other	Yes	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	No	No	Maybe	No Response	Not Sure	Third Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	Yes	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	Maybe	No Response	Yes	Third Dept.
No	No Response	No Response	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	Not applicable	Maybe	Third Dept.
No	No Response	Not relevant to future area of p	Bar Prep Course	Somewhat	No	No	Maybe	May need in future	Not Sure	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Yes	Third Dept.
No	No	Not applicable	Other	Not Sure	Not Sure	Yes	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	Interested in other courses	Individual Study	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	Somewhat	No	Maybe	No Response	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Not relevant to future area of p	No Response	No Response	No Response	No Response	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Somewhat	No	No	No Response	No	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Other	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	Third Dept.
No Response	No Response	No Response	Bar Prep Course	Yes	Somewhat	No	No	Helpful for career	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	No	No	Required by Employer	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Somewhat	No	No	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	No Response	No Response	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Other	No Response	No Response	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No	Not relevant to future area of p	No Response	No Response	No Response	No	Yes	Not applicable	Yes	Third Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	Recognized accreditation	Maybe	Third Dept.
Yes	No	Interested in other courses	Individual Study	No	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Law School Resources	No	No	No	Maybe	No Response	Yes	Third Dept.
Yes	Yes	No Response	Individual Study	Yes	No	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Maybe	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Maybe	Required by Employer	Yes	Third Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Yes	No	Maybe	No Response	Maybe	Third Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	No	Helpful for career	Maybe	Third Dept.
Yes	No	Not relevant to future area of p	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No	Other	Bar Prep Course	Somewhat	Somewhat	No	Maybe	Not applicable	Not Sure	Third Dept.
Yes	No Response	No Response	Bar Prep Course	Somewhat	Yes	No	Maybe	No Response	Yes	Third Dept.
Yes	No	Other	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	Maybe	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Not relevant to future area of p	Other	Not Sure	Not Sure	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	No	No	No	Maybe	Required by Employer	No	Third Dept.
Not Sure	No	No Response	Individual Study	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No	No Response	Individual Study	Yes	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No	Not offered/promoted	Bar Prep Course	Not Sure	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No	Not relevant to future area of p	Bar Prep Course	Yes	Yes	No	Maybe	No Response	Yes	Third Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Other	Combination of Methods	Yes	Yes	No	No	No Response	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Maybe	Maybe	No Response	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	Maybe	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not offered/promoted	No Response	No Response	No Response	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	No	Maybe	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	No	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
No	No	Not applicable	Law School Resources	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	No	No	Yes	Yes	Required by Employer	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	No Response	No	Third Dept.
Not Sure	No	No Response	Individual Study	No	No	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No	No Response	Bar Prep Course	Somewhat	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	No Response	No	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No	Not offered/promoted	Combination of Methods	Yes	Yes	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Yes	Yes	No	Maybe	No Response	Yes	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	No	No Response	No Response	No Response	No Response	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	Maybe	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	No	No	Maybe	No Response	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Law School Resources	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not offered/promoted	Individual Study	No	Somewhat	No	Maybe	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Study Group	No	Yes	Maybe	Yes	Not applicable	Maybe	Third Dept.
No Response	No Response	No Response	Bar Prep Course	Somewhat	No	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	No	No	No	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Required by Employer	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Not Sure	Yes	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Beneficial for practice in NY	Bar Prep Course	Somewhat	No	No	Maybe	No Response	Recognized accreditatic	Maybe
No	No Response	Not applicable	Law School Resources	Yes	No	No	Maybe	No Response	Yes	Third Dept.
Yes	Yes	No Response	Combination of Methods	Somewhat	Yes	No	No	Helpful for career	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	May need in future	Maybe	Third Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not required for Exam	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No	Not offered/promoted	Individual Study	Yes	Yes	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Maybe	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	No	No	Required by Employer	Yes	Third Dept.
Not Sure	No	Not applicable	Study Group	No	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	No	Somewhat	Yes	Maybe	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	May need in future	Yes	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Not Sure	Not Sure	No Response	No Response	Yes	No	No	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Not Sure	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	Yes	Yes	No Response	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	No Response	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Maybe	Yes	Not applicable	Maybe	Third Dept.
Yes	No	No Response	Individual Study	Yes	Somewhat	Maybe	Yes	Not applicable	Yes	Third Dept.
No	No	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Required/Recommended	Individual Study	Somewhat	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	No Response	No Response	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	No Response	No Response	No Response	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No	No Response	Combination of Methods	Yes	Somewhat	Maybe	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Interested in other courses	Bar Prep Course	Somewhat	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	No	Third Dept.
No	Not Sure	Not applicable	Law School Resources	Yes	Yes	No	No	Helpful for career	Not Sure	Third Dept.
No	No	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	Somewhat	No	Maybe	Required by Employer	Maybe	Third Dept.
Not Sure	No	No Response	Individual Study	Yes	Yes	No	Maybe	No Response	Not Sure	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Not Sure	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Maybe	No Response	Yes	Third Dept.
Not Sure	No	No Response	Individual Study	Yes	Yes	No	Yes	May need in future	Yes	Third Dept.
Not Sure	No	No Response	Law School Resources	Not Sure	Somewhat	No	Maybe	May need in future	Yes	Third Dept.
Not Sure	No Response	No Response	No Response	Somewhat	Somewhat	No	Maybe	No Response	No	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No	Interested in other courses	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Other	Not Sure	Not Sure	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Maybe	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No Response	Interested in other courses	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Not Sure	Yes	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	Yes	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	No	No	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	No	No	No Response	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	No	Maybe	Required by Employer	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	No	No	Yes	May need in future	Yes	Third Dept.
Not Sure	No	No Response	Combination of Methods	Yes	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Not required for Exam	Law School Resources	Somewhat	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	No	No	No	Maybe	No Response	Maybe	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	No	No Response	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Individual Study	No	No	No	Maybe	May need in future	Yes	Third Dept.
Yes	No	Not relevant to future area of p	Combination of Methods	Somewhat	Yes	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	No	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	No	Maybe	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	No	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No	Not offered/promoted	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No	No Response	Individual Study	Somewhat	Yes	No	No	Other	Yes	Third Dept.
Not Sure	No	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Maybe	No Response	No	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	No	Maybe	No Response	Not Sure	Third Dept.
Not Sure	No	Not offered/promoted	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
Yes	No	No Response	Individual Study	Somewhat	No	No	Maybe	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
No Response	No Response	No Response	Bar Prep Course	No Response	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Maybe	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	No	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	Not relevant to future area of p	Bar Prep Course	Yes	No	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Maybe	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Not Sure	No	Maybe	May need in future	Not Sure	Third Dept.
No	No Response	Not offered/promoted	Law School Resources	Somewhat	No	Yes	Yes	Not applicable	No Response	Third Dept.
No Response	No Response	No Response	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
Not Sure	Not Sure	Other	Bar Prep Course	Not Sure	Somewhat	Maybe	Maybe	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	No Response	Combination of Methods	Yes	Yes	No	No	Helpful for career	Maybe	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	No	No	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Other	Individual Study	Somewhat	No	No	Maybe	No Response	Maybe	Third Dept.
Yes	No	Schedule did not permit	No Response	No Response	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Other	No	No	No	No	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	No	Other	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Maybe	May need in future	Maybe	Third Dept.
Not Sure	No	No Response	No Response	Somewhat	No	No Response	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Somewhat	Yes	No	No	Other	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	Somewhat	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Other	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Other	No Response	No Response	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No	Interested in other courses	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Combination of Methods	No	Yes	No	Yes	Not applicable	Maybe	Third Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	No	Maybe	No Response	Yes	Third Dept.
No	No	Not offered/promoted	Individual Study	Somewhat	No	No	Yes	Not applicable	Yes	Third Dept.
No	Not Sure	Not applicable	Individual Study	Somewhat	No	Maybe	Maybe	No Response	Maybe	Third Dept.
Yes	No Response	No Response	Individual Study	No	No	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	No	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	No Response	No	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Maybe	Recognized accreditatic	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	Somewhat	No	Maybe	Recognized accreditatic	Maybe	Third Dept.
Not Sure	No Response	Not applicable	No Response	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
Yes	Not Sure	No Response	Law School Resources	Yes	No	No	Yes	Not applicable	Yes	Third Dept.
No	No	Not applicable	Individual Study	Somewhat	No	Maybe	No	Required by Employer	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Yes	No	Yes	Not applicable	Yes	Third Dept.
No Response	Not Sure	No Response	Law School Resources	No	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	Not Sure	Third Dept.
Yes	No	No Response	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	Maybe	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	No	Recognized accreditatic	Not Sure	Third Dept.
Yes	No	Schedule did not permit	Combination of Methods	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	No Response	Not Sure	Not Sure	No	No	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	No	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	No Response	Individual Study	Somewhat	No	No	Maybe	Not applicable	Yes	Third Dept.
Not Sure	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	No	Maybe	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	No Response	Individual Study	Yes	No	No	Maybe	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	No	No	Maybe	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	Not applicable	Maybe	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	No	Required by Employer	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	No Response	Somewhat	Somewhat	No	No	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	No	Helpful for career	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No Response	No Response	No Response	Individual Study	No Response	No Response	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No	No Response	Other	No Response	No Response	Yes	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Maybe	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Study Group	Somewhat	No	No	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Schedule did not permit	Combination of Methods	Somewhat	No	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	No	No	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	No	No	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	No	No	Maybe	No Response	Maybe	Third Dept.
No	Yes	Other	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	No	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Yes	No	Schedule did not permit	Individual Study	No	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No	Not required for Exam	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Individual Study	Not Sure	No	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No Response	No Response	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No	Not required for Exam	Combination of Methods	Yes	Somewhat	No	Yes	Not applicable	Not Sure	Third Dept.
Not Sure	No	Not relevant to future area of p	Combination of Methods	Yes	Yes	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Maybe	No Response	Not Sure	Third Dept.
Not Sure	No	No Response	Combination of Methods	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	Yes	Yes	No Response	Yes	Third Dept.
No	No Response	Not applicable	Other	Not Sure	Not Sure	No	Yes	Not applicable	Yes	Third Dept.
No	No	Not applicable	Law School Resources	Somewhat	No	No	Maybe	No Response	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Maybe	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No	Interested in other courses	Law School Resources	Not Sure	No	No	Yes	Not applicable	Yes	Third Dept.
Yes	No	Schedule did not permit	Study Group	No	Yes	Yes	Yes	Not applicable	Yes	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Law School Resources	Yes	No	No	Yes	Not applicable	Maybe	Third Dept.
No	No	Not applicable	Combination of Methods	Yes	Yes	No	Maybe	No Response	Yes	Third Dept.
Yes	No	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Yes	Not applicable	No	Third Dept.
Yes	No	Not required for Exam	Combination of Methods	Yes	No	Yes	Yes	Not applicable	Not Sure	Third Dept.
Yes	Yes	Beneficial for practice in NY	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Interested in other courses	Bar Prep Course	Yes	Yes	No	Maybe	No Response	No	Third Dept.
Not Sure	Not Sure	No Response	Combination of Methods	Yes	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	Maybe	Maybe	Required by Employer	Maybe	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Somewhat	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No	No Response/Recommended	Law School Resources	Yes	No	Yes	Yes	Not applicable	Not Sure	Third Dept.
Yes	Yes	Required/Recommended	Individual Study	Yes	Yes	No	No	Other	No	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Not Sure	Yes	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No Response	No Response	Study Group	Yes	No	No	Maybe	No Response	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Not Sure	Third Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Law School Resources	Somewhat	Somewhat	No	Yes	Other	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	Not Sure	No Response	No Response	Yes	Somewhat	Yes	Yes	Not applicable	No Response	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	Yes	Not applicable	No	Third Dept.
No	No	Not applicable	Individual Study	Yes	Yes	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
Yes	No	Interested in other courses	Combination of Methods	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	No	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	Maybe	Required by Employer	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Yes	Not applicable	Yes	Third Dept.
Yes	No	Interested in other courses	Combination of Methods	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	No	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	Maybe	Required by Employer	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Maybe	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	No	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	No	Maybe	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	No	Maybe	Not applicable	No	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	No	No Response	Individual Study	No	No	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	No	Maybe	No Response	Maybe	Third Dept.
Not Sure	No	No Response	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	Third Dept.
No	No	Not applicable	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	No	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No Response	No Response	Individual Study	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Maybe	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	Yes	Beneficial for practice in NY	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	No	Third Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	Not Sure	No	Yes	Yes	Not applicable	Not Sure	Third Dept.
Yes	Yes	Required/Recommended	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No	No Response	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	No	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	No	Yes	Not applicable	Not Sure	Third Dept.
Yes	Yes	No Response	Combination of Methods	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Law School Resources	Yes	Somewhat	No	Maybe	May need in future	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No	Not relevant to future area of p	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	Maybe	Maybe	Not applicable	Yes	Third Dept.
Not Sure	No Response	Not applicable	Combination of Methods	Somewhat	No	No	Yes	Not applicable	Yes	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Law School Resources	No	No	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	No	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	Yes	Maybe	No Response	Not Sure	Third Dept.
No	No	Not offered/promoted	Combination of Methods	Yes	Somewhat	No	No	Required by Employer	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	Maybe	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	No	Maybe	No Response	No	Third Dept.
Not Sure	No	Not relevant to future area of p	Individual Study	No	Somewhat	Yes	Maybe	No Response	Yes	Third Dept.
Yes	Yes	No Response	Individual Study	Somewhat	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
No	No	Other	Study Group	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Yes	No	Schedule did not permit	Combination of Methods	No	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Maybe	No Response	No	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Other	No	No	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Required/Recommended	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No	Not relevant to future area of p	Individual Study	Yes	Yes	Maybe	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	No	No	Required by Employer	Yes	Third Dept.
Yes	Yes	No Response	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Study Group	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
Yes	No	Interested in other courses	Bar Prep Course	Not Sure	Yes	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	No	Yes	No	Maybe	No Response	Yes	Third Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	No	No	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Law School Resources	Yes	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
No	No Response	Not applicable	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	Yes	Not applicable	No	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	No	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Not Sure	No	No	Yes	Not applicable	Maybe	Third Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
Not Sure	No	Other	Combination of Methods	Yes	Somewhat	Maybe	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Yes	No	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Combination of Methods	Yes	Yes	No	No	May need in future	Not Sure	Third Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	No Response	Not Sure	Third Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	Third Dept.
No	No Response	Not offered/promoted	Law School Resources	Yes	Somewhat	Maybe	Yes	Not applicable	Yes	Third Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Yes	Yes	No	Other	Maybe	Third Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Yes	Not applicable	Yes	Third Dept.
Not Sure	No	Interested in other courses	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No	Not applicable	No Response	No	No	No	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	Third Dept.
No	No Response	Not applicable	Study Group	Somewhat	No	No	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	Maybe	No Response	Yes	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	Maybe	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Third Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Law School Resources	Somewhat	No	Yes	Yes	Not applicable	No	Third Dept.
Yes	No	Not required for Exam	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	No	Third Dept.
Yes	Yes	Required/Recommended	Law School Resources	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	Third Dept.
No	No	Not applicable	Individual Study	Yes	No	Yes	Yes	Not applicable	No	Third Dept.







Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No	Not applicable	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	No Response	No Response	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No	Not applicable	Combination of Methods	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No Response	Not applicable	Other	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Combination of Methods	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Study Group	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Other	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Other	No	No	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Other	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Other	No Response	No Response	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	Yes	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Other	Somewhat	Yes	Yes	Yes	Not applicable	No	First Dept.



Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	Not Sure	No Response	Other	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Yes	Yes	No	Maybe	No Response	No	First Dept.
Not Sure	Not Sure	No Response	Other	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Yes	Yes	Yes	Not applicable	No	First Dept.
Yes	No	No Response	Individual Study	Not Sure	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Individual Study	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Combination of Methods	No	Yes	No	Yes	Not applicable	Maybe	First Dept.
Yes	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No Response	No Response	Individual Study	Not Sure	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No Response	No Response	Individual Study	Not Sure	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No Response	No Response	Individual Study	Not Sure	Yes	Yes	Yes	Not applicable	Yes	First Dept.
No Response	No Response	No Response	No Response	No Response	No Response	No Response	No	No Response	Maybe	First Dept.
No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response	No Response	First Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	Somewhat	No	No Response	No Response	No Response	First Dept.
Not Sure	No	No Response	Bar Prep Course	Not Sure	Yes	Yes	No Response	No Response	No Response	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Yes	No	Maybe	No Response	Yes	First Dept.
Not Sure	No	No Response	Individual Study	Somewhat	No	No	Maybe	No Response	No	First Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	No	First Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Yes	Yes	No	Maybe	No Response	No	First Dept.
Not Sure	Not Sure	No Response	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	No	First Dept.
No Response	No Response	No Response	Individual Study	No Response	No Response	First Dept.				
Yes	No	No Response	Bar Prep Course	Somewhat	No	No	Maybe	No Response	Not Sure	First Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	No	Maybe	No Response	Yes	First Dept.
Yes	No	No Response	No Response	No Response	No Response	No Response	Yes	Not applicable	No Response	First Dept.
Yes	No Response	No Response	No Response	No Response	No Response	No Response	Yes	Not applicable	No Response	First Dept.
Yes	No	No Response	Bar Prep Course	Not Sure	Somewhat	No	Yes	Not applicable	Maybe	First Dept.
Yes	Not Sure	No Response	Individual Study	Somewhat	Somewhat	Maybe	Yes	Not applicable	Yes	First Dept.
Yes	No	No Response	Law School Resources	Yes	Somewhat	Maybe	Yes	Not applicable	Maybe	First Dept.
Not Sure	Not Sure	No Response	Individual Study	Yes	Somewhat	Maybe	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	No	No	Yes	Not applicable	Yes	First Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	Not Sure	No Response	Other	Somewhat	No	No	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Individual Study	Yes	Yes	No	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	No	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Individual Study	No	Yes	No	Yes	Not applicable	No	First Dept.
No	No	Not applicable	Individual Study	Somewhat	Yes	No	Yes	Not applicable	No	First Dept.
Yes	No	No Response	Bar Prep Course	Yes	No	No	Yes	Not applicable	No	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Other	Yes	Yes	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No Response	No Response	Individual Study	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Bar Prep Course	Not Sure	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Individual Study	No	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	No Response	Individual Study	Not Sure	No	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	No Response	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No	No Response	Individual Study	No	No	Yes	Yes	Not applicable	No	First Dept.
No	No	No Response	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	No Response	Individual Study	Somewhat	Not Sure	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Individual Study	Yes	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Individual Study	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No	No Response	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	No Response	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	No Response	Law School Resources	No Response	No	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No Response	No Response	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	No	First Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	Yes	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No Response	No Response	Other	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	Not Sure	Not Sure	Yes	Yes	Not applicable	No	First Dept.
No	No	Not applicable	Bar Prep Course	No	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Not Sure	No Response	Combination of Methods	Somewhat	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Bar Prep Course	Not Sure	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	First Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	No Response	Other	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	Not Sure	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	No Response	Individual Study	Somewhat	Yes	Yes	Yes	Not applicable	No	First Dept.
Yes	No	No Response	Individual Study	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	Not Sure	No Response	Other	Yes	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	Yes	No Response	Bar Prep Course	No	Yes	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No Response	No Response	Individual Study	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	No Response	Individual Study	Yes	Not Sure	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No Response	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	No Response	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	No	First Dept.
No	No	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Yes	Yes	No Response	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No	Not applicable	Combination of Methods	Somewhat	Not Sure	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Not Sure	Yes	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	First Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Not Sure	No Response	No Response	Bar Prep Course	No Response	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	No Response	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	Not Sure	No Response	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No Response	No Response	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No	No Response	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	No Response	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	No Response	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No Response	No Response	Other	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	No Response	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	No Response	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	No Response	Bar Prep Course	Somewhat	Not Sure	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Bar Prep Course	Not Sure	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Individual Study	Yes	No	No	No	May need in future	Yes	First Dept.
No	No Response	Not applicable	Other	No	No	Yes	No Response	Other	Yes	First Dept.
No	No	Not applicable	Individual Study	Somewhat	No	Maybe	Yes	Not applicable	Yes	First Dept.
No	No	Not applicable	Bar Prep Course	Somewhat	Somewhat	No	Maybe	Other	Not Sure	First Dept.
No	No	Not applicable	Bar Prep Course	Somewhat	No	No	No	Recognized accreditatic	No	First Dept.
Not Sure	No	No Response	Bar Prep Course	Not Sure	Not Sure	Yes	No	Helpful for career	No	First Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	No	Recognized accreditatic	No	First Dept.
Yes	Yes	No Response	Other	No Response	No Response	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	No Response	Bar Prep Course	No	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
No	No Response	Not applicable	Bar Prep Course	No	Yes	No	No	Helpful for career	No	First Dept.
Not Sure	Not Sure	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Yes	Somewhat	No	No	Other	No	First Dept.
Not Sure	No	Interested in other courses	Bar Prep Course	Somewhat	No	No	Maybe	Helpful for career	No	First Dept.
Yes	No	Schedule did not permit	Individual Study	No	Yes	No	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Interested in other courses	Other	No	No	No	Maybe	Helpful for career	Yes	First Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Interested in other courses	Other	No	Somewhat	No	No	Other	Yes	First Dept.
Yes	No	Other	Individual Study	No	Somewhat	No	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Individual Study	No	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No	Not offered/promoted	Combination of Methods	Yes	No	Yes	Yes	Not applicable	No	First Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	No	No	Other	Maybe	First Dept.
Yes	No	Interested in other courses	Combination of Methods	Somewhat	No	No	No	Other	No	First Dept.
Not Sure	No	Interested in other courses	Combination of Methods	Yes	No	No	No	Required by Employer	Maybe	First Dept.
Not Sure	No	Not applicable	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No Response	Not applicable	Combination of Methods	Yes	Somewhat	No	Maybe	Not applicable	No	First Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	Maybe	Maybe	Required by Employer	No	First Dept.
No	No	Not offered/promoted	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Maybe	No Response	No	First Dept.
Yes	Yes	Other	Combination of Methods	Somewhat	No	No	Maybe	No Response	Maybe	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	No	Maybe	No Response	Not Sure	First Dept.
Not Sure	No	Interested in other courses	Individual Study	No	No	Yes	Maybe	No Response	Yes	First Dept.
Not Sure	No	Not relevant to future area of p	Individual Study	No	Somewhat	No	Maybe	No Response	Yes	First Dept.
Yes	No	Interested in other courses	Combination of Methods	Somewhat	Somewhat	No	Maybe	No Response	Yes	First Dept.
Yes	No	Interested in other courses	Combination of Methods	Somewhat	Somewhat	No	Maybe	No Response	Maybe	First Dept.
Not Sure	No	Other	Bar Prep Course	Not Sure	Somewhat	Yes	Maybe	No Response	Not Sure	First Dept.
Yes	No	Not relevant to future area of p	Study Group	Somewhat	Somewhat	No	Maybe	No Response	Yes	First Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Yes	Yes	Maybe	No Response	Yes	First Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	No	Maybe	No Response	Maybe	First Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	No	No	Maybe	No Response	Maybe	First Dept.
Not Sure	No	Not relevant to future area of p	Bar Prep Course	Yes	Somewhat	No	Maybe	No Response	No	First Dept.
Yes	No	Interested in other courses	Individual Study	No	No	No	Maybe	No Response	Yes	First Dept.
No	No	Interested in other courses	Individual Study	No	No	No	Maybe	No Response	Yes	First Dept.
Not Sure	No	Not offered/promoted	Bar Prep Course	Yes	No	No	Maybe	No Response	No	First Dept.
Yes	No	Not required for Exam	Individual Study	Yes	No	Maybe	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Interested in other courses	Bar Prep Course	Somewhat	No	No	Yes	Not applicable	No	First Dept.
Yes	No	Other	Bar Prep Course	Yes	No	Maybe	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Combination of Methods	Somewhat	No	No	Yes	Not applicable	No	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Yes	No	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	No	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Required/Recommended	Individual Study	Somewhat	Somewhat	Maybe	Yes	Not applicable	Yes	First Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No Response	Not applicable	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Schedule did not permit	Bar Prep Course	Not Sure	Yes	No	Yes	Not applicable	Maybe	First Dept.
Yes	No	Interested in other courses	Individual Study	No	No	No	Yes	Not applicable	Maybe	First Dept.
Yes	No	Other	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Maybe	First Dept.
No	No	Not offered/promoted	Individual Study	Somewhat	No	Maybe	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Yes	No	No	Yes	Not applicable	Maybe	First Dept.
Yes	No	Not relevant to future area of p	Individual Study	Somewhat	Somewhat	Maybe	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	No	Yes	Not applicable	Not Sure	First Dept.
Not Sure	Not Sure	No Response	Individual Study	Yes	Yes	No	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Interested in other courses	Other	Yes	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Other	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	Not Sure	First Dept.
Not Sure	No	Not offered/promoted	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Not relevant to future area of p	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Not offered/promoted	Bar Prep Course	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No	Interested in other courses	Combination of Methods	Yes	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Interested in other courses	Other	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not offered/promoted	No Response	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Not required for Exam	Law School Resources	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not offered/promoted	Combination of Methods	No	Yes	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Not required for Exam	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Interested in other courses	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Interested in other courses	Combination of Methods	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Other	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	Not offered/promoted	Bar Prep Course	Not Sure	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Not applicable	Bar Prep Course	Not Sure	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Required/Recommended	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Not relevant to future area of p	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not relevant to future area of p	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not relevant to future area of p	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not relevant to future area of p	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not relevant to future area of p	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not relevant to future area of p	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Interested in other courses	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	Not Sure	Not relevant to future area of p	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Other	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No	Other	Bar Prep Course	Not Sure	Not Sure	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Other	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Other	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Bar Prep Course	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Not required for Exam	Combination of Methods	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Not required for Exam	Combination of Methods	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Not offered/promoted	Bar Prep Course	Not Sure	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Combination of Methods	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Other	Combination of Methods	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Combination of Methods	No	Yes	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Other	Combination of Methods	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Required/Recommended	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Interested in other courses	Combination of Methods	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Interested in other courses	Other	No	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Other	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	Interested in other courses	Study Group	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Combination of Methods	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Interested in other courses	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Not relevant to future area of p	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No	Other	Bar Prep Course	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Schedule did not permit	Bar Prep Course	Somewhat	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No	Not offered/promoted	Combination of Methods	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Interested in other courses	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Interested in other courses	Bar Prep Course	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not offered/promoted	Bar Prep Course	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Not relevant to future area of p	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Not applicable	Bar Prep Course	No	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
No	No	Not offered/promoted	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No Response	Not offered/promoted	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Not offered/promoted	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	No	Not offered/promoted	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Not relevant to future area of p	Individual Study	No	No	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	Interested in other courses	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Schedule did not permit	Individual Study	Not Sure	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Not offered/promoted	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Required/Recommended	Individual Study	Yes	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not offered/promoted	Individual Study	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No Response	Not applicable	Individual Study	Yes	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Individual Study	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Not relevant to future area of p	Individual Study	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not offered/promoted	Individual Study	Not Sure	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.



Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
Yes	Yes	Other	Individual Study	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Interested in other courses	Individual Study	No	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No	Not offered/promoted	Individual Study	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No	Not offered/promoted	Individual Study	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Not offered/promoted	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Other	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No	Not applicable	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	Not Sure	Interested in other courses	Individual Study	No Response	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not required for Exam	Bar Prep Course	No	No	Yes	Yes	Not applicable	No	Second Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	Second Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Maybe	Second Dept.
Yes	Yes	Required/Recommended	Individual Study	Yes	Yes	Yes	Yes	Not applicable	No	Second Dept.
Yes	Yes	Required/Recommended	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Yes	Second Dept.
Not Sure	No	Interested in other courses	Combination of Methods	Yes	Somewhat	No	Maybe	Not applicable	Yes	Second Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Maybe	Second Dept.
Yes	No	Schedule did not permit	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Maybe	Second Dept.
Yes	No	Not required for Exam	Bar Prep Course	No	Yes	Yes	Yes	Not applicable	Not Sure	Second Dept.
Yes	No Response	Interested in other courses	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	No	Second Dept.
Yes	No Response	Interested in other courses	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	Second Dept.

Question 2	Question 2a	Question 2b	Question 3	Question 4	Question 5	Question 6	Question 7	Question 7a	Question 8	Dept.
Yes	No	Interested in other courses	Individual Study	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
Yes	Yes	Other	Individual Study	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
No	No	Not applicable	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Interested in other courses	Individual Study	No	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No	Not offered/promoted	Individual Study	Yes	Yes	Yes	Yes	Not applicable	No	First Dept.
No	No	Not offered/promoted	Individual Study	No	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Schedule did not permit	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Not Sure	No	Not offered/promoted	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	First Dept.
Not Sure	No	Not applicable	Individual Study	No	No	Yes	Yes	Not applicable	Not Sure	First Dept.
Yes	No	Other	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	No	First Dept.
No	No	Not applicable	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Maybe	First Dept.
Not Sure	Not Sure	Interested in other courses	Individual Study	No Response	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Schedule did not permit	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Somewhat	No	Yes	Yes	Not applicable	Yes	First Dept.
Yes	Yes	Beneficial for practice in NY	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
Yes	No	Interested in other courses	Individual Study	No	Somewhat	Yes	Yes	Not applicable	Yes	First Dept.
No	No	Not required for Exam	Bar Prep Course	No	No	Yes	Yes	Not applicable	Maybe	First Dept.
Yes	No	Not required for Exam	Individual Study	Somewhat	No	Yes	Yes	Not applicable	No	Second Dept.
No	No Response	Not applicable	Individual Study	Yes	Somewhat	Yes	Yes	Not applicable	Yes	Second Dept.
Yes	Yes	Required/Recommended	Individual Study	Yes	Yes	Yes	Yes	Not applicable	Maybe	Second Dept.
Yes	Yes	Required/Recommended	Individual Study	Somewhat	Somewhat	Yes	Yes	Not applicable	No	Second Dept.
Yes	Yes	Beneficial for practice in NY	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Yes	Second Dept.
Not Sure	No	Interested in other courses	Combination of Methods	Yes	Somewhat	No	Maybe	Not applicable	Yes	Second Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	Somewhat	Yes	Yes	No Response	Yes	Second Dept.
No	No Response	Not applicable	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	Maybe	Second Dept.
Yes	No	Schedule did not permit	Combination of Methods	Yes	Yes	Yes	Yes	Not applicable	Maybe	Second Dept.
Yes	No	Not required for Exam	Bar Prep Course	No	Yes	Yes	Yes	Not applicable	Not Sure	Second Dept.
Yes	No Response	Interested in other courses	Bar Prep Course	Yes	No	Yes	Yes	Not applicable	No	Second Dept.
Yes	Yes	Interested in other courses	Bar Prep Course	Yes	Yes	Yes	Yes	Not applicable	Maybe	Second Dept.

Law Schools that Offer Courses in New York Law

Count of Question 2 Row Labels	Column Labels														Grand Total		
	Albany	Brooklyn	Buffalo	Cardozo	Columbia	Cornell	CUNY	Fordham	Hofstra	New York	No Response	NYU	Other	Pace		St. John's	Syracuse
No	2	6	2	1	26	9	2	4	1	32	23	653	1	3	2	1	768
No Response		2					1		1	8		5					18
Not Sure		12	2	20	39	9	7	2	9	8	49	114	5		7	2	285
Yes	37	44	70	37	6	4	59	22	28	19	13	65	28	32	44	16	546
<b>Grand Total</b>	<b>39</b>	<b>64</b>	<b>74</b>	<b>58</b>	<b>71</b>	<b>22</b>	<b>69</b>	<b>28</b>	<b>39</b>	<b>67</b>	<b>85</b>	<b>837</b>	<b>35</b>	<b>35</b>	<b>53</b>	<b>19</b>	<b>1617</b>

Question 2: Did your law school offer an courses focused exclusively on New York law, such as New York Practice?

Number of Students who took the course if it was offered?

Count of Question 2	Column Labels					
Row Labels	No	No Response	Not Sure	Yes	(blank)	Grand Total
No	170	3	142	294		609
No Response	593	14	119	21		747
Not Sure	2	1	24	5		32
Yes	3			226		229
(blank)						
<b>Grand Total</b>	<b>768</b>	<b>18</b>	<b>285</b>	<b>546</b>		<b>1617</b>

Column: Did your law school offer any courses focused exclusively on New York law, such as New York Practice?

Row: If yes, did you take any such course?

**Reason most chosen to take course if it was offered**

Question 2                      Yes

Count of Question 2 Row Labels	Column Labels	
	Yes	Grand Total
Beneficial for practice in NY	131	131
Interested in other courses	1	1
No Response	36	36
Other	19	19
Required/Recommended	39	39
<b>Grand Total</b>	<b>226</b>	<b>226</b>

Column: If yes, did you take any such course?

Row: What was the reason for decision to take such classes?

Filter: Did your law school offer any courses focused exclusively on New York law, such as New York Practice?

Reason course not taken, if it was offered

Question 2 Yes

Count of Question 2 Row Labels	Column Labels	
	No	Grand Total
Beneficial for practice in NY	1	1
Interested in other courses	58	58
No Response	41	41
Not applicable	3	3
Not offered/promoted	5	5
Not relevant to future area of practice	25	25
Not required for Exam	42	42
Other	25	25
Schedule did not permit	94	94
<b>Grand Total</b>	<b>294</b>	<b>294</b>

Column: If yes, did you take any such course?

Row: What was the reason for decision to not take such classes?

Filter: Did your law school offer any courses focused exclusively on New York law, such as New York Practice?

Number of Students who didn't take course, if offered, and intend to practice in NY

Question 2      Yes

Count of Question 2 Row Labels	Column Labels	
	No	Grand Total
Maybe	25	25
No	8	8
No Response	1	1
Yes	260	260
<b>Grand Total</b>	<b>294</b>	<b>294</b>

Column: If yes, did you take any such course?

Row: Do you intend to practice in New York?

Filter: Did your law school offer any courses focused exclusively on New York law, such as New York Practice?

**How did students prepare for the New York Law Examination i.e. the NY component of the Bar exam**

<b>Row Labels</b>	<b>Count of Question 3</b>
Bar Prep Course	449
Combination of Methods	189
Individual Study	779
Law School Resources	70
No Response	41
Other	61
Study Group	28
<b>Grand Total</b>	<b>1617</b>

Did you find that the New York Course was a helpful educational experience?

Row Labels	Count of Question 4
No	279
No Response	52
Not Sure	70
Somewhat	564
Yes	652
<b>Grand Total</b>	<b>1617</b>

Did you find the NY Law Examination to be a challenging test?

Row Labels	Count of Question 5
No	573
No Response	40
Not Sure	31
Somewhat	625
Yes	348
<b>Grand Total</b>	<b>1617</b>

Have you applied or do you intend to apply for admission in another American jurisdiction?

Row Labels	Count of Question 8
Maybe	432
No	448
No Response	11
Not Sure	232
Yes	494
<b>Grand Total</b>	<b>1617</b>

# **Appendix E**





## The UBE and Service to New York Clients

Deborah Jones Merritt

June 12, 2019

What impact has the UBE had on the number of attorneys available to serve New York clients? It is difficult to answer that question definitively because (a) New York adopted the UBE relatively recently; (b) publicly available data are limited; and (c) other trends in legal education and the profession are affecting the number of attorneys licensed in New York and other states. I explore here, however, data from several different sources that offer at least a preliminary answer to the question.

### I. Transfers of UBE Scores

The National Conference of Bar Examiners (NCBE) tracks the number of lawyers who transfer UBE scores in and out of a state. A lawyer who transfers a score *into* New York is one who obtains a New York license based on a UBE score earned in another state. Conversely, a lawyer who transfers a score *out of* New York is one who takes the UBE in New York and then uses that score to obtain a license in another state. Table One (on the next page) shows national transfer data for 2018.

As the table shows, New York transferred more 2018 scores out of the state (1,663) than into the state (747). Table Two, also drawn from NCBE data, shows a similar pattern for 2017 scores. That table appears on page three of this review.

At first glance, these numbers suggest that New York is suffering a net loss of registered attorneys under the UBE. There are, however, two very important counterpoints to that interpretation. First, lawyers who transfer a UBE score from one state to another do not necessarily leave the first state. Instead, some of these lawyers transfer scores so that they can maintain licenses in both states. This is especially true in states like New York that (a) have metropolitan areas spanning several states, and (b) are home to sophisticated clients with interests in multiple states.

Second, participation in the UBE may attract some law students and new attorneys to New York—drawing them away from schools and job offers in other states. The UBE is attractive to law students and new lawyers because of its mobility; these students and new professionals like to maximize their options. New York’s participation in the UBE is unlikely to play a major role in decisions about which law school or employment offer to accept, but it could have a noticeable impact on the margins.

NCBE’s raw transfer numbers, in other words, only begin to answer the question, “What impact has the UBE had on the number of attorneys available to serve New York clients?” To answer the question more fully, I looked at two other sources of data.

**Table One: UBE Scores Earned in 2018 That Were Transferred In and Out of Each UBE State<sup>1</sup>**

<b>UBE Jurisdiction</b>	<b>2018 UBE Scores Earned</b>	<b>2018 Scores Transferred Out</b>	<b>2018 Scores Transferred In</b>
Alabama	806	56	101
Alaska	82	35	52
Arizona	966	242	107
Colorado	1,081	341	151
Connecticut	510	90	162
District of Columbia	2,232	298	822
Idaho	171	51	61
Iowa	250	39	82
Kansas	147	60	158
Maine	162	52	28
Massachusetts	1,426	112	338
Minnesota	800	128	191
Missouri	857	265	146
Montana	117	61	70
Nebraska	195	89	32
New Hampshire	204	133	43
New Jersey	1,446	340	618
New Mexico	300	58	154
New York	13,438	1,663	747
North Dakota	84	41	66
Oregon	622	117	39
South Carolina	655	272	272
Utah	358	85	58
Vermont	117	54	27
Washington	1,003	232	207
West Virginia	227	43	12
Wyoming	85	26	73
Virgin Islands	11	5	8
<b>TOTALS</b>	<b>28,352</b>	<b>4,988</b>	<b>4,825</b>

<sup>1</sup> This table is taken from The Bar Examiner, UBE Scores Earned and Transferred by Jurisdiction in 2018 <https://thebarexaminer.org/statistics/2018-statistics/ube2018/#step3> (last visited June 12, 2019).

**Table Two: UBE Scores Earned in 2017 That Were Transferred In and Out of Each UBE State<sup>2</sup>**

<b>UBE Jurisdiction</b>	<b>UBE Scores Earned</b>	<b>Scores Transferred Out</b>	<b>Scores Transferred In</b>
Alabama	740	61	64
Alaska	100	50	47
Arizona	971	249	89
Colorado	1,103	285	162
Connecticut	517	36	125
District of Columbia	1,497	155	709
Idaho	182	46	63
Iowa	260	45	68
Kansas	172	41	129
Maine†	119	8	20
Minnesota	825	117	178
Missouri	925	273	121
Montana	149	57	56
Nebraska	217	80	41
New Hampshire	234	82	16
New Jersey	1,351	183	629
New Mexico	308	40	124
New York	14,093	1,373	517
North Dakota	113	31	42
Oregon†	459	51	16
South Carolina	680	142	211
Utah	397	93	58
Vermont	111	20	28
Washington	1,117	200	189
West Virginia†	158	11	12
Wyoming	90	47	60
Virgin Islands†	9	0	2
<b>TOTALS</b>	<b>26,897</b>	<b>3,776</b>	<b>3,776</b>

<sup>2</sup> This table is taken from The Bar Examiner, UBE Scores Earned and Transferred by Jurisdiction in 2017, <https://thebarexaminer.org/statistics/2017-statistics/ube2017/#step3> (last visited June 12, 2019). NCBE has not published a similar table for 2016, the first year that New York administered the UBE, so data from that year are not publicly available.

## II. New Lawyers with Multiple Licenses

As noted above, lawyers who transfer UBE scores from New York to another state do not necessarily leave New York. Instead, these lawyers may maintain an active New York practice that is enriched by a license from another state. This is especially likely in the New York City metropolitan area, where client interests easily spill over state lines.

NCBE's publicly released data, unfortunately, do not tell us where New York examinees are transferring their UBE scores. Are these lawyers moving to Colorado rather than establishing any New York practice? Or are they complementing their New York license with a New Jersey license, so that they can serve New York clients with interests in both states?

NCBE might be willing to release more detailed information about UBE transfers to the Task Force; they will not share that information with a private individual like me. Meanwhile, other publicly available data suggest that many of the lawyers transferring UBE scores out of New York are doing to obtain a second license that will complement their New York license—not because they are relocating to another state. I discuss that data further here.

First, Tables One and Two show that New Jersey, Connecticut, and Massachusetts are all net *importers* of UBE scores; each of those states transfers more scores into the state than out of the state. Indeed, New Jersey now admits more than a third of its new lawyers through transferred UBE scores.<sup>3</sup> There is no reason for those “transfer in” lawyers to take the UBE in New York or another state if they plan to practice full-time in New Jersey: New Jersey has the same UBE cut score (266) as New York. Instead, it is quite likely that most of New Jersey's “transfer in” lawyers are New York practitioners who are transferring their New York score in order to serve clients with interests in both New York and New Jersey.<sup>4</sup> The same appears to be true, although to a lesser extent, with scores transferred to Connecticut and Massachusetts.

Second, data suggest that most of the people who pass the UBE in New York do obtain admission in the state. Table Three reports that information.<sup>5</sup> Each row of the table represents two administrations of a New York exam, one in July and the other in February.<sup>6</sup> The first two rows

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<sup>3</sup> In 2017, New Jersey admitted 954 lawyers through the UBE taken in that state; another 496 lawyers (34.2%) obtained admission by transferring their UBE scores to New Jersey. In 2018, the percentage of transfer admissions was even higher: New Jersey admitted 750 lawyers through the UBE taken in that state; another 483 lawyers (39.2%) gained admission by transferring their UBE scores transferred into the state. *See* The Bar Examiner, Admissions to the Bar by Examination and by Transferred UBE Score, 2014–2018, <https://thebarexaminer.org/statistics/2018-statistics/admissions-to-the-bar-by-examination-and-by-transferred-ube-score-2014-2018-2/> (last visited June 12, 2019).

<sup>4</sup> Note that New Jersey's “transfer in” lawyers cannot come from Pennsylvania, which also shares a metropolitan area with New Jersey, because Pennsylvania has not adopted the UBE.

<sup>5</sup> Data in this table are drawn from The Bar Examiner statistics site, <https://thebarexaminer.org/statistics/2018-statistics/> (last visited June 12, 2019). *See* in particular the admissions page cited *supra* note 3, and the pages reporting the number of bar passers in each state for each year.

<sup>6</sup> Rather than pair February and July exams given in the same calendar year, I pair each July exam with the February exam given in the next calendar year. I do that because New York conducts its character and fitness process after candidates pass the bar exam. As a result, most candidates who pass the July exam do not secure admission until the

represent administrations of the UBE; the others reflect administrations of the previous New York Bar Exam.

For each of these paired exam administrations, the second column in the table reports the number of candidates who passed one of those exams. This column does not include any candidates who passed the UBE in another state and ultimately gained admission in New York; it includes only candidates who took a bar exam in New York and passed the exam.

The third column in the table shows the number of candidates who were admitted to the New York bar based on a passing exam score obtained in New York. This column does not include attorneys who were admitted to the bar by motion or based on a UBE score obtained in another state; it focuses exclusively on candidates who gained admission based on a bar exam score earned in New York.

The fourth column shows the net gain or loss between the number of candidates who passed an exam administered in New York and the number who gained admission because they passed that exam. The fifth column shows the number of additional New York admits based on attorneys who transferred their scores into the state, and the final column shows the total number of admits for that cohort of new attorneys.

**Table Three: Exam Passage and Bar Admission  
In New York, July 2013 -- February 2018**

<b>Exam Administration</b>	<b>Passed Exam in NY</b>	<b>Admitted in NY from NY Exam Score<sup>7</sup></b>	<b>Difference (Admitted - Passed)</b>	<b>Additional Admits from UBE Transfer</b>	<b>Total Admits</b>
Feb 2018 (UBE) July 2017 (UBE)	8,223	8,199 (2018)	- 24	747	8,946
Feb 2017 (UBE) July 2016 (UBE)	8,399	8,181 (2017)	- 218	517	8,698
Feb 2016 (NY) July 2015 (NY)	8,194	7,885 (2016)	- 309	11	7,896
Feb 2015 (NY) July 2014 (NY)	8,978	8,261 (2015)	- 717	--	8,261
Feb 2014 (NY) July 2013 (NY)	10,000	10,273 (2014)	273	--	10,273

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following calendar year. Candidates who pass a July exam, therefore, tend to be admitted during the same calendar year as candidates who pass the following February exam.

<sup>7</sup> The numbers in parentheses in this column represent the year of admission. As noted in the preceding footnote, candidates who pass New York's July exam tend to be admitted to the bar during the following calendar year.

As the table shows, the number of candidates who pass the bar exam in New York almost always is smaller than the number who gain admission based on that passing score.<sup>8</sup> This drop-off occurs because some candidates fail the character and fitness process; some may neglect to complete the Pro Bono Requirement; others (since adoption of the UBE) may fail to finish the New York Law Course or pass the New York Exam; still others may forego admission because of illness, death, other personal crises, or significant changes in career plans. There is always some drop-off between bar exam passage and bar admission.

The most significant point about the figures in Table Three is that this drop-off has diminished—rather than risen—since adoption of the UBE. The average drop-off for the four UBE administrations in Table Three is 121 candidates per year. The average drop-off for the six administrations of the New York Bar Exam preceding adoption of the UBE was 251 candidates per year.

These numbers offer strong evidence that UBE takers who transfer their scores out of New York are doing so to obtain additional licenses, rather than to leave New York. If successful New York examinees were using their UBE scores solely to obtain licenses in other states, the drop-off would have increased—rather than diminished—since adoption of the UBE. Instead, it appears that successful New York examinees are securing admission to New York’s bar, even if they also apply for licenses in other states.

It would be unusual, moreover, for those successful examinees to apply for a New York license if they did not plan to use that license to benefit clients. New York’s licensing process includes several steps beyond passage of the bar exam: Examinees must also complete New York’s Character and Fitness Process, the New York Law Course, the New York Law Exam, and New York’s Pro Bono Requirement. New attorneys who complete all of those steps clearly see value in obtaining a New York license. Whether they use that license to advise clients physically located in New York or in other parts of the nation/world, they understand the value of a New York license when serving clients.

### **III. Attracting More New Lawyers**

The number of law school graduates has fallen dramatically over the last five years. In 2013, 46,776 individuals graduated from law school;<sup>9</sup> by 2018, that number had fallen to 34,221.<sup>10</sup> Bar

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<sup>8</sup> The one exception, in the bottom row of the table, probably stems from variations in the pace of the Character and Fitness process. New York cannot admit more exam passers than the number of people who actually passed its exam! For that reason, it is better to focus on figures that average several years; I do that in the analyses below.

<sup>9</sup> ABA Section of Legal Education and Admissions to the Bar, 2013 Law Graduate Employment Data, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2013\\_law\\_graduate\\_employment\\_data.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_graduate_employment_data.pdf) (last visited June 11, 2019).

<sup>10</sup> ABA Section of Legal Education and Admissions to the Bar, Employment Outcomes as of April 2019 (Class of 2018 Graduates), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/2018-law-graduate-employment-data.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2018-law-graduate-employment-data.pdf) (May 6, 2019).

passage rates also declined during that period.<sup>11</sup> As a result, most states have suffered a drop in the number of new lawyers admitted to the bar.

Table Three above shows that New York shared in that national decline. Between 2014 and 2016, admission of new lawyers by exam fell from 10,273 to 7,896—a decline of 23%. Notably, however, the trend reversed after New York adopted the UBE. Total admissions based on the UBE (whether the score was earned in New York or another state) rose to 8,946 in 2018, the latest year for which information is available. Admissions may never reach the high level registered in 2014, but they are on the rebound.

The rebound, of course, could be due to many factors other than the UBE. New York employers may have enhanced their recruitment of new lawyers. Those new lawyers may have realized on their own that New York offers particularly attractive practice opportunities. New York law schools may have created new programs that draw students to the state—and, perhaps, better prepare them to pass the bar exam. Factors like these may greatly outweigh any impact of the UBE on bar admissions.

From the perspective of client access to lawyers, however, it is reassuring that adoption of the UBE did not diminish the number of lawyers admitted to practice in New York. That is particularly reassuring because, as Table Four shows, other states have continued to suffer drops since 2016 in the number of new-attorney admissions.

That table includes admissions data for seven other key states. The table includes California, Florida, and Texas because, after New York, they admit the largest number of new lawyers each year. It also includes New Jersey, Connecticut, Massachusetts, and Pennsylvania because they border New York.<sup>12</sup> In different ways, therefore, these seven states share characteristics with New York.

**Table Four: Lawyers Admitted to the Bar by Exam or Transferred UBE Score, Selected States, 2014 – 2018**

<b>Year</b>	<b>Calif.</b>	<b>Fla.</b>	<b>Tex.</b>	<b>N.J.</b>	<b>Conn.</b>	<b>Mass.</b>	<b>Pa.</b>
2018	4,975	2,517	2,485	1,233	344	1,198	1,168
2017	5,873	2,745	2,677	1,450	417	1,240	1,261
2016	5,496	2,888	2,849	1,286	353	1,542	1,455
2015	6,150	3,177	2,805	2,586	446	1,787	1,662
2014	6,726	3,137	2,892	3,635	516	1,998	1,883

<sup>11</sup> See The Bar Examiner, Ten-Year Summary of Bar Passage Rates, Overall and First-Time, 2009–2018, <https://thebarexaminer.org/statistics/2018-statistics/ten-year-summary-of-bar-passage-rates-overall-and-first-time-2009-2018/> (last visited June 11, 2019) (nationally, overall pass rates declined from 68% in 2013 to 54% in 2018; in New York rates declined from 64% to 56%).

<sup>12</sup> All data in this table are drawn from The Bar Examiner, Admissions to the Bar by Examination and by Transferred UBE Score, 2014–2018, <https://thebarexaminer.org/statistics/2018-statistics/admissions-to-the-bar-by-examination-and-by-transferred-ube-score-2014-2018-2/> (last visited June 12, 2019).

As the table shows, between 2014 and 2016 each of these states experienced the decline in bar admissions that New York witnessed during the same period. In each of these seven other states, however, the decline *continued* between 2016 and 2018—rather than reversing as in New York.

This comparison does not prove that adoption of the UBE increased the number of new lawyer admissions in New York. Indeed, three of the other states listed in Table Four (Connecticut, Massachusetts, and New Jersey) adopted the UBE during this period without seeing a net gain in bar admissions after 2016. The comparison, however, offers additional evidence that adoption of the UBE has not unduly depressed the number of new attorneys serving clients in New York.

## **Conclusion**

The UBE's impact on the number of lawyers available to serve New York clients is uncertain. The state only adopted the exam in 2016, and other trends have affected bar admissions since that year. The existing data, however, seem to support two conclusions.

First, the number of new-attorney admissions in New York has increased since the state adopted the UBE. That increase might have occurred without adoption of the UBE; unfortunately there is no way to test that hypothesis. Adoption of the UBE, however, has not depressed new-attorney bar admissions in the state.

Second, although New York transfers more UBE scores out of the state than it transfers in, many of those transfers out reflect New York attorneys who want to enrich their client service by obtaining a second license—rather than attorneys who are leaving the state. New York's net export status raises some concerns about the resources it devotes to administering and grading bar exams: New York benefits other states by performing those tasks. There is less concern, however, that New York is actually losing lawyers to those other states.



# Appendix F



<b>Jurisdiction</b>	<b>Type of Admission</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Alabama	Admission by Examination	461	408	381	407	383
Alaska	Admission by Examination	79	84	64	53	42
Arizona	Admission by Examination	683	635	479	440	479
Arkansas	Admission by Examination	219	212	209	220	165
California	Admission by Examination	6,726	6,150	5,496	5,873	4,975
Colorado	Admission by Examination	914	807	787	767	687
Connecticut	Admission by Examination	516	446	353	360	263
Delaware	Admission by Examination	122	99	123	139	116
District of Columbia	Admission by Examination	253	200	466	972	901
Florida	Admission by Examination	3,137	3,177	2,888	2,745	2,517
Georgia	Admission by Examination	1,297	1,029	1,016	1,133	935
Hawaii	Admission by Examination	203	188	146	193	160
Idaho	Admission by Examination	132	118	160	151	152
Illinois	Admission by Examination	2,676	2,327	1,987	1,932	1,752
Indiana	Admission by Examination	565	534	467	491	436
Iowa	Admission by Examination	294	262	176	203	185
Kansas	Admission by Examination	277	137	155	130	95
Kentucky	Admission by Examination	475	398	122	185	0
Louisiana	Admission by Examination	722	630	618	558	535
Maine	Admission by Examination	128	92	131	102	152
Maryland	Admission by Examination	1,637	1,382	1,231	1,025	873
Massachusetts	Admission by Examination	1,998	1,787	1,542	1,240	1,113
Michigan	Admission by Examination	1,011	849	805	674	678
Minnesota	Admission by Examination	752	662	601	568	539
Mississippi	Admission by Examination	233	205	198	137	129
Missouri	Admission by Examination	899	887	755	730	632
Montana	Admission by Examination	112	107	80	110	93
Nebraska	Admission by Examination	147	166	169	158	138
Nevada	Admission by Examination	319	321	276	288	279
New Hampshire*	Admission by Examination	168	142	142	162	88
New Jersey	Admission by Examination	3,635	2,586	562	954	750
New Mexico	Admission by Examination	324	191	164	222	195
<b>New York</b>	<b>Admission by Examination</b>	<b>10,273</b>	<b>8,261</b>	<b>7,885</b>	<b>8,181</b>	<b>8,199</b>
North Carolina	Admission by Examination	1,102	956	917	878	555
North Dakota	Admission by Examination	76	64	53	60	45
Ohio	Admission by Examination	1,179	1,036	940	895	802
Oklahoma	Admission by Examination	328	278	302	335	269
Oregon	Admission by Examination	471	384	417	460	629
Pennsylvania	Admission by Examination	1,883	1,662	1,455	1,261	1,168
Rhode Island	Admission by Examination	158	175	130	104	58
South Carolina	Admission by Examination	469	494	422	427	405
South Dakota	Admission by Examination	52	62	53	65	61
Tennessee	Admission by Examination	709	616	612	591	507
Texas	Admission by Examination	2,892	2,805	2,849	2,677	2,485
Utah	Admission by Examination	441	437	317	305	274
Vermont	Admission by Examination	104	48	64	54	66
Virginia	Admission by Examination	1,224	1,050	1,008	816	720
Washington	Admission by Examination	910	856	829	743	629
West Virginia	Admission by Examination	185	181	160	152	136
Wisconsin†	Admission by Examination	204	144	126	148	126
Wyoming	Admission by Examination	61	58	59	54	57
Guam	Admission by Examination	10	11	11	11	2
N. Mariana Islands	Admission by Examination	8	4	7	6	6
Palau	Admission by Examination	4	1	0	1	2
Puerto Rico	Admission by Examination	495	458	375	370	306
Virgin Islands	Admission by Examination	29	19	26	13	6
<b>Total for All Jurisdictions</b>	<b>Admission by Examination</b>	<b>54,381</b>	<b>47,278</b>	<b>41,766</b>	<b>41,929</b>	<b>37,950</b>
Alabama	Admission by Transferred UBE Score	10	10	17	28	50
Alaska	Admission by Transferred UBE Score	8	18	21	21	48
Arizona	Admission by Transferred UBE Score	38	47	53	42	80

Arkansas	Admission by Transferred UBE Score	—	—	—	—	0
California	Admission by Transferred UBE Score	—	—	—	—	0
Colorado	Admission by Transferred UBE Score	—	45	45	78	70
Connecticut	Admission by Transferred UBE Score	—	—	—	0	57
Delaware	Admission by Transferred UBE Score	—	—	—	—	0
District of Columbia	Admission by Transferred UBE Score	—	—	—	6	165
Florida	Admission by Transferred UBE Score	—	—	—	—	0
Georgia	Admission by Transferred UBE Score	—	—	—	—	0
Hawaii	Admission by Transferred UBE Score	—	—	—	—	0
Idaho	Admission by Transferred UBE Score	—	34	33	38	55
Illinois	Admission by Transferred UBE Score	—	—	—	—	0
Indiana	Admission by Transferred UBE Score	—	—	—	—	0
Iowa	Admission by Transferred UBE Score	—	—	1	38	50
Kansas	Admission by Transferred UBE Score	—	—	125	136	96
Kentucky	Admission by Transferred UBE Score	—	—	—	—	0
Louisiana	Admission by Transferred UBE Score	—	—	—	—	0
Maine	Admission by Transferred UBE Score	—	—	—	—	7
Maryland	Admission by Transferred UBE Score	—	—	—	—	0
Massachusetts	Admission by Transferred UBE Score	—	—	—	—	85
Michigan	Admission by Transferred UBE Score	—	—	—	—	0
Minnesota	Admission by Transferred UBE Score	—	48	76	88	111
Mississippi	Admission by Transferred UBE Score	—	—	—	—	0
Missouri	Admission by Transferred UBE Score	—	29	37	50	77
Montana	Admission by Transferred UBE Score	—	72	51	25	41
Nebraska	Admission by Transferred UBE Score	—	3	6	20	30
Nevada	Admission by Transferred UBE Score	—	—	—	—	0
New Hampshire*	Admission by Transferred UBE Score	—	6	7	9	12
New Jersey	Admission by Transferred UBE Score	—	—	—	90	496
New Mexico	Admission by Transferred UBE Score	—	—	1	56	73
New York	Admission by Transferred UBE Score	—	—	—	11	172
North Carolina	Admission by Transferred UBE Score	—	—	—	—	4
North Dakota	Admission by Transferred UBE Score	—	28	53	42	32
Ohio	Admission by Transferred UBE Score	—	—	—	—	0
Oklahoma	Admission by Transferred UBE Score	—	—	—	—	0
Oregon	Admission by Transferred UBE Score	—	—	—	—	14
Pennsylvania	Admission by Transferred UBE Score	—	—	—	—	0
Rhode Island	Admission by Transferred UBE Score	—	—	—	—	0
South Carolina	Admission by Transferred UBE Score	—	—	—	—	20
South Dakota	Admission by Transferred UBE Score	—	—	—	—	0
Tennessee	Admission by Transferred UBE Score	—	—	—	—	0
Texas	Admission by Transferred UBE Score	—	—	—	—	0
Utah	Admission by Transferred UBE Score	—	43	44	52	43
Vermont	Admission by Transferred UBE Score	—	—	—	7	8
Virginia	Admission by Transferred UBE Score	—	—	—	—	0
Washington	Admission by Transferred UBE Score	—	69	84	94	116
West Virginia	Admission by Transferred UBE Score	—	—	—	—	1
Wisconsin†	Admission by Transferred UBE Score	—	—	—	—	0
Wyoming	Admission by Transferred UBE Score	—	78	80	51	35
Guam	Admission by Transferred UBE Score	—	—	—	—	0
N. Mariana Islands	Admission by Transferred UBE Score	—	—	—	—	0
Palau	Admission by Transferred UBE Score	—	—	—	—	0
Puerto Rico	Admission by Transferred UBE Score	—	—	—	—	0
Virgin Islands	Admission by Transferred UBE Score	—	—	—	—	0
Total for All Jurisdictions	Admission by Transferred UBE Score	—	511	718	982	1,858
						2,700

# Appendix G



# Table of Issues

## New York Bar Exam: 2000 --- 2015

**Note:** The following tables identify every issue tested on the essays in the New York bar exam from 2000 to 2015. The essays are based on both procedural and substantive law. Except for questions involving federal law, the New York essay questions are based on New York law (*as noted by the New York Board of Law Examiners on its website, [www.nybarexam.org/barexam.htm](http://www.nybarexam.org/barexam.htm), when visited on November 14, 2010*).

Essay Topics	February 2000	July 2000	Essay Topics
<p><b>Essay 1</b></p> <p>Contracts</p> <p>Agency/ Ptnrship</p> <p>Fed Jxn</p>	<p>UCC sale of goods; contract terms; statute of frauds</p> <p>Partner's authority to bind partnership</p> <p>Corporations as partners in a partnership</p> <p>Consideration: validity of termination provision</p> <p>Fraudulent inducement</p> <p>Perfect tender rule; breach of sales contract</p> <p>Installment contract; waiver</p> <p>Federal Practice/Procedure: subject matter jurisdiction; basis for removal to federal court</p>	<p>UCC sale of goods</p> <p>Breach of contract; breach of warranty</p> <p>Revocation of acceptance</p> <p>Breach of express and implied warranties</p> <p>Consequential damages</p> <p>Incidental damages</p> <p>Employment contract</p> <p>Enforceability of restrictive covenant in employment contract</p> <p>NY Civil Practice: preliminary/permanent injunction</p>	<p>Contracts Article 2</p> <p>NY Civil Practice</p>
<p><b>Essay 2</b></p> <p>4 Amend</p> <p>Crim Law</p>	<p>Fourth Amendment</p> <p>Transferred intent</p> <p>Attempt; defenses to attempt</p> <p>Factual impossibility</p> <p>Murder in second degree</p> <p>Manslaughter in first degree</p> <p>Extreme emotional disturbance</p> <p>Burden of proof on affirmative defenses</p>	<p>Changing the beneficiary of a totten trust in a will</p> <p>Spousal right of election</p> <p>Computation of the elective share</p> <p>Identifying testamentary substitutes: totten trusts, life insurance</p> <p>Distribution of the residuary of the estate</p> <p>Lapsed legacies: when a beneficiary renounces a bequest</p>	<p>Wills</p>
<p><b>Essay 3</b></p> <p>Dom Rel</p> <p>Property</p> <p>NY Civil Practice</p>	<p>Grounds for annulment: fraudulent misrepresentation</p> <p>Defense of cohabitation</p> <p>Prenuptial agreement: when it must be signed and acknowledged</p> <p>Adverse possession; tacking; ousting</p>	<p>Domestic relations retainer agreement</p> <p>Requirements for a conversion divorce</p> <p>Paternity by estoppel</p> <p>Best interests of the child standard for petition for modification of a custody arrangement</p> <p>Ethics: non-refundable retainer agreement in domestic relations matter</p>	<p>Dom Rel</p> <p>Ethics</p>
<p><b>Essay 4</b></p> <p>Torts</p> <p>NY Civil Practice</p>	<p>Negligence: standard for children</p> <p>Superceding causes</p> <p>Vicarious liability; <i>respondeat superior</i></p> <p>Joint &amp; several liability</p> <p>Contributory/comparative negligence</p> <p>NY Civil Practice: limits on non-economic losses; failure to state a cause of action; court's grant of summary judgment on its own motion</p>	<p>Strict products liability: design and manufacturing defect</p> <p>Negligence</p> <p>Comparative negligence</p> <p>Conflict of law: torts — interspousal tort immunity</p> <p>Breach of warranty</p> <p>NY Civil Practice: statute of limitations for warranty and products liability claims</p>	<p>Torts</p> <p>Conflict of laws</p> <p>NY Civil Practice</p>
<p><b>Essay 5</b></p> <p>Property</p> <p>Wills</p> <p>NY Civil Practice</p>	<p>Acceleration clauses in mortgage agreements</p> <p>Redemption of mortgage</p> <p>Termination of agency relationship</p> <p>Will execution requirements: assisted signatures; interested witnesses and when their bequest would be forfeited</p> <p>NY Civil Practice: service of notice in foreclosure proceedings</p>	<p>Grand larceny by false promise</p> <p>Basis for grand jury indictment</p> <p>Fourth Amendment searches/seizures: arrest without warrant as defendant was leaving his home</p> <p>Search of the "wingspan"</p> <p>Exclusionary rule</p> <p>Prosecutor's obligation to defense: Rosario material</p> <p>Admissibility of evidence of common plan or scheme</p>	<p>4 Amend</p> <p>Evidence</p>
<p><b>Essay 6</b></p> <p>Corps</p>	<p>Duty of corporate directors/officers: corporate opportunity doctrine</p> <p>Voting requirements: Where written shareholder agreement requires board unanimity but no such provision in cert of incorporation or by-laws</p> <p>Statutory liability of directors for breach of fiduciary duties</p> <p>Preemptive rights</p>	<p>Interested director transaction: interest not disclosed</p> <p>Corporate loans to directors</p> <p>Liability of partners for partnership debts</p> <p>Liability of shareholders in closely held corp for employee wages</p>	<p>Corps</p> <p>Ptnrship</p>

Essay Topics	February 2001	July 2001	Essay Topics
<p><b>Essay 1</b></p> <p>Contracts</p>	<p>Construction contract: defective performance Substantial performance; damages Unconscionability: substantive and procedural Unilateral mistake; basis for rescission</p>	<p>UCC sale of goods; merchants Contract formation when there are different terms in the acceptance: "battle of the forms" Distinction between UCC and common law "mirror image rule" Perfect tender rule; seller's right to cure Employee as agent for employer: scope of authority <b>NY Civil Practice: motion for summary judgment</b></p>	<p>Contracts</p> <p>Article 2</p> <p>NY Civil Practice</p>
<p><b>Essay 2</b></p> <p>Con Law</p> <p>4 Amend</p>	<p>First Amendment: freedom of expression: "fighting words" exception Assault : the intent required by the statute</p> <p>Fourth Amendment searches/seizures: scope of search incident to a lawful arrest Defense of justification Citizen's right to resist arrest</p>	<p>Felony murder/burglary Dying declaration exception to hearsay; distinction between NY and Federal rule Basis for mistrial: juror conduct</p>	<p>Crim Law</p> <p>Evidence</p>
<p><b>Essay 3</b></p> <p>Dom Rel</p> <p>Property</p> <p>NY Civil Practice</p>	<p>Grounds for divorce: adultery/conversion of separation agreement Incorporating the separation agreement into the judgment Adverse possession License to use land <b>NY Civil Practice: jurisdiction over defendant; durational residency requirement</b></p>	<p>Requirements for conversion divorce Determining assets subject to equitable distribution Defining marital and separate property Valuation of law license acquired during marriage Inherited property and increase in valuation of property during the marriage – both managed and passive Payment of child support pursuant to separation agreement when parent obligated to pay gains custody Ethics: attorney securing a fee in a matrimonial matter by holding a mortgage in marital home</p>	<p>Dom Rel</p> <p>Ethics</p>
<p><b>Essay 4</b></p> <p>Torts</p> <p>NY Civil Practice</p>	<p>Negligence Duty of owner/occupier of land Dram Shop Law Assumption of the risk NY Civil Practice: indemnification</p>	<p>Common law negligence; negligence per se Contributory negligence/comparative negligence standard Employee vs. independent contractor Workers' compensation Federal Practice/Procedure: basis for removal to federal court; diversity jurisdiction NY Civil Practice: motion for summary judgment</p>	<p>Torts</p> <p>Workers' Comp</p> <p>Fed Jxn</p> <p>NY Civil Practice</p>
<p><b>Essay 5</b></p> <p>Wills</p> <p>Ethics</p>	<p>Will execution requirements: witness signatures Codicils: execution requirements Basis for Attorney General's standing in Surrogate's Court Classification of legacies: per stirpes calculations Ethics: where attorney is a beneficiary under the will; where attorney/beneficiary is the draftsman</p>	<p>Wills: partial revocation by physical act Codicils: execution requirements Rule of ademption: destruction of the bequest and insurance proceeds Future Interests: whether residuary gift of the principal of a trust violates RAP</p>	<p>Wills</p> <p>Property</p>
<p><b>Essay 6</b></p> <p>Corps</p>	<p>Notice requirement for special meeting of directors Basis for removal of a director; where director is also an employee of the corporation Basis for judicial dissolution: oppressive conduct toward a minority shareholder Shareholder agreements: "right of first refusal"</p>	<p>MPT Topic: Confidential communication between client and attorney: Social worker exception</p> <p>MPT Task: Persuasive brief in support of a motion to quash a subpoena.</p>	<p>MPT</p>

Essay Topics	February 2002	July 2002	Essay Topics
<b>Essay 1</b> Contracts Article 2  Torts	UCC sale of goods Whether a cause of action lies in strict products liability for purely economic damages Rights of intended third party beneficiary Consideration: modification in a writing	Employment contract; at will employment; indefinite terms Consideration: modification and pre-existing duty Statute of frauds/ one year provision Ethics: is compliance with ethical standards an implied term in legal employment contracts	Contracts  Ethics
<b>Essay 2</b>  4 Amend	Fourth Amendment searches/seizures: stop of van and arrest of driver Issues of reasonable suspicion for stop and probable cause for arrest When does the Sixth Amendment right to counsel attach Standard for waiver of rights when police know defendant is represented by counsel	Admissibility of character evidence; exceptions Accomplice liability Conviction by testimony of an accomplice – need for corroboration Admissibility of liability insurance	Evidence  Crim Law
<b>Essay 3</b>  Dom Rel  Property	Marital and separate property Joint bank account Statute of frauds/ marriage provision Engagement ring - is it subject to equitable distribution? Mortgaging property owned in a tenancy by the entirety; forgery of signature; rights of survivorship	Right to maintenance payments after death of paying spouse when provided in separation agreement Validity of signed but not acknowledged mortgage Determining priority of mortgages; recording statutes Whether ex-wife can serve as executrix and/or inherit from ex's estate	Dom Rel  Property  Wills
<b>Essay 4</b> Torts  Conflict of law  Ethics  NY Civil Practice	Negligence, landowner liability, failure to warn, Assumption of risk Conflict of law: contracts — insurance policy  Ethics: payment of a referral fee; standards for contingent fee retainer agreements  NY Civil Practice: motion for summary judgment	Bringing suit against a municipality for negligence Admissibility of payment of medical expenses by insurance company  NY Civil Practice: personal jurisdiction over a foreign corporation – assertion of long arm jurisdiction; failure to state a cause of action	Torts  Evidence  NY Civil Practice
<b>Essay 5</b>  Wills  Ethics	Calculating the right of election Identifying testamentary substitutes: totten trust is one; life insurance is not Non-probate transfers: joint tenancy and totten trusts Attorney as executor: need to fully disclose two fees Ethics: conflict of interest, attorney/executor	Granting letters of administration Duties of an administrator Determining intestate shares for spouse and issue Identifying partnership property Dissolution of a partnership upon death of one of the partners; whether estate administrator can be substituted for partner in a partnership upon death of partner	Wills  Partnership
MPT	MPT Topic:     Joint venture  MPT Task:     Advisory/opinion letter to a corporate client advising its obligations under a joint venture agreement and assignment agreement	MPT Topic:     Criminal case; seeking a felony indictment on two counts of endangering the welfare of a child  MPT Task:     Persuasive memorandum	MPT

Essay Topics	February 2003	July 2003	Essay Topics
<b>Essay 1</b> Contracts Corps Ethics NY Civil Practice	Parol evidence rule Power of agent to bind principal Basis for shareholder to request a judicial dissolution Agency/Ethics: attorney's duty to inform client of settlement offers NY Civil Practice: preliminary injunction	UCC sale of goods; missing price term Determining who bears risk of loss when goods are destroyed Consideration: illusory promise Real estate transaction where "time is of the essence"; forfeiture of 10% down payment Liquidated damages	Contracts UCC Art 2
<b>Essay 2</b> Crim Law UCC Article 3	Liability for writing a bad check Larceny by means of writing false checks Negotiable instruments Forgery: false endorsement; bank liability	Fourth Amendment searches/seizures: issue of consent; evanescent evidence Burden of proof for affirmative defense of insanity Allowable inquiry into peremptory challenges Sixth Amendment right to effective counsel Ethics: contingency fee arrangement in criminal case	4 and 6 Amend Crim Law Ethics
<b>Essay 3</b> Wills	Validity of handwritten changes to a will (codicil) Rule of ademption: specific bequest no longer in testator's estate at time of death; effect of stock split on specific bequest of "my 100 shares" Intestacy: entitlement of child born after execution of will who is not provided for in will	Adultery as grounds for divorce; when the accusing spouse is also committing adultery Requirements for conversion divorce Effect of a default judgment on the distribution of marital property and the calculation of child support Identifying marital and separate property	Dom Rel
<b>Essay 4</b> Torts Evidence NY Civil Practice	Negligence/ negligence per se No-fault insurance Affirmative defense of speeding and failure to wear a seatbelt; comparative negligence Medical malpractice <i>Res ipsa</i> Admissibility of traffic conviction in a personal injury trial NY Civil Practice: statute of limitations for medical; continuous treatment; foreign objects	Workers' compensation as a bar to recovery in wrongful death action Distinction between employee and independent contractor Wrongful death recovery: what is recoverable and who may recover NY Civil Practice: claim for contribution from an employer; grave injury exception	Torts Workers' Comp NY Civil Practice
<b>Essay 5</b> Dom Rel Property Contracts	Bases for divorce: cruel and inhuman treatment and abandonment Whether default on mortgage accelerates the payments absent an express acceleration term Enforceability of oral agreement to assume the mortgage	Construction of a residuary clause: following the testator's intent Changing a life insurance beneficiary by means of a will's residuary clause Will execution requirements: when an attesting witness can take under a will	Wills
MPT	MPT Topic: Tenant liability for improvements made by landlord MPT Task: Letter to attorney explaining and defending client's position	MPT Topic: First Amendment protections for proposed newspaper article which is an expose' of companies' questionable sales practices. MPT Task: Two-part objective memorandum to the supervising attorney	MPT

Essay Topics	February 2004	July 2004	Essay Topics
<b>Essay 1</b> Contracts Corps NY Civil Practice	Enforceability of pre-incorporation contracts Promoter liability Officer's authority: power of president to initiate contract action on behalf of corp. Statute of frauds/ one-year provision Applicability of part performance exception Satisfying the written memorandum requirement: material terms/several writings NY Civil Practice: motion for summary judgment	UCC sale of goods/merchants Anticipatory repudiation; adequate assurances; retraction of repudiation Right to cover Interested director transaction; interest disclosed by director votes on contract Business judgment rule	Contracts UCC Art 2 Corps
<b>Essay 2</b> 4 Amend Crim Law	Fourth Amendment searches and seizures: scope of search incident to a lawful arrest Exceptions: wingspan/locked containers Statutory interpretation: knowledge element Availability of entrapment defense Pleading alternate defense theories	Fourth Amendment searches and seizures: probable cause for warrant based on reliability of informant testimony / Aguilar Spinelli test Police officer's good faith reliance on a defective warrant Probable cause standard for wiretap warrant Exclusion of evidence	4 Amend
<b>Essay 3</b> Dom Rel Property	Standard for modifying child support agreement contained in a separation agreement that was incorporated but did not merge into the judgment of divorce Basis for seeking change in custody Whether restrictive covenants binds successors in interest	Adverse possession Whether tenancy by the entirety when parties were not married when deed was delivered Whether joint tenants can seek the partition of property Ethics: attorney represents client in litigation where attorney was previously the mediator trying to resolve the dispute between all parties	Property Ethics
<b>Essay 4</b> Torts Property NY Civil Practice	Negligent supervision: whether parents are liable to third parties; whether child has COA against own parent Negligence Landowner's duty to entrants upon his land Joint and several liability NY Civil Practice: limits on non-economic losses; failure to state a cause of action; summary judgment	No-fault insurance – can a pedestrian recover under no-fault insurance when the driver was not negligent Conflict of law: contracts — analysis regarding an insurance company's retroactively canceled insurance policy NY Civil Practice: motion for summary judgment; burden and form of proof	Torts No-fault insurance NY Civil Practice
<b>Essay 5</b> Wills Trusts	Lapsed legacies: when a beneficiary renounces a bequest /NY's anti-lapse statute Creation of a "pour over trust" Distribution of residuary estate when bequest to trust fails Effect of simultaneous death on disposition in will /lapsed gift	Validity of oral agreement to execute mutual wills Calculation of elective share Determining testamentary substitutes: totten trust, joint savings account, joint checking account, condo in husband's name only Ethics: conflict of interest in simultaneous representation	Wills Ethics
MPT	MPT Topic: Admissibility of prior incidents of domestic abuse in a prosecution for domestic violence MPT Task: Trial brief; includes a statement of facts	MPT Topic: Breach of implied warranty of habitability MPT Task: Letter to supervising attorney	MPT

Essay Topics	February 2005	July 2005	Essay Topics
<p><b>Essay 1</b></p> <p>Contracts</p> <p>UCC Art 2</p> <p>Corps</p>	<p>UCC sale of goods</p> <p>Disclaimer of warranties, express, implied, and title</p> <p>Statutory liability of officers and directors for breach of fiduciary duties; personal liability</p> <p>Basis to initiate a shareholder derivative action against officers and directors</p> <p>Shareholder's right/basis to force dissolution of corp.</p>	<p>Piercing the corporate veil to hold sub corp liable on a contract party had with main corp</p> <p>Term in oral agreement contradicts writing: question of parol evidence or subsequent modification</p> <p>Recovery under quantum meruit</p> <p>Ethics: attorney's refusal to refund unearned portion of non-refundable retainer</p>	<p>Corps</p> <p>Contracts</p> <p>Ethics</p>
<p><b>Essay 2</b></p> <p>4 Amend</p> <p>Crim Law</p>	<p>Defendant's due process rights during pre-charge line-up</p> <p>Admissibility of in-court identification when previous line-up ID is tainted</p> <p>Validity of waiver of right to counsel by one in custody when made w/o presence of lawyer</p> <p>Viability of self-defense when possibility of safe retreat exists</p>	<p>Elements of criminal solicitation</p> <p>Need for corroboration of accomplice testimony: "accomplice" is undercover police officer</p> <p>Attempt; defense of impossibility</p> <p>NY's "indelible" right to counsel</p> <p>Waiver of right to counsel</p> <p>Elements of burglary</p>	<p>Crim Law</p> <p>5 and 6 Amend</p>
<p><b>Essay 3</b></p> <p>Dom Rel</p> <p>Property</p>	<p>Adultery as grounds for divorce; condonation</p> <p>Factors for awarding equitable distribution; passive/active contributions</p> <p>Effect of mortgage taken by one spouse on a tenancy by the entirety</p>	<p>Conflict of laws: full faith and credit; divisible divorce</p> <p>Subject matter jurisdiction over divorce</p> <p>Factors for determining maintenance award</p> <p>Personal jurisdiction requirement for granting maintenance award – exercise of long arm jurisdiction</p>	<p>Conflict of laws</p> <p>Dom Rel</p> <p>Fed Jxn</p>
<p><b>Essay 4</b></p> <p>Torts</p>	<p>Negligence; assumption of risk of engaging in a sport</p> <p>Whether parent can bring claim for negligent infliction and emotional distress</p> <p>Strict products liability; affirmative defense of consumer modification to product</p>	<p>Negligence; vicarious liability of employer for negligence of its employees</p> <p>Admission admissible as non-hearsay</p> <p>Validity of a waiver of liability</p> <p>NY Civil Practice: statute of limitations for negligence action; tolling of statute for minor</p>	<p>Torts</p> <p>Evidence</p> <p>NY Civil Practice</p>
<p><b>Essay 5</b></p> <p>Wills</p> <p>Evidence</p> <p>NY Civil Practice</p>	<p>Admissibility of opinion testimony by a layperson</p> <p>Wills: execution; testamentary capacity</p> <p>Interested party's right to an accounting from the executor of the estate</p> <p><b>NY Civil Practice: personal jurisdiction: basis for jurisdiction, notice and opportunity to be heard; service upon a natural person</b></p>	<p>Probate of a photocopy</p> <p>Effect of a no-contest clause on beneficiary's right to bequest; exceptions to no-contest clauses</p> <p>Incorporation of an outside writing into a will by reference</p> <p>Cy Pres doctrine</p>	<p>Wills</p> <p>Cy Pres</p>
MPT	<p>MPT Topic: Professional responsibility; fee-splitting among lawyers</p> <p>MPT Task: Memorandum</p>	<p>MPT Topic: Request for a variance of residentially-zoned property to a commercial business</p> <p>MPT Task: Letter to members of the Zoning Board</p>	MPT

Essay Topics	February 2006	July 2006	Essay Topics
<p><b>Essay 1</b></p> <p>Crim law</p> <p>Ethics</p>	<p>Elements for criminal possession of stolen property and criminal possession of weapon/ distinction between driver and passenger Grand jury standard for indictment Prosecutor's duty to submit defendant's statement to defense Ethics: attorney's conflict of interest in representing two parties involved in same criminal case</p>	<p>Corporation's ratification of pre-incorporation contract Promoter liability for pre-incorporation contract; promoter as agent in establishing corporation Consequential and incidental damages</p> <p><b>NY Civil Practice: statute of limitations for breach of warranty; parties' ability to reduce statutory period; motion for summary judgment, including partial summary judgment</b></p>	<p>Corps</p> <p>UCC Art 2</p> <p>NY Civil Practice</p>
<p><b>Essay 2</b></p> <p>Property</p> <p>Dom Rel</p>	<p>Defeating tenancy in common interest through implied ouster (adverse possession) Biological parent's right/basis to revoke prior consent to adoption Whether order of adoption can be vacated based on failure to gain consent from one parent</p>	<p>Admissibility of evidence of prior convictions against criminal defendant — NY liberal policy for admissibility of prior convictions; Sandoval hearing Elements for crimes of conspiracy, arson, felony murder; accomplice liability; defenses to felony murder</p>	<p>Evidence</p> <p>Crim Law</p>
<p><b>Essay 3</b></p> <p>Contracts UCC Art 2</p> <p>Corps</p>	<p>Statute of Frauds: writing requirement for sale of goods over \$500; merchant exception when merchant fails to object to confirmatory writing Battle of Forms problems: (1) whether interest term for late payment became part of the contract (2) whether a waiver of warranties provision became part of the contract Right to reject non-conforming goods; waiver Personal liability for a corporate debt: piercing the corporate veil</p>	<p>Battery, trespass to chattel, trespass to land UCC Article 9 creditor's use of self-help to repossess personal property Employer liability under <i>respondeat superior</i> negligent hiring Car owner's vicarious liability for driver of vehicle Statute of limitations for intentional torts, negligence No-fault insurance coverage</p>	<p>Torts</p> <p>UCC Art 9</p> <p>Torts</p> <p>No-fault insurance</p>
<p><b>Essay 4</b></p> <p>Torts</p> <p>Issue Preclusion</p> <p>NY Civil Practice</p>	<p>Liability for battery; transferred intent Issue preclusion of prior criminal conviction in civil battery action based on same operative facts Claim against town for negligent police work</p> <p>NY Civil Practice: statute of limitations for claims against a municipality; notice of claim</p>	<p>Holdover tenant's liability for rent and taxes Identification/valuation of separate and marital property subj to equitable distribution: law license acquired during marriage and real property with active and passive appreciation Ethics: attorney obtaining a mortgage on client's property to secure payment of fees in a matrimonial action</p>	<p>Property</p> <p>Dom Rel</p> <p>Ethics</p>
<p><b>Essay 5</b></p> <p>Wills</p>	<p>Grounds for contesting a will: testamentary capacity; undue influence; fraud Calculation of the elective share: identifying testamentary substitutes; life insurance policy; Exempt personal property</p>	<p>Creditor's right to reach trust income when trust contains no spendthrift provision; exceptions to spendthrift protection Whether creditor can reach trust principal when settlor retains power to revoke the trust Distribution of estate following divorce and when testator seeks a per stirpes distribution Whether settlor may Amend trust terms when the instrument is silent as to Amendment</p>	<p>Trusts</p> <p>Wills</p>
MPT	<p>MPT Topic: Mediation privilege and its exceptions</p> <p>MPT Task: Persuasive brief in opposition to Motion to Quash</p>	<p>MPT Topic: Duty to disclose "material facts" to future buyers of residential real estate</p> <p>MPT Task: Objective memorandum of law</p>	MPT

Essay Topics	February 2007	July 2007	Essay Topics
<p><b>Essay 1</b></p> <p>Torts</p> <p>Conflict of laws</p> <p>NY Civil Practice</p>	<p>Conflict of law: torts  <i>Erie</i> Doctrine; diversity jurisdiction  <i>Prima facie</i> case for negligence and <i>res ipsa loquitor</i>  Joint and several liability  NY Civil Practice: claim for contribution in a negligence action</p>	<p>UCC Art 3 negotiable instruments: liability of bank for cashing a forged check  Standard of proof to dismiss criminal indictment; fact application to statute for criminal possession of a forged instrument in second degree</p>	<p>UCC Art 3</p> <p>Crim Law</p>
<p><b>Essay 2</b></p> <p>Wills</p> <p>UCC Art 9</p>	<p>Whether spouse who kills the other spouse can inherit under the will/ whether murdering spouse retains right of survivorship in property owned as tenants by the entirety  Right of pretermitted child under the will  Interest of a secured but unperfected creditor as against a purchaser for value</p>	<p>Elements for tortious interference with a contract  Defense of qualified privilege based on a special relationship  Cause of action for defamation; slander per se  NY Civil Practice: motion for summary judgment; partial summary judgment</p>	<p>Torts</p> <p>NY Civil Practice</p>
<p><b>Essay 3</b></p> <p>Corps</p> <p>Contracts</p> <p>NY Civil Practice</p>	<p>Whether directors may remove a director for cause where certificate and bylaws are silent  Usurpation of corporate opportunity and breach of fiduciary duty of loyalty  Corporation's recovery of lost profits through constructive trust  Enforceability of restrictive covenant in employment contract  NY Civil Practice: preliminary injunction; permanent injunction</p>	<p>Validity of a will with an assisted signature  Effect of a no-contest clause on beneficiary's right to bequest; exceptions to no-contest clauses  Exoneration clause: effect of will's exculpation clause on trustee's actions of making an unsecured loan from trust funds</p>	<p>Wills</p> <p>Trusts</p>
<p><b>Essay 4</b></p> <p>4 and 6 Amend</p>	<p>Fourth Amendment searches/seizures: arrest at home without warrant  Aguilar-Spinelli test  Exigent circumstances exception  Standing to challenge a search; expectation of privacy  Whether there is a Sixth Amendment right to counsel at a pre-charge lineup; NY's "indelible" right to counsel  Waiver of right to counsel</p>	<p>Equitable distribution of marital assets  Separate and marital property (marital home, pre-marital property; vested pension plan)  Child custody determination: "best interests of the child standard"  Child support — necessary to identify standard but no actual calculations required</p>	<p>Dom Rel</p>
<p><b>Essay 5</b></p> <p>Property</p>	<p>Joint tenancy; tenancy in common  Takings clause: just compensation for a "taking" of private land for public use  Who bears the risk of loss with respect to sale of real property where property is "condemned"</p>	<p>Shares in corporation as consideration for future services  Statute of frauds/ one year provision with respect to oral employment contract  Oppressive conduct toward minority shareholder in closely held corp as basis for seeking judicial dissolution  Ethics: attorney conflict of interest in representing client and corp</p>	<p>Corps</p> <p>Contracts</p> <p>Ethics</p>
<p>MPT</p>	<p>MPT Topic: Claims pursuant to Family Medical Leave Act  MPT Task: Persuasive letter</p>	<p>MPT Topic: Jurisdiction of a tribal court in a contract dispute  MPT Task: Argument section of a brief in support of SJ motion</p>	<p>MPT</p>

Essay Topics	February 2008	July 2008	Essay Topics
<p><b>Essay 1</b></p> <p>Contracts</p> <p>UCC Art 2</p> <p>Corps</p>	<p>UCC sale of goods; Who bears risk of loss for rejected shipment of non-conforming goods</p> <p>Interested director transaction: vote by disinterested directors insufficient</p> <p>Application of parol evidence rule to oral agreement regarding a corporate buy-back provision</p>	<p>Landlord liability with respect to common areas</p> <p>Tenant's duty to repair</p> <p>Negligence</p> <p>Contributory and comparative negligence</p> <p>NY Civil Practice: motion for judgment as a matter of law</p>	<p>Property</p> <p>Torts</p> <p>NY Civil Practice</p>
<p><b>Essay 2</b></p> <p>Crim Law</p>	<p>Justification defense; NY rule regarding use of deadly force and duty to retreat</p> <p>Elements of attempted assault in the first degree</p> <p>Defenses of infancy and withdrawal</p> <p>Elements of criminal conspiracy and solicitation</p> <p>NY unilateral approach to conspiracy</p>	<p>Fourth Amendment searches and seizures: warrant requirement exceptions search incident to valid arrest; plain view; auto exception</p> <p>Excited utterances and present sense impression exceptions to hearsay</p> <p>Sixth Amendment Right to Confrontation</p> <p>Criminal defendant's right to consult with attorney during recess periods.</p>	<p>4 and 6 Amend</p>
<p><b>Essay 3</b></p> <p>Dom Rel</p>	<p>Presumption of paternity / doctrine of equitable estoppel</p> <p>Whether arrears in child support may be canceled</p> <p>Misconduct of spouse by interfering with visitation</p> <p>Modification of child support obligation</p> <p>Separation agreement incorporated but not merged into divorce decree</p>	<p>Partnerships; partner liability; scope of partner authority</p> <p>Action for accounting</p> <p>Enforceability of written contract modification without consideration</p> <p>Economic duress</p> <p>Material breach; substantial performance</p>	<p>Ptnrship</p> <p>Contracts</p>
<p><b>Essay 4</b></p> <p>Torts</p> <p>No-fault insurance</p> <p>Ethics</p> <p>NY Civil Practice</p>	<p>Negligence</p> <p>Medical malpractice as foreseeable intervening event</p> <p>Driver's liability under NY's no-fault insurance</p> <p>Ethics: writing requirement for retainer agreement and contingency fee payment</p> <p>NY Civil Practice: statute of limitations for medical; continuous treatment rule; contribution</p>	<p>Due execution of will when attesting witnesses sign separately</p> <p>UCC Article 9: Perfection of security interest</p> <p>Whether gift to "issue" includes adopted child</p> <p>Rule of ademption</p> <p>Lapsed legacies: bequest to adopted-out child who predeceases testator leaving issue</p> <p>Testator leaves child out of the will</p> <p>Inheritance rights of adopted children; specific bequest to an adopted-out child</p> <p>Anti-lapse statute</p>	<p>Wills</p> <p>UCC Art 9</p>
<p><b>Essay 5</b></p> <p>Wills</p> <p>Ethics</p>	<p>Will execution</p> <p>Validity of will witnessed by beneficiary</p> <p>Interested witness: when entitled to bequest</p> <p>Claim of undue influence where attorney is drafter and beneficiary (<i>Matter of Putnam</i>)</p> <p>Rule of ademption: specific bequest no longer in testator's estate at time of death</p> <p>Ethics: where attorney is executor has duty to provide full disclosure of entitlement to receive both executor's commissions and legal fees</p>	<p>Grounds for divorce</p> <p>Abandonment, adultery</p> <p>Easement by necessity; easement abandonment</p> <p>Transfer of property owned as tenants by the entirety</p> <p>Durable power of attorney</p>	<p>Dom Rel</p> <p>Property</p> <p>Agency</p>
<p>MPT</p>	<p>MPT Topic: Whether a blog writer is a reporter and protected from revealing confidential sources under Reporter Shield Act</p> <p>MPT Task: Memorandum</p>	<p>MPT Topic: Fraudulent statements</p> <p>MPT Task: Evaluate statements for fraud; draft a cause of action for the actionable statements</p>	<p>MPT</p>

Essay Topics	February 2009	July 2009	Essay Topics
<b>Essay 1</b> Dom Rel Property Contracts	Equitable distribution of marital assets Separate and marital property (gift funds used to start a business during marriage) Restrictive covenant running with the land Constructive trust Statute of frauds/ interest in land Equitable defense of unclean hands	Agent liability; scope of authority; express and apparent authority UCC sale of goods Perfect tender rule Installment contract; acceptance of non-conforming installments; course of performance and trade usage Past consideration: promise to pay bonus based on past performance; NY writing exception	Agency UCC Art 2 Contracts
<b>Essay 2</b> Torts Agency Workers' Comp	Strict products liability: design and manufacturing defect Subsequent modification to product; foreseeable uses Negligence; landlord liability; successor liability Landlord/tenant relationship; agency Workers' compensation	Elements of larceny; exception of claim of right; Extortion Issuing a bad check; defenses of duress and depositing sufficient funds IOU as a negotiable instrument	Crim Law UCC Art 3
<b>Essay 3</b> Wills Trusts	Pour-over will; incorporation by reference into the terms of a will Income trust Validity of Amendment to lifetime revocable trust Right of pretermitted child Status of residuary gift Lapsed legacy: surviving residuary beneficiary	Defenses to granting of conversion divorce — adultery, minor breaches of separation agreement Basis for downward modification of maintenance award Basis for modification of child support Best interests of the child Child custody determinations	Dom Rel
<b>Essay 4</b> Contracts Ethics	Mutual mistake; reformation Economic duress, unconscionability Negligence; professional malpractice Quantum meruit Ethics: Validity of oral contingency fee agreement	Third party action in negligent supervision of a child; Negligence Conflict of law: torts — limit on recovery for pain and suffering in negligence action Comparative negligence; failure to wear a seat belt  NY Civil Practice: failure to state a cause of action; contribution	Torts Conflict of laws NY Civil Practice
<b>Essay 5</b> Crim Law 5 Amend	Standard for dismissal of criminal action Elements of burglary, unlawful imprisonment Establishing alibi defense; assessing credibility of wife as alibi witness  Fifth Amendment right to remain silent — prosecutor's comment on defendant's failure to mention alibi in its closing argument	Testamentary capacity Calculating the elective share Effect of a no-contest clause on beneficiary's right to bequest Creation of a trust Revocability of trust	Wills Trusts
MPT	MPT Topic: DMV administrative hearing for suspension of driver's license MPT Task: Persuasive memorandum	MPT Topic: Star baseball player alleges violation of recently enacted "right of publicity" statute MPT Task: Objective memorandum	MPT

Essay Topics	February 2010	July 2010	Essay Topics
<b>Essay 1</b> Dom Rel Jxn UCC Art 9	Matrimonial action: jurisdiction over defendant; residency requirements Requirements for conversion divorce; defense to granting of divorce based on voluntary cohabitation on single occasion Extent of personal liability of incoming partner for partnership's existing debts and obligations Attachment and perfection of Article 9 security interest in consumer goods	Pre-trial proceedings: prosecutor's duty to disclose exculpatory evidence Whether conviction can be overturned as consequence of failure to turn over exculpatory evidence Manslaughter in the first degree Whether voluntary intoxication is a defense to manslaughter Ethics: duty to render competent representation; ineffective assistance of counsel for failure of attorney to serve discovery demands	Crim Law Ethics
<b>Essay 2</b> Wills Evidence Agency	Will execution Lapsed legacy: anti-lapse statute Abatement of demonstrative legacies Admissibility of witness testimony as to testamentary capacity of testator Termination of agency relationship	UCC Article 2 sale of goods: parties are not merchants Breach of contract — "perfect tender rule" Breach of warranty — express warranty Revocation of acceptance; duty to inspect and latent defects Damages: recovery of contract price and incidental damages Article 3 negotiable instruments: definition and rights of a holder in due course Liability of parties for payment	UCC Art 2 Contracts UCC Art 3
<b>Essay 3</b> Torts NY Civil Practice	Negligent infliction of emotional distress Strict liability: vicious propensities, "one bite rule" NY Civil Practice: preliminary injunction; permanent injunction	Shareholder voting: importance of "record date" for determining voting eligibility Proxy agreements: definition and revocability Whether a corporation has the right to vote treasury shares Whether certificate of incorporation or by-laws control when there is a conflict	Corps
<b>Essay 4</b> Property Contracts	Easements; types and termination Conveyance by deed including warranties Statute of frauds: licensed real estate broker agreement	Basis for termination of parental rights Custodial parent's petition to relocate: assessment based on "best interests of the child" Conflict of laws: full faith and credit; divisible divorce Jurisdiction for purposes of divorce and maintenance award	Dom Rel Conflict of laws Jxn
<b>Essay 5</b> Corps	Shareholder's right of inspection of corporation's books and records Derivative actions Shareholder's right to dividends Business judgment rule	Will execution requirements: publication Whether testator can make a bequest of a management interest in a partnership Dissolution of a partnership upon death of one of the partners Validity of bequest of \$1 to adopted child Rights of pretermitted child Calculation of elective share Distribution under intestacy	Wills Ptnrship
MPT	MPT Topic: Violations of Franklin Criminal Code MPT Task: Persuasive brief; arguments in support of motions	MPT Topic: Attorney-client privilege and the crime-fraud exception MPT Task: Argument section of a brief in support of Motion to Quash	MPT

Essay Topics	February 2011	July 2011	Essay Topics
<b>Essay 1</b> Property Contracts	Adverse possession; NY rule that requires good faith claim to believe she was true owner Hold-over tenant Third-party beneficiaries: intended vs. incidental	Creation of the types of tenancies: joint tenancy, tenancy by the entirety, and tenancy in common; rights and obligations of tenants in common with respect to repairs Whether there an easement in land is created when the owner gives oral permission to use a portion of the property Common law doctrine of equitable conversion; NY rule where risk of loss remains with seller until buyer takes legal title or possession	Property
<b>Essay 2</b> Crim Law Evidence	Elements of conspiracy, arson, felony murder; affirmative defenses Plea negotiations: Ineffective assistance of counsel; duty to inform client of plea offers	Fourth Amendment searches/seizures: street encounters and levels of suspicion ("sliding scale" of police authority) Fifth Amendment right to remain silent, Miranda warnings, and spontaneous, unsolicited statements Exclusionary rule: suppression of "fruit of the poisonous tree" Criminal possession of forged instrument Art 3 negotiable instruments: bank's liability where payee's endorsement is forged by company employee	4 and 5 Amend Crim law UCC Art 3
<b>Essay 3</b> Dom Rel Corps UCC Art 9 <b>Essay 4</b> Torts Ethics NY Civil Practice	Grounds for divorce: adultery Defenses to adultery: condonation Shareholder's derivative suit; breach of the duty of loyalty: interested director votes to give corporate loan to himself Perfecting a security interest to become a secured creditor Trespass; assault Atty communication with represented person Notice of claim to a municipality NY Civil Practice: motion for summary judgment	Presumption of paternity / doctrine of equitable estoppel Modification of child support obligation; separation agreement incorporated but not merged into divorce decree Interested director transaction: interest not disclosed in contract but it was a fair market deal UCC Article 9 creditor's use of self-help to repossess personal property Negligence; no-fault insurance Compensatory damages under no fault Comparative negligence Driving while intoxicated	Dom Rel Corps UCC Art 9 Torts No-fault insurance
<b>Essay 5</b> Wills MPT	Effect of divorce on totten trust Validity of partial revocation of a will by physical act Rule of ademption: specific bequest no longer in testator's estate at time of death Lapsed legacy: anti-lapse statute Rights of inheritance of adopted children MPT Topic: Validity of marriage under Franklin Family Code MPT Task: Objective memo and closing argument	Revocation of a will: where second will does not expressly revoke prior will (by implication) Revocation by physical act Duty of trustee in management of a trust Liability of partners in a limited liability partnership MPT Topic: Professional responsibility issue involving an investigation using social networking pages MPT Task: Persuasive memo	Wills Trusts Ltd liability ptrnshp MPT

Essay Topics	February 2012	July 2012	Essay Topics
<b>Essay 1</b>  Contracts Art 2	UCC sales of goods; common law of contracts  Statute of frauds/ application of “merchant confirmatory memo” exception for sale of a boat Statute of frauds/ one year provision in an oral contract for services Material breach/ substantial performance Damages: “lost volume seller”	UCC sale of goods Determining risk of loss in the absence of breach when goods are destroyed prior to delivery; seller is a merchant without insurance to cover the loss Enforceability of a “general release” in settlement of a claim Defense of mutual mistake Severance of a joint tenancy	Contracts Art 2  Property
<b>Essay 2</b>  Crim Law  4 Amend	Application of facts to elements of burglary in First degree: statute provided in the exam question  Fourth Amendment searches/seizures: consent to search residence by suspect's live-in girlfriend  Plain view doctrine Whether an arrest in the home without a warrant violates the Fourth Amendment; exceptions to warrant requirement	Fourth Amendment searches/seizures: violation of reasonable expectation of privacy by a visual surveillance by store security of suspected customer in fitting room Search incident to an arrest; inevitable discovery; inventory searches  Admissibility of evidence on cross examination of criminal defendant: basis for job termination and prior convictions NY Civil Practice: bringing suit against a municipality; notice of claim	4 and 5 Amend  Crim law  Evidence  NY Civ Practice
<b>Essay 3</b>  Corps  Dom Rel	Basis for judicial dissolution: oppressive conduct toward a minority shareholder and director in a close corporation; whether other shareholders have right to prevent dissolution by acquiring the shares  Conflict of laws: full faith and credit for “common law marriage”; requirements for “no fault” divorce Jurisdiction for purposes of divorce Equitable distribution of marital assets Identification/valuation of separate and marital property subject to equitable distribution: professional license acquired during marriage	NY Civil Practice in a matrimonial action: residency requirements Personal jurisdiction over defendant Service of process  Grounds for divorce: “irretrievably broken”  Identification/valuation of separate and marital property subject to equitable distribution	Dom Rel  NY Civil Practice
<b>Essay 4</b>  NY Civil Practice  Torts	Exercise of long-arm statute; personal jurisdiction  Defamation; basis for special damages  NY Civil Practice: statute of limitations for defamation; exceptions  NY Civil Practice: motions: failure to raise lack of personal jurisdiction in a pre-answer motion; failure to state a cause of action	Duties of landlord/tenant for repairs and maintenance to property Negligence  Evidence: hearsay; admissions Conflict of law: torts — limit on recovery for pain and suffering in negligence action  NY Civil Practice: motion for summary judgment	Property Torts  Evidence Conflict of Laws  NY Civ Practice
<b>Essay 5</b>  Property  Wills  Trusts	Elements of a constructive trust; defense of unclean hands Will execution: interested witness Inheritance rights of interested witness Incorporation by reference Pour-over trust Rights of disinherited children	Will execution requirements: Attorney signs testator's name at testator's direction Interested witness: when entitled to bequest Effect of a no-contest clause on beneficiary's right to bequest Ethics: where attorney is a beneficiary under the will; where attorney/beneficiary is the draftsman	Wills  Ethics
MPT	MPT Topic: Benefits of legislation for royalty to be paid to artists MPT Task: Persuasive document	MPT Topic: Private nuisance; standards for granting injunctive relief MPT Task: Persuasive brief	MPT

Essay Topics	February 2013	July 2013	Essay Topics
<p><b>Essay 1</b></p> <p>Contracts</p> <p>Ethics</p>	<p>Contract formation: “the mailbox rule”</p> <p>Statute of Frauds issues: (1) how and where satisfied through multiple writings (2) oral promise to pay a commission for the sale of real property to one who was neither a lawyer nor a licensed real estate broker</p> <p>Where lawyer speaks to potential opposing party without their attorney present</p>	<p>Whether non-marital biological parent's consent to child's adoption is required: Best interests of the child</p> <p>Effect of mortgage taken by one spouse on a tenancy by the entirety; ability of creditor to foreclose on the non-debtor spouse's interest</p> <p>Basis for a court-ordered partition</p> <p>Identification/valuation of separate and marital property subject to equitable distribution</p> <p>NY Civil Practice: motion to dismiss for failure to state a cause of action</p>	<p>Dom Rel</p> <p>Property</p> <p>NY Civil Practice</p>
<p><b>Essay 2</b></p> <p>Evidence</p> <p>Ethics</p> <p>Crim law</p>	<p>Excited utterance and dying declaration exceptions to hearsay</p> <p>Lawyer's duty to the court to disclose knowingly false testimony</p> <p>Burden of proof on an alibi defense</p> <p>Double jeopardy – where defendant has already been convicted for attempted murder and the victim then dies</p>	<p>Attempted possession of stolen property</p> <p>Factual impossibility</p> <p>Attempted larceny</p> <p>Robbery; assault</p> <p>Defense of justification</p>	<p>Crim Law</p>
<p><b>Essay 3</b></p> <p>Property</p> <p>Trusts</p> <p>Wills</p>	<p>Whether a bequest to a trust violates “RAP” – Rule against Perpetuities; NY exception which saves a bequest that violates RAP</p> <p>Simultaneous Death Act</p> <p>Totten trust; Calculation of elective share</p>	<p>Ethics: conflict of interest</p> <p>Limited liability company</p> <p>Shareholder's derivative suit</p> <p>Corporate director's breach of the duty of loyalty; Usurping a corporate opportunity</p> <p>Perfect tender rule; buyer's remedies upon seller's breach</p>	<p>Ethics</p> <p>Corps/LLC</p> <p>UCC Art 2</p>
<p><b>Essay 4</b></p> <p>Torts</p> <p>NY Civil Practice</p>	<p>Availability of punitive damages in a case for gross negligence</p> <p><i>Res ipsa loquitur</i>: sudden stoppage of escalator</p> <p>Joint and several liability</p> <p>NY Civil Practice: limits on non-economic losses; claim for contribution</p>	<p>Negligence action against the employer</p> <p>Workers' compensation</p> <p>Manufacturer's contribution claim against the employer when the employee was injured on the job: “grave injury” exception to worker's compensation</p> <p>Strict products liability: design defect</p> <p>NY Civil Practice: motion to dismiss, statute of limitations in strict products liability</p>	<p>Torts</p> <p>Workers' Comp</p> <p>NY Civil Practice</p>
<p><b>Essay 5</b></p> <p>Corps</p> <p>Dom Rel</p>	<p>Quorum requirement for adoption of a resolution by the board of directions at a duly called meeting where certificate of incorporation is silent regarding voting and quorum requirements</p> <p>Business judgment rule: corporate directors' personal liability for waste and neglect for corporate losses</p> <p>Basis for shareholder's derivative action</p> <p>Standard for modification of a separation agreement which was incorporated but not merged into the divorce judgment</p> <p>Factors in awarding or modifying child support: “best interests of the child”; substantial change in circumstances</p>	<p>Inheritance rights of the non-marital child; establishing paternity</p> <p>Right of pretermitted child under the will</p> <p>Rule of ademption: destruction of the bequest and insurance proceeds</p> <p>Joint bank account for purposes of convenience: was there a right of survivorship</p> <p>Anti-lapse statute; determining per capita distribution of residuary estate</p>	<p>Wills</p>
<p>MPT</p>	<p>MPT Topic: Petition for guardianship of grandson in Tribal Court</p> <p>MPT Task: Persuasive brief in support of motion to transfer</p>	<p>MPT Topic: Recording contract</p> <p>MPT Task: Draft contract provisions to meet client's contractual demands objectives</p>	<p>MPT</p>

Essay Topics	February 2014	July 2014	Essay Topics
<p><b>Essay 1</b></p> <p>Dom Rel</p> <p>Property</p>	<p>Modification of divorce judgment Best interests of the child standard for petition for modification of visitation arrangement when custodial parent wants to move to accept job offer</p> <p>Types of easements: implied and prescriptive Whether implied easement arose by strict necessity</p>	<p>Ethics: referral fee agreement between attorney and non-attorney</p> <p>Fourth Amendment search: probable cause for warrant based on reliability of informant testimony / Aguilar Spinelli test</p> <p>Justification as defense to strict liability crime Ordinary and affirmative defenses</p>	<p>Ethics</p> <p>4 Amend</p> <p>Crim law</p> <p>Burdens of proof</p>
<p><b>Essay 2</b></p> <p>Ethics</p> <p>LLC/ Agency</p> <p>4 Amend</p>	<p>Ethics: attorney conflict of interest when attorney loans money to client</p> <p>Non-disclosed principal; liability of agents Scope of authority</p> <p>Fourth Amendment search/seizures: probable cause for arrest warrant based on informant tip Warrantless arrest in home; Plain view</p>	<p>Standing of shareholders to bring a derivative action on behalf of the LLC Pre-incorporation liability Fiduciary duties of LLC members De facto and de jure corporations/LLCs</p> <p>Statute of Frauds: merchant memo exception</p> <p>Former testimony exception to hearsay, non-availability of witness; party admission as non-hearsay</p>	<p>LLCs</p> <p>Contracts UCC Art 2</p> <p>Evidence</p>
<p><b>Essay 3</b></p> <p>Contracts UCC Art 2</p> <p>Property</p>	<p>Unconscionability</p> <p>UCC sale of goods Determining risk of loss when seller ships non-conforming goods</p> <p>Types of tenancies; holdover tenant</p>	<p>Creditor's right to reach assets held in revocable trust Whether income interest from a trust with spendthrift protection is assignable Trustee's violation of fiduciary duty by making improper payments from a trust</p> <p>Admissibility of prior writing (extrinsic evidence) to aid in construction of a will Whether inter vivos gift by donor is an advancement of the beneficiary's legacy</p>	<p>Trusts</p> <p>Wills</p>
<p><b>Essay 4</b></p> <p>Torts</p>	<p>Negligence: bringing suit against a municipality Duty of care based on a relationship: order of protection</p> <p>Landowner's duty to entrants upon his land</p>	<p>Court's consideration of marital fault in equitable distribution of assets Court's consideration of spouse's economic fault in determining equitable distribution Spouses' obligations with respect to visitation rights and child support payments What constitutes "wrongful interference" with visitation Parents' obligation to provide economic support child to age of 21; issue of constructive emancipation</p>	<p>Dom Rel</p>
<p><b>Essay 5</b></p> <p>Wills</p> <p>MPT</p>	<p>Wills: revocation by physical action Lapsed legacies: when a beneficiary renounces a bequest Testator specifically makes no provision for son Bequest to wife nullified by subsequent divorce Where the residuary beneficiary predeceases the testator Anti-lapse statute Intestacy distribution</p> <p>MPT Topic: Immigration matter concerning conditional residency MPT Task: Persuasive brief</p>	<p>No-fault insurance; exception where driver is intoxicated Negligence; negligence per se Whether injured third party can recover from vehicle owner for injury inflicted by authorized driver Dram Shop Act: tavern owner serves alcohol to visibly intoxicated patron Tort of emotional distress NY Civil Practice: failure to state a cause of action</p> <p>MPT Topic: Demand letter MPT Task: Demand letter</p>	<p>Torts</p> <p>No-fault insurance</p> <p>NY Civil Practice</p> <p>MPT</p>

Essay Topics	February 2015	July 2015	Essay Topics
<b>Essay 1</b> Wills	Validity of will execution; interested witness Revocation and revival of prior will Distribution of estate where net estate is inadequate to cover bequests Specific gifts	Adverse possession; permissive non-structural encroachment “Irretrievable breakdown” of the marriage NY Civil Practice: residency requirement for divorce action	Property Dom Rel Conflict of Laws NY Civil Practice
<b>Essay 2</b> 5 and 6 Amend Crim Law	Right to counsel; admissibility of physical evidence Miranda Warnings; right to “remain silent” Second degree manslaughter; Recklessness Criminally negligent homicide	Proper party for Letters of Administration Inter-vivos gift and survival of gift where there was a security interest in collateral (gift) Intestate distribution of estate: elective share, surviving children, and illegitimate child	Wills Secured Transaction
<b>Essay 3</b> Contracts Corps	Consequential damages: lost profits Enforceability of non-compete agreement Personal liability for negligence of professional corporation	Duty to inspect; perfect tender rule; revocation of acceptance of non-conforming goods Implied warranties of merchantability and fitness for a particular purpose Consequential damages for breach of warranty Contingency fee agreement and communication with adverse party	UCC Art 2 Ethics
<b>Essay 4</b> Torts NY Civil Practice Conflict of Law	Negligence: car accident at stoplight Choice of law: time period under which medical necessity defense must be raised NY Civil Practice: motion for summary judgment	Negligence: duty of care to landowner to trespasser Negligent supervision: negligent entrustment of dangerous instrument Damages: joint and several liability	Torts
<b>Essay 5</b> Property	Specific performance: warranties and conditions in the sale of land Injunction to remove encroachment Warranty of habitability and remedies for breach	Right to procedural due process Hearsay: rules of evidence do not apply in administrative hearing Criminal trespass in the second degree NY Civil Practice: statute of limitations for Article 78 proceeding	Admin law Evidence Criminal law NY Civil Practice
MPT	MPT Topic: Disclosure of protected health information without written patient authorization (HIPAA) MPT Task: Letter to administrative agency	MPT Topic: Agency: potential liability for credit card purchases MPT Task: Opinion letter	MPT



# Appendix H



# Multistate Essay Examination (MEE)

## Table of Issues

### By Bar Exam Administration: 2005 --- 2019

**Note:** The following information is helpful in understanding why the number of MEEs varies from 2005 to 2019.

The Multistate Essay Examination (MEE) was first administered in 1988 in six jurisdictions. It underwent significant changes in format, content, and the number of questions over the next two decades. By 2007, it consisted of nine questions covering both MBE and non-MBE subjects in 15 areas of law. Jurisdictions could select which questions and how many they wanted for their bar exam.

First administered in 2011, the Uniform Bar Examination (UBE), consists of a common set of six MEEs. According to NCBE, the “six MEE questions included as part of each UBE administration were selected by NCBE testing staff in light of UBE jurisdictions ratings and input.”<sup>1</sup>

Effective with the February 2014 exam, the MEE consisted of a common set of six questions offered to all MEE jurisdictions --- UBE and non-UBE jurisdictions alike.

**New York joined the UBE with the July 2016 bar administration.**

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<sup>1</sup> Judith A. Gundersen, *The MEE Marks a Major Milestone*, THE BAR EXAMINER, December 2013, at 20.

Essay #	February 2005	July 2005
1	<p><b>Corporations</b>  Officer's authority: power of president to hire attorney to initiate action on behalf of corporation (to collect accounts receivable).  Authority of corporate officers: acts within scope of ordinary course of business.  Authority of board of directors: declaration of dividends, acts in extraordinary course of business.</p>	<p><b>Decedents' Estates</b>  Whether a life insurance beneficiary be changed by a will provision.  Joint bank account with right of survivorship; account of convenience, power to write checks only and the intent of the testator.  Lapsed legacy: death of beneficiary prior to death of testator, state lapse statute, application of statute to class gifts and to persons who died before will was executed.  Uniform Probate Code (UPC) anti-lapse statute compared to common law and state lapse statutes.</p>
2	<p><i>Negotiable Instruments/  No longer on MEE</i></p>	<p><b>Corporations</b>  Promoter liability for pre-incorporation contract; promoter as agent in establishing corporation.  Novation.  Factual issue whether promoter would be personally liable based on whether company intended to hold promoter liable: can be argued either way.  Corporation's ratification or adoption of pre-incorporation contract: express and implied adoption.</p>
3	<p><b>Civil Procedure</b>  Jurisdiction: federal subject matter jurisdiction based on diversity of citizenship (28 U.S.C. §1332(a)); diversity established at the time the suit is filed.  Aggregation of claims to satisfy the amount-in-controversy requirement.  Federal courts' basis for supplemental jurisdiction under 28 U.S.C. §1367(a) over all claims that "derive from a common nucleus of operative fact."  Venue: change of venue under 28 U.S.C. §1404(a) is only permitted to a court where the action could have been brought originally (i.e., where venue was proper at the time suit was filed).</p>	<p><b>Secured Transactions</b>  Attachment and rights of creditors with unperfected security interests.  Creditor's use of self-help remedies to repossess and sell collateral.  Foreclosure sale: notice requirement to debtor and "any secondary obligor"; guarantor of loan with actual knowledge of sale but who did not receive proper notice of the sale.  Deficiency judgments: secured party fails to comply with foreclosure rules in business transactions, there is a deficiency, and the "rebuttable presumption rule."</p>
4	<p><b>Family Law and Conflict of laws</b>  Standards governing custodial parent's relocation: balancing of impact on visitation by noncustodial parent against benefits of the move for the child; "best interests of the child."  Enforceability of a registered child support order in a non-issuing state pursuant to the Uniform Interstate Family Support Act (UIFSA).  Interstate enforcement and modification of child support orders (UIFSA).  Interstate modification of child custody order as governed by Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).</p>	<p><b>Family Law</b>  Whether statute of limitations in state's paternity statute violates unwed biological father's substantive due process rights under 14<sup>th</sup> Amendment.  Factors for establishing a significant parental relationship.  Presumption of paternity; presumption of legitimacy.  Nonparent estopped from disclaiming parental responsibilities when previously consented to act as a parent and support child and child's interests would be harmed by terminating the parental relationship.  Interpreting a state visitation statute: violation of due process of parent when no deference is given to fit parent's determination of best interests of child.</p>
5	<p><b>Decedents' Estates</b>  Revocation: physical destruction with intent to revoke; multiple copies of will executed while only 1 copy was destroyed; proponent's burden of proof.  Revival of will: destruction of will revives prior will</p>	<p><i>Negotiable Instruments/  No longer on MEE</i></p>

	<p>pursuant to state revival statute.  Codicil: handwriting and changing a bequest on a previously executed will. Execution requirements: doctrine of dependent relative revocation.  Rule of ademption: specific bequest of real property no longer in testator's estate at time of death and whether there is entitlement to replacement property.</p>	
6	<p><b>Secured Transactions</b>  <b>UCC Article 9</b>  Unperfected security interest compared to judicial lien creditor.  Purchase-money security interest; definition of "goods"; delayed filing and 20-day grace period after delivery of the collateral to perfect by filing, and security interest relating back to the date of the attachment.  Item of sale changing from "goods" to a "fixture" (an oven).  Priority of liens: competing security interests, judgment liens, mortgages, "fixture filing."</p>	<p><b>Civil Procedure</b>  Standard for granting TRO under FRCP 65(b) (to enjoin employee from violating the non-compete provision in contract and disclosing trade secrets).  Standard for granting preliminary injunction: (1) risk of "irreparable harm" to plaintiff if preliminary injunction is not granted; (2) likelihood of plaintiff's success on the merits of the underlying claim; (3) "balance of the equities" --- likelihood that the harm the plaintiff will suffer in the absence of the preliminary injunction outweighs the harm the defendant will suffer if it is granted; (4) the public interest.  A mandatory injunction: order compelling party to engage in particular acts.</p>
7	<p><b>Agency</b>  Defining the agency relationship.  Undisclosed principals and liability of undisclosed principal for contracts (purchase of supplies and employment contract) entered into by general agent in violation of principal's instructions.  Types of authority: actual, inherent, and apparent authority.</p>	<p><b>Trusts and Future Interests</b>  Testamentary trust.  Elements of a valid trust: definite beneficiaries required; trust established to give income to "my friends" invalid for want of definite beneficiaries.  Donee's exercise of special power of appointment to appoint trust assets (principal) and to create more limited interests (life estate).  Special power of appointment exercised in favor of an impermissible object.  Partially ineffective exercise of special power of appointment and consequences to permissible object.</p>

Essay #	February 2006	July 2006
1	<p><b>Trusts and Future Interests</b>            Elements of a valid trust: trustee, beneficiary, and trust property.            Revocable trust.            Trust written on a napkin with intention to fund it at a later date: trust arises when funded.            Pour-over will to a trust where the trust's terms were incorporated in a writing (napkin) that was written before the will.            Incorporation by reference doctrine: testamentary additions to revocable trust.            Self-settled trusts; enforceability of spendthrift provision; reach by settlor's creditors to trust assets of revocable trust.</p>	<p><i>Negotiable Instruments/            No longer on MEE</i></p>
2	<p><b>Agency</b>            Vicarious liability of employer for acts of employees committed within the scope of employment.            Defining the agency relationship: reflected in master-servant relationship.            Factors distinguishing between independent contractor and employer/employee.            Fiduciary duties of agent/employee: duty to obey reasonable instructions and duty to act solely for benefit of principal.</p>	<p><b>Agency and Partnership</b>            Definition of partnership: determining whether parties are partners based on a loan to the partnership (no) but forgiveness of the loan in exchange of share of the profits (yes).            Partner as agent of partnership: partner's authority to bind partnership for an act for carrying on the ordinary course of partnership business, but not for an act outside the ordinary business.            Actual and apparent authority.            Partners' joint and several liability for partnership obligations.</p>
3	<p><b>Civil Procedure</b>            Jurisdiction: federal subject matter jurisdiction based on anticipation of a federal defense; "well-pleaded complaint rule."            Jurisdiction: federal subject matter jurisdiction based on diversity of citizenship (28 U.S.C. §1332(a): determining domicile based on residence and "intent to remain."            FRCP 4(k)(1): asserting personal jurisdiction over a non-resident defendant.            Exercise of state's long-arm statute where it extends jurisdiction as far as the Due Process Clause of the 14<sup>th</sup> Amendment allows; evaluation of internet-based contacts.</p>	<p><b>Decedents' Estates</b>            When a joint will constitutes a will contract: determined by language used, "each of us agrees" is a contract between husband and wife; contract becomes irrevocable at death of first spouse; includes property acquired after death of a spouse; beneficiaries of joint will as contract creditors of surviving spouse's estate.            Doctrine of "facts of independent significance" and rule of construction that wills "speak at the time of death."            Incorporation by reference: document executed after will executed as compared to a document in existence prior to the execution of a will; invalid bequest not evidenced by a testamentary instrument.</p>
4	<p><b>Family Law</b>            Validity of common law marriage in states that do not recognize common law marriages.            Requirements to establish a common law marriage.            Whether agreements between cohabitants establish property or support rights ("ceremony of commitment").            Protection under the due process clause of 14<sup>th</sup> Amendment for unwed father who lived with his child for a substantial portion of his child's life and wishes to maintain an active, custodial relationship with the child; his parental rights cannot be severed without his consent or showing of parental unfitness.</p>	<p><b>Family Law and Conflict of Laws</b>            Common law marriage elements.            Validity of common law marriage in states that do not recognize common law marriages.            Mutual vows, ceremony of commitment and enforceable agreement to share property, verbal cohabitation agreement.            Termination of parental rights of unwed father, adoption without consent of father, due process, 14<sup>th</sup> Amendment, involved father who lived with his child for a substantial portion of his child's life, and who wishes to maintain an active, custodial relationship with the child.</p>
5	<p><b>Corporations</b>            Authority of board of directors to call a special meeting of shareholders.</p>	<p><b>Corporations</b>            Breach of fiduciary duty of majority shareholder for failure to disclose material information to minority</p>

	<p>What constitutes proper notice for a special shareholder meeting.</p> <p>Voting rights of different classes of stock: conditions imposed on voting rights by articles of incorporation.</p> <p>Proxy agreements: definition; requirements for a proper Quorum requirements: majority needed to dissolve corporation.</p>	<p>shareholders; what constitutes material information.</p> <p>Duty of care and business judgment rule in approving a merger.</p> <p>Duty of fair dealing when a majority shareholder purchases the interest of the minority shareholders.</p>
6	<p><b>Secured Transactions</b></p> <p><b>UCC Article 9</b></p> <p>Consignment agreement: where consignor retains title to goods.</p> <p>Collateral in inventory: creditor of a consignee "deemed to have rights and title to goods identical" to those of consignor.</p> <p>Purchase-money security interest in inventory held by a consignor of goods.</p> <p>Priority of liens: competing security interests.</p> <p>Perfection of a security interest; financing statement; notification requirements.</p>	<p><b>Civil Procedure</b></p> <p>Amended pleadings: complaint may be amended "once as a matter of course at any time before a responsive pleading is served" under FRCP 15(a) and will "relate back to the date of the original pleading" if requirements of FRCP 15(c) are met.</p> <p>Complaint amended after statute of limitations had run to correct a mistake in the name of a defendant.</p> <p>Final judgment rule; consideration of statutory and judge-made exceptions, including the collateral order exception.</p> <p>FRCP 16(a) and (f): pre-trial conferences and court's power to sanction a party for party's attorney for failure to appear.</p> <p>Where entry of default judgment may be an abuse of discretion.</p>
7	<p><b>Decedents' Estates</b></p> <p>Advancement: whether intervivos gift by donor is an advancement on the beneficiary's legacy; intention of the testator.</p> <p>Slayer statute: felonious intent and killing of decedent compared to negligence as cause of testator's death.</p> <p>Intestacy distribution incorporated in will.</p> <p>Per capita distribution of assets compared to per stirpes distribution of assets.</p>	<p><b>Secured Transactions</b></p> <p>Improper disposition of the collateral (consumer goods); public v. private disposition of collateral; "commercially reasonable" manner; notice of sale.</p> <p>Remedies of consumer as a result of secured party's failure to provide notice of disposition and a "commercially reasonable" disposition of collateral; actual damages, statutory damages, right of redemption,</p> <p>Deficiency judgments: secured party fails to comply with foreclosure rules in a consumer transaction, liability of the debtor, "absolute bar" rule, and "rebuttable presumption rule."</p>

Essay #	February 2007	July 2007
1	<p><i>Negotiable Instruments/</i> <i>No longer on MEE</i></p>	<p><b>Contracts</b> Requirements for an enforceable contract: offer, acceptance, consideration and, when required, a signed writing. Requirements for an offer; distinguishing between a counteroffer and an inquiry. Rules for acceptance: when is acceptance effective upon dispatch, the "mailbox rule"; rejection effective upon receipt. Rule where an acceptance is sent after a rejection: the one to reach the recipient first is effective. Statute of Frauds: one-year provision. Personal services contract: damages are available but specific performance is not.</p>
2	<p><b>Trusts and Future Interests</b> Testamentary trust. Elements of a valid trust: a trust established to give income to "my friends" fails because it lacks definite beneficiaries. Distribution of trust income to residuary legatee when trust fails; whether to accumulate trust income for ultimate distribution to remainder beneficiaries or currently distribute income to presumptive remainder beneficiaries. Creditor's right to reach trust income when trust contains no spendthrift provision. Rights of creditors no greater than rights of beneficiary. Bequest to charity that no longer exists: <i>cy pres</i> doctrine, general charitable intent.</p>	<p><b>Civil Procedure</b> Removal from state court to federal court; determining citizenship of executor for diversity and removal purposes. Preclusive effect of default judgment when court had subject matter and personal jurisdiction. FRCP 13(a): compulsory counterclaim requirement.</p>
3	<p><b>Civil Procedure</b> Discovery: determining what is discoverable. Plaintiff served requests for production of documents in personal injury action seeking investigative and accident reports and the bus driver's entire personnel file, including safety and driving records and disciplinary records. FRCP 26 (b)(1): "documents relevant to a claim or defense." FRCP 26 (b)(3): materials "prepared in anticipation of litigation."</p>	<p><b>Family Law</b> Basis for setting aside or modifying a divorce settlement or agreement before a final divorce judgment is entered: when a spouse's coercive behavior, fraud, or duress results in a substantively unfair agreement. Setting aside a divorce settlement agreement based on serious misconduct by the mediator. Factors for determining spousal maintenance award: contributions to marriage, duration of marriage, parties' financial resources and needs.</p>
4	<p><b>Family Law and Conflict of Laws</b> Jurisdiction and divorce: over the marriage and over the property. A court's jurisdiction to grant its domiciliary's divorce petition as long as the state's jurisdictional requirements are satisfied. Divisible divorce: a court's jurisdiction in an <i>ex parte</i> divorce extends to the marriage only and not to the property of the marriage. Personal jurisdiction over both spouses needed for property division order. No-fault divorce granted based on separation and irreconcilable differences; does not matter whether the separation was nonconsensual or one spouse is seeking to reconcile. Separate property and marital property.</p>	<p><b>Agency and Partnership</b> Definition of partnership: intent to form a partnership; written agreement not required. Partner as agent of partnership: partner's authority to bind partnership for an act for carrying on the ordinary course of partnership business; acts outside the ordinary course of business require consent of all partners. Actual and apparent authority. A partner is jointly and severally liable for partnership obligations; partner liability includes unpaid wages of an employee. Personal liability of general partner and limited partners for partnership's debts. Procedure for recovering against partners personally: judgment must first be obtained individually against each partner and against the partnership and levy execution against partnership assets.</p>

5	<p><b>Decedents' Estates</b></p> <p>Effect of a stock dividend or stock split on a specific bequest of "my 100 shares"; common law compared to the Uniform Probate Code (UPC).</p> <p>Disclaimer of legacy: sister of testator disclaims: beneficiary deemed to have failed to survive testator, lapsed legacy, anti-lapse statute.</p> <p>Advancement: whether the intervivos gift by donor is an advancement on the beneficiary's legacy; intention of the testator.</p> <p>Abatement of legacies in order of the classification of legacy.</p>	<p><b>Criminal Law</b></p> <p>Second-degree murder (shot friend while aiming at lamp behind friend).</p> <p><i>Mens rea</i>, "malice aforethought", "depraved-heart" murder.</p> <p>"Extreme indifference to value of human life", reckless behavior.</p> <p>Causation: defendant's acts must be both the actual ("but for") and proximate cause of death.</p> <p>A "dependent intervening cause", a consequence of defendant's prior wrongful conduct, breaks the chain of causation when it is bizarre or out of the ordinary.</p>
6	<p><b>Agency and Partnership</b></p> <p>Limited partnership.</p> <p>Right of limited partners to obtain information from general partner regarding the financial condition of the business upon "reasonable demand": tax returns, contracts, correspondence.</p> <p>Liability of limited partners in a limited liability partnership: generally not liable for the obligations of a limited partnership unless participate in the "control of the business."</p> <p>"Safe harbor": RULPA's list of activities that do not constitute the exercise of control of the business includes removal of a general partner.</p> <p>Participation in control of business can make limited partners liable for obligations of limited partnership under certain circumstances.</p>	<p><b>Real Property</b></p> <p>Requirements for a valid deed (grantee must be identified).</p> <p>Adverse possession: elements.</p> <p>Adverse possessor's claim to possession against subsequent BFP.</p> <p>State recording statute and its effect on owner who acquired land by adverse possession (where owner had no deed to record).</p>
7	<p><b>Secured Transactions</b></p> <p><b>UCC Article 9</b></p> <p>Perfection of a security interest in accounts receivable.</p> <p>Errors in UCC filing statements: ineffective filing of financing statement where the name of debtor is incorrect (trade name as opposed to the name of the corporation), "seriously misleading" test", search of records would not disclose the financing statement.</p> <p>Automatic perfection of security interest in accounts (upon attachment); when assignment of accounts do not transfer "significant part of assignor's outstanding accounts."</p> <p>Priority of liens: competing security interests and "first to file or perfect rule."</p>	<p><i>Negotiable Instruments/</i></p> <p><i>No longer on MEE</i></p>
8	<p><i>No question</i></p>	<p><b>Trusts</b></p> <p>Drafting of trust agreement to reflect Settlor's intent.</p> <p>MEE task requires comparing list of Settlor's goals in creating the trust to the Trust Agreement drafted by the attorney and making changes to meet the Settlor's stated goals.</p> <p>Settlor wants full control of trust assets in memo: Settlor should retain power to revoke, to withdraw principal; Settlor should be named as sole trustee.</p> <p>Trust should include an additions clause.</p> <p>Ascertainable standard for distributions of trust principal to wife and beneficiary's right to withdrawal of trust principal so that wife is comfortably provided for.</p> <p>Special testamentary power of appointment created by trust so that wife can reward her children in her will.</p>

		<p>Drafting using the term “issue” to ensure child that predeceases wife will take the deceased child’s share of trust principal.</p> <p>Anti-lapse statutes and how they apply to inter vivos trusts as compared to testamentary trusts.</p>
9	<i>No question</i>	<p><b>Corporations and LLCs</b></p> <p>Members’ right (of a manager-managed LLC) to maintain an action against manager of LLC for mismanagement: derivative action vs. direct action.</p> <p>Procedural requirements for bringing a derivative action (set forth in ULLCA).</p> <p>Members of LLC right to bring a derivative action on behalf of LLC for mismanagement.</p> <p>What constitutes a violation of manager’s fiduciary duty of care: negligence standards; simple negligence, gross negligence.</p> <p>Business judgment rule.</p> <p>Personal liability of LLC members for negligence.</p> <p>Piercing the LLC veil to hold members personally liable: “mere instrumentality” or “unity of interest and ownership.”</p>

Essay #	February 2008	July 2008
1	<p><b>Decedents' Estates</b>  Grounds for contesting a will: elements for undue influence.  Effect of finding of undue influence: can invalidate all or a portion of the will.  Rules of intestacy are followed upon invalidation of a will.  When a residuary bequest fails, does the invalidated share pass to the testator's heirs or to the remaining residuary legatees: common law approach - "no residue of residue" rule (testator's heirs) compared to UPC approach - "residue of residue" rule (other residuary legatee)</p>	<p><b>Secured Transactions</b>  <b>UCC Article 9</b>  Perfection of a security interest; inventory and equipment; after acquired collateral.  Motor vehicles: certificate of title statute and notation on certificate of title as perfection of a security interest as compared to filing a financing statement.  Priority of liens: competing security interests.  Continuation of security interest: accessions, priority rules governing accessions with certificate of title statutes; description of the collateral in creditor's security agreement.  Purchase-money security interest in equipment takes priority over competing security interest which was acquired earlier in time.</p>
2	<p><b>Torts</b>  Strict products liability (food poisoning): liability of commercial product sellers compared to occasional, non-commercial food seller.  Defective products: where a product's risk of being unreasonably dangerous cannot be eliminated, adequate warnings or instructions are required or the product is defective.  Negligence: where there are multiple defendants and cannot show which of three parties acted negligently because parties acted independently and not jointly.  Where <i>res ipsa loquitur</i>, alternative liability, and joint enterprise liability are unavailable to support a negligence claim.</p>	<p><b>Constitutional Law</b>  First Amendment: freedom of the press.  Defamation: public figure, "actual malice", "reckless disregard" of the truth.  Freedom of the press: lack of immunity for breaking the law or committing a tort.  Invasion of privacy: lawfully obtained information involving a matter of public concern, reasonable expectation of privacy.</p>
3	<p><b>Family Law</b>  Meaning of an adoption order; whether an adoptive parent can dissolve the adoption when the parent quarrels frequently with the child.  Seeking a retroactive modification of child support obligation: forbidden by federal law.  Voluntary reduction of income not a basis to obtain downward modification of child support obligation unless made in good faith and without incurring hardship on child.  Must show a "substantial change in circumstances" to obtain modification of future support obligation.  Support of children of employable age; compliance with reasonable parental demands.</p>	<p><b>Agency and Partnership</b>  Identifying partnership property.  Whether partnership property is subject to attachment and execution by judgment creditor of individual partner.  How creditor of individual partner can collect from a partner's financial interest in a partnership.  Assignment of partnership interest: rights of assignee (financial interest only).  Types of partnerships: partnership for term, partnership at will, or partnership for a particular undertaking; how type of partnership affects a forced dissolution.</p>
4	<p><b>Evidence</b>  Hearsay; exceptions to hearsay.  Business-records exception; statements made for purpose of receiving medical diagnosis or treatment.  Two evidentiary privileges applicable to the marital relationship: testimonial spousal privilege and marital confidential communications privilege.  Hearsay admissible to impeach hearsay declarant's credibility.</p>	<p><b>Real Property</b>  Landlord/tenant: creating periodic and at-will tenancies.  Statute of Frauds: one-year provision (3 years in some jurisdictions).  Violation of statute of frauds, possession of property and acceptance of rent, creation of at-will or periodic tenancy, month-to-month tenancy.  Terminating at-will and periodic tenancies: notice requirements.  Assignment of lease that is silent about assignments, liability for rent of assignor and assignee.</p>
5	<p><b>Corporations</b>  Corporate officer and director's duty of loyalty to corporation.</p>	<p><b>Civil Procedure</b>  FRCP 19: joinder of a "necessary party."</p>

	<p>Safe harbors for director who breaches his duty of loyalty: approval by disinterested directors, approval by disinterested shareholders, or fairness (RMBCA). Duty of board of directors to act on an informed basis when reviewing a contract in which a director has an interest. Business judgment rule; duty of care.</p>	<p>FRCP 13(a): defendant's counterclaim against plaintiff is compulsory when it arises from the "same transaction or occurrence." Federal courts' basis for supplemental jurisdiction under 28 U.S.C. §1367(a) over all claims that "derive from a common nucleus of operative fact" (unpaid \$50 restaurant bill).</p>
6	<p><b>Civil Procedure</b> FRCP 50(b): judgment as a matter of law ("JMOL", also called a judgment notwithstanding the verdict, "JNOV"); when the motion must be brought. FRCP 50(a): standard for granting a motion for JMOV. FRCP 59(b): procedure for filing a motion for a new trial and the "miscarriage of justice" standard for granting it. Juror misconduct: challenge based on bias and nondisclosure during <i>voir dire</i>.</p>	<p><b>Trusts</b> Revocable trust. Validity of pour-over will assets to a trust created during testator's lifetime either by testator or another. Validity of additions to revocable trust which was amended after will is executed. Incorporation-by-reference. Construction of a trust amendment with two possible interpretations: grantor's intent regarding age and survivorship contingencies. Whether grandchild is a substituted taker when trust instrument specifies "children" and includes words of survivorship ("who are living"). Anti-lapse statutes and application to wills as opposed to trusts.</p>
7	<p><b>Secured Transactions</b> <b>UCC Article 9</b> Perfection of a security interest in deposit or demand accounts: secured party must have control of the account to perfect their interest. Errors in UCC finance statements; effective filing of financing statement where the name of debtor was incorrect; "seriously misleading" test; search of records would disclose financing statement. Priority of liens: competing security interests.</p>	<p><b>Family Law and Conflict of Laws</b> Which state law determines enforceability of a premarital agreement: law of state where contract is signed or law of state with which parties have the "most significant relationship." Determining enforceability of premarital agreement governing property distribution: voluntariness, unconscionability, reasonable disclosure of assets and liabilities. Premarital agreement regarding child support or custody is unenforceable if it is not in the "best interests of the child." Separate and marital property; in a majority of states, marital property continues to accrue until final divorce decree.</p>
8	<p><b>Criminal Law and Procedure</b> Fourth Amendment: determining a "seizure" and whether that seizure was reasonable under the Fourth Amendment. Exclusionary rule and "fruit of the poisonous tree." Questioning of suspect when there is a "reasonable articulable suspicion." <i>Miranda</i> rights: determining when they attach (suspect is subject to an in-custody interrogation). When is a subject "in custody." Voluntary confession compared to an involuntary confession.</p>	<p><b>Contracts</b> Calculating damages in breach of contract: cost-of-completion v. difference in value. Award of consequential damages: test of foreseeability. Damages must be calculable with reasonable certainty to be recoverable (calculation difficulties with respect to a new business). Calculation of damage award includes subtraction of costs avoided by not having to perform; reduction of award to present value when assessing damages based on loss of future income; duty to mitigate damages.</p>
9	<p><b>Trusts</b> Irrevocable trust. Duties of trustee with respect to management of trust. Duty of loyalty: investing in a corporation where the trustee has a substantial investment. Duty to invest prudently: investing in closely held corporation that was "cash poor." Duty to diversify trust investments: investing 90% of trust assets in two corporations that were extremely similar and had same market risks.</p>	<p><i>Negotiable Instruments/</i> <i>No longer on MEE</i></p>

	Duty of care: investing in items that did not earn income and were not liquid so income beneficiary received nothing and prevented beneficiary from withdrawing trust principal as provided for in the terms of the trust.	
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Essay #	February 2009	July 2009
1	<p><b>Agency</b>            Defining the agency relationship (consulting contract).            Power of agent to bind principal (to a contract).            Actual and apparent authority.            Agent exceeding authority or acting without authority and consequences.</p>	<p><b>Trusts</b>            Irrevocable trust.            Trustee with absolute and uncontrolled discretion to distribute income and principal; abuse of discretion by failing to distribute income based upon personal motives; disagreement with beneficiary's political opinions.            Duty of loyalty: self-dealing; purchasing assets from the trust without court approval; no appraisal but purchased by trustee at fair market value.            Bequest to charity that no longer exists: <i>cy pres</i> doctrine, general charitable intent.</p>
2	<p><b>Evidence</b>            FRE 404: character evidence.            Impeachment of witness on cross-examination with a specific instance of prior bad act about lying on job application.            FRE 608(b): forbids use of extrinsic evidence to impeach witness's character for truthfulness.            FRE 612: only counsel for opposing party can offer document to refresh recollection of a witness.</p>	<p><b>Constitutional Law</b>            First Amendment: freedom of speech.            Sedition Statute: inciting illegal conduct must meet "imminent and likely" test under <i>Brandenburg</i>.            Abusive Words Statute: "fighting words" are unprotected speech when likely to cause a violent reaction.            Statutes may be overbroad where it punishes speech that is merely rude or abusive because it reaches protected speech.            Commentary on matters of public concern are afforded the highest level of First Amendment protection.</p>
3	<p><b>Decedents' Estates</b>            Distribution of assets in will.            Effect of stock dividend or stock split on a specific bequest of "my 100 shares."            Rule of ademption: specific bequest of real property no longer in testator's estate at time of death, replacement property.            Generically described property in a will, "my automobile" does not follow rule of ademption when a different car is owned at time of death.            Disclaimer of legacy: friend disclaims and beneficiary deemed to have failed to survive the testator, lapsed legacy, anti-lapse statute.</p>	<p><b>Family Law and Conflict of Laws</b>            Interstate enforcement and modification of child support orders (Uniform Interstate Family Support Act (UIFSA).            Enforcement of registered child support order in non-issuing state even when non-issuing state lacks personal jurisdiction over respondent (UIFSA).            Under federal Parental Kidnapping Prevention Act (PKPA), only issuing jurisdiction can modify child custody order so long as child or any contestant continues to reside in that state and issuing states does not decline to exercise jurisdiction.            Custody modification based on a "substantial change in circumstances": whether parental relocation qualifies as such a change; consideration of "best interests of the child."            Modification of child support obligation; may not be modified retroactively, but may be modified prospectively if there is a "substantial change in circumstances" that significantly reduces the child's need or the obligor's ability to pay.</p>
4	<p><b>Real Property</b>            Tenancy in common: statutory presumption when conveyance to 2 or more grantees.            Joint tenancy: 4 unities test (common law); is a joint tenancy or tenancy-in-common created when a deed's language includes "jointly" and "equally, to share and share equally" but does not mention survivorship?            Act and consequence of severing a joint tenancy: mortgage by one joint tenant, contract to sell by one joint tenant.            Distinction between "lien theory" and "title theory" jurisdictions.            Bona fide purchaser for value; recording of mortgagee gives constructive notice to purchasers</p>	<p><b>Secured Transactions</b>  <b>UCC Article 9</b>            Security interest in equipment; after acquired collateral.            Agreement that is called a lease may be a security interest: "economic realities" of the transaction where lessee has option to become owner with a nominal payment at end of the lease.            Perfection of a security interest.            Creditor's use of self-help remedies to repossess and sell collateral.            Priority of liens: competing security interests.            Applying proceeds of sale towards competing interests.</p>

	regardless of unrecorded deed. Doctrine of equitable conversion.	Good faith purchaser of collateral at foreclosure sale: "transferee for value."
5	<b>Civil Procedure and Conflict of Laws</b> FRCP 4 and Due Process clause of U.S. Constitution: evaluating basis for email service of process on a foreign corporation. Action against a foreign corporation on federal law claim and state law claim. Federal court sitting in diversity must apply choice-of-law rule of the state in which court sits when there is non-federal claim. Restatement (Second) of Conflict of Laws §145: applying choice of law rules to an issue in tort (unfair competition).	<b>Contracts</b> Consideration: requirement of a "bargained-for exchange." Past consideration or past performance. Substitutes for consideration: material benefit rule and promissory estoppel.
6	<i>Negotiable Instruments/</i> <i>No longer on MEE</i>	<b>Civil Procedure</b> Process for removing a case from state court to federal court. FRCP 20: joinder of claims in "same transaction or occurrence" and "common questions of law and fact." Subject matter jurisdiction. Diversity jurisdiction. Supplemental jurisdiction statute 28 U.S.C. §1367; claims arising out of state law; "common nucleus of operative fact" test.
7	<b>Torts</b> Negligence: standard of care owed by tenant to tenant's guest; standard for 8-year old child. Contributory negligence/comparative negligence. Negligence <i>per se</i> , state statute to keep apartment in good repair. Causation, proximate cause of injuries, intervening causes to break chain of causation.	<b>Criminal Law and Procedure</b> Fourth Amendment: standing to challenge the legality of a search, reasonable expectation of privacy. Attempted robbery: elements, intention & actions "beyond mere preparation." Defense of voluntary withdrawal or abandonment of crime when actions go beyond mere preparation.
8	<b>Family Law</b> Due process requirements for assertion of personal jurisdiction over a nonresident parent in a child support action. State long-arm statute in fact pattern same as in Uniform Interstate Family Support Act (UIFSA). Contract to waive Dad's child support duty unenforceable because inconsistent with "best interest of child." Calculation of child support based upon income and earnings of parents, not public assistance levels. Child custody and visitation determination, "best interest of child" standard.	<b>Partnership</b> Determining type of entity: limited partnership or general partnership when no general partner signs the limited partnership agreement. Partner liability for partnership obligations or debt; partners jointly and severally liable. Procedure for recovering against partners personally: judgment must first be obtained individually against each partner and against the partnership and levy execution against partnership assets. Partner liability for tort (wrongful death); joint and several liability.
9	<b>Corporations</b> When directors are entitled to the protection of the business judgment rule. Directors' duty to become informed before making business decisions. Breach of duty of care; breach of duty of loyalty. Director's failure to disclose his interest in a transaction to the other directors. Exculpatory provisions in articles of incorporation shielding directors from liability in money damages for failure to exercise adequate care in performance of their duties as directors.	<b>Decedents' Estates</b> Grounds for contesting a will: elements for undue influence, elements for fraud in the execution (misrepresents character/contents of the instrument) and in the inducement. Effect of finding of undue influence: can invalidate all or a portion of the will. General power of appointment and the proper exercise of power; residuary clause in will that makes no mention of power of appointment. Simultaneous Death Act: common accident where beneficiary survives testator by 1 week. Intestacy distribution rules: whether testator's niece or testator's uncle take if will is declared invalid. Parentelic method (UPC approach) of determining heirship compared to intestacy schemes governed

		by the civil law consanguinity method (minority method).
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Essay #	February 2010	July 2010
1	<p><b>Secured Transactions</b>  <b>UCC Article 9</b>  Security interest in inventory.  Retention of title by seller of delivered goods until payment is made is ineffective, resulting in an unperfected security interest in goods rather than a retention of title.  Perfecting a security interest in inventory: raw materials as inventory.  Priority of liens: competing security interests, perfected v. unperfected.  Attachment of security interest, debtor must have "rights in collateral" (undelivered goods.)</p>	<p><b>Agency and Partnership</b>  Partnership formation (general partnership) without a partnership agreement or formalities of other types of partnerships.  Investment with a return of profits and with intention to form a partnership; compared to a loan with the right to receive profits until loan is paid in full.  Assignment of partnership interest and rights of assignee to receive profits.  Rights of assignee to inspect books and records and participate in management of partnership.  Identifying partnership property and the misuse of partnership property by a partner.</p>
2	<p><b>Real Property</b>  Types of easements.  Actual notice, constructive notice, or inquiry notice with regard to easements which are visible (power lines) and easements which are not visible (underground gas lines), when the easements are not recorded and when there are subsequent purchasers for value.  "Shelter doctrine."  Conveyance by full covenant and warranty deed: covenant against encumbrances.</p>	<p><b>Contracts/Article 2</b>  UCC Article 2 sale of goods.  Breach of warranty — creation of express warranty through affirmations of fact relating to the goods that are part of the basis of the bargain.  Misrepresentation as common law basis to avoid or rescind the contract; common law principles supplement the Code under UCC §1-103.  Revocation of acceptance; duty to inspect and difficulty of discovery of latent defects.  Damages: recovery of contract price and incidental and consequential damages; alternative remedy of "cover" damages.</p> <p><i>Negotiable Instruments/  No longer on MEE</i></p>
3	<p><b>Family Law</b>  Basis for setting aside a settlement agreement before a final divorce judgment is entered: if fraud, overreaching, or duress results in a substantively unfair agreement.  Consideration of marital misconduct in property or alimony determination; distinction between marital misconduct and financial misconduct in award considerations.  Marital and separate property: professional license (law degree is marital property only in NY) acquired during the course of the marriage.  Rehabilitative award for spousal support and maintenance; factors in determining spousal support and maintenance (alimony) awards.</p>	<p><b>Decedents' Estates</b>  Execution requirements of a will: doctrine of integration for multi-page will (validity when all pages of will are together but unstapled).  Codicil: effect of handwritten change to bequest on a previously executed will.  Doctrine of dependent relative revocation (revocation based on mistaken assumption of law or fact is ineffective if testator would not have revoked if he had accurate information).  Bequest to "my children" when testator intended only biological children to take under the will; rights of adopted and non-marital child.  Reformation of a will: use of extrinsic evidence to correct a mistake.</p>
4	<p><b>Torts</b>  Battery: intent and knowledge to a substantial certainty (pedestrian hit by a baseball that traveled over fence at baseball stadium).  Negligence.  Vicarious liability of employer for negligence of employee.  Custom: industry standards in profession in determining negligence.  "Eggshell skull."</p>	<p><b>Constitutional Law</b>  First Amendment and types of forums: public forum, limited public forum and nonpublic forum.  Public forum: content-neutral regulation must meet intermediate scrutiny (statute preventing leaflet distribution on a public street).  Limited public forum: rules applicable to traditional public forum apply; no exception to requirement of content neutrality when religious speech is at issue.  Non-public forum: state can regulate conduct without communicative value in a nonpublic forum.</p>
5	<p><b>Corporations</b>  Closely held corporation.</p>	<p><b>Real Property</b>  Terms of conveyance ambiguous: fee simple on condition subsequent or fee simple determinable and the consequences that arise from each.</p>

	<p>Shareholder's right of inspection of corporation's books and records (proper purpose of valuing shares of corporation).</p> <p>Shareholder's right to dividends; whether a suit to compel payment of a dividend is a suit to enforce a right of the corporation or a suit to enforce an individual right of the shareholder.</p> <p>Business judgment rule.</p>	<p>Interpreting grantor's intent: preference for fee simple on condition subsequent.</p> <p>Future interest and interpreting a state statute which allows interest to pass by will; interpreting a will with a survivorship contingency of "my surviving children" where one child predeceases testator.</p>
6	<p><b>Civil Procedure</b></p> <p>Subject matter jurisdiction.</p> <p>Jurisdiction: federal subject matter jurisdiction based on diversity of citizenship and amount-in-controversy requirement (28 U.S.C. §1332(a)).</p> <p>Determining citizenship of corporation and permanent resident alien for diversity purposes.</p> <p>Diversity jurisdiction in breach of contract case (insurance policy).</p> <p>Domestic relations exception to federal courts' exercise of diversity jurisdiction: federal courts will not exercise jurisdiction over cases that are primarily marital disputes.</p> <p>FRCP 20: joinder of claims in "same transaction or occurrence" and "common questions of law and fact"; the logical-relationship test.</p>	<p><b>Family Law</b></p> <p>Determining enforceability of premarital agreement governing property distribution: voluntariness, unconscionability, reasonable disclosure of assets and liabilities.</p> <p>Marital and separate property: property acquired during marriage and by gift; pension can be part marital and part separate property.</p> <p>Alimony: financial resources, marital contributions and marital duration, spousal misconduct, injured spouse.</p>
7	<p><b>Evidence</b></p> <p>Admissibility of relevant evidence in negligence action.</p> <p>FRE 701: non-expert opinion evidence.</p> <p>FRE 404(a): evidence of character trait not admissible for proving action in conformity on a particular occasion.</p> <p>FRE 406: habit evidence (cell phone usage).</p> <p>Relevancy of memory loss concerning events related to the incident.</p> <p>FRE 401-403: where parties have stipulated to injuries, evidence of additional injuries not mentioned in stipulation are inadmissible as waste of time and may be unfairly prejudicial.</p>	<p><b>Civil Procedure</b></p> <p>FRCP 4(k)(1): asserting personal jurisdiction over a non-resident defendant.</p> <p>Exercise of state's long-arm statute where it extends jurisdiction as far as the Due Process Clause of the 14<sup>th</sup> Amendment allows; evaluation of contacts with forum state for finding of specific jurisdiction based on nonresident's purposeful availment of benefits of forum state and foreseeability of being haled into court.</p> <p>Jurisdiction: federal subject matter jurisdiction based on diversity of citizenship and amount-in-controversy requirement (28 U.S.C. §1332(a)).</p> <p>Determining citizenship of corporation for diversity purposes.</p> <p>Determining domicile based on residence and "intent to remain"; satisfying the amount-in-controversy requirement.</p> <p>Determining whether federal-question jurisdiction exists: whether claims alleged in complaint are created by federal or state law (federal statute, but state law claim).</p>
8	<p><b>Trusts</b></p> <p>Revocable trust.</p> <p>After-born children: "surviving children" as a class does not close until Settlor's death and would include "after-born" children.</p> <p>Distribution of trust assets where remainderman predeceases the life tenant: follow the directives in trust instrument; outcome different under UPC where survivors take a predeceased person's share by representation.</p> <p>Disclaimer of interest in a trust by beneficiary: beneficiary deemed to predecease the Settlor; different result under UPC's survivorship rule.</p> <p>Trustee's duty to invest prudently.</p>	<p><b>Criminal Law</b></p> <p>Larceny by false pretenses: elements.</p> <p><i>Actus reus</i> and <i>mens rea</i> elements of false pretenses.</p> <p>False statements of a material fact compared to commercial puffery.</p> <p>False statements made knowingly with the intent to defraud.</p>

	Duty of fiduciary of a revocable trust who is acting in accordance with Settlor's wishes as compared to the duty of a fiduciary of an irrevocable trust.	
9	<i>Negotiable Instruments/ No longer on MEE</i>	<b>Corporations</b> Shareholder voting: importance of "record date" for determining voting eligibility. Proxy agreements: definition and revocability, action inconsistent with a proxy. Shareholder of record may vote at shareholder's meeting. Whether a corporation has the right to vote treasury shares. Whether certificate of incorporation or by-laws control when there is a conflict.

Essay #	February 2011	July 2011
1	<p><b>Trusts</b></p> <p>Trustee with uncontrolled discretion to distribute income and principal.</p> <p>Discretionary trust: rights of creditors no greater than rights of beneficiary to compel trustee to make payments.</p> <p>Inheritance rights in trust of adopted grandchild who was adopted after testator's death.</p> <p>Where trust instrument creates a future interest in grandchildren: when does the class close.</p> <p>Vested remainder: trust provides that if the remainderman predeceases the life tenant that it shall pass to the child of the remainderman and the remainderman dies with no children; common law compared to UPC.</p>	<p><b>Secured Transactions</b></p> <p>Security interest in inventory and equipment including future or after acquired items.</p> <p>Perfection of a security interest.</p> <p>Retention of title by seller of delivered goods until payment is made is ineffective and results in an unperfected security interest in goods rather than the retention of title; seller must file a financing statement or retaining possession of goods to perfect a security interest.</p> <p>Priority of liens: competing security interests.</p> <p>Agreement that is called a lease may be a security interest: "economic realities" of the transaction where lessee becomes the owner after making all payments.</p>
2	<p><b>Evidence</b></p> <p>Impeaching witness credibility with a prior inconsistent statement.</p> <p>Extrinsic evidence admissible to impeach credibility between prior out-of-court statement and witness's trial testimony.</p> <p>FRE 801(d)(1)(C): non-hearsay statement of identification.</p> <p>FRE 801(d)(1)(A): a prior inconsistent statement admissible as not hearsay when the statement is made under oath, under penalty of perjury at trial, hearing, proceeding, or deposition.</p> <p>FRE 405(a): admissibility of evidence of good character of a relevant character trait may be introduced by defendant only through reputation or opinion testimony.</p>	<p><b>Criminal Law and Procedure</b></p> <p>Fourth Amendment: whether constitutional reasonableness of a traffic stop depends on the motivation of the officer.</p> <p>Probable cause to stop vehicle based on minor traffic violation.</p> <p>Search and seizure; evidence found in "plain view."</p> <p><i>Miranda</i> rights: determining when they attach (arrested and being questioned).</p> <p>Whether <i>Miranda</i> violation's taint's subsequent interrogation.</p> <p><i>Miranda</i> rights: demand for an attorney must be unequivocal and unambiguous as compared to defendant's statement: "Maybe I need a lawyer."</p>
3	<p><b>Secured Transactions</b> <b>UCC Article 9</b></p> <p>Security interest in inventory.</p> <p>Sale of collateral: no continuation of security interest with a buyer in ordinary course of business (BIOCOB), consumer.</p> <p>Purchase-money security interest in consumer goods and perfected security interest without filing of financing statement; subsequent sale of collateral.</p>	<p><b>Trusts</b></p> <p>Court's power to reform trust provisions: equitable deviation doctrine; reforming trust terms when there is an unanticipated change in circumstances (expanded under the Uniform Trust Code to include modification of administrative trust provisions as well as dispositive provisions).</p> <p>Bequest to charity that no longer exists, <i>cy pres</i> doctrine, presumption of general charitable intent under the UTC.</p>
4	<p><b>Torts</b></p> <p>Battery: prima facie case, intent to cause a harmful or offensive contact (use of stun gun).</p> <p>Whether frisk as part of routine screening process is "offensive."</p> <p>Defense to battery: consent.</p> <p>Strict products liability: manufacturing defect.</p> <p>"Eggshell skull."</p>	<p><b>Real Property</b></p> <p>Termination of easement: abandonment, non-use, and intent to abandon.</p> <p>Common law first-in-time, first-in-right principle.</p> <p>Notice-type state recording statute that has a grantor-grantee index.</p> <p>Actual, constructive, or inquiry notice.</p> <p>"Wild deed": deed recorded outside the chain of title and therefore undiscoverable by a reasonable search of the grantor-grantee index; provides no constructive notice to subsequent purchaser.</p> <p>Easement (visible railroad tracks): subsequent purchaser put on inquiry notice.</p>
5	<p><b>Family Law</b></p> <p>Basis for invalidating a separation agreement's property and support provisions: unconscionability or fraud; whether misrepresentation of paternity would support a finding a fraud.</p> <p>Whether a property division award can be modified after divorce decree is entered.</p>	<p><b>Civil Procedure</b></p> <p>Determining what is an appealable final judgment.</p> <p>FRCP 54(b): final judgments are immediately appealable when there is "no just reason for delay."</p> <p>Final judgment rule; consideration of the collateral order exception (non-appealable interlocutory order regarding forum-selection clause).</p>

	<p>Modification of spousal-support award and a “substantial change in circumstances.”</p> <p>Modification of child-support obligation based on non-paternity.</p>	<p>Whether pendant appellate jurisdiction would apply to allow appellate court to hear appeal where party is seeking review of a non-final order.</p>
6	<p><b>Contracts</b></p> <p>Offer to modify an existing contract: process of offer, counteroffer, acceptance.</p> <p>Breach of contract: failure to use good faith efforts to obtain loan which was a condition precedent to party’s duty to perform.</p> <p>Recovery of expectation damages, including loss of potential investment when foreseeable at time of contract. Punitive damages not recoverable in contract.</p>	<p><b>Family Law and Conflict of Laws</b></p> <p>Validity of common law marriage in states that do not recognize common law marriages.</p> <p>Requirements to establish a common law marriage.</p> <p>Substantive due process rights under 14<sup>th</sup> Amendment of unwed biological father.</p> <p>Whether state can permit adoption without the consent of the biological father.</p> <p>Determining a child’s “home state” under the Uniform Child Custody Jurisdiction and Enforcement Act to issue an initial custody decree (UCCJEA).</p>
7	<p><b>Corporations</b></p> <p>Filing of articles of incorporation: sets effective date of corporate existence.</p> <p>Liability of persons purporting to act on behalf of corporation with knowledge that articles of incorporation have not been filed.</p> <p>Personal liability by those who purport to act for a corporation if they entered the contract with knowledge there was no incorporation.</p>	<p><i>Negotiable Instruments/</i></p> <p><i>No longer on MEE</i></p>
8	<p><b>Civil Procedure</b></p> <p>FRCP 12(b)(6): motion to dismiss for failure to state a cause of action.</p> <p>FRCP 12(b): failure to join other defenses: waiver of defense of insufficient service of process when motion challenging service not joined in initial Rule 12(b) motion.</p> <p>FRCP 13(g): defendant’s answer may state crossclaim against a co-defendant where the claim arises out of the same transaction or occurrence that is the subject matter of the original action.</p> <p>Whether federal court has independent subject matter jurisdiction over a state law cross-claim where there is no diversity of citizenship and the amount-in-controversy is not satisfied.</p> <p>Federal courts’ basis for supplemental jurisdiction under 28 U.S.C. §1367(a) over all claims that “derive from a common nucleus of operative fact.”</p>	<p><b>Constitutional Law</b></p> <p>Equal Protection Clause of the Fourteenth Amendment.</p> <p>Gender-based discrimination: separate nursing facilities and programs based on gender.</p> <p>State action doctrine: when can actions of private party be considered state action.</p> <p>Classification based on gender: assessed under heightened or intermediate scrutiny. State must show important governmental objectives and means employed are substantially related to achievement of those objectives.</p> <p>Remedying past discrimination as an “important governmental objective.”</p>
9	<p><b>Decedents’ Estates</b></p> <p>Execution requirements of a will: handwritten wills that are properly executed compared to holographic wills.</p> <p>Whether a life insurance beneficiary be changed by a will provision.</p> <p>Incorporation by reference of memorandum regarding testator’s jewelry located in safe deposit box.</p> <p>Lapsed legacy and anti-lapse statute with respect to a husband that predeceases the testator.</p> <p>Abatement of legacies in order of the classification of legacy.</p>	<p><b>Partnership</b></p> <p>Withdrawing from a partnership and consequences for the partner and the partnership.</p> <p>Dissociation when proper and when wrongful.</p> <p>Winding-up process: partnership obligations incurred during winding-up period; liability of partners for partnership obligations.</p>

Essay #	February 2012	July 2012
1	<p><b>Evidence</b>  FRE 401: relevant evidence.  FRE 407: subsequent remedial measures (hospital change in policy).  FRE 408: settlement offers of disputed claim.  FRE 409: offers to pay medical expenses.  FRE 412(a): "Rape Shield" rule.  FRE 412(b)(2): in civil cases, otherwise inadmissible evidence of allege victim's sexual behavior is admissible "if its probative value substantially outweighs the danger of harm to any victim."</p>	<p><b>Trusts and Future Interests</b>  Irrevocable trust.  Termination of trust upon consent of the income beneficiaries and remainder beneficiaries if there is no material purpose yet to be performed.  Whether limitation on remarriage of husband beneficiary is a material purpose.  Trust remainder to "Settlor's children": gift to a class related to a common ancestor with no condition of survivorship; who qualifies as trust remainder under common law as compared to a jurisdiction that adopted the UPC survivorship statute.  "Surviving children" as a class of persons does not close until death of "Settlor" and includes children born after the creation of the trust (after-born).  Trust termination: trust beneficiaries may direct distribution of trust property in any manner they choose and so direct the trustee.</p>
2	<p><i>Negotiable Instruments/  No longer on MEE</i></p>	<p><b>Criminal Law and Procedure</b>  Involuntary manslaughter: elements.  <i>Mens rea</i> required for involuntary manslaughter liability; varies by jurisdiction recklessness, gross, criminal, or culpable negligence (defendant dumped bags of marbles at traffic intersection at night resulting in car accident and passenger death).  Causation: causation in fact (but for cause) proximate cause.  Accomplice liability on charge of involuntary manslaughter: elements.  Must have <i>mens rea</i> required for underlying offense.</p>
3	<p><b>Contracts</b>  Substantial performance; when failure to perform or defective performance amounts to a material breach. Determining when a contract is divisible to allow some measure of recovery in event of breach; when a party may be entitled to restitution based on part performance.</p>	<p><b>Constitutional Law</b>  Interstate Commerce Clause: Congressional authority to regulate economic activities that have a "substantial economic effect" on interstate commerce (Federal statute against workplace violence).  10<sup>th</sup> Amendment: federalism, Congress may regulate public and private actors on the same terms.  Bar of the 11<sup>th</sup> Amendment: when abrogation of state immunity is satisfied.</p>
4	<p><b>Torts</b>  False imprisonment: elements (refusal to restart a ferris wheel)  Vicarious liability of employer for acts of employee.  Negligence: standard of care.  Whether parent can bring claim for emotional distress: "zone of danger"; contemporaneously observe injury to child.</p>	<p><b>Family Law</b>  Which state has jurisdiction to issue a child custody decree when the child has no "home state": pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, state may exercise jurisdiction based on "significant connections" and "substantial evidence" (UCCJEA).  Weight given to older child's wishes or preferences in determining custody: relevant but not determinative.  Interpreting a state grandparent child-custody statute: violation of due process of parent when no deference is given to fit parent's determination of best interests of child.</p>
5	<p><b>Decedents' Estates</b>  Execution requirements of will.</p>	<p><b>Secured Transactions</b>  Perfection of a security interest: present and future inventory, equipment not included.</p>

	<p>Codicil: cannot republish a will that has not been properly executed; codicil will act as a valid partial will.</p> <p>Incorporation by reference where testator says "I republish my will": specific identification to the earlier document and testator's intent to incorporate the document.</p> <p>Intestacy distribution rules: "slayer statute" where heir murdered another but did not kill testator.</p> <p>Rule of ademption: specific bequest of real property no longer in testator's estate at time of death; common law ademption compared to "intent test" regarding substitute or replacement property.</p> <p>Effect of a stock dividend or stock split on a specific bequest of "my 400 shares."</p>	<p>Sale of collateral: no continuation of security interest with a buyer in ordinary course of business (BIOCOB), consumer.</p> <p>Security interest extending beyond inventory to equipment when inventory is traded for equipment.</p> <p>Retention of title by seller of delivered goods until payment is made is ineffective and results in an unperfected security interest in goods rather than the retention of title; seller must file a financing statement or retain possession of goods to perfect a security interest.</p> <p>Priority of liens: competing security interests and a judgment lien.</p>
6	<p><b>Partnership</b></p> <p>LLP liability for pre-existing judgement against same entity prior to its qualification as an LLP.</p> <p>LLP status: partners' liability for partnership obligations incurred prior to qualification as LLP and those incurred after such qualification.</p> <p>Incoming partner's personal liability for LLP's obligations incurred before becoming a partner.</p>	<p><b>Torts</b></p> <p>Negligence: duty of care owed by university to its students; causation (failure to repair broken lock).</p> <p>No general duty to come to aid of another: exception if increase in harm and reliance on actor.</p> <p>Duty of psychotherapist: to warn a reasonably identifiable individual of credible threat from patient; no duty to an indeterminate class.</p> <p>"Eggshell skull."</p>
7	<p><b>Civil Procedure and Conflict of Laws</b></p> <p>When removal from state court to federal court is proper under 28 U.S.C. §1441(a).</p> <p>Venue: change of venue under 28 U.S.C. §1404(a) permitted to a court where the action could have been brought originally, convenience of the parties, and "interest of justice."</p> <p>Application of <i>Erie</i> Rule following a change of venue: court to which the case is transferred must apply the same law as would have been applied by the original court: change of venue does not affect the law to be applied.</p>	<p><b>Civil Procedure</b></p> <p>FRCP 15(a)(2): leave to amend its answer based on facts learned in discovery where defendant previously failed to raise the affirmative defense.</p> <p>Defendant's burden to plead affirmative defenses under FRCP 8(c).</p> <p>FRCP 56(a): standard for grant of summary judgment: "no genuine issue as to any material fact"; in considering the evidence, inferences must be drawn most favorable to the party opposing the motion.</p>
8	<p><b>Real Property</b></p> <p>Appurtenant easement extinguished by merger with a subsequent deed.</p> <p>Creation of easement by implication (implied from prior use): identify criteria.</p> <p>Distribution of proceeds in foreclosure sale with multiple lenders when the first loan which was recorded is a construction loan or "future-advance" mortgage.</p> <p>Whether future-advances mortgage payments are required or optional determines the rights of junior lender.</p>	<p><b>Corporations and LLCs</b></p> <p>Member-managed LLC; whether majority member of member-managed LLC has fiduciary duties that require it to bring claims against an LLC member.</p> <p>Claim of LLC v. claim of individual member of LLC.</p> <p>When a derivative action in a member-managed LLC may be brought.</p> <p>Involuntary dissolution: "oppression doctrine" as applied to LLC.</p> <p>Limited liability of LLC members and managers: piercing the LLC veil.</p>
9	<p><b>Corporations</b></p> <p>Notice requirements for special meeting of directors (stating the purpose of meeting not necessary): waiver of notice by a director by attending and voting.</p> <p>Quorum required for action at special meeting of board of directors.</p> <p>What it means to be "legally present" at a meeting: all directors must be able to simultaneously hear all others who are present.</p>	<p><b>Decedents' Estates and Conflict of Laws</b></p> <p>Conflict of laws: domicile and distribution of personal property, real property and law of the situs.</p> <p>Holographic wills and interpretation of two different state statutes with different execution requirements where both statutes find the will invalid – all assets to pass intestate.</p> <p>Interpretation of two different state intestacy statutes with regard to inheritance rights of biological, adopted, and non-marital child when paternity has been established; constitutional standards.</p>

Essay #	February 2013	July 2013
1	<p><b>Real Property</b>  Landlord/tenant: commercial lease with term-of-years.  Constructive eviction: elements at common law.  No implied duty for landlord to repair leased premises under common law; courts reluctant to imply duty to repair in commercial leases.  Written lease contained no term requiring landlord to repair the air-conditioning.  Covenant of quiet enjoyment does not include duty to repair.  Surrender of a lease by tenant and whether the landlord accepted the surrender (retaining keys) or held the tenant to lease terms.  Common law rule: landlord had not duty to mitigate damages and not entitled to recover unpaid future rents, only what was in arrears at time of suit. Other courts allow landlords to sue tenants for wrongful termination and seek damages equal to difference between unpaid rent due and fair market rental value or other valuations for unpaid future rent.</p>	<p><b>Civil Procedure</b>  Jurisdiction: federal subject matter jurisdiction based on diversity of citizenship (28 U.S.C. §1332(a)).  Determining domicile: residence and “intent to remain.”  Determining citizenship for corporations: dual citizenship based on state where incorporated and where corp. has its principal place of business (“nerve center” test).  Venue: basis for venue when jurisdiction is based on diversity (28 U.S.C. § 1391(b)).  Obtaining personal jurisdiction over a corporate defendant (FRCP 4(k)).  Exercise of state’s long-arm statute where it extends jurisdiction as far as Due Process Clause of the 14<sup>th</sup> Amendment allows.</p>
2	<p><b>Contracts/Article 2</b>  UCC Article 2 sale of goods.  Reasonable grounds for insecurity regarding prospective performance; written demand for adequate assurances; when failure to provide such assurances constitute a repudiation.  Retracting a repudiation.</p>	<p><b>Torts</b>  Vicarious liability of employer for acts of employee committed within the scope of employment.  Principal’s liability for agent’s torts based on apparent authority of employee.  Negligence: causation.</p>
3	<p><b>Constitutional Law</b>  First Amendment: freedom of speech (refusal to recite pledge of allegiance).  State action where private actor exercises a “public function (running a privately owned “company town”).  First Amendment ban on compelled expression; compelled expression of a political belief (school required students to salute flag and Pledge Allegiance).  Regulation of student speech by schools and teachers.  Traditional public forum: content-neutral regulation of speech, intermediate scrutiny of a statute (preventing leaflet distribution).</p>	<p><b>Family Law</b>  Whether a court would order a parent to stop making contributions from her earnings to a religious organization.  Court intervention in parental disputes: whether a court would require one parent to follow the other’s preference with respect to child rearing practices (allowing daughter to take skating lessons).  Court intervention when health or safety of child is at issue because of parent’s religious belief; court may order medication given to child.  Whether court may deny a parent custody based the parent’s religious faith based on a threat to the child’s health or safety: “best interests of the child.”</p>
4	<p><b>UCC Article 9</b>  Perfection of a security interest: “purchase-money security interest” in consumer goods without a financing statement.  Sale of collateral and continuation of security interest with a buyer who is not a buyer in the ordinary course of business (BIOCOB), but rather is a buyer of goods used for “personal, family or household purposes.”  Gift of collateral, for no value and the continuation of a security interest.</p>	<p><b>Evidence</b>  Hearsay; exceptions to hearsay (911 call).  FRE 803 (1): present sense impressions.  FRE 803 (2): “excited utterances.”  FRE 803 (4): “statements made for medical diagnosis and treatment.”  Sixth Amendment Confrontation Clause: whether the statement to police was testimonial.</p>
5	<p><b>Civil Procedure</b>  Claim preclusion (<i>res judicata</i>): determining issues of privity between parties (family relationship).  Issue preclusion (<i>collateral estoppel</i>): effect of privity on non-party’s ability to present her claim in a second suit even if it is factually related to claims and defenses presented in first suit.  Non-mutual issue preclusion: abandonment of “traditional” requirement of mutuality where the party</p>	<p><i>Negotiable Instruments/  No longer on MEE</i></p>

	asserting issue preclusion and party against whom it was asserted were both bound by the prior judgment.	
6	<p><b>Agency</b>          Defining the agency relationship.          Power of agent to bind principal.          Actual and apparent authority.          Agent exceeding authority or acting without authority and consequences.          Types of authority: actual, inherent, and apparent authority.          Undisclosed, partially disclosed, and unidentified principals: impact on liability for contracts entered into by agent.          Effect of ratification on contract by undisclosed principal: whether owner is liable depends on whether court follows Second or Third Restatement of Agency.</p>	<p><b>Corporations and LLCs</b>          Member-managed LLC: members in a fiduciary relationship with duty of utmost trust and loyalty.          Where member participates in a competing business but the express terms of the operating agreement allow members to have such an interest ("opting-out" of the duty of loyalty).          Liability of members for debts of LLC: improper dissolution and winding up of LLC; notice to creditors.          Piercing the LLC veil: "alter ego" where factors are considered: improper use of the LLC form, siphoning funds, intermingling personal and business funds, failure to follow corporate accounting formalities.</p>
7	<p><b>Evidence</b>          FRE 401: relevant evidence.          Hearsay: text message is a "written assertion."          FRE 803(1): hearsay exception for present sense impressions.          FRE 803(6): text message as a business record.          "Thumbs-up" as a non-verbal assertion made out-of-court: when hearsay and when not.</p>	<p><b>Contracts/Article 2</b>          UCC Article 2 sale of goods.          Statute of frauds: sale of goods over \$500.          Application of "merchant confirmatory memo" exception.          What constitutes a signature to satisfy the statute of frauds.          Where statute of frauds is not satisfied but the contract is valid in other respects, it is enforceable as to the goods which have received and accepted.</p>
8	<p><b>Trusts and Future Interests</b>          Revocable trust (inter vivos); whether a revocable trust is amendable.          Settlor's power of revocation includes the power to amend trust when trust is silent on power to amend or modify.          Settlor's ability to amend trust without formalities necessary to execute a will (no need for witnesses to Settlor's signature).          Revocable trust may be amended any time prior to Settlor's death and the amendment applies to assets conveyed to the trust in a pour-over will where the will was executed prior to amendment.          Rule Against Perpetuities: interpreting the state statute provided in the MEE question; applying common law rule to determine validity of Settlor's trust.</p>	<p><b>Real Property</b>          New home construction: implied warranty against latent defects, implied warranty of fitness, implied warranty of habitability (rejection of caveat emptor doctrine).          Extension of implied warranty of latent defects to remote grantees or subsequent purchasers in most jurisdictions (despite lack of privity with builder).          Assumption of mortgage: express assumption required for personal liability on unpaid mortgage obligation; implied assumption of mortgage.          Quitclaim deeds: contain no warranties of title.</p>
9	<p><i>Negotiable Instruments/          No longer on MEE</i></p>	<p><b>Decedents' Estates</b>          Prenuptial agreement: waiving rights in spouse's estate will not preclude a surviving spouse from inheriting from a will that was executed after the prenuptial agreement was signed.          Divorce: when parties have only filed for divorce as compared to a final divorce at the time of the testator's death.          Adopted-out child: rights to inherit when child is adopted out by a family member.          Appointment of personal representative when will is silent; priority of devisees.</p>

Essay #	February 2014	July 2014
1	<p><b>Constitutional Law</b>  Fifth Amendment: city ordinance requiring business to install floodlights is not a <i>per se</i> taking.  Unconstitutional regulatory taking of property without unjust compensation compared to regulating with a legitimate state interest.  Determining a regulatory taking: three-part balancing test under <i>Penn Central</i>.  Exaction of an easement to obtain a building permit, uncompensated taking, <i>Dolan</i> test.</p>	<p><b>Criminal Law and Procedure</b>  Sixth Amendment right to counsel: is charge- or offense- specific; does not attach to uncharged crimes where there is no formal adversarial judicial proceeding. <i>Miranda</i> rights: demand for an attorney must be unequivocal and unambiguous as compared to defendant's statement: "I think I want my lawyer here before I talk to you."  <i>Miranda</i> rights: standard for waiver of rights is voluntary, knowing, and intelligent.</p>
2	<p><b>Trusts and Future Interests</b>  Testamentary trust.  Determining what constitutes income and principal, sale of proceeds of real estate, rental proceeds, cash dividends, and stock dividends.  Disclaimer made more than 9 months after testator's death is invalid pursuant to state statute; income beneficiary who invalidly disclaims is not deemed to have predeceased testator; common law rule allowing disclaimers at any time; acceleration of remainder not available where the remainder in will has survivorship contingency.</p>	<p><b>Contracts</b>  Consideration: modification and pre-existing duty rule.  Exception under the Restatement (Second) for changed circumstances that were unanticipated at the time of contract and the modification would be fair and equitable.  UCC Article 2: consideration not required for modifications made in good faith.  Defense of economic duress/ business compulsion: when a threat of non-performance is "wrongful" or "improper."</p>
3	<p><b>UCC Article 9</b>  Security interest in equipment including future or after acquired items.  Priority of liens: competing security interests and "first to file-or-perfect rule."  Filing financing statement before security agreement or loan is obtained, attachment, and determining the date of perfection.  Sale of collateral and continuation of security interest in equipment where buyer is not a buyer in ordinary course of business (BIOCOB) because seller is not in the business of selling goods of that kind.</p>	<p><b>Family Law</b>  Interstate enforcement and modification of child support orders (UIFSA), personal jurisdiction, subject matter jurisdiction, enforcement in non-issuing state.  UIFSA: does not govern property distributions in divorce decree.  Modification of child support obligation, retroactive modification, prospective support obligation and "substantial change in circumstances", involuntary loss of income or voluntary loss of income.  Modification of property-division award in divorce decree, personal jurisdiction and property division.</p>
4	<p><b>Civil Procedure</b>  FRCP 26(b)(1), FRCP 34(a)(1).  Discovery: work product rule: whether a document prepared in the course of a contract dispute is non-discoverable "work product" when the document was not prepared in anticipation of litigation.  Discovery; destruction of discoverable materials, deletion of potentially relevant emails when litigation is possible, role of routine document retention/destruction policy.  Duty to preserve discoverable materials when litigation is anticipated.  Determining appropriate sanctions for spoliation of evidence: court considers the level of culpability of the spoliating party and the degree of prejudice the loss of evidence causes the other party.</p>	<p><b>Civil Procedure</b>  FRCP 24(a): intervention as a matter of right; identification of the three requirements for intervention of right.  Standard and requirements for granting TRO under FRCP 65(b).  Standard for granting preliminary injunction: (1) risk of "irreparable harm" to plaintiff if preliminary injunction is not granted; (2) likelihood of plaintiff's success on the merits of the underlying claim; (3) "balance of the equities" --- likelihood that the harm the plaintiff will suffer in the absence of the preliminary injunction outweighs the harm the defendant will suffer if it is granted; (4) the public interest.</p>
5	<p><b>Criminal Law and Procedure</b>  Fifth Amendment: double jeopardy, two crimes with different elements, theft and burglary.  Due Process Clause requires the prosecution to prove all elements of offense beyond a reasonable doubt: jury instructions which create either an "irrebuttable conclusive presumption" or a "rebuttable</p>	<p><b>Evidence</b>  Impeachment of witnesses with evidence of prior convictions and specific instances of misconduct (felony drug conviction, perjury, sexual assault).  FRE 609(a): evidence of prior convictions admissible to attack witness's character for truthfulness.</p>

	<p>presumption” unconstitutionally shift burden of proof to the defendant.</p> <p>Sixth Amendment: right to jury trial on element of offense, where the value of stolen goods may increase the penalty for a crime, said value is a question for the jury and must be proved beyond a reasonable doubt.</p>	<p>FRE 609(b): determining the 10-year time limit for admissibility: limit runs from date of conviction or release from confinement whichever is later.</p> <p>Admissibility of evidence subject to FRE 403 balancing test.</p> <p>FRE 608(b): cross-examination of witness about specific instance of prior non-conviction misconduct (lying on job application and resume).</p> <p>FRE 608(b): forbids use of extrinsic evidence to impeach witness’s character for truthfulness.</p>
6	<p><b>Agency and Partnership</b></p> <p>Partner liability in general partnership: joint and several liability for misrepresentations made by partner in the ordinary course of the partnership business.</p> <p>Extent of personal liability of incoming partner in a general partnership on existing claims against the partnership.</p> <p>How a general partnership can make an election and become a limited liability partnership.</p> <p>After the filing by a general partnership of a statement of qualification as a limited liability partnership, whether the partners are personally liable as partners on (a) an existing claim against the general partnership and (b) a claim against the partnership that arose after the filing.</p>	<p><b>Corporations</b></p> <p>Whether shareholders have authority to amend corporation’s bylaws and if so, what are proper matters (e.g., procedures for nominating directors). Shareholders’ power to amend or repeal board-approved bylaws.</p> <p>Derivative suit: to vindicate corporate rights; must make demand on the board.</p> <p>Ability of shareholders to bring direct suit: to vindicate shareholder’s own rights.</p>

Essay #	February 2015	July 2015
1	<p><b>Torts</b></p> <p>Independent contractor vs. employee Vicarious liability of employer for acts of employee committed within the scope of employment. Negligence <i>per se</i>: violation of traffic ordinance (double-parking). Whether conforming to custom is a defense to negligence. Indemnification of employer by employee for tort claim.</p>	<p><b>Torts</b></p> <p>Negligence: minor engaged in a hazardous, adult activity (snowmobiling). Standard of care owed by landowner to a trespasser and to a licensee. Attractive nuisance doctrine. No general duty to come to aid of another: exception if increase in harm and reliance on actor. Contributory/comparative negligence.</p>
2	<p><b>Constitutional Law</b></p> <p>Age-based discrimination. Equal Protection Clause of the Fourteenth Amendment: three levels of scrutiny for EP claims. Scope of congressional authority under Section Five of Fourteenth Amendment.</p>	<p><b>Civil Procedure</b></p> <p>FRCP (4)(k)(1)(A): asserting personal jurisdiction over a non-resident defendant. Exercise of state's long-arm statute where it extends jurisdiction as far as the Due Process Clause of the 14<sup>th</sup> Amendment allows; evaluation of contacts with a forum state. Jurisdiction: 28 U.S.C. § 1331: original jurisdiction, cause of action based on violating a federal statute. Jurisdiction: 28 U.S.C. § 1367: supplemental jurisdiction, "same case or controversy" even though based on contract claim or state claim.</p>
3	<p><b>Secured Transactions</b> <b>UCC Article 9</b></p> <p>Criteria for a valid security interest. Security interest in "accounts" and "inventory." Classifying property as an account, inventory, or equipment. Inventory: raw materials as inventory, items left for repair by customers are not inventory. Sale of collateral: no continuation of security interest with a buyer in ordinary course of business (BIOCOB), consumer to consumer. Priority of liens: competing security interest and a judgment lien.</p>	<p><b>Contracts/Article 2</b></p> <p>Statute of frauds: sale of goods over \$500, oral agreement followed by a signed letter indicating that the contract exists. Repudiation of contract, attempted retraction of repudiation. Damages: difference between contract price and resale price plus incidental damages.</p>
4	<p><b>Real Property</b></p> <p>Adverse possession: elements, calculating the 10-year statutory period by tacking of time of previous possessors. Title acquired by adverse possession extends to only occupied portion and not entire parcel of land. Warranty deed: 6 covenants, present and future covenants, breach of covenant of seisin. Easement: buyer taking property subject to existing sewer-line easement.</p>	<p><b>Corporations</b></p> <p>Director's conflicting interest transaction/director self-dealing. Business judgment rule. Safe harbor for director who breaches his duty of loyalty: approval by disinterested directors, approval by disinterested shareholders, or fairness (RMBCA). Corporate directors' breach of duty of loyalty where unable to show that the transaction was fair to the corporation even if not properly authorized. Corporate directors' breach of duty of care by failure to be adequately informed prior to decision-making.</p>
5	<p><b>Civil Procedure</b></p> <p>FRCP 4 (h): service of process on a corporation. Subject matter jurisdiction based on federal question (sexual harassment and sex discrimination claim). Subject matter jurisdiction over third party complaint for state law claim, breach of contract: based on diversity, Determining corporate citizenship for purposes of diversity. Determining domicile and amount-in-controversy requirement.</p>	<p><b>Criminal Law and Procedure</b></p> <p>Affirmative defense: requirements to establish defense of not guilty by reason of insanity (NGRI). Manslaughter: elements; <i>actus reus and mens rea</i> (death caused by the criminal operation of a motor vehicle). Affirmative defense: duress (knife held to throat of the defendant).</p>

	FRCP 14(a): impleader rules, improper joinder of claims, third-party claim based on derivative liability.	
6	<p><b>Decedents' Estates</b></p> <p>Revocation of will or a portion of a will: testamentary intention to revoke and physical act; writing on will to "call lawyer to fix" is only intent to have will reviewed, not revoked.</p> <p>Rights of after-born child (pretermitted child) not mentioned in will.</p> <p>Distribution of assets of revocable trust: interpreting state intestacy statute and state statute regarding "illusory" revocable trusts (created during marriage).</p>	<p><b>Trusts</b></p> <p>Testamentary trust.</p> <p>Provision of trust that violates public policy is void (condition of marriage).</p> <p>Duty of loyalty: self-dealing, trustee purchasing stock from trust; trust beneficiaries may seek to rescission of the transaction or seek damages.</p> <p>Duty to invest trust assets in a prudent manner (mutual funds decline in value during economic downturn).</p>

Essay #	February 2016	July 2016
1	<p><b>Secured Transactions</b>  <b>UCC Article 9</b>  Security interest in “present and future inventory” in a store; buyer in ordinary course of business (BIOCOB) and “shelter principle” affecting subsequent transfers.  Perfection of retailer’s security interest: “purchase-money security interest” in “consumer goods”; retailer retaining title is in effect a security interest.  Sale of collateral: no continuation of security interest with a buyer in ordinary course of business (BIOCOB), consumer to consumer.  Security interests in proceeds (check) of sale of collateral.</p>	<p><b>Limited Liability Companies</b>  Determining whether an LLC is member-managed or manager-managed when its certificate of organization and operating agreement is silent.  Whether a member in a member-managed LLC had actual or apparent authority to bind the LLC to a contract based on determinations of whether the acts were within the ordinary course of the LLC’s activities or outside it.  Consequences of an LLC member’s withdrawal: constitutes a “dissociation” and not a “dissolution” and winding up of the business.</p>
2	<p><b>Evidence</b>  Hearsay; exceptions to hearsay.  FRE 803 (1): present sense impressions.  FRE 803 (2): “excited utterances.”  Sixth Amendment Confrontation Clause: whether the statement was testimonial (arguments either way in this case).  FRE 801(d)(1)(C): admissibility of out-of-court statement of identification testified to at trial.  Character evidence: inadmissible to show propensity.</p>	<p><b>Evidence and Criminal Procedure</b>  <i>Miranda</i> rights: whether defendant’s crying is a testimonial communication.  Hearsay; exceptions to hearsay, non-hearsay.  FRE 803(5): recorded recollections.  FRE 801(d)(2): non-hearsay (statement of opposing party).  FRE 803(5): even if written notes meet exception to be read into evidence, admissible as an exhibit only if offered by the adverse party.  Whether post-invocation statements are admissible when custodial suspect initiates communication with police: fresh set of <i>Miranda</i> warnings required.  Police obligation to honor an invocation of <i>Miranda</i> right to counsel terminates 14 days after suspect has been released from interrogative custody (<i>Maryland v. Shatzer</i>).</p>
3	<p><b>Agency and Partnership</b>  LLP’s liability based on LLP partner’s apparent authority to take out a bank loan.  LLP partner’s limited liability for partnership debts; exception for personal misconduct.  Partners’ fiduciary duties to the partnership and other partners: duty of loyalty, duty of care.  Partners’ liability for damages to the partnership and co-partners for breach.  Partnership and individually injured partner can bring a direct action against the breaching partner and an accounting action.</p>	<p><b>Torts</b>  Medical malpractice: standard of care for the relevant specialty and medical community.  Negligence.  Strict products liability (pesticide in herbal tea); manufacturing defect.  Implied warranty of merchantability.  Causation requirement not met where multiple product manufacturers and plaintiff cannot link any particular defendant to his injury.  Strict products liability claim against commercial seller.</p>
4	<p><b>Constitutional Law</b>  Commerce Clause: state statute that applies equally to in-state and out-of-state utilities.  Where a state statute treats in-state electricity consumers more favorably than out-of-state consumers.  Where state acts as a “market participant.”</p>	<p><b>Secured Transactions and Real Property</b>  <b>UCC Article 9</b>  Remedies available to a secured creditor when debtor defaults on “equipment”; whether “self-help” is available.  Security interest in equipment: defining “equipment” under Article 9.  Perfection of a security interest in equipment including fixtures.  Determining the priority of interests in equipment after it becomes a fixture when a bank holds a mortgage on the real property; exception relating to the priority of a “purchase-money security interest” in fixtures as against an encumbrance of the related real property.  “Fixture filing.”</p>
5	<b>Decedents’ Estates</b>	<b>Contracts</b>

	<p>Agent's authority to act under a durable health-care power of attorney (POA).  Protection of agent from civil (wrongful death action) and criminal liability when acting in good faith.  "Slayer statute": where one who intentionally caused the decedent's death is barred from sharing in the estate with regard to health care POA.</p>	<p>Whether contract rights may be assigned without the obligor's consent when the assignment does not change the obligor's duty in any material respect.  What is required for an effective assignment.  The assignee's rights to enforce the contract when the obligor does not perform.  Determining third-party beneficiary status: differences between incidental vs. intended beneficiaries.  Delegation of duties: where obligor remains liable for any breach by the delegate.</p>
6	<p><b>Family Law</b>  Determining enforceability of premarital agreement under the Uniform Premarital Agreement Act (UPAA): voluntariness, unconscionability, reasonable disclosure of assets and liabilities.  Determination of marital property and separate property; principles of equitable distribution; winning lottery ticket purchased before divorce filing.</p>	<p><b>Civil Procedure</b>  FRCP 4(k)(1)(A): transient jurisdiction: personal jurisdiction based on service of process of defendant who is physically present in the state.  Jurisdiction: 28 U.S.C. § 1331: subject matter jurisdiction; federal question jurisdiction based on a federal statute.  Jurisdiction: diversity jurisdiction (lack of diversity) 28 U.S.C. § 1332 over state-law negligence claim.  Jurisdiction: 28 U.S.C. § 1367: supplemental jurisdiction, "same case or controversy" over a negligence or state claim.  Venue: Determining appropriate venue under 28 U.S.C. §1391(b).</p>

Essay #	February 2017	July 2017
1	<p><b>Contracts/Article 2</b>  Offer formation under the Code; whether a party is a merchant.  Irrevocable offers; "firm offers."  Output contracts.</p>	<p><b>Torts</b>  Strict products liability: whether public fireworks display is an abnormally dangerous activity.  Negligence; negligence <i>per se</i>.  Burden of taking precautions compared to risk of harm.  Assessing proximate cause: danger invites rescue.  Vicarious liability: whether one who employs an independent contractor is liable for harm caused by the independent contractor when the contractor is hired to engage in work involving a special danger to others and the employer knows about such danger.</p>
2	<p><b>Trusts</b>  Revocable trust.  Settlor's power of revocation includes the power to amend trust when trust is silent on power to amend or modify.  Under UTC, power to revoke or amend is exercisable by will unless the trust instrument provides otherwise.  Power of appointment (specific not general) created in Settlor's trust and exercised in a subsequent will; "permissible appointees" compared to "impermissible appointees."  Taker in default of ineffective appointment.  Right of election.  Surviving spouse's right to the elective share of probate assets pursuant to a state statute.  Illusory transfer doctrine and fraudulent transfer doctrine (available in some jurisdictions) allowing surviving spouse to exercise the right of election to claim trust assets held in a revocable trust.</p>	<p><b>Constitutional Law</b>  State's sovereign immunity under the 11<sup>th</sup> Amendment from suit for damages in federal court.  <i>Ex parte Young</i>: suit against State's Superintendent of Banking to enjoin enforcement of allegedly unconstitutional statute not barred by 11<sup>th</sup> Amendment when it is an official-capacity action and seeks prospective relief.   Dormant commerce clause: balancing test is used when the state law is nondiscriminatory on its face (because it applies equally to local and out-of-state banks) but still imposes an incidental burden on interstate commerce.</p>
3	<p><b>Family Law and Conflict of Laws</b>  Requirements to establish a common law marriage.  Recognition of common law marriage in other states.  Determination of marital property; principles of equitable distribution.  Putative-spouse doctrine.  Illegality of bigamy: when a first marriage is not legally dissolved, a second marriage has no legal effect.  Presumption that the latest in a series of marriages is valid: designed to protect parties' expectations but may be rebutted.  Property and support rights between unmarried co-habitants based on an express or implied contract to share assets.  Fundamental right of parents to control the upbringing of their children; a fit parent is presumed to act in the best interests of her children.  Determining non-parent's visitation rights.</p>	<p><b>Secured Transactions</b>  <b>UCC Article 9</b>  Perfection of a security interest in "present and future accounts."  UCC Article 9 criteria for attachment of a security interest.  Priority of liens: competing security interests and "first to file or perfect rule."  Determining priority of interests between perfected and unperfected interests.  Discharge of obligations by account debtors to assignee upon receiving notice of the assignment.</p>
4	<p><b>Corporations</b>  Shareholder's right to inspect accounting records and board minutes if there is a "proper purpose"; proper purpose as a shareholder includes trying to</p>	<p><b>Decedent's Estates/Future Interests</b>  Execution requirements of will.  Validity of will when witnessed by an interested witness and effect on the bequest to that witness.</p>

	<p>determine whether improper corporate transactions have occurred.  Shareholder has burden to show credible evidence of possible mismanagement to obtain inspection of books and records.  When the board can seek dismissal of a shareholder's derivative suit: need for good faith, reasonable inquiry by majority of board's qualified directors into the shareholder's allegations.  Fiduciary and good faith duties of directors; when the business judgment rule protects directors' conduct.</p>	<p>Codicil: republication-by-codicil doctrine cures defect in previously validly executed will with interested witness problem.  Bequest of household goods (furniture) made in an unattested document (memo) written after the will was executed and the will evidences intent to so dispose of the property.  Whether a bequest violates the Rule Against Perpetuities (RAP).  Vesting of a class gift for purposes of the RAP when the class is closed and all members of the class have met any conditions precedent.</p>
5	<p><b>Agency</b>  Defining the agency relationship.  Agents: scope of authority; actual, inherent, and apparent authority.  Power of agent to bind the principal:</p> <ul style="list-style-type: none"> <li>• Liability to third party when agent enters into a contract with a third party on behalf of a disclosed principal on terms not authorized by the principal.</li> <li>• Liability to third party when agent enters into a contract with a third party on behalf of an undisclosed principal on terms authorized by the principal but the principal later repudiates the contract.</li> <li>• Liability to third party when agent enters into a contract on behalf of a partially disclosed principal for goods different from those authorized by the principal and the principal accepts the goods.</li> </ul>	<p><b>Evidence/Criminal Law and Procedure</b>  Relevant evidence.  Hearsay, non-hearsay, &amp; exceptions to hearsay.  Hearsay: when an out-of-court statement is not hearsay.  Whether criminal defendant's admission violates <i>Miranda</i> when the police officer's question was limited to weapons and asked after a shooting (public safety exception to <i>Miranda</i>).  Non-hearsay: statement of opposing party  Hearsay exceptions: custodian describing what he heard around the time of the incident:</p> <ul style="list-style-type: none"> <li>• FRE 803 (1): hearsay exception: present sense impressions; or</li> <li>• FRE 803 (2): "excited utterances."</li> </ul>
6	<p><b>Real Property</b>  Landlord/tenant.  Validity of lease provision requiring landlord's written consent for assignment; whether refusal to consent to assignment must be reasonable.  Actions constituting an abandonment of the premises.  Landlord's options when tenant abandons: accept surrender of the premises; re-let or attempt to re-let the premises and leave the premises vacant and sue tenant for unpaid rent.  Landlord's duty to mitigate.</p>	<p><b>Civil Procedure and Conflict of Laws</b>  FRCP 12 – whether a motion to dismiss can be amended prior to a responsive filing (no prejudice or delay to other party) to add a ground for dismissal that would have been waived because it was not raised in the initial Rule 12(b)(6) motion to dismiss.  FRCP 4(e): insufficient service of process when documents are not personally served but delivered to parents' home where defendant used to live.  Choice-of-law rules: a federal court sitting in diversity applies the choice-of-law rules of the state where the federal court sits (Restatement) and according to a signed contract between the parties.</p>

Essay #	February 2018	July 2018
1	<p><b>Family Law</b>            Enforceability of premarital agreement with property division, alimony, and child custody provisions.            Divisibility of marital assets at divorce: separate and marital property.            Whether a parent's adulterous conduct is considered by the court in making a custody decision.            "Best interests of the child": factors in determining child custody.</p>	<p><b>Constitutional Law</b>            Whether a federal act requiring state officers/agencies to assist in the enforcement of federal drug laws violates fundamental principles of federalism.            Concepts of federalism and dual sovereignty.            Constitutional exercise of Congress's spending power when it conditions the granting of federal funds on a state's compliance with "federal statutory and administrative directives.</p>
2	<p><b>Criminal Law</b>            Determining whether a criminal defendant is competent to stand trial.            If found competent and the prosecution proceeds, whether a jurisdiction that follows the <i>M'Naughten</i> test should find the defendant not guilty by reason of insanity (NGRI).</p>	<p><b>Contracts/Article 2</b>            Determining whether UCC Article 2 applies to a transaction involving a lawnmower.            Offer; rejection; renewing an offer.            Promise to keep an offer open: by common law, by statute, by reliance.            Terminating the power of acceptance: indirect revocation.</p>
3	<p><b>Contracts/Article 2</b>            Determining whether UCC Article 2 or the common law applies under a mixed contract: predominant purpose test.            Applicability of the parol evidence rule to a prior oral agreement.            Consideration: modification and pre-existing duty rule.</p>	<p><b>Real Property</b>            Application of the nonconforming-use doctrine: whether proposed changes to expand a convenience store are exempt from the zoning ordinance as a nonconforming use depends on whether they are substantial or unsubstantial changes.            "Future-advances" loan: whether the bank's commitment to make future advances optional or obligatory.            Determining whether a bank's mortgage has priority over a mechanic's lien when the mortgage was recorded and payment was made before the filing of the lien.</p>
4	<p><b>Real Property</b>            Whether there was a breach of a warranty deed's title covenants, specifically, the covenant against encumbrances.            Whether damages are available for breach of the covenant against encumbrances when the easement was plain and obvious and if so, what they would be.            Whether there was a breach of the implied warranty of habitability.</p>	<p><b>Trusts and Future Interests</b>            Duties of trustee to the trust beneficiaries.            Duty of loyalty: trustee rented a trust-owned apartment to himself but paid the market rate (self-dealing); "no-further-inquiry rule."            Duty of prudent administration (duty of care): trustee failed to purchase fire/casualty insurance on the trust's real property.            Duty to comply with applicable law: trustee allocated a \$50,000 repair expense necessitated by a fire exclusively to income when it should have been allocated to principal.            Distribution of trust principal where the remainder interest was vested.</p>
5	<p><b>Civil Procedure</b>            FRCP 11: filing an answer with a general denial of factual and legal contentions where the attorney made no inquiry into the facts before doing so.            Procedure for presenting a Rule 11 motion: giving attorney an opportunity to correct the pleading.            Court's discretion in imposing sanctions; possible sanctions; on whom sanctions may be imposed: the party, the attorney the law firm.</p>	<p><b>Evidence</b>            Admissibility of relevant evidence.            Opinion evidence: lay and expert opinion.            Hearsay; business-records exception.            Physician-patient privilege; patient's waiver of the privilege by filing a civil lawsuit placing her medical condition "in issue."            Non-hearsay: statement by an opposing party.            Hearsay exception for statements made for medical diagnosis or treatment.            Question of whether roommate's texting behavior is evidence of habit or character.</p>

6	<b>Partnership</b> Partner's right to dissolve an at-will partnership. Partner's continuing duties to the partnership during the winding-up process. Partner's fiduciary duties to the partnership and other parties during the winding-up process; duty not to appropriate partnership opportunities during the winding-up of the partnership business.	<b>Corporations and LLCs</b> Determining when a corporation comes into existence: filing of articles of incorporation. Personal liability on a contract by a party acting on behalf of a corporation when she did not know that the business had not been properly incorporated. Limited liability in cases of defective incorporation: "de facto corporation" and "corporation by estoppel" doctrine. Personal liability of inactive investor in the business on an employment contract; apply defective-incorporation principles, de facto corporation, and corporation by estoppel doctrines.
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Essay #	February 2019	July 2019
1	<p><b>Torts</b>  Negligence; negligence <i>per se</i>: state statute for speed limit.  <i>Res ipsa loquitur</i> in action against medical providers where patient suffers infection following medical treatment for injuries from car accident.  Assessing liability for damages; joint and several liability.</p>	<p><b>Decedents' Estates/Conflict of Laws</b>  Determining which state's law applies for probate of testator's holographic will (law of testator's domicile at death).  Validity of a holographic will.  Determining whether a will is conditional on an event.  Applying the anti-lapse statute.  Interpreting an ambiguity in a will provision.  Whether a child omitted from the will is entitled to take.</p>
2	<p><b>Secured Transactions  UCC Article 9</b>  Whether a secured party may dispose of collateral after debtor's default without first notifying debtor.  Perfecting a security interest: determining who has superior rights as between a secured party with possession and a person who has a judicial lien on the same item.  Whether a security agreement describing collateral as "all personal property" creates an enforceable security interest in the debtor's property.</p>	<p><b>Criminal Law and Procedure</b>  <i>Miranda</i> rights: determining when they attach.  When is a subject "in custody."  Determining whether a suspect has invoked her right to counsel.  When may law enforcement reinitiate custodial interrogation when the suspect has previously invoked the right to counsel.  Whether the detective's <i>Miranda</i> warnings "reasonably conveyed" the suspect of her right to counsel.</p>
3	<p><b>Agency and Partnership</b>  Determining the type of entity formed: whether general partnership or LLC which they intended and agreed to share profits but failed to sign and file the LLC documents.  Partner as agent of partnership; equal rights in management and control of partnership business.  Partner's authority to bind partnership for an act for carrying on the ordinary course of partnership business, but not for an act outside the ordinary business.  Dissociation from an at-will partnership; where other partners agree to continue the partnership there is no dissolution or winding up; buying-out the dissociating partner --- how much and when.</p>	<p><b>Corporations and LLCs</b>  Whether a no-dividend policy by the parent corp. violates its fiduciary duty of loyalty and care to its partially owned subsidiary  Application of the "business judgment rule" in dealings between a controlling shareholder (parent corporation) and the controlled corporation.  Conflict-of-interest transaction and self-dealing transactions.  Allocating business opportunities within a corporate group.</p>
4	<p><b>Civil Procedure</b>  Jurisdiction: federal subject matter jurisdiction based on diversity of citizenship (28 U.S.C. §1332(a)); diversity established at the time the suit is filed.  Determining citizenship of corporation ("nerve center") and individual ("domicile") for purposes of diversity jurisdiction.  Specific personal jurisdiction; general jurisdiction.  Exercise of state's long-arm statute where it extends jurisdiction as far as the Due Process Clause of the 14<sup>th</sup> Amendment allows; evaluation of contacts.</p>	<p><b>Contracts</b>  Recoverable damages in a contract action based on anticipatory repudiation.  Determining a recovery based on the party's expectation interest.  Whether consequential damages are recoverable.  Determining whether lost profits are recoverable and the limits on such recovery.</p>
5	<p><b>Trusts and Future Interests</b>  Discretionary support trust with spendthrift protection; where trust instrument grants trustee discretion whether or not to pay beneficiary's support-related expenses.  What constitutes a trustee's abuse of discretion in carrying out the trustee's duties.</p>	<p><b>Family Law</b>  Seeking spousal support in an intact marriage.  Parents' constitutional right to care, custody, and control of their children under the 14<sup>th</sup> amendment includes making health-care decisions.  State's police authority to mandate vaccinations to protect public health.</p>

	<p>Claims against beneficiary of spendthrift trust: for unpaid child support, for unpaid medical care, for unpaid loan for computer-gaming system. Creditors' reach to beneficiary's trust income and trust interest.</p>	<p>UCCJEA and PKPA: initial child-custody action must be brought in child's "home state" – where the child lived for preceding 6 months.  Determining child custody: fit legal parent preference over a non-parent (<i>Troxel</i>).  Child's preference is relevant but not determinative when a nonparent seeks custody from a fit legal parent.</p>
6	<p><b>Criminal Law</b>  Applying common law rules to: burglary; larceny; embezzlement; receiving stolen property.</p>	<p><b>Civil Procedure and Constitutional Law</b>  Determining basis for federal diversity jurisdiction in a class action suit.  <i>Erie</i> doctrine: applying federal procedural rules for class actions: where claim based on state-law right is brought in federal court.  Application of Rule 23: facts of problem within the holding of <i>Shady Grove</i>.  Article III: establishing basis for standing to satisfy the "cases" and "controversies" requirement.  Whether an "intangible injury", invasion of privacy, satisfies the standing requirement of a "concrete" injury when the plaintiff seeks to recover only statutory damages and does not claim actual damages.</p>



Second Report of the Task Force on the New York Bar Examination:

The Coronavirus and Bar Examination Administration

March 30, 2020

The Task Force on the New York Bar Examination (“Task Force”) was formed in April, 2019 by then-President of the New York State Bar Association Michael Miller to study and report on the impact in New York of the Adoption of the Uniform Bar Examination. The Task Force issued its Report on March 5, 2020 and the Report is scheduled to be presented at the April 3, 2020 meeting of the Association’s Executive Committee and the April 4, 2020 meeting of the Association’s House of Delegates.

On March 7, 2020, Governor Andrew M. Cuomo issued an Executive Order declaring that a disaster emergency in New York State due to the onset of the novel coronavirus (COVID-19).<sup>1</sup> As the COVID-19 virus spread rapidly through the State and beyond, the Governor took a variety of actions to limit the contagion through restrictions on public assembly and non-essential public and private activity. In the light of the Governor’s pronouncements and the serious public health crisis existing throughout the State, Chief Judge Janet DiFiore and Chief Administrative Judge Lawrence K. Marks issued a memorandum on March 13, 2020 outlining actions taken to limit high-volume court proceedings. Two days later, with the public health crisis growing to pandemic proportions, Chief Administrative Judge Marks issued an order limiting all the courts of the State to essential operations only, effective March 16, 2020 at 5:00 p.m. As of March 29, 2020, the coronavirus has continued to spread throughout the United

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<sup>1</sup> Executive Order No. 202.

States, with our country now having more cases of infection than any other country in the world.<sup>2</sup> New York State has been especially hard hit, with our State having nearly one-half of the reported cases nationwide. Governor Cuomo has stated that experts project that the apex of the pandemic in New York may still be 14 to 21 days away.<sup>3</sup> The Governor has ordered schools in New York to remain closed at least through April 15, 2020.<sup>4</sup>

While the major threat to public health and safety posed by the coronavirus, which is causing a rapidly compounding number of deaths and serious illnesses, may loom much larger than the disruption caused to otherwise healthy people, it is nevertheless the responsibility of the New York State Bar Association to champion and advocate for the interests of the legal profession. To that end, President Henry M. Greenberg requested that the Task Force consider the impact of the current health crisis upon the July 2020 administration of the Bar examination.

We have endeavored to address these issues promptly as we are acutely aware of the anxiety and uncertainty that law school students who are graduating in the Spring 2020 are experiencing. In the best of times, graduating law school students may be apprehensive as to finding a position, starting a position, relocating and studying for the bar examination and as to consequences of the test results. This year, because of the existing public health crisis and related limitations on law practices, both public and private, there are reports that job offers have been or will be delayed or withdrawn, compensation may be re-examined, and general employment start dates may be adjusted. Worse, these economic dislocations come at a time when so many law school students are burdened with significant debt from student loans for both college and law school.

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<sup>2</sup>Maxouris, New York May Be Weeks Away from a Peak in Coronavirus Cases, CNN, updated 2:41 p.m., March 28, 2020.

<sup>3</sup> *Id.*

<sup>4</sup> Executive Order 202.11, dated March 27, 2020.

We are also very much aware that it is presently impossible to forecast with certainty when the current restrictions on social distancing may be lifted. The present health crisis has not yet reached its apex in New York and other parts of the country may only now be approaching the initial period of infection that New York has already experienced. Every day there are, among countless other developments, new pronouncements as to the nature of the virus, potential mitigation measures to address it and the scope and duration of limitations on public assembly and movement. Our recommendations necessarily reflect our best judgment predicated on the information presently available. We want to be clear that we are prepared to reevaluate our recommendations on the basis of new information as it develops.

*A. The July 2020 Bar Examination Should be Postponed and  
The Examination Administered Proximate to Labor Day 2020*

At its initial meeting following the issuance of its new charge, held by remote video/teleconference on March 26, 2020, the Task Force concluded that the July 2020 administration of the Bar examination in New York should be postponed. The postponement of the Bar examination is, in our view, the best of the options presently available. We were heartened, therefore, to learn that late the very next day the New York Court of Appeals determined to delay the July 2020 administration of the Bar examination until dates in the Fall to be determined. While we commend the Court for taking this decisive action, and thereby mitigate the uncertainty being experienced by law school students, we are extremely concerned as to prospective rescheduled dates.

Because New York has adopted the Uniform Bar Examination, the administration of the Bar Examination is entirely dependent upon the National Conference of Bar Examiners (NCBE), which prepares and licenses the test. Since the impact of the coronavirus is being experienced differently in different parts of the United States, we were concerned that the NCBE could insist

that the UBE be administered in July or decline to prepare an iteration of the UBE to be administered at a date later in 2020. We, therefore, welcomed the NCBE's announcement that, while it would defer a final determination as to what to do regarding the July 2020 administration until May 5, 2020, it was committed to providing an administration of the UBE in the Fall to those jurisdictions that cannot provide a July exam or cannot administer at normal seating capacity.

We are, however, deeply concerned with published reports that the NCBE may be contemplating the new Fall testing dates would be in the period between September 29 and October 1, 2020.<sup>5</sup> Since September 28, 2020 is Yom Kippur, the holiest day in the Jewish calendar, administering the examination the following day or days would be extremely insensitive to bar applicants of the Jewish faith. With the Jewish High Holidays commencing with Rosh Hashanah on September 18, 2020, and concluding with Yom Kippur on the evening of September 28, 2020, it would be very ill-advised to require Jewish bar applicants to choose between religious observance and bar preparation. Even more importantly, the contemplated dates will have a substantial and adverse impact on most of the test takers. The reality is that many bar applicants, particularly first-time test takers who graduated in May 2020, will have commenced legal or other employment by September 2020, making it difficult for them to take time off from their new positions to take the examination, much less study for it. Having gone through the process ourselves, we know that graduating seniors count on using the summer to study for and take the Bar examination. Even putting aside the overwhelming consequences of the health crisis, it will be much more difficult for those who have started employment in September to use their evenings and weekends to study for the Bar examination, particularly

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<sup>5</sup> See Morris, Officials Ponder Potential Delay in July Bar Exam Because of COVID-19, Texas Lawyer, March 26, 2020 at 5:56, Law.com.

when they trying to acclimate to their jobs and, possibly, their new residences. We question how it will be fair to correlate the performance of those applicants to take the Bar examination in late September or early October with those applicants who took the Bar in July having more time available to prepare for it and the ability to concentrate upon it exclusively.

We urge the New York Court of Appeals, and the New York Board of Law Examiners, to take all actions necessary or appropriate to administer the bar examination proximate to Labor Day, September 7, 2020. In normal years, law school students graduate in May and the bar examination is administered in or about the third full week of July. Law school graduates typically use the period between the end of law school and the administration of the examination to study for the examination, including the taking of bar review courses. Thus, in typical years, law school graduates would have the balance of July and all of August to prepare themselves to commence employment, which may entail their physical relocation and other extensive preparations. Graduates who do not yet have employment may use that period to conduct job searches.

While 2020 surely is not a typical year, we believe that we should endeavor to try to normalize the situation as much as is possible. Administering the bar examination either shortly before or shortly after Labor Day would permit law school graduates to use the summer period to prepare themselves for the bar examination. That scheduling would also avoid requiring bar applicants to take time off from positions that they may have just started in order to sit for the examination and avoid distracting them from their new employment by having to study for the examination. It could well be a significant hardship to law graduates, burdened with student loans, to have to defer commencement of employment in order to prepare for and take the bar examination. An early September date would cause the least amount of disruption to a recent

graduate who may have already be starting, or about to start, a new position, whether in the public or private sector. And, by scheduling the examination in early September, conflict with the Jewish holidays can be avoided.

We recognize that, in New York at least, it is not presently possible to forecast when the present health crisis will abate sufficiently to permit the safe renewal of larger public gatherings. However, we also believe that, if New York now commits to administering the bar examination in early September, the Board of Law Examiners will be able to procure a sufficient number of locations, and train the requisite number of proctors so as to be able to securely administer the bar examination in settings offering appropriate social distancing. Indeed, even if the bar examination were administered later in the Fall, arrangements to obtain locations and proctors would need to be made now.

It may be well be possible to administer the bar examination in more, less-dense, locations. Assuming that social distancing requirements remain relatively constant for the next several months, it may be necessary to limit each room where the test is given to no more than 10 people. While this approach would require more locations and more proctors than are customarily utilized, and would increase the cost of administration, we believe that, with advance planning, the use of more sites, with less density, is feasible. This feasibility is one of the reasons why we agree with the postponement of the July 2020 examination. We urge that, rather than a further postponement, planning begin immediately to make sure that a Fall 2020 examination can be administered and that a further postponement of the examination be avoided.

While it is true that New York cannot unilaterally compel the NCBE to administer the bar examination on any particular date, we believe that, because of the large number of test takers

who take the test in New York, New York can –and should – exert its prominent role in the American legal community to influence the NCBE to offer the UBE in early September.

We urge that New York use its influence as well to have the NCBE announce, by no later than May 5, 2020, whether it will administer a July 2020 examination anywhere and the dates for the Fall administration of the Bar examination. It is important for law graduates to be able to make their plans for the Summer and Fall in light of the Bar examination dates.

We express our concern at the prospect that the UBE could be administered in July 2020 in some of the UBE states. It is possible that, if the UBE is administered in some states, law graduates will endeavor to register to take the examination there, thus causing that State to have a greater than usual number of test takers, some of whom may then seek to transfer their score to New York in order to gain admission here sooner than they might through an examination administered in September 2020 or later. Because of the way the UBE is graded and scored (a subject extensively discussed in our prior report), a rush by those ultimately seeking admission in New York to take the examination in July 2020 elsewhere could skew the results. We urge the Court of Appeals and BOLE to study this possibility and consider whether, for purposes of 2020, it is necessary to preclude the use of a July 2020 examination score for purposes of transfer into New York. We certainly do not wish to see law graduates game the system by flocking to take the test in a jurisdiction where they would not otherwise take the test.

We also urge the BOLE to train a sufficient number of examination graders so as to be able to grade a Fall 2020 test as expeditiously as possible and thus reduce delay in the admission process. Similarly, we respectfully urge the Appellate Division to make its best efforts to admit successful test takers to practice as expeditiously as is possible through the efficient administration of the character and fitness process .

*B. Alternatively, the Use of Student Practice Orders Should be Expanded*

While we believe, on the basis of the information presently available, that it will be possible to administer the Bar examination in early September, it is prudent to have an alternative available to enable law graduates to commence the practice of law without further undue delay in the event that conditions prevent the administration of the Bar examination as we contemplate. We conclude that the most practical avenue, consistent with both the interests of the law graduates and the public interest in assuring that licensed lawyers have established a minimum level of competence, is to expand the existing provisions for supervised practice.

New York presently permits governmental agencies, such as District Attorney offices, Corporation Counsels, and legal-aid organizations to apply to the Appellate Division for an order permitting law school graduates, as well as law students who meet certain criteria, to engage in law practice activities enumerated in the order.<sup>6</sup> These orders are addressed to the sponsoring organization and are not dependent upon the name or identity of the participating student or graduate. Stated somewhat differently, many governmental agencies and legal-aid organizations already have student practice orders in place that permit law graduates to engage in practice activities while waiting to take and pass the bar examination. For years, new law graduates have, for example, worked as assistant district attorneys, assistant corporation counsels, and as attorneys for legal aid societies, while awaiting their passage of the Bar examination.

By use of student practice orders, a law graduate is permitted to engage in the practice of law and have gainful employment. The public is protected since the activities of the law

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<sup>6</sup> See Judiciary Law, §§478, 484.

graduate are subject to the supervision of a licensed attorney. The concerns and complications posed by a provisional admission are avoided. Only law graduates who have failed the Bar examination twice would be ineligible for participation under a student practice order.

The statutes authorizing the issuance of student practice orders do not permit such orders to be issued to private sector attorneys. Should the delay in the administration of the Bar examination be only from mid-July to early September, there would not be a pressing need to re-examine the exclusion of the private sector from student practice orders. However, we would recommend seeking legislation now to permit the Appellate Division to issue student practice orders for private sector attorneys and law firms. With such authority, law graduates would, if the delay in Bar examination administration becomes prolonged, have an avenue by which they could gainfully practice law under the supervision of licensed attorneys. The Appellate Division would have the authority to pass upon applications for such orders and determine whether a particular attorney or law firm is positioned to provide an appropriate degree of supervision to a recent graduate. Since most law graduates do not simply proceed into practice as sole practitioners (hang out their own shingle, so to speak), entering practice under the supervision of an employer, the use of student practice orders conforms to real world reality, without sacrificing our commitment to protecting the public through an appropriate examination and licensure system.

Likewise, we recommend that the existing statutory language in Sections 478 and 484 be clarified to assure that 2020 law graduates may participate in practice under student practice orders. At present, the statutes offer participation to law students who have completed at least two semesters and to law graduates who have taken the bar examination immediately available

after graduation.<sup>7</sup> The statutes should be clarified to specify that law graduates who are awaiting the administration of the first Bar examination following their graduation are eligible for participation.

We urge that such legislation be adopted promptly so that student practice orders may be issued without delay in the event there is a significant delay in the administration of a Fall 2020 examination.

*C. General Waiver of Distance-Learning Limitations  
For all ABA-Accredited Law Schools for the Spring 2020 Semester*

The Court of Appeals imposes instructional requirements that must be satisfied by those seeking to take the bar examination in New York. Among other things, the Court has limited the use of distance learning, *i.e.*, courses in which the instructor and the students are physically separated from each other with technology being utilized so that students can interact with the instructor and with each other. The rules of the Court of Appeals permit, subject to certain conditions<sup>8</sup>, up to 15 credit hours of distance learning courses to be counted towards the 83 credit hours needed for graduation as well as towards the 64 credit hours of required classroom instruction. While these rules are normally eminently sensible, the distance learning limitations should be relaxed for the Spring 2020 semester on a one-time basis in light of the devastating impact with which the coronavirus has struck at the mid-point of the Spring 2020 law school academic semester.

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<sup>7</sup>Persons who have graduated law school but failed the first examination are eligible provided they have taken the next succeeding examination and have not been notified that they failed it (Judiciary Law, §478, 484).

<sup>8</sup> There must be opportunity for regular and substantive interaction between the faculty member and students and among students and the faculty member must regularly monitor student effort and accomplishment and there must be the opportunity for communication regarding the student's work. In no event is credit allowed for correspondence courses. (See 22 NYCRR §520.3[c][6]).

Due to the public health concerns, law schools across the country began to close their physical facilities and shift to online learning as early as March 4, 2020. The first law school to close was New York Law School, followed rapidly by law schools at the University of Washington, located in another American jurisdiction hard-hit by the virus, Stanford University, University of California -Berkeley, Fordham University and Hofstra University.<sup>9</sup> Closures of law schools, like closures of public schools and other places of public assembly, have spread widely throughout the county. On a virtually overnight basis, law schools, with commendable effort and agility, shifted to distance learning in order to permit their students to continue with their studies. Without the ability to make robust use of technology, students in American law schools would have been stopped in the middle of the Spring semester and potentially required to restart the semester after the crisis abates.

Anticipating that the abrupt movement toward distance learning in March 2020 could render some law students ineligible to sit for the bar examination in New York if they had already taken 15 hours of distance learning courses, the New York Court of Appeals, on March 19, 2020, announced that it would permit law schools to apply for programmatic waivers of the distance learning requirements due to the coronavirus epidemic. Waivers must be requested by the dean (or person designated by the dean) and must address nine identified factors.<sup>10</sup> The Court of Appeals indicated that it would evaluate each application for a waiver on an individual basis, taking into account “the challenges faced by law schools during this health emergency and

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<sup>9</sup> Sloan, Coronavirus Closures Hit Law Schools at Stanford, Columbia and Several Others, March 9, 2020 at 12:42 pm., law.com.

<sup>10</sup> The factors to be addressed include: an estimate of the portion of the semester’s instruction that will be completed by distance learning, whether the course was designed for or is easily adaptable to distance learning, whether the faculty members have the experience to deliver distance education, whether the school has the technical capacity to support this form of instruction, a description of the technology to be used, whether the distance learning will be synchronous or asynchronous, how the school will confirm that students meet the distance learning requirements, whether the manner of grading will change, and whether the course requirements will change.

their available resources, as well as the fact that the majority of law students have completed approximately half of the semester via existing learning methods.”

It appears that most, if not all, of the law schools located in New York have applied for and received waivers. While we commend the Court of Appeals for rapidly developing an approach to accommodate the unexpected utilization of distance learning as the exclusive means for completing the Spring 2020 semester, we respectfully submit that the approach adopted by the Court of Appeals falls short of what is required in these difficult times. The July 2019 bar examination was taken by 3,513 graduates of ABA-accredited law schools situated in New York and by 2,994 graduates of ABA-accredited law schools located out of State. Given the large number of graduates of New York-based law schools who sit for the bar examination in New York, it is reasonable to anticipate that the New York-located schools will each apply for a distance-learning waiver. However, it is far less clear that the deans of the law schools located outside of New York will submit waiver applications.

There are 200 fully ABA accredited law schools in the United States, with only 15 of them being located in New York. As our March 5, 2020 report set forth, using information from 2018, Harvard Law School had 287 students apply for admission in New York, Stanford had 38, and Notre Dame had 30. We respectfully question whether the deans of law schools located outside of New York will take the time and effort to apply for a waiver of the New York distance learning requirements, especially given the great stresses that law schools are experiencing at this time. We perceive that it is an undue burden to require all of the nation’s law schools to potentially have to submit a distance learning waiver application to each American jurisdiction that any one of their graduates may seek admission. We also believe that it would be unduly

burdensome to the Court of Appeals itself to have to review potentially 200 waiver applications in the compressed time frame required to decide who may sit for the Fall 2020 bar examination.

The failure of a law school dean, whether by oversight or by intent, to submit an application to the Court of Appeals, or to successfully obtain a waiver, will not have a direct consequence to the dean or to the law school. The consequence will be felt exclusively by the student who will then not be eligible to take the bar examination in New York. The student could be eligible to take the bar examination elsewhere but he or she would be unable to transfer his or her UBE score into New York since the student must still meet New York's educational requirements.<sup>11</sup> In addition, the student would be unable to "vouch in" to New York without examination even after five years of successful practice in another American jurisdiction since even such attorneys must satisfy New York's educational requirements.<sup>12</sup> This result appears to us to be an unduly harsh penalty for a circumstance totally outside the control of the individual student.

We believe that it is critical to recognize that, as a result of the present health crisis, ABA-accredited law schools and their student had no choice but to shift to distance learning in order to complete the Spring 2020 semester. Rather than rely upon a cumbersome and intrusive waiver process, we recommend the adoption of a one-time, limited expedient. We urge the Court of Appeals to adopt a rule that credits earned at any ABA-approved law school in the United States as the result of a course that, in the Spring 2020 semester, commenced as a conventional in-person instructional course but was shifted to distance learning as the result of the coronavirus crisis, be counted towards the 83 credit hour and 64 classroom credit hour requirements, notwithstanding the otherwise applicable limitations on distance education.

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<sup>11</sup> 22 N.Y.C.R.R. §520.2(b)(2).

<sup>12</sup> 22 N.Y.C.R.R. §520.5(a)(2).

The adoption of such a rule would eliminate the need for individualized law school waiver applications and enable law school graduates to sit for the bar examination in New York without stress or worry. It would eliminate the burden on the Court of Appeals itself to evaluate up to 200 individual waiver requests. Most fundamentally, it would assure that no person graduating in 2020 from an ABA accredited law school in the United States would be deprived of the opportunity to take the bar examination in New York, or gain admittance to practice in New York, by reason of the temporary and involuntary need to use distance learning in order to complete the 2020 Spring Semester. The proposed rule would also protect those who will graduate in 2021 and later years as well.

*D. Other Considerations*

The Task Force has also considered potential means, other than postponement, for addressing the impact of the coronavirus epidemic on the July 2020 bar examination. On March 22, 2020, an ad hoc group of distinguished academics released a paper which highlighted the need for immediate action. One of the authors, Professor Eileen Kaufman, is a member of the Task Force and two others, Professor Deborah Jones Merritt and Dean Judith Welch Wegner, made presentations to us during the course of our review of the Uniform Bar Examination. We express our very deep appreciation to all of them for drawing the attention of the Bench and Bar to this important issue and for their thoughtful suggestions. The Task Force has also received a letter presented by some 1,000 law students advocating for a diploma privilege system as well as submissions by individual law students. We have carefully considered the various suggestions made to us.

### *1. Online Testing*

It has been suggested that the July 2020 (or Fall 2020) bar examination could be offered entirely online. We question whether this is even technologically feasible. And even if so, we are concerned as to whether all test-takers would have the necessary internet access and quiet locations that would be necessary for test taking. The experience with the New York Law Examination does not lend confidence that online testing would be sufficiently secure so as to avoid all incidents of dishonesty. Any system of online testing would require a significant trial period in order to confirm its viability, which time does not presently exist. While greater use of technology to assist in the administration of the bar examination should be considered, we do not believe that this is now time to experiment.

### *2. Emergency Diploma Privilege*

Some, and particularly current law students, have advocated for the granting of admission solely on the basis of graduation from an ABA-accredited law school or, alternatively, on the basis of law school graduation plus satisfaction of other criteria, such as completion of the New York Law Examination, CLE courses, bridge-the-gap programs, or evidence of successful completion of an internship or clinical program. While the Task Force recommended, as part of its March 2020 report, consideration of a pilot program predicated upon a student's concentration in New York law, we do not favor an emergency diploma privilege as a response to the coronavirus crisis.

By both statute and court rule, New York generally requires that an applicant for admission to practice (not previously admitted elsewhere) pass the written bar examination.<sup>13</sup> The Board of Law Examiners is not empowered to waive the bar examination requirement for

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<sup>13</sup> Judiciary Law, §§460, 463; 22 N.Y.C.R.R. §520.7.

individual persons as its role is merely ministerial in certifying to the Appellate Division the names of the candidates who have successfully passed the examination.<sup>14</sup> The Court of Appeals is empowered to dispense with the bar examination where the applicant is a graduate of one of the following named law schools: Albany Law School, New York University Law School, Columbia Law School, University of Buffalo Law School, Cornell Law School, Syracuse College of Law, Brooklyn Law School, and Fordham Law School. It may also dispense with the examination for graduates of any law school, registered with the Regents of the University of the State of New York, which requires a three-year course for graduation.<sup>15</sup>

While the Court of Appeals has the authority to eliminate the examination requirement for New York-based law schools, it has evidently done that only twice, both times being for military veterans. During World War II, the Court dispensed with the examination for bar applicants who: (i) had been on active duty in the armed forces for at least 12 months after September 16, 1940 and who had been honorably discharged; (ii) had been residents of New York State for the preceding six months; and (iii) had completed (A) two-thirds of law school but had the balance of law school delayed by military service or (B) law school but was prevented from taking either of the next two bar examinations due to military service.<sup>16</sup> A comparable rule was in place for veterans who entered military service after January 1, 1963 and remained in force through 1969.<sup>17</sup>

The diploma privilege for veterans existed at a time when New York had an entirely home-grown bar examination and the curricula of New York-located law schools had an

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<sup>14</sup> *Koeppel v. Wachtler*, 183 A.D.2d 808, 583 N.Y.S.2d 975 (2d Dept. 1992).

<sup>15</sup> Judiciary Law, §53(5).

<sup>16</sup> See Rule III-A for the Admission of Attorneys and Counselors at Law, 1945 N.Y. Laws 2170.

<sup>17</sup> See 1969 Civil Practice Annual at 9-10.

extensive New York law focus. As we discussed in our March 2020 report, since the advent of the Uniform Bar Examination, there has been a dramatic reduction in the number of New York law oriented courses offered by law schools and in the number of students who take such courses when offered. The New York Legal Examination, we have reported, is a flawed and inadequate device which does not even purport to measure an applicant's knowledge of New York law.

Under the UBE, the New York bar passage rates for graduates of New York and non-New York law school graduates are comparable. For the July 2019 examination, 85% of first-time test takers who were graduates of New York law schools passed but so did 87% of first-time test takers who were graduates of non-New York law schools. For the July 2019 examination, 76% of all takers who graduated from New York law schools passed, as did 78% of all takers who graduated from non-New York law schools.

We would be very concerned about affording a diploma privilege to those who graduate from New York-located schools without there being a rational basis upon which to deny a similar privilege to all graduates of all ABA-accredited law schools. Similarly, while it may be that a high percentage (more than 85%) of all first-time takers pass the bar examination, it remains that the conferral of a diploma privilege upon all first-time takers would result in the admission of a substantial number of persons who would have likely failed the examination. For the July 2019 bar examination, 5,517 graduates of all ABA-accredited law schools took the test; 769 failed. Of a total of 6,507 graduates from all of the ABA-accredited law schools took the test, 1,487 failed.

This analysis has excluded foreign law school graduates who represent an increasing number of test takers. In July 2019, only 53% of the foreign law graduates who took the bar examination passed it.

While we believe that a diploma privilege for bar applicants with a solid law school grounding in New York law is a concept worth study and development, we do not believe that the conferral of diploma privilege is an appropriate response to the present circumstances, especially where, as here, the bar examination can be administered in the Fall. Just as we are concerned that persons seeking admission in New York would flock to take a July 2020 examination in other States in order to gain earlier admission here, we are concerned that a diploma privilege would open the door to the admission of a large number of individuals who only wanted to use New York as a vehicle for gaining admission elsewhere. As we have discussed in our March 5, 2020 report, this already occurs and devalues the significance of New York admission and imposes administrative burdens. Furthermore, with many law schools adopting pass/fail grading for the Spring 2020 semester, and with different law schools having different grading and admission standards, the absence of an examination would create unacceptable risks that persons lacking minimum competence to practice law would gain admission in New York. Further, inequities would be created between persons who failed the July 2019 or February 2020 examination and who cannot gain admission, and were seeking to take the test in July 2020, and those who were anticipating taking the test for the first time in July 2020. While bar passage rates are higher for first-time takers, as discussed above, a significant number of first-time takers fail. Likewise, most persons who take the test more than once eventually pass. It would make little sense to admit all first-time takers on the basis of their diploma, while not also admitting persons who failed the test on the basis of their diploma.

Respectfully submitted,

The Task Force on the New York Bar Examination



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #8

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Standards of Attorney Conduct (COSAC).

Last November, the House of Delegates approved amendments to Rule 7.5 of the Rules of Professional Conduct relating to the names used by law firms. The amendments continued New York's prohibition on lawyers or law firms utilizing trade names or domain names for their practices. Since that time, a lawsuit has been filed in the U.S. District Court for the Southern District of New York, challenging this blanket ban on First Amendments grounds. COSAC has revisited this issue and recommends that Rule 7.5 be amended to prohibit only misleading trade and domain names. The proposed amendments are contained in the committee's report.

This report was published in the Reports Community in March 2020. No comments have been received.

The report will be presented at the April 4 meeting by past COSAC chair Joseph E. Neuhaus.



# MEMORANDUM

March 16, 2020

**TO:** NYSBA Executive Committee and House of Delegates  
**CC:** Kathy Baxter, NYSBA General Counsel  
**FROM:** Committee on Standards of Attorney Conduct (“COSAC”)  
**SUBJECT:** Proposed Amendments to Rule of Professional Conduct 7.5

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At its November 2, 2019 meeting, the House of Delegates approved a proposal by the New York State Bar Association’s Committee on Standards of Attorney Conduct (“COSAC”) to amend Rule 7.5 of the New York Rules of Professional Conduct, which sets forth specific rules regarding the names law firms may use in New York. The versions of Rule 7.5(b) & (e) approved by the House continued New York’s existing blanket ban on allowing lawyers or law firms in private practice to practice under trade names or domain names.

Since last November, an out-of-state law firm that practices under a trade name (which is also its domain name) has filed a lawsuit in the United States District Court for the Southern District of New York against eleven New York disciplinary counsel. The suit asserts that New York’s blanket ban on trade names violates the First Amendment to the United States Constitution. (The same out-of-state law firm has filed similar federal court actions in eight other states challenging the rules that prohibit law firms from practicing under a trade name in those states.) After revisiting the issues in light of these lawsuits and other considerations, COSAC recommends amending New York Rule 7.5 to prohibit only *misleading* trade names and *misleading* domain names.

The proposed amendments to Rule 7.5 also (i) reorganize parts of Rule 7.5, (ii) add additional guidance regarding proper and improper law firm names, and (iii) delete parts of Rule 7.5 that are no longer necessary in light of the proposed amendments.

At this time COSAC is *not* proposing amendments to the Comments to Rule 7.5, but COSAC anticipates proposing amendments to the Comments if the Administrative Board of the Courts approves COSAC’s proposed amendments to the black letter text of Rule 7.5. COSAC expects the Comments to make clear, for example, that it is not misleading for a law firm name to include the names of deceased or retired members of the firm (or of a predecessor firm) in a continuing line of succession, as has been the custom in New York for many decades.

Below are clean and redline versions of COSAC’s proposals to amend Rule 7.5, with additions to existing Rule 7.5 underscored in blue and deletions ~~stricken through in red~~.

## **CLEAN Version of Proposed Rule 7.5**

### **Professional Notices, Letterheads and Names**

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, provided the same do not violate these Rules or any statute or court rule.

(b)(1) A lawyer or law firm in private practice shall not practice under:

- (i) a misleading trade name;
- (ii) a misleading domain name; or
- (iii) a name that is misleading as to the identity of the lawyer or lawyers practicing under such name.

(2) *Specific Guidance Regarding Law Firm Names.*

- (i) Such terms as “legal aid,” “legal service office,” “legal assistance office,” “defender office,” and the like may be used only by bona fide legal assistance organizations.
- (ii) A law firm name, trade name, or domain name may not include the terms “non-profit” or “not-for-profit” unless the law firm qualifies for those designations under applicable law.
- (iii) The name of a professional corporation shall contain “PC” or such symbols permitted by law.
- (iv) The name of a limited liability company or limited liability partnership shall contain “LLC,” “LLP” or such symbols permitted by law.
- (v) A lawyer or law firm may utilize a telephone number that contains a trade name, domain name, nickname, moniker, or motto that does not otherwise violate these Rules.

(3) A lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis may not include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith.

(4) A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer’s name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer’s name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

## REDLINE Version of Proposed Rule 7.5

### Professional Notices, Letterheads and Signs Names

(a) A lawyer or law firm may use internet web sites, professional cards, professional announcement cards, office signs, letterheads, or similar professional notices or devices, provided the same do not

violate [these Rules](#) or any statute or court rule. ~~and are in accordance with Rule 7.1, including the following:~~

~~(1) a professional card of a lawyer identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, and any information permitted under Rule 7.1(b) or Rule 7.4. A professional card of a law firm may also give the names of members and associates;~~

~~(2) a professional announcement card stating new or changed associations or addresses, change of firm name, or similar matters pertaining to the professional offices of a lawyer or law firm or any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. It may state biographical data, the names of members of the firm and associates, and the names and dates of predecessor firms in a continuing line of succession. It may state the nature of the legal practice if permitted under Rule 7.4;~~

~~(3) a sign in or near the office and in the building directory identifying the law office and any nonlegal business conducted by the lawyer or law firm pursuant to Rule 5.7. The sign may state the nature of the legal practice if permitted under Rule 7.4; or~~

~~(4) a letterhead identifying the lawyer by name and as a lawyer, and giving addresses, telephone numbers, the name of the law firm, associates and any information permitted under Rule 7.1(b) or Rule 7.4. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members. A lawyer or law firm may be designated "Of Counsel" on a letterhead if there is a continuing relationship with a lawyer or law firm, other than as a partner or associate. A lawyer or law firm may be designated as "General Counsel" or by similar professional reference on stationery of a client if the lawyer or the firm devotes a substantial amount of professional time in the representation of that client. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession.~~

(b)(1) A lawyer or law firm in private practice shall not practice under:

(i) [a misleading trade name;](#)

(ii) [a misleading domain name; or](#)

(iii) [a name that is misleading as to the identity of the lawyer or lawyers practicing under such name.](#)

~~a trade name, or a firm name containing names other than those of one or more of the lawyers in the firm, except that except that the name of a professional corporation shall contain "PC" or such symbols permitted by law, the name of a limited liability company or partnership shall contain "LLC," "LLP" or such symbols permitted by law and, if otherwise lawful, a firm may use as, or continue to include in its name the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession. Such terms as "legal clinic," "legal~~

~~aid,” “legal service office,” “legal assistance office,” “defender office” and the like may be used only by qualified legal assistance organizations, except that the term “legal clinic” may be used by any lawyer or law firm provided the name of a participating lawyer or firm is incorporated therein. A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith. A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer’s name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer’s name in the firm name or in professional notices of the firm.~~

(2) Specific Guidance Regarding Law Firm Names.

(i) Such terms as ~~“legal clinic,”~~ “legal aid,” “legal service office,” “legal assistance office,” “defender office,” and the like may be used only by bona fide legal assistance organizations.

(ii) A law firm name, trade name, or domain name may not include the terms “non-profit” or “not-for-profit” unless the law firm qualifies for those designations under applicable law.

(iii) The name of a professional corporation shall contain “PC” or such symbols permitted by law.

(iv) The name of a limited liability company or limited liability partnership shall contain “LLC,” “LLP” or such symbols permitted by law.

(v) ~~(f)~~ A lawyer or law firm may utilize a telephone number ~~which that~~ contains a trade name, domain name, nickname, moniker, or motto that does not otherwise violate these Rules.

(3) ~~A lawyer or law firm may not include the name of a nonlawyer in its firm name, nor may~~ a lawyer or law firm that has a contractual relationship with a nonlegal professional or nonlegal professional service firm pursuant to Rule 5.8 to provide legal and other professional services on a systematic and continuing basis may not include in its firm name the name of the nonlegal professional service firm or any individual nonlegal professional affiliated therewith.

(4) A lawyer who assumes a judicial, legislative or public executive or administrative post or office shall not permit the lawyer’s name to remain in the name of a law firm or to be used in professional notices of the firm during any significant period in which the lawyer is not actively and regularly practicing law as a member of the firm and, during such period, other members of the firm shall not use the lawyer’s name in the firm name or in professional notices of the firm.

(c) Lawyers shall not hold themselves out as having a partnership with one or more other lawyers unless they are in fact partners.

(d) A partnership shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations on those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

~~(e) A lawyer or law firm may utilize a domain name for an internet web site that does not include the name of the lawyer or law firm provided:~~

~~(1) all pages of the web site clearly and conspicuously include the actual name of the lawyer or law firm;~~

~~(2) the lawyer or law firm in no way attempts to engage in the practice of law using the domain name;~~

~~(3) the domain name does not imply an ability to obtain results in a matter; and~~

~~(4) the domain name does not otherwise violate these Rules.~~

~~(f) A lawyer or law firm may utilize a telephone number which contains a domain name, nickname, moniker or motto that does not otherwise violate these Rules.~~

[End of Memo]





# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #9

**REQUESTED ACTION:** Approval of the report and recommendations of the Task Force on Autonomous Vehicles and the Law.

The Task Force on Autonomous Vehicles and the Law was appointed in 2019 to examine how the law and the legal profession should adapt to the development of autonomous vehicles. The Task Force invited experts to its meetings to educate members about issues related to the development of autonomous vehicle technology and reviewed legislation relating to the regulation of autonomous vehicles; testing policies for autonomous vehicles; and liability and insurance. As a result of its study, the Task Force makes the following recommendations:

A. New York should position itself as an attractive AV testing forum by decreasing regulatory burdens and incentivizing a collaborative approach between the State, industry, and research institutes (See Report, p. 27) Areas outside of New York City, especially those with state universities like Binghamton, Buffalo and Albany, are ideal places for testing.

B. To avoid potentially dangerous over-reliance on AV technology by consumers, campaigns should be developed to educate the public, in order to provide an accurate depiction of what AV features can and cannot do. (See Report, pp. 27-28)

C. Consideration should be given to having mandatory training as a prerequisite to acquiring a driver's permit for highly automated vehicles. (See Report, p. 22, 28)

D. New York State should focus on educating the public about the potential benefits of AVs, which include increased mobility for the disabled, the elderly, and people in rural areas. AV technology can also bolster the ability to deliver food, medicine and health care (in fact, AVs are currently being used to assist in fighting the COVID-19 epidemic in countries other than the U.S.), and job creation. (See Report, p. 28-29)

E. New York State should emphasize computer simulation for testing, in addition to on-road testing. Leveraging existing expertise within the State, such as the AV research 2 program at the University at Buffalo, would promote the efficient use of State resources and could position New York at the cutting edge of this industry.

- a. Use computer simulations to test, validate and accumulate safety related data.
- b. Involve State Police in simulation testing (See Report, p. 9-10).

F. New York State should balance individual privacy rights against the state and local governments' legitimate need for certain data. (See Report, p. 9-10).

G. The State Bar Association should support AB 6014-B, which would establish a task force on automated vehicle technology. The State Task Force would address Level 3 and above if established. (See Appendix E.).

H. Existing law should continue to be relied upon as this technology continues to develop, until a situation or case shows a need to create new law. (See Report, p. 28).

This report was published in the Reports Community in March 2020. No comments have been received.

The report will be presented at the April 4 meeting by Task Force chair Dean Aviva Abramovsky.

NEW YORK STATE BAR ASSOCIATION

REPORT OF THE TASK FORCE ON AUTONOMOUS  
VEHICLES AND THE LAW

MARCH 2020

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## EXECUTIVE SUMMARY

Autonomous Vehicles (AV) have the potential to provide significant societal benefits, including increased mobility and independence for the disabled, people who are legally blind, and our aging population. Over the past several months, the Task Force on Autonomous Vehicles (Task Force) invited expert guests to provide information regarding this highly specialized and rapidly developing area of law. The Task Force also examined existing legislation and existing policy frameworks from other states as well as other countries.

The Task Force feels it is important to make New York an attractive forum for AV testing and deployment. New York State provides unique advantages for testing and deployment, including the ability to test in a variety of weather conditions and terrains, and an existing framework for computer simulation, such as the research being done at the University at Buffalo.

The recommendations of the Task Force are:

- A. New York should position itself as an attractive AV testing forum by decreasing regulatory burdens and incentivizing a collaborative approach between the State, industry, and research institutes (See Report, p. 27) Areas outside of New York City, especially those with state universities like Binghamton, Buffalo and Albany, are ideal places for testing as they have four seasons and varying weather conditions, different areas to test in (such as small cities, mountainous terrain, and school campuses with students who, importantly, are open to this technology).
- B. To avoid potentially dangerous over-reliance on AV technology by consumers, campaigns should be developed to educate the public, in order to provide an accurate depiction of what AV features can and cannot do. (See Report, pp. 27-28)
- C. Consideration should be given to having mandatory training as a prerequisite to acquiring a driver's permit for highly automated vehicles. (See Report, p. 22, 28)
- D. New York State should focus on educating the public about the potential benefits of AVs, which include increased mobility for the disabled, the elderly, and people in rural areas. AV technology can also bolster the ability to deliver food, medicine and health care (in fact, AVs are currently being used to assist in fighting the COVID-19 epidemic in countries other than the U.S.), and job creation. (See Report, p. 28-29)
- E. New York State should emphasize computer simulation for testing, in addition to on-road testing. Leveraging existing expertise within the State, such as the AV research

program at the University at Buffalo, would promote the efficient use of State resources and could position New York at the cutting edge of this industry.

- a. Use computer simulations to test, validate and accumulate safety related data.
  - b. Involving State Police in simulation testing – they have expertise from testing that’s been done so far, and know the scenarios that law enforcement are concerned about – can be a valuable partnership with academia and others to create effective testing
- F. New York State should balance individual privacy rights against the state and local governments’ legitimate need for certain data. (See Report, p. 9-10)
- G. The State Bar Association should support AB 6014-B, which would establish a task force on automated vehicle technology. The State Task Force would address Level 3 and above if established. (See Appendix E.)
- H. Existing law should continue to be relied upon as this technology continues to develop, until a situation or case shows a need to create new law. Nothing to date has shown the need for new laws. Existing concepts of negligence, recklessness, misrepresentation, fraud, and product liability should continue to apply to ADAS and AV cases. For example, AV-related lawsuits are proceeding in state courts in CA and AZ under existing laws, without the need for the creation of any new laws. (See Report, p. 28)

## **I. TASK FORCE MISSION STATEMENT**

The Task Force on Autonomous Vehicles and the Law is charged with examining how the law and legal profession should adapt to the development of autonomous vehicles.

## **II. PROCEDURAL BACKGROUND**

Over the past seven months, the Task Force invited expert guests to present information to educate its members about autonomous vehicle technology and the issues relating to it.

Invited guests included representatives from industry, such as Ryan Chin, Co-Founder and CEO of Optimus Ride, and Burt Kaufman, head of corporate and regulatory affairs for Zoox; scientists and researchers, such as Suzanne Murtha, National Lead for Connected and Automated Technology at AECOM, Professor Chunming Qiao, SUNY Distinguished Professor and Chair of the Department of Computer Science and Engineering at the University at Buffalo, Carrie Long, Director of the University of Pennsylvania Center for Safe Mobility, Carlos Cardillo, PhD, Director of the Nevada Center for Applied Research at the University of Nevada, Amitai Bin-Nun, Vice President, Autonomous Vehicles and Mobility Innovation at Securing America's Future Energy (SAFE); members of the insurance industry, including Tom Karol, General Counsel for Federal Affairs at the National Association of Mutual Insurance Companies (NAMIC), and Brad Nail, of Converge Government Affairs; representatives of non-profit organizations, including Jay Stanley of ACLU's Speech, Privacy and Technology Project; Brad Stertz, Co-Chair of the coalition Partners for Automated Vehicle Education (PAVE); and both trial plaintiff and defense attorneys. The New York State Police, the New York State Department of Motor Vehicles, and the NYPD were invited to speak to the Task Force but declined our invitations. A full list of speakers can be found at Appendix A.

### III. AUTONOMOUS VEHICLE LEGISLATION

#### A. Introduction

States' attempts to regulate the testing and deployment of AVs began as early as 2011.<sup>1</sup> These attempts have continued expanding and evolving and almost every state has now considered or passed legislation on the topic.<sup>2</sup> Federal legislation has been proposed, and some bills are pending in the Senate. NHTSA released non-binding guidance to promote uniform industry terms and harmonize legislation between states.<sup>3</sup> The only proposed legislation being supported by the Task Force is AB 6014-B. Any other legislation mentioned in this report is for informational purposes only and is not, and should not be considered, an endorsement by the Task Force.

#### New York Legislation

Several bills are pending in the NYS legislature that would advance New York's AV legislative framework if passed, including several referred to committees in January 2020.<sup>4</sup> The pending bills include the following: (1) NYS Senate Bill 1159, which would create an AV committee to study AVs and how best to support their testing on public roads;<sup>5</sup> (2) NYS Assembly Bill 1554, which would create an AV Task Force to compare New York AV usage with other states;<sup>6</sup> (3) NYS Assembly Bill 2643, which would define "autonomous technology,"

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<sup>1</sup> Nevada was the first state to pass an AV law in 2011. National Conference of State Legislatures, *LegisBrief*, Vol. 25, No. 13, April 2017.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; Moving and Fostering Innovation to Revolutionize Smarter Transportation Act, H.R. 3388, 116th Cong. (2019); Automated Driving Systems: A Vision for Safety, AV 2.0, NHTSA 2016; Preparing for the Future of Transportation: Automated Vehicles 3.0, NHTSA 2018.

<sup>4</sup> See NY S1159, 2019 (pending); NY A1554, 2019 (pending); NY A2643, 2019 (pending); NY A7980, 2019 (pending); NY S6014, 2019 (pending); NY A301, 2019 (pending); NY S1779, 2019 (pending); NY A1808, 2019 (pending).

<sup>5</sup> NY S1159, 2019 (pending).

<sup>6</sup> NY A1554, 2019 (pending).

exclude driver assist functions from classification as an AV, allow NHTSA regulations to supersede it in the event of any inconsistencies, deem a person to be “operating” an AV when they have engaged its autonomous technology regardless of physical presence in the vehicle, and allow AV testing with a human operator present in the vehicle;<sup>7</sup> (4) NYS Assembly Bill 7980 and NYS Senate Bill 6014, which would both establish an AV task force and contain nearly identical language;<sup>8</sup> (5) NYS Senate 1159, which would establish an AV committee;<sup>9</sup> (6) NYS Assembly Bill 301, which would require the Department of Labor to study the impact of AVs on delivery and transport jobs;<sup>10</sup> (7) NYS Senate Bill 1779, which would define “autonomous technology” in a nearly identical way to NYS Assembly Bill 2643;<sup>11</sup> and (8) NYS Assembly Bill 1808, which would enroll New York in federal AV data collection programs.<sup>12</sup>

On January 8, 2020, NYS Senate Bill 6052-B was referred to the judiciary committee for review.<sup>13</sup> S.B. 6052-B, if passed, would authorize the testing of autonomous vehicles on public roads in and around the University at Buffalo’s North Campus.<sup>14</sup>

New York passed legislation effective in 2017<sup>15</sup> that allows the testing of AVs, but only if a number of strict requirements are met. These requirements include that all tests must be directly supervised by state police, a human operator possessing a valid driver’s license must be

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<sup>7</sup> NY A2643, 2019 (pending).

<sup>8</sup> NY A7980, 2019 (pending); NY S6014, 2019 (pending).

<sup>9</sup> NY S1159, 2019 (pending).

<sup>10</sup> NY A301, 2019 (pending).

<sup>11</sup> NY S1779, 2019 (pending); NY A2643, 2019 (pending).

<sup>12</sup> NY A1808, 2019 (pending).

<sup>13</sup> NY S06052, 2020 (pending).

<sup>14</sup> *Id.*

<sup>15</sup> N.Y. Laws 2017, Ch. 55, Part FF, as amended by Laws 2019, Ch. 58, Part M (extending repeal date to Apr. 1, 2021).

in the vehicle, and the vehicle must be insured in an amount no less than \$5 million. S.B. 2005 also provides a definition of “autonomous vehicle technology” and “dynamic driving task.”<sup>16</sup>

## **B. Common Concepts in State AV Legislation**

### **1. Testing**

Most states have adopted standards for the testing of autonomous vehicles on public roads.<sup>17</sup> Common concepts to AV testing legislation include training and licensing requirements for test operators, a bond as proof of financial responsibility, and specification that the vehicles be capable of following traffic regulations.<sup>18</sup> Training and licensing requirements for test operators include possession of a valid driver’s license and status as a trained employee of the testing company.<sup>19</sup> \$5 million is the amount most commonly required as a bond for AV testing.<sup>20</sup>

### **2. Allocation of Liability**

A concept common across state legislation is the allocation of liability for AV accidents and traffic violations. While it is common for states to address the issue, there has not been wide uniformity as to a particular liability allocation system.

A provision included by many states is that an original automobile manufacturer is not liable for AV-related incidents when a third party converts the vehicle into an autonomous

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<sup>16</sup> *Id.*

<sup>17</sup> See Kells, Roetzer & Garber, Survey of Autonomous Vehicle Regulations, October 2019.

<sup>18</sup> See Colo. Rev. Stat. §§ 42-1-102, 42-4-110, 42-4-242; Washington Executive Order 17-02 (June 7, 2017) [https://www.governor.wa.gov/sites/default/files/exe\\_order/17-02AutonomouVehicles.pdf](https://www.governor.wa.gov/sites/default/files/exe_order/17-02AutonomouVehicles.pdf); S.D. Codified Laws § 32-26-50 (2019); S.B. 427, Gen. Assemb., Reg. Sess. (Pa. 2017), *et. al*; Arizona Executive Order 2018-04 (Mar. 1, 2018) [https://azgovernor.gov/sites/default/files/related-docs/eo2018-04\\_1.pdf](https://azgovernor.gov/sites/default/files/related-docs/eo2018-04_1.pdf).

<sup>19</sup> Arizona Executive Order 2015-09 (Aug. 25, 2015), <https://azmemory.azlibrary.gov/digital/collection/execorders/id/752/>; Cal. Gov’t Code § 14107(d) (Deering 2019); Conn. Gen. Stat. § 13a-260(d)(1) (2019); Washington Executive Order 17-02 (June 7, 2017); S.B. 427, Gen. Assemb., Reg. Sess. (Pa. 2017); 23 Vt. Stat. Ann. § 4202(10) (2019); B23-0232, Council of the Dist. of D.C. (D.C. 2019).

<sup>20</sup> Some states that have used the \$5 million amount are Vermont, Nevada, New York, Connecticut and Massachusetts. 23 Vt. Stat. Ann. § 4203(h)(2)(B) (2019); Nev. Rev. Stat. § 482A-060 (2019); N.Y. Laws 2017, Ch. 55, Part FF, as amended; Conn. Gen. Stat. § 13a-260(d)(2) (2019); H. 3143, 191st Gen. Ct. of the Commw. (Mass. 2019).

vehicle.<sup>21</sup> Another often included provision is that a remote operator is liable for an AV's compliance with traffic laws even when not present in the vehicle.<sup>22</sup>

Allocation of liability for traffic violations and collisions vary between states. Some states hold the owner or lessee of an autonomous vehicle responsible for all traffic violations<sup>23</sup> while others hold the operator liable for violations occurring only when he is physically controlling the vehicle and holds the AV manufacturer liable for violations occurring when the autonomous driving system is engaged.<sup>24</sup>

### **3. Post-Collision Protocol**

Some states have implemented some post-collision protocol for AVs while others have considered aspects of data reporting following a crash. There is some uniformity amongst states which have adopted post-collision protocol, but there are also many states which have not made any provision for AV action in the event of a collision.

Several states specify that, in the event of a collision, an AV must remain at the scene of the collision and its owner must report the crash.<sup>25</sup> In Nevada, a crash which caused damage amounting to \$750 or more must be reported.<sup>26</sup> Massachusetts legislators are considering a bill which would require “event data,” or indications of speed, brake usage, throttle, and whether the

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<sup>21</sup> *E.g.*, Nev. Rev. Stat. § 482A.90 (2019); A.B. 2643, Leg. 2019-2020 Reg. Sess. (N.Y. 2019); H.B. 1543, 66th Leg. Assemb., Reg. Sess. (N.D. 2019) (failed); H.B. 2770, Leg., Reg. Sess. (Or. 2019) (failed); Tenn. Code Ann. § 55-30-106 (2019); H.B. 119, 86th Leg., Reg. Sess. (Tex. 2019) (failed).

<sup>22</sup> La. Rev. Stat. Ann. § 32:400.7 (2019).

<sup>23</sup> Ala. Code § 32-9B-4(a) (2019); N.C. Gen. Stat. § 20-401(e) (2019).

<sup>24</sup> LB142, 106th Leg., First Sess. (Neb. 2019) (pending); Tenn. Code Ann. § 55-30-106 (2019); Texas Transp. Code § 545.453 (West 2019); S.B. 218, Gen. Assemb., 2017-2018 Reg. Sess. (Ga. 2017).

<sup>25</sup> LB142, 106th Leg., First Sess. (Neb. 2019); Neb. Rev. Stat. § 60-3307 (2020); Utah Code Ann. § 41-26-105 (2020); B23-0248, Council of the Dist. of Columbia, (D.C. 2019); Fla. Stat. §§ 316.062, 063, 065 (2019).

<sup>26</sup> Nev. Rev. Stat. Ann. § 482A.095 (2019).

vehicle was driving autonomously, to be recorded and preserved after a crash.<sup>27</sup> A similar bill was considered, but failed in Georgia.<sup>28</sup>

#### **4. Data Collection and Usage**

Some states have adopted provisions determining how data collected from AVs should be handled while other states have not provided for the issue. A frequently seen provision regarding data privacy and AVs is that only non-identifying data may be collected and used by anyone other than the vehicle's owner. Some states allow this data to be used in the aggregate, but prohibit its use when it identifies a particular person or vehicle.

Bills have been introduced in the District of Columbia and Massachusetts that would require AVs to have data recording devices.<sup>29</sup> Utah enacted a provision which would only allow location data collected from an AV to be used for aggregate, and not for identifying purposes.<sup>30</sup> A similar provision failed to pass in Arizona and North Dakota.<sup>31</sup> Utah allows non identifying data collected by an AV to be used for studies of improving vehicle safety, medical study of the human body's reaction to vehicle crashes.<sup>32</sup> Massachusetts has called for the Department of Consumer Affairs to adopt data privacy regulations concerning AV data.<sup>33</sup> The state is also considering the imposition of fines up to \$50,000 for destroying, deleting or altering AV data

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<sup>27</sup> H.3672, 191st Gen. Court of the Commw. (Mass. 2019).

<sup>28</sup> HB 248, 2017-2018 Gen. Assemb., Reg. Sess. (Ga. 2017).

<sup>29</sup> 2019 DC B 232 (pending); 2019 MA Senate Bill 2115 (pending).

<sup>30</sup> 2019 UT S.B. 72 (enacted).

<sup>31</sup> HB2684, 54th Leg., 1st Gen. Sess. (Ariz. 2019) (failed); HB 1197, 66th Leg. Assemb., Reg. Sess. (N.D. 2019) (failed); HB 1394, 65th Leg. Assemb., Reg. Sess. (N.D. 2017) (failed).

<sup>32</sup> Utah Code Ann. § 41-1a-1503(g).

<sup>33</sup> S.2056, 191st Gen. Ct. of the Commw. (Mass. 2019) (pending).

following a collision.<sup>34</sup> North Dakota twice failed to pass a bill which would have made the owner of an AV the owner of any data gathered thereby.<sup>35</sup>

## 5. Platooning

It has been commonly provided by states that AVs may travel on public roads in a platoon formation. Platooning is generally defined as individual vehicles travelling in a unified manner at electronically coordinated speeds.<sup>36</sup> Allowing AVs to travel in a platoon has required exemptions from following distance laws so that the AVs can hold a tight formation.<sup>37</sup> Some states impose additional requirements on platoons. Kentucky, for example, requires a human driver to be present within each AV in a platoon, and both Kentucky and Minnesota require carriers to give notice of a platoon plan to the state police prior to its operation.<sup>38</sup> Minnesota does not allow platoons to contain more than three vehicles.<sup>39</sup> Louisiana does not allow platoons to operate on a two-lane highway.<sup>40</sup>

### C. Unique AV Legislative Provisions

Some states' legislation contains provisions which stand out as unique from the others. One such provision is included in Arkansas' HB 1561, which allows a remote operator to control

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<sup>34</sup> H.3672, 191st Gen. Ct. of the Commw. (Mass. 2019) (pending).

<sup>35</sup> HB 1197, 66th Leg. Assemb., Reg. Sess. (N.D. 2019) (failed); HB 1394, 65th Leg. Assemb., Gen. Sess. (N.D. 2017) (failed).

<sup>36</sup> *See, e.g.*, Code of Ala. §§ 32-1-1.1(83), 32-5A-89(d) (2019); Ark. Code Ann. § 27-51-305(c) (2019); Ga. Code Ann. § 40-6-49(e) (2019); Ind. Code Ann. § 9-21-8-14(a), 15(a), 16(a)(2) (2020); Ind. Code Ann. § 9-21-8-22 (2020); Miss. Code Ann. §§ 63-3-103(k), 63-3-619(3) (2019); N.C. Gen. Stat. § 20-152(c) (2019); N.D. Cent. Code § 39-10-18(4), (5) (2019); Okla. Stat. tit. 47 § 11-310(e), (f) (2019); 75 Pa. Cons. Stat. §§ 102, 3317, 8501-8503 (2020); S.D. Codified Laws § 32-26-50; Utah Code Ann. § 41-6a-711 (2020); Wis. Stat. § 346.14(1b), (2)(c) (2019). Unenacted or pending bills covering platooning include: 2019 FL SB 660 (failed); 2019 FL SB 1104 (failed); 2018 FL HB 1287 (failed); 2017 IL HB 4050.

<sup>37</sup> Ala. Code § 32-5A-89(d) (2019).

<sup>38</sup> Ky. Rev. Stat. Ann. §§ 281.010(39), 281.764, 189.340 (2019); Minn. Stat. § 169.011(3).

<sup>39</sup> Minn. Stat. § 169.011(4).

<sup>40</sup> La. Rev. Stat. Ann. § 32:81(F) (2019).

up to three AVs simultaneously and which provides that AVs need not be equipped with safety equipment like a steering wheel, seat belt, or rearview mirror.<sup>41</sup>

Another unique provision comes from California’s Public Utilities Code § 5446, which provides that the City of San Francisco may levy taxes on trips originating in that city and taken in AVs owned by a transportation company. Such taxes may not exceed 3.25% and are not to exceed 1.5% when trips are shared.<sup>42</sup>

Pending in Washington D.C. is a provision that would allow the National Highway Traffic Safety Administration (NHTSA) to grant exceptions to AVs that do not comply with federal motor vehicle safety standards.<sup>43</sup>

A failed Florida bill would have defined and funded a “grid integrated vehicle” program capable of a two-way power exchange with the electric grid.<sup>44</sup>

#### **D. The Uniform Automated Operation of Vehicles Act**

In an effort to promote uniformity in state legislation of AVs, the Uniform Law Commission (“ULC”) in 2019 published its “Uniform Automated Operation of Vehicles Act” (“UAOVA”).<sup>45</sup>

In the UAOVA, the ULC proposes individuals need not hold a driver’s license to take a completely automated trip.<sup>46</sup> A remote operator would likewise not be required to hold a driver’s license to operate an AV in autonomous mode.<sup>47</sup>

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<sup>41</sup> HB 1561, 92 Gen. Assemb., Reg. Sess. (Ark. 2019).

<sup>42</sup> Cal. Pub. Util. Code § 5446 (Deering 2019).

<sup>43</sup> B22-1010, Council of the Dist. of Columbia (D.C. 2018).

<sup>44</sup> HB 633, Leg., 2018 Reg. Sess. (Fla. 2018).

<sup>45</sup> National Conference of Commissioners on Uniform State Laws, UNIFORM AUTOMATED OPERATION OF VEHICLES ACT, § 4(a) (2019).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at § 4(b).

As defined in the UAOVA, an “automated-driving provider” (“ADP”) refers to a person or entity that makes a declaration of ownership or control over an AV or autonomous system to a relevant state agency.<sup>48</sup> Such a declaration essentially assigns responsibility to the declarer as the point of contact for state agencies if issues arise with the AV. The UAOVA would require the ADP to represent by sufficient evidence that the AV system is capable of complying with state laws.

The UAOVA also introduces the term “associated automated vehicle.”<sup>49</sup> An associated automated vehicle is the particular AV associated with an ADP who has made a declaration to a state agency. Under the UAOVA, an ADP would bear responsibility for violations of state laws committed during the *automated* operation of its associated automated vehicles.<sup>50</sup> As ADPs could be manufacturers, system developers, software providers or others, the UAOVA as written could allocate liability to any such party if it has made a state agency declaration.

#### **E. Federal AV Legislation**

In September 2017, H.R. 3388 — the SELF DRIVE Act — passed the U.S. House of Representatives. The Act will be reintroduced to the Senate in the 116th Congressional Session to be considered for passage into law. [citation to this is needed] A similar bill, S. 1885 — the AV START Act — passed the Senate Commerce Committee in October 2017 and will be reintroduced in the next Congressional session as calendar number 268. [citation needed]

The SELF DRIVE Act and the AV START Act would both preempt the ability of state and local governments to regulate design, construction, and performance of highly automated vehicles unless such regulations are identical to, or at least as restrictive as, the federal

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<sup>48</sup> *Id.* at § 6(a).

<sup>49</sup> *Id.* at § 7(a).

<sup>50</sup> *Id.* at § 9(c).

regulations.<sup>51</sup> The AV START Act would not, however, preempt the applicability of state tort law to resolve liability issues involving AV accidents.<sup>52</sup> The AV START Act specifies it will not impose additional duties upon state or local governments that would result in additional spending or loss of revenue.<sup>53</sup> The AV START Act would not preempt state and local authority to sell and repair AVs and requires that rules for the issuance of AV licenses not be discriminatory to people with disabilities.<sup>54</sup>

On February 7, 2020, the National Science and Technology Council and the U.S. Department of Transportation released its most recent report on autonomous vehicles, *Ensuring American Leadership in Automated Vehicle Technologies: Automated Vehicles 4.0 (AV 4.0)*. AV 4.0 builds on an earlier version and seeks to “to unify efforts in automated vehicles across 38 Federal departments, independent agencies, commissions, and Executive Offices of The President ... [by] providing high-level guidance to Federal agencies, innovators, and all stakeholders on the U.S. Government’s posture towards AVs.” The report seeks to ensure a consistent U.S. Government (USG) approach to AV technologies and details the authorities, research, and investments being made across the USG on AV research, development, and integration.<sup>55</sup>

The report is structured around three key areas: (1) USG AV Principles; (2) Administration Efforts Supporting AV Technology Growth and Leadership; and (3) USG Activities and Opportunities for Collaboration.<sup>56</sup>

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<sup>51</sup> H.R. 3388; S. 1885.

<sup>52</sup> Mark Geistfeld, *The Regulatory Sweet Spot for Autonomous Vehicles*, 53 Wake Forest L. Rev. 337, 340 (2019).

<sup>53</sup> S. 1885.

<sup>54</sup> *Id.*

<sup>55</sup> USDOT Automated Vehicle Activities, Automated Vehicles (Feb. 7, 2020), <https://www.transportation.gov/AV>.

<sup>56</sup> *Ensuring American Leadership in Automated Vehicle Technologies: Automated Vehicles 4.0*, U.S. Dep’t of Transportation (Feb. 7, 2020), <https://www.transportation.gov/av/4>.

Within the first key area, USG AV Principles, there are three sub-topics that the report focuses on; (1) Protecting Users and Communities, (2) Promoting Efficient Markets, and (3) Facilitating Coordinated Efforts.<sup>57</sup> The National Science and Technology Council developed an Automated Vehicle Fast Track Action Committee. That committee developed ten principles that fall within the three sub-topics mentioned above.<sup>58</sup>

As it relates to protecting users and communities, the government articulates intent to consider safety, security and cybersecurity, privacy and data security, and mobility and accessibility concerns.<sup>59</sup>

In an effort to promote efficient markets, the report specifies the government's intent to remain technology-neutral, work to protect American innovation and creativity, and modernize regulations.<sup>60</sup> AV 4.0 also articulates a desire to promote consistent standards and policies within state and local governments, ensure a consistent federal approach, and improve transportation system-level effects.<sup>61</sup>

AV 4.0, Section 8. Promote Consistent Standards and Policies, provides that, “the U.S. Government will prioritize participation in and advocate abroad for *voluntary consensus* standards and evidence based *and data driven regulations*. The U.S. Government will engage State, local, tribal and territorial authorities as well as industry to promote the development and implementation of voluntary consensus standards, advance policies supporting the integration of

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<sup>57</sup> Nat'l Science and Tech. Council & U.S. Dep't of Transp., Ensuring American Leadership in Automated Vehicle Technologies 1 (Jan. 2020), <https://www.transportation.gov/sites/dot.gov/files/2020-02/EnsuringAmericanLeadershipAVTech4.pdf>.

<sup>58</sup> *Id.* at 3.

<sup>59</sup> *Id.* at 4.

<sup>60</sup> *Id.* at 5.

<sup>61</sup> *Id.* at 5.

AVs throughout the transportation system, and seek harmonized technical standards and regulatory policies with international partners.”<sup>62</sup>

At the same time, AV 4.0 identifies that the “USDOT is provided with significant research, regulatory, and enforcement authority to protect the safety of the American public pertaining to various aspects of AVs, *to include establishing manufacturing, performance, and operational standards...*” AV 4.0 continues to identify NHTSA as a “key modal” agency, since “NHTSA sets and enforces safety performance standards for motor vehicles and motor vehicle equipment, identifying safety defects, and through the development and delivery of effective highway safety programs for State and local jurisdictions.”

Finally, AV 4.0 lists a wide range of federal government agencies that have invested in AV research and development programs that aim to promote and develop safety, mobility, security and cybersecurity, infrastructure, and connectivity.<sup>63</sup>

The report states that the DOT intends to be proactive in its approach to AV technology and its implementation as it recognizes the governmental role in assuring stakeholders can invest in the field. The DOT will also prepare for complementary technology to AVs: communication and data links, for example. The DOT states in AV 4.0 that it will not universally implement any single approach. AV 4.0 acknowledges the need to prepare for AV tech and the important role the DOT might have in sustaining technological advancements and investments in the field. It further emphasizes the importance of fostering innovation in technology that will complement AVs, and considers how best to promote America’s leadership role in the field of AV development.<sup>64</sup>

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<sup>62</sup> *Id.* at 12-13.

<sup>63</sup> *Id.* at 8-37.

<sup>64</sup> *Id.* at 1.

## IV. AV TESTING POLICIES

### A. Arizona

Enacted in 2015, Executive Order 2015-09 allowed AV pilot programs to test on select college campuses and on certain public roads in Arizona.

The rules laid out in Executive Order 2015-09 for AV testing required only the following for AV testing: (1) the operator of an AV must possess a driver's license; (2) the operator must be employed or designated by the company developing the self-driving technology; (3) the AVs must be constantly monitored; (4) operators must be able to take control of the vehicle in the event of a malfunction; and (5) vehicle owners must submit proof of financial responsibility in an amount determined by the Arizona Department of Transportation.<sup>65</sup> The Order did not require the operator to be physically present in the vehicle while it operated.<sup>66</sup> Executive Orders 2018-04 and 2018-09 were passed in March 2018 and October 2018, and required, respectively, that a statement must be filed with the Arizona DOT before a vehicle may be operated in fully autonomous mode and established the Institute of Automated Mobility to develop and test AVs.<sup>67</sup>

One of the first AV companies to act upon the 2015 Order was Waymo, Google's Self Driving Car Project.<sup>68</sup> Waymo deployed a test fleet of AVs on public streets in Chandler,

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<sup>65</sup> *Id.*

<sup>66</sup> Arizona Executive Order 2015-09, 2015.

<sup>67</sup> Arizona Executive Order 2018-04 (March 1, 2018) [https://azgovernor.gov/sites/default/files/related-docs/eo2018-04\\_1.pdf](https://azgovernor.gov/sites/default/files/related-docs/eo2018-04_1.pdf) ; Arizona Executive Order 2018-09 (Oct. 11, 2018) [https://azgovernor.gov/sites/default/files/eo\\_2018-09\\_iam\\_0.pdf?token=bmTM1RAS](https://azgovernor.gov/sites/default/files/eo_2018-09_iam_0.pdf?token=bmTM1RAS).

<sup>68</sup> Ryan Randazzo, *Who was really at fault in the fatal Uber crash?*, Arizona Republic, March 17, 2019, <https://www.azcentral.com/story/news/local/tempe/2019/03/17/one-year-after-self-driving-uber-rafaela-vasquez-behind-wheel-crash-death-elaine-herzberg-tempe/1296676002/>.

Arizona in April 2016.<sup>69</sup> Uber notified the Governor’s Office that it would be testing its AVs on Arizona public roads in August 2016, and General Motors followed suit.<sup>70</sup>

On March 18, 2018, an Uber SUV collided with pedestrian Elaine Herzberg. Ms. Herzberg was struck and killed by the self-driving Uber while crossing the street on a bicycle.<sup>71</sup>

Upon investigation of the incident, authorities discovered Uber had disabled the operating system allowing its AVs to brake themselves in emergencies because the system had been causing erratic driving patterns, braking for minor obstacles such as birds flying in front of the cars.<sup>72</sup> Evidence from the Uber’s interior monitoring camera also suggested the SUV’s operator had not been watching the road just before the collision occurred.<sup>73</sup> After the accident, public backlash against self-driving vehicles manifested itself in the form of public complaints, harassment of self-driving vehicles and drivers, the formation of groups opposed to the implementation of AVs, and some instances of violence.<sup>74</sup> A main component of the public outrage following the accident was that no registration approval, or public disclosure processes had been put in place by Executive Order 2015-09.<sup>75</sup> The public felt blindsided by news that companies had been testing their AVs on Arizona roads for years without its knowledge.<sup>76</sup>

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<sup>69</sup> *Id.*

<sup>70</sup> *Id.*; Sue Callaway, *The Country’s Hottest New City for Autos*, FORTUNE, July 22, 2016, <https://fortune.com/2016/07/22/phoenix-arizona-tech-centric-automotive/>.

<sup>71</sup> Ryan Randazzo, *Who was really at fault in the fatal Uber crash?*, Arizona Republic, March 17, 2019.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Incidents of violence include attempts to force AVs off the road, rocks being thrown at AVs, and a man pointing a gun at a Waymo driver in an attempt to “intimidate” him. The opposition group mentioned is the Human Driving Association, and includes in its manifesto the belief that no car should be built without a steering wheel. *Id.*

<sup>75</sup> Ryan Ramdazzo & Jerod MacDonald-Evoy, *Fatal Uber collision highlights secrecy of tests in Arizona*, Arizona Republic, March 29, 2018, <https://www.azcentral.com/story/money/business/tech/2018/03/29/fatal-uber-collision-highlights-secrecy-self-driving-car-tests-arizona/466715002/>.

<sup>76</sup> Ryan Randazzo, *Who was really at fault in the fatal Uber crash?*, Arizona Republic, March 17, 2019, <https://www.azcentral.com/story/news/local/tempe/2019/03/17/one-year-after-self-driving-uber-rafaela-vasquez-behind-wheel-crash-death-elaine-herzberg-tempe/1296676002/>.

## **B. United Kingdom**

### **1. Introduction – The Automated and Electric Vehicles Act of 2018**

The UK formed the Centre for Connected and Autonomous Vehicles (“CCAV”) in 2016 which analyzed and recognized gaps for AV liability and insurance.<sup>77</sup> Coordination between the CCAV and the UK Department for Transportation led to the passage of the Automated and Electric Vehicles Act of 2018 (the UK Act) in July 2018.<sup>78</sup>

The UK Act lays out regulations relating to liability for the insurer, the insured, the manufacturers, and injured parties. The CCAV commissioned two reports in September 2018 to study and identify gaps in the legislation and to put forth recommendations for parliament to consider in amending the UK Act.<sup>79</sup> We include a discussion of the UK Act for informational purposes, recognizing that the insurance and legal processes in the UK are not identical to those in the U.S.

### **2. Liability**

The UK Act stipulates if an accident is caused by an uninsured AV driving itself, the owner of the AV will be liable for damages.<sup>80</sup> If an insured AV is driving itself and is involved in an accident, the insurer is directly liable for the damage.<sup>81</sup> Once the insurer has settled the

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<sup>77</sup> Araz Taeihagh & Hazel Si Min Lim, *Governing autonomous vehicles: emerging responses for safety, liability, privacy, cybersecurity, and industry risks*, 39 *Transport Reviews* 103, 110 (2018).

<sup>78</sup> Automated and Electric Vehicles Act, 2018, c. 18 (U.K.).

<sup>79</sup> Centre for Connected and Autonomous Vehicles, UK Connected & Autonomous Vehicle Research & Development Projects 2018 (Sept. 2018), <https://www.gov.uk/government/publications/connected-and-autonomous-vehicle-research-and-development-projects>; Centre for Connected & Autonomous Vehicles, Code of Practice: Automated Vehicle Trialling (Feb. 2019) <https://www.gov.uk/government/publications/trialling-automated-vehicle-technologies-in-public>.

<sup>80</sup> “Uninsured” in this context refers to a vehicle uninsured at the time of the accident. Automated and Electric Vehicles Act, 2018, c. 18, § 2(2) (U.K.).

<sup>81</sup> *Id.* at § 2(1).

claim with the injured party, it may then reclaim damages from other parties that are liable for the accident, such as the vehicle manufacturer.<sup>82</sup>

This provision makes an effort to increase efficiency and cut costs in compensating the victim of an accident by making the insurer the default payor. However, it does not delegate final responsibility for the accident. The imposition of liability on the insurer, or vehicle owner, does not affect any other party's liability with respect to the accident. If it is found that the cause of the accident was faulty equipment in the AV, for example, the insurer can claim against the manufacturer to recover costs.<sup>83</sup>

The law also stipulates this default liability may not be limited or excluded by a term of an insurance policy, except in accidents found to be the result of software alterations or failure to update software.<sup>84</sup>

### **3. Contributory Negligence**

The UK Act applies the same principles of contributory negligence to AV accidents that apply to standard, human driven vehicles in the UK.<sup>85</sup> This standard contributory negligence principle dictates compensation to the injured party will be reduced by the amount a court determines the injured party is at fault for the accident.<sup>86</sup> Further, the insurer or owner of an AV is not liable under the Act to the operator of the vehicle where the operator was negligent in engaging autonomous mode.<sup>87</sup>

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<sup>82</sup> *Id.* at §§ 4, 5.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at § 3.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at § 3(2).

#### **4. Software Updates**

The UK Act lays out a variety of situations in which an insurance policy may exclude or limit the insurer's liability where alterations or updates affect AV software.<sup>88</sup> First, any software alterations prohibited under the policy made by or with the knowledge of the insured person can limit the insurer's liability. For an insured who is not the policyholder, an insurer only escapes liability when the insured knows that prohibited software alterations are in effect at the time of the accident.<sup>89</sup>

Additionally, failure to install safety-critical software updates that the insured person knows, or should reasonably know, are safety critical will limit the insurer's liability.<sup>90</sup> Updates are considered safety-critical if it would be unsafe to use the AV without the updates.<sup>91</sup> If the accident is found to be the result of software alterations or failure to install software updates, the amount paid by the insurer is recoverable from the insured to the extent provided by the policy.<sup>92</sup>

#### **5. Insurer's Claims Against Responsible Party**

Under the UK Act, an AV insurer or owner must pay damages to the injured party after an accident even if a third party is responsible for the accident.<sup>93</sup> After an insurer or owner has settled a claim with an injured party, any other responsible party is then liable in the same amount he would owe the injured party to the insurer or owner who has already paid damages.<sup>94</sup>

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<sup>88</sup> *Id.* at § 4.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

If the insurer or owner recovers damages from the responsible party that exceed the amount paid to the injured party, the insurer or owner must repay the difference.<sup>95</sup>

## **6. Additional Reports**

The CCAV has produced two reports analyzing the UK Act and projecting future needs for AV regulation in the UK.<sup>96</sup> The first was published in November of 2018, the second was published in October of 2019, and a third will be published in 2020 with final recommendations for the UK government to improve its AV laws.<sup>97</sup> These papers report findings from technology experts, industry veterans, and other stakeholders for AV technology and integration. The reports cover topics including consumer information, driver training, causation, data retention, software, criminal liability and sanctions, and AVs used as public transport (HARPS).<sup>98</sup>

### **a. Gaps in Consumer Information and Marketing**

The CCAV estimated a problem with AVs and consumer information will be over-reliance on AV technology once it becomes mainstream.<sup>99</sup> To address this issue, the CCAV recommended marketing campaigns presenting an accurate depiction of what AV features can and cannot do. For example, marketing campaigns should tell consumers whether the lane assist AV feature is able to steer around a parked vehicle or whether adaptive cruise control can gauge the speed of a motorcycle driving directly in front of it. The main goal of such campaigns is to

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<sup>95</sup> *Id.*

<sup>96</sup> Centre for Connected & Autonomous Vehicles, UK Connected & Autonomous Vehicle Research & Development Projects 2018 (Sept. 2018), <https://www.gov.uk/government/publications/connected-and-autonomous-vehicle-research-and-development-projects>; Centre for Connected & Autonomous Vehicles, Code of Practice: Automated Vehicle Trialling (Feb. 2019), <https://www.gov.uk/government/publications/trialling-automated-vehicle-technologies-in-public>.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> Law Commission & Scottish Law Commission, Automated Vehicles, a Joint Preliminary Consultation Paper 20 (2018) [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxsou24uy7q/uploads/2018/11/6.5066\\_LC\\_AV-Consultation-Paper-5-November\\_061118\\_WEB-1.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxsou24uy7q/uploads/2018/11/6.5066_LC_AV-Consultation-Paper-5-November_061118_WEB-1.pdf).

increase the availability of accurate and explicit consumer information so that consumers do not over-rely on the technology.<sup>100</sup>

### **b. Gaps in Driver Training**

The CCAV's study also contemplates introducing both compulsory and voluntary training for AV drivers.<sup>101</sup> Compulsory training could be added as a prerequisite to acquiring a driver's permit for highly automated vehicles.<sup>102</sup> Voluntary training could be offered as a way to acquire an insurance discount.<sup>103</sup> Whether voluntary or compulsory, the CCAV recommends additions to driver training courses to include instruction about how to manage and master the various technology features in an AV.<sup>104</sup>

### **c. Gaps in Causation**

For the liability framework outlined in the UK Act to apply, the AV itself must be the legal cause of the accident. There is associated debate as to whether this causation also implies an element of fault.<sup>105</sup> To illustrate this dilemma, the CCAV provides an example where an AV swerves to avoid an erratic cyclist and hits a parked car.<sup>106</sup> Because the AV caused the accident, would the cyclist be absolved from fault for creating a dangerous situation?<sup>107</sup> The CCAV does not directly answer this question. It recommends, however, leaving the determination of causation to the courts on a case-by-case basis and applying the same principles of civil liability

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<sup>100</sup> *Id* at 30, 80-81.

<sup>101</sup> *Id* at 88-9.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Law Commission & Scottish Law Commission, Automated Vehicles, a Joint Preliminary Consultation Paper (2018) [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/11/6.5066\\_LC\\_AV-Consultation-Paper-5-November\\_061118\\_WEB-1.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/11/6.5066_LC_AV-Consultation-Paper-5-November_061118_WEB-1.pdf).

<sup>105</sup> *Id.*

<sup>106</sup> *Id* at 110.

<sup>107</sup> *Id.*

currently used for vehicle accidents.<sup>108</sup> The main issue with applying the same vehicle accident civil liability framework to AVs is that insurers will need greater certainty when it comes to causation to accurately price their insurance and avoid lengthy litigation.<sup>109</sup>

#### **d. Gaps in Data Retention**

Data retention requirements for AV manufacturers are anticipated to be important to litigation following AV accidents. In the event of an accident, insurers will need data from the AV to verify details like location, direction, speed, and whether the vehicle was actually driving itself at the time of the accident.<sup>110</sup> The anticipated issue with this data collection is that the vast amount of data AVs generate could be too much for vehicles to store for an extended amount of time.<sup>111</sup> Thus, the question as to which type of data must be stored for insurers to defend claims and bring actions against third parties must be resolved. The CCAV recommended two solutions in its report: (1) that a new time limitation be introduced dictating when one must bring an AV-related injury claim, and (2) that a standard be adopted dictating which type of data must be preserved for AV-related liability suits.<sup>112</sup>

#### **e. Gaps in OTA Updates**

The report presents the question of how current product liability laws in the UK will apply to “over-the-air” (“OTA”) software updates.<sup>113</sup> An OTA update is the wireless delivery of

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<sup>108</sup> *Id.*

<sup>109</sup> Law Commission & Scottish Law Commission, Automated Vehicles, a Joint Preliminary Consultation Paper 110 – 111 (2018) [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2018/11/6.5066\\_LC\\_AV-Consultation-Paper-5-November\\_061118\\_WEB-1.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2018/11/6.5066_LC_AV-Consultation-Paper-5-November_061118_WEB-1.pdf).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 114.

new software or data to a device.<sup>114</sup> Current UK laws allow product liability claims to be brought against defective software that is within a physical medium, such as a vehicle.<sup>115</sup> However, it is uncertain whether these product liability laws would apply to software sold separately from a physical product.<sup>116</sup>

This is an important question for AVs because safety-critical software updates are likely to be produced and offered by a different entity than the AV manufacturer.<sup>117</sup> The UK report contemplates whether product liability law will apply to software updates and the providers thereof in situations where the software was a standalone product added to an AV.<sup>118</sup> The CCAV Law Commission called for the UK to pass new legislation to answer this question.

#### **f. Gaps for Liability and Sanctions**

The CCAV examined the attribution of liability for driving offenses set forth in the UK Act and found the UK's existing legal definition too flexible. The Commission believes when an automated driving system is engaged and conducting the entire dynamic driving task, complying with traffic laws should be the legal responsibility of the automated driving system entity rather

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<sup>114</sup> Margaret Rouse, "OTA Update," TARGET TECH, August 2018, <https://searchmobilecomputing.techtarget.com/definition/OTA-update-over-the-air-update>.

<sup>115</sup> Law Commission & Scottish Law Commission, Automated Vehicles, a Joint Preliminary Consultation Paper 115 (2018), [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2018/11/6.5066\\_LC\\_AV-Consultation-Paper-5-November\\_061118\\_WEB-1.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2018/11/6.5066_LC_AV-Consultation-Paper-5-November_061118_WEB-1.pdf). The 1987 Act is the UK law defining "product" for purposes of products liability suits. This definition includes "any goods or electricity" including "a product which is comprised in another product, whether by virtue of being a component part or raw material or otherwise." Consumer Protection Act 1987, s 1(2). It is unclear whether this definition would include OTA software updates.

<sup>116</sup> *Id.* at n.440, citing European Commission, Brief Factual Summary on the Results of the Public Consultation on the Rules on Producer Liability for Damage Caused by a Defective Product (2017) p 3, <http://ec.europa.eu/docsroom/documents/23471>, discussed in Pinsent Masons, Legal aspects of connected and automated cars, White Paper, May 2018, at p 8.

<sup>117</sup> Law Commission & Scottish Law Commission, Automated Vehicles, a Joint Preliminary Consultation Paper (2018), [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2018/11/6.5066\\_LC\\_AV-Consultation-Paper-5-November\\_061118\\_WEB-1.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2018/11/6.5066_LC_AV-Consultation-Paper-5-November_061118_WEB-1.pdf).

<sup>118</sup> *Id.*

than the human user.<sup>119</sup> The CCAV criticized the UK Act as being too flexible because it defines a person in an AV as the driver — even if the AV is driving autonomously.<sup>120</sup> The Commission proposed an amendment be made to the law that would clarify a user in a vehicle is not a “driver” for legal purposes if the accident was caused by the way a vehicle was driven by the automated system.<sup>121</sup>

The CCAV also recognized situations in which the human driver should be held responsible when the AV is operating autonomously. These situations include: a driver who is unfit to drive, an intoxicated driver, a driver who fails to responsibly manage the AV, and a driver who fails to take steps to avoid obvious dangers they are or should be aware of.<sup>122</sup>

The CCAV also recommended a sanctioning system being considered by Australia’s transport commission as a desirable method to discipline certain AV-related offenses. It would require that AV manufacturers and developers back every automated driving system they sell, taking responsibility for each automated system as its designated Automated Driving System Entity (“ADSE”).<sup>123</sup> This proposed system would require that each automated driving system sold be backed by an ADSE, and, in the event of a system failure, the ADSE would be subject to regulatory sanctions.<sup>124</sup>

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<sup>119</sup> *Id.* at 9.

<sup>120</sup> *Id.* at 128-29.

<sup>121</sup> *Id.* at 129.

<sup>122</sup> Law Commission & Scottish Law Commission, Automated Vehicles, a Joint Preliminary Consultation Paper 134-35 (2018), [https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/11/6.5066\\_LC\\_AV-Consultation-Paper-5-November\\_061118\\_WEB-1.pdf](https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2018/11/6.5066_LC_AV-Consultation-Paper-5-November_061118_WEB-1.pdf).

<sup>123</sup> *Id.* at 150.

<sup>124</sup> *Id.*

**g. Gaps for AVs as Public Transport**

Although the UK Act doesn't directly address AVs used for public transport, the CCAV's second consultation report recommended a structure and system for AV public transport be added to the law.<sup>125</sup> The CCAV coined a term for AV public transportation systems, calling them "Highly Automated Road Passenger Services" ("HARPS").<sup>126</sup> The Commission defined HARPS as any business which carries passengers for hire or reward using highly automated vehicles on a road without the services of a human driver or user-in-charge.<sup>127</sup>

The CCAV recommended HARPS operators be required to routinely update maps and software and maintain the highest levels of cyber security.<sup>128</sup> The Commission also recommended HARPS utilize remote supervisors — much like air traffic control personnel or remote supervisors for railways — who could respond to requests from the AVs and decide on a course of action for the AV to carry out.<sup>129</sup> Additionally, the CCAV recommended reporting requirements for HARPS operators whereby they would be required to report consecutive miles driven or passengers carried without the occurrence of a negative event. In the event of an accident, HARPS operators should be required to report contextual data such as weather and road conditions, type of road, and other risk factors in order to put accident statistics into context.<sup>130</sup>

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<sup>125</sup> Law Commission & Scottish Law Commission, *Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport* (2019), <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2019/10/Automated-Vehicles-Consultation-Paper-final.pdf>.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 34.

<sup>129</sup> *Id.* at 75-78

<sup>130</sup> *Id.* at 78-79.

## V. AV POLICIES TO MEET NEW YORK'S NEEDS

### A. New York Testing Standards

Current New York AV testing standards have been described as burdensome and make New York a less attractive forum for AV deployment than states with fewer restrictions.<sup>131</sup> Chapter 55, Part FF of the Laws of 2017<sup>132</sup> which became effective on April 1, 2017, allows for the testing of AVs on public roads in New York, but only under the direct supervision of the New York State police.<sup>133</sup> As a result, few AV manufacturers have chosen New York as the state in which to test their products.<sup>134</sup> Therefore, one of New York's most pressing needs is to reduce the regulatory burdens on AV manufacturers in order to attract companies to test AV technology on New York roads.

### B. Terminology and Education

To avoid over-reliance on AV technology by consumers, campaigns should be developed to educate the public, in order to provide an accurate depiction of what AV features can and cannot do. Consideration should also be given to having mandatory training as a prerequisite to acquiring a driver's permit for highly automated vehicles.

NY State should also focus on educating the public about the potential benefits of AVs, which includes increased mobility for the disabled, the elderly, and people in rural areas. AV

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<sup>131</sup> "New York's law has been seen by some as heavy-handed with its AV legislation, which has likely limited its ability to attract AV manufacturers." Bill Covington et al., *Legislating Autonomous Vehicles in Washington: An Analysis of Current Autonomous Vehicle Law with Recommendation for Washington 33* (Univ. of Wash. School of Law Tech., Law and Public Policy Clinic 2018), <https://wstc.wa.gov/wp-content/uploads/2019/11/2018-0717-BP7-UWFullReportAVLawScan.pdf>.

<sup>132</sup> Amended by Laws 2019, Ch. 58, Part M (extending repeal date to Apr. 1, 2021).

<sup>133</sup> S. 2005C, Part FF, §1(a), Jan. 23, 2017.

<sup>134</sup> *Audi Tests Autonomous Vehicle in Albany*, Times Union, June 13, 2017, <https://www.timesunion.com/local/article/Audi-tests-autonomous-vehicle-in-Albany-11218108.php>; David Lombardo, *Self-driving Vehicles Still a Work in Progress for NY*, Times Union, July 2, 2018, <https://www.timesunion.com/news/article/Fits-and-starts-on-the-way-to-autonomous-vehicles-13043589.php>.

technology also can bolster the ability to deliver food, medicine and health care (in fact, AVs are currently being used to assist in fighting the COVID-19 epidemic in countries other than the U.S.), and job creation.

### **C. Preserve Existing Liability Frameworks**

Both New York's driver obligations and product liability rules are well understood and do not need to be reworked to specifically address automated vehicles.

Whether future changes in the law are called for will depend upon the circumstances that arise if or when automated vehicles permeate society. Suggestions such as no-fault liability placed on the ADS manufacturer, or self-insurance against harms by the users of automated vehicles, are premature and could either over or under incentivize investments in automated driving safety. For the near to mid-term, the existing liability rules that hold human drivers and autonomous car manufacturers accountable for unlawful driving or producing a defective product should provide a robust and efficient incentive for appropriate investments in safe automated driving systems.

### **D. Insurance Considerations**

As mentioned above, any suggestions for changes to the existing NY insurance laws are premature.

In a July 2019 panel discussion involving Uber, Ford, NAMIC, Liberty Mutual and others conducted by the National Council of Insurance Legislators (NCOIL), the following points were raised:

- For no-fault states (like New York), the law already provides for each owner taking care of their own injuries lest they exceed a certain threshold, thus limiting in that case the implications of AVs on third parties;

- Permissive operator regulations, and the recognition of autonomous driving systems constituting a permissive operator, would cover a significant issue concerning responsibility of the owner, to wit, the current structure of insurance and liability would appear sufficient for such purposes;
- While the technology is new, the risk is actually more traditional in nature and the current automobile insurance form issued by the Insurance Services Office (ISO) would appear sufficient to cover an event involving an AV.

In the opinion of the participants in the NCOIL panel, many insurers agree that there will be significant data privacy issues associated with autonomous vehicles, and black-box technology and the data privacy issues associated with that feature have already become commonplace in the automobile and auto insurance industries, and many issues relating thereto have already been litigated.

## APPENDIX A

### **Task Force on Autonomous Vehicles and the Law 2019-2020 Panel Presentations**

To view video recordings of these presentations, go to:  
<https://nysba.org/committees/task-force-on-autonomous-vehicles-and-the-law/>

**August 20, 2019**  
**University at Buffalo**  
**Buffalo, NY**

Presenters:

Chunming Qiao  
SUNY Distinguished Professor and Chair, Department of Computer Science and Engineering,  
University at Buffalo

Ben Husch  
Natural Resources and Infrastructure Committee Director, National Conference of State Legislatures

Peter Kurdock  
General Counsel, Advocates for Highway & Auto Safety

**September 17, 2019**  
**Greenberg Traurig LLP**  
**New York, NY**

Presenters:

Brad Stertz  
Co-Chair, Partners for Automated Vehicle Education

Carlos Cardillo, PhD  
Director, Nevada Center for Applied Research, University of Nevada

**September 18, 2019**  
**Greenberg Traurig LLP**  
**New York, NY**

Presenters:

Amitai Bin-Nun  
Vice President of Autonomous Vehicles, Securing America's Future Energy (SAFE)

Ryan Chin  
CEO and Co-founder, Optimus Ride

**October 15, 2019**  
**Greenberg Traurig LLP**  
**New York, NY**

Presenters:

Carrie Sauer  
Director, University of Pennsylvania Center for Safe Mobility

Suzanne Murtha  
National Lead for Connected and Automated Technology, AECOM

Bert Kaufman  
Head of Corporate & Regulatory Affairs, Zoox

**November 6, 2019**  
**Albany Law School**  
**Albany, NY**

Presenters:

Tom Karol  
General Counsel, Federal, National Association of Mutual Insurance Companies (NAMIC)

Brad Nail  
Partner, Head of Multistate Practice, Converge Government Affairs

Libby Snyder  
Legislative Counsel, Uniform Law Commission

**January 21, 2020**  
**Gibson Dunn & Crutcher**  
**New York, NY**

Presenters:

Jay Stanley  
Senior Policy Analyst, ACLU's Speech, Privacy and Technology Project

Ron Plesco  
Principal, KPMG's Cyber Response Services

Dorothy Glancy  
Professor of Law, Santa Clara University School of Law

Joseph DeMarco, Esq.  
Partner, DeVore & DeMarco LLP

**January 29, 2020\***  
**New York Hilton Midtown**  
**New York, NY**

Presenters:

Nicholas Papain  
Partner, Sullivan Papain Block McGrath & Cannavo P.C.

Meagan Dean  
Senior Associate, McGivney Kluger Clark & Intoccia, P.C.

**February 18, 2020**  
**Via Zoom Meeting**

Presenter:

Senator Timothy M. Kennedy  
New York State Senate

\*Video recording not available.

## APPENDIX B

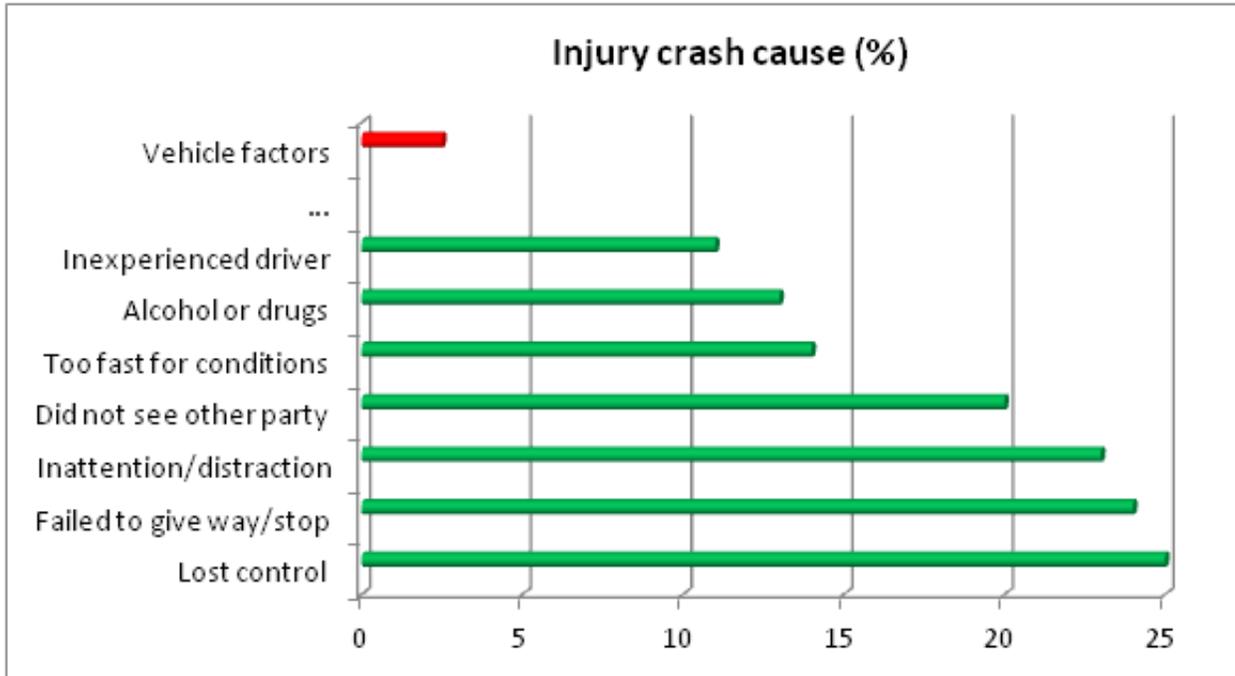


### SAE J3016™ LEVELS OF DRIVING AUTOMATION

	SAE LEVEL 0	SAE LEVEL 1	SAE LEVEL 2	SAE LEVEL 3	SAE LEVEL 4	SAE LEVEL 5
What does the human in the driver's seat have to do?	You <u>are</u> driving whenever these driver support features are engaged – even if your feet are off the pedals and you are not steering			You <u>are not</u> driving when these automated driving features are engaged – even if you are seated in “the driver’s seat”		
	You must constantly supervise these support features; you must steer, brake or accelerate as needed to maintain safety			When the feature requests, you must drive	These automated driving features will not require you to take over driving	
	These are driver support features			These are automated driving features		
What do these features do?	These features are limited to providing warnings and momentary assistance	These features provide steering <b>OR</b> brake/acceleration support to the driver	These features provide steering <b>AND</b> brake/acceleration support to the driver	These features can drive the vehicle under limited conditions and will not operate unless all required conditions are met		This feature can drive the vehicle under all conditions
Example Features	<ul style="list-style-type: none"> <li>• automatic emergency braking</li> <li>• blind spot warning</li> <li>• lane departure warning</li> </ul>	<ul style="list-style-type: none"> <li>• lane centering <b>OR</b></li> <li>• adaptive cruise control</li> </ul>	<ul style="list-style-type: none"> <li>• lane centering <b>AND</b></li> <li>• adaptive cruise control at the same time</li> </ul>	<ul style="list-style-type: none"> <li>• traffic jam chauffeur</li> </ul>	<ul style="list-style-type: none"> <li>• local driverless taxi</li> <li>• pedals/steering wheel may or may not be installed</li> </ul>	<ul style="list-style-type: none"> <li>• same as level 4, but feature can drive everywhere in all conditions</li> </ul>

## APPENDIX C

### Why Autonomous Vehicles Could Be Safer\*



\*Source: Chunming Quio (August 2019). Connected and Autonomous Vehicles (CAV): The New Frontier. Presentation, University at Buffalo School of Law.

# APPENDIX D

## Google/Waymo Accidents

7/15, CA: one of many accidents during tests



05/18 CHANDLER, AZ



02/16, CA: the first accident caused by AV: merging back into traffic, and struck the side of the bus while doing so

06/18, MESA, AZ



TESLA 05/16 FLORIDA



TESLA 03/18 CA



UBER 03/18 AZ



TESLA 01/16 HEBEI



TESLA 09/17 CA



TESLA 01/17 AUS



TESLA 05/18 CA

Source: Chunming Quio (August 2019). Connected and Autonomous Vehicles (CAV): The New Frontier. Presentation, University at Buffalo School of Law.

## APPENDIX E

[add PDF of SB 6014]



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #10

**REQUESTED ACTION:** Approval of the report and recommendations of the Task Force on Free Expression in the Digital Age.

The Task Force on Free Expression in the Digital Age was appointed in 2019 to examine the crisis in local journalism caused by the rise in digital media as a source for both information and advertising. Places that lack independent news organizations to cover local government and politics are increasing, and the Task Force report discusses ways to strengthen news organizations.

The Task Force report addresses the following topics:

Libel reform. News organizations facing financial difficulties may forego coverage of certain issues if litigation is threatened. While the Task Force finds that New York libel law is protective of press freedom, the anti-SLAPP protections should be strengthened.

FOIL reform. The Task Force calls for building into the statute enforceable deadlines and strengthening the fee-shifting provision so that news organizations with meritorious cases can challenge improper withholding without facing prohibitive financial costs. The Task Force also calls for the elimination of Civil Rights Law section 50-a.

Transparency. The Task Force recommends that the Legislature enact laws to require local governments to make certain basic information readily available on governmental websites, that the open meetings law be amended to require the provision of key documents in advance of board or council meetings and that the agencies overseeing pro-active disclosures at the state level work with journalists and public interest groups to foster “smart disclosure.”

Encouragement of nonprofits. The Task Force recommends that the bar look deeper at the issue of government funding mechanisms that do not involve government content control.

Expanded legal services. The Task Force recommends that the bar association create a legal referral network devoted to journalism clients and encourage practitioners to provide pro bono or discounted services to clients such as startup news organizations and traditional news organizations facing financial difficulties.

This report was published in the Reports Community in March 2020. No comments have been received.

The report will be presented at the April 4 meeting by Task Force co-chairs Cynthia A. Arato and David E. McCraw.



NEW YORK STATE  
BAR ASSOCIATION



# Report of the New York State Bar Association **Task Force on Free Expression in the Digital Age: The Crisis in Local Journalism**

April 2020

The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.



**REPORT &  
RECOMMENDATIONS  
OF THE TASK FORCE ON  
FREE EXPRESSION IN  
THE DIGITAL AGE**

**The Crisis in Local Journalism**

**APRIL 2020**

**The views expressed in this report are solely those of the Task Force and do not represent those of the New York State Bar Association unless and until adopted by the House of Delegates.**



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\* Hon. Rolando T. Acosta and Hon. Susan Phillips Read abstained from voting on Section IV of the Report; Hon. Barbara Jaffe abstained from voting on Sections III, IV, and VI of the Report.

^ Mr. Mark H. Alcott dissents from portions of Section III and has submitted a statement attached as Appendix B.

## ACKNOWLEDGEMENTS

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## Introduction

In 2019, the Bar Association launched a new Task Force initiative to look at “Freedom of Expression in the Digital Age.” As its initial project, the Task Force took a deep look at the crisis in local journalism. Local journalism has been in a steady financial decline for at least the past decade, resulting in a dearth of journalists and publications to cover important issues impacting our daily lives and a growing number of “news deserts” (locales that are no longer served by a local newspaper). Much of the decline is attributable to the rise of digital platforms and their profound transformation of both America’s information ecology and its advertising markets. That technological revolution has come at a price for local news sources and the citizens who have historically depended on them.

The crisis is rarely viewed as a legal issue. Its roots are in the changing nature of advertising and in the revolutionizing aspects of digital media. The advertising market is now dominated by national and international digital platforms that allow advertisers to reach consumers without going through the local newspaper or broadcaster. Digital media also can target readers and viewers with few of the costs shouldered by traditional media.

Nonetheless, the Task Force recognized that the law and the organized bar have a role to play in alleviating the crisis. Local journalism remains the heartbeat of civic engagement in New York’s towns and cities. Local news organizations not only inform communities on the issues and events that have the most immediate impact on citizens’ lives, but they also play a vital role in holding governments accountable. In examining the current state of local journalism in New York, the Task Force recognized that financially weakened news organizations are susceptible to threats of libel suits and other claims that often silence important reporting. News organizations also encounter roadblocks and frustrations in trying to get at government information, obstacles that seem baked into the Freedom of Information Law (“FOIL”) and the FOIL request system, or arise from the law’s implementation by agencies, its interpretation by the courts, or a lack of resources for the government’s FOIL officers. Few struggling organizations have the resources to challenge in court improper denials of access or delays. Important as well is the body of law that dictates, independent of FOIL, what information should be available proactively to journalists and citizens. Technology empowers easy access to governmental data, but there needs to be a legal framework in place to ensure that information is available, up to date, and distributed as widely as possible. Increasingly, nonprofit news organizations are being formed to fill the gap left by the decline of traditional media, and their development should be encouraged as a public good. In addition, these nonprofits, along with for-profit local news entities, would benefit from legal assistance to facilitate their formation and continued operation.

Over the course of its work, the Task Force convened forums and meetings on the reform of New York’s libel laws; the reform of FOIL and access to court records and proceedings; the status of government transparency outside of FOIL and ways to encourage and increase the release of government records and data to the public; the rise of nonprofit news organizations; and

initiatives designed to bring pro bono and low-cost legal services to news organizations. The Task Force met with Professor Penelope Abernathy of the University of North Carolina, a leading scholar in the field, to learn directly about her research on the decline of local journalism. The Task Force also heard from a range of journalists, media lawyers, nonprofit publishers, and public interest groups.

The focus of the Task Force’s report is on legal reform in libel; amendment of FOIL; the advancement of government transparency outside of FOIL; support of nonprofit journalism; and the expansion of legal services for news organizations. One overarching topic is not addressed here, but was repeatedly referenced in our discussions: the role of the digital platforms in destabilizing traditional news organizations, in both urban centers and smaller cities, by their dominance of the advertising market and their ability to “free-ride” on content developed by news organizations through links and aggregation, and whether that dominance could and should be addressed through legislation or antitrust enforcement. Necessarily, those concerns invoked a further discussion of what the platforms could do to support local journalism and provide local communities with the information necessary for self-governance. Because of time constraints, this report does not address either those concerns or those possible solutions, but they warrant the close attention of the bar association and all New Yorkers concerned about sustaining civic engagement and government accountability.

## I. Executive Summary

Local journalism has been deeply harmed by an industry-wide financial crisis set in motion by the rise of digital media as a source of information and entertainment and as a vehicle for advertising. Vibrant local journalism, which has traditionally played a powerful role in government oversight and civic engagement, has grown increasingly rare throughout New York, in both rural and urban areas. “News deserts,” places that lack independent news organizations to cover local government and politics, are on the rise. The law and the legal profession do not have the ability to alter the financial and technological forces reshaping American journalism, but the law and the legal profession do have a role to play in making certain that vital journalism remains vital and published in New York despite the disruptions in the industry.

The Task Force report focuses on five principal topics: (a) legal reform in libel, (b) amendment of FOIL, (c) the advancement of government transparency outside of FOIL, (d) the growth of nonprofit journalism, and (e) the expansion of legal services for news organizations.

**Libel reform:** As news organizations face financial difficulties, they may become more prone to avoid difficult but necessary stories in the face of threatened or actual litigation. The “chilling effect,” which has long been a driving force in libel reform, is exacerbated by the declining resources of news organizations, who cannot devote resources to outsized or even routine legal expenses. The Task Force found that New York libel law has been appropriately protective of press freedom with one exception. The state’s anti-SLAPP law is decidedly weaker than that

found in many other states. SLAPP refers to strategic lawsuits against public participation. Anti-SLAPP statutes provide for early dismissal of such lawsuits when they lack legal merit and are designed primarily to silence critical comment. The statutes typically provide for mandatory fee shifting if a defendant prevails on the motion. New York's statute, however, is narrowly limited to communication about governmental permitting, such as a zoning change, and provides only for discretionary fee-shifting. The Task Force recommends that the statute be amended so that its provisions encompass news reporting and commentary about public matters more broadly and provide for a mandatory fee award to a prevailing defendant.

**FOIL reform:** New York's Freedom of Information Law, enacted in 1974, has long been a valuable tool for journalists to use in their coverage of local and state governments. It was written with a presumption that governmental records should be public unless one of the statute's enumerated exceptions applies, and that citizens would enjoy the benefits of a widely open government. The reality has become much different. The Task Force repeatedly heard from journalists and others about the flaws and failures of FOIL. Among the key problems: extended delays in getting agency responses, a lack of resources in both staffing and technology for FOIL units in their respective agencies, aggressive deployment of the exemptions to deny access at many agencies or local governmental bodies, and a weak statutory provision for shifting legal fees from the requester to the agency when the requester is forced to go to court to get documents. Because of the financial restraints most news organizations now work under, challenging FOIL denials through an Article 78 proceeding is increasingly rare. The Task Force recommends that FOIL be amended in several ways. Most significantly, FOIL should build into the statute enforceable deadlines and strengthening the fee-shifting provision so that news organizations with meritorious cases can challenge improper withholding without facing prohibitive financial costs. The Task Force also calls for reform of Section 50-a of the Civil Rights Law, which exempts from FOIL and cloaks in secrecy much police misconduct and police disciplinary processes. The law has become a major obstacle for news organizations providing oversight to the activities of local police agencies. The Task Force calls for its elimination and believes the release of the personnel records of the police should be governed by the statutory scheme set forth in FOIL, which governs all other personnel records. To the extent that there is truly sensitive information involving police misconduct or discipline, FOIL's current exemptions for personal privacy and certain law enforcement information protect those interests.

**Pro-active transparency:** New York has shown a commitment to make governmental data more readily available online. That is an important development for news organizations with limited resources and for citizens, because it frees journalists and citizens from the regimen of FOIL requests or visiting government offices to get information. The Task Force believes those efforts at pro-active transparency can be enhanced. Journalists and public interest groups expressed concerns that truly valuable information was not being included in the data portals and that many local governments were notoriously slow to adopt transparency initiatives or lack the technology to facilitate access to information. The Task Force recommends that the Legislature enact laws to

require local governments to make certain basic information readily available on governmental websites, that the open meetings law be amended to require the provision of key documents in advance of board or council meetings and that the agencies overseeing pro-active disclosures at the state level work with journalists and public interest groups to foster “smart disclosure.” Disclosure initiatives should not be judged simply by the volume of data made public but by the value of the information being made available.

**Encouragement of nonprofits:** One of the most exciting and interesting developments the Task Force explored is the rise of nonprofit journalism organizations. Some nonprofits are issue-focused and cover topics like criminal justice or climate change; others are devoted to community journalism in the same way as their traditional print counterparts. Much of what the Task Force says in its report about libel, FOIL, pro bono services, insurance, and other initiatives applies with equal or greater force to nonprofits. But the Task Force recommends that the bar look deeper at the complex issue of government funding mechanisms that do not involve government content control (for instance, the model of the BBC).

**Expansion of legal services:** Outside of the national press, the journalism industry is marked today with startup news entities and traditional news outlets that have experienced significant financial troubles over the past decade. Both of those groups play a vital role in local democracy and the ability of citizens to have access to independent and comprehensive coverage of local government and politics. While journalism does not fall in any traditional category of need for the provision of legal services, the Task Force believes that providing legal assistance to news organization contributes to the public good. The Task Force recommends that the bar association create a legal referral network devoted to journalism clients and encourage practitioners to provide pro bono or discounted services to such clients. The needs of news organizations, especially nonprofit startups, extend beyond the usual areas of media law like libel and FOIA and encompass areas like employment, incorporation, and taxes. A NYSBA-sponsored referral service would not only assist in getting needed legal services to journalists and news organizations but stand as a distinguishing symbol of the bar association’s commitment to a free press.

## **II. Background on Trends in Local Journalism**

Local journalism has been in a state of crisis for the past 15 years, fueled by intense disruption and financial distress caused by the ascendancy of search engines and digital platforms that deliver news and entertainment in various forms. During this time, local news outlets have faced crushing competition from these platforms for both readers’ attention and advertising revenue. While New York’s local newspapers remain an important vehicle for advertising and publication of legal notices, the financial strain has caused local news organizations to shut their doors at

alarming rates, leaving many U.S. communities without a daily news outlet and creating so-called “news deserts.”<sup>1</sup>

This trend has consequences for our nation, since local journalists are at the frontline of communities, investigating and delivering the news that matters most to residents, and which leads to greater civic engagement and community bonds.<sup>2</sup>

#### A. Data on the Decline

Professor Abernathy’s landmark study published by the Center for Innovation and Sustainability in Local Media at the University of North Carolina’s School of Media and Journalism, documents that:

- The nation has lost 2,300 newspapers since 2008, leaving only 1,700 dailies and 5,000 weeklies in existence.
- More than one in five newspapers has closed over the past 15 years. That has left half of the 3,143 counties in the country with only one newspaper.<sup>3</sup>
- Almost 200 of the 3,143 counties in the country have no newspaper at all, affecting 3.2 million people.<sup>4</sup>
- Many of the surviving newspapers are ghosts of their former selves with staffs so “dramatically pared back that the remaining journalists can’t adequately cover their communities.”<sup>5</sup> It is estimated that staff has been cut in half at as many as 1,500 of the newspapers.<sup>6</sup>
- During a tumultuous decade and a half that saw a precipitous drop in print advertising, the largest 25 companies took control of newspapers at an astonishing pace. By 2018, these companies owned nearly one-third of all papers, up from 20 percent in 2004. When it comes to dailies, the numbers are even more striking—two out of three of all the daily newspapers, accounting for 812 publications, are owned by the top 25 firms.<sup>7</sup>
- Chain ownership has led to publications managed by out-of-town editors with less knowledge of local issues or connection to residents’ concerns.
- Newspapers have retreated from outlying circulation areas that are less desirable to advertisers, helping expand news deserts across wide swaths of the nation.

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<sup>1</sup> Penny Muse Abernathy, “The Expanding News Desert,” School of Media and Journalism, Center for Innovations and Sustainability in Local Media, UNC, 2018 at 16.

<sup>2</sup> “Putting a Price Tag on Local News,” <https://knightfoundation.org/wp-content/uploads/2019/11/Putting-a-Price-Tag-on-Local-News-final-updated.pdf>, at p.1, n. 6.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> Abernathy, *supra* n. 2, at 24.

<sup>5</sup> *Id.* (the analysis focuses on local newspapers and does not include The New York Times, Wall Street Journal, and USA Today or shopping circulars, magazines, or specialty publications.)

<sup>6</sup> *Id.* at 14.

<sup>7</sup> *Id.* at 31

- Cities with rival newspapers were once the norm, but now there are fewer than a dozen cities with competing publications.
- The nation has lost more newspaper jobs than coal-mining jobs.<sup>8</sup>

Here’s how the economic collapse of newspapers played out in New York:

- There were only 303 newspapers (54 dailies and 249 weeklies) still publishing in the state in 2019 compared to 501 (62 dailies and 439 weeklies) in 2004, a 40 percent decrease.<sup>9</sup>
- New York has one county without a newspaper and 13 with just one newspaper, and most of those 13 are weeklies that don’t cover all of the applicable counties.<sup>10</sup>
- As of 2018, the top 25 newspaper chains owned 61 of New York’s newspapers, which amounts to 1 in 5.<sup>11</sup>
- In 2004, New York newspaper publishers distributed 9.3 million copies. By 2019, that was slashed to 3.4 million, a decrease of 63%.<sup>12</sup>
- New York lost 190 weekly newspapers between 2004 and 2019.<sup>13</sup> Thus, one of the most populous states (with 20 million residents) was also one of the states that saw the most weeklies go out of business.

## B. Why Newspapers Matter

Research dating back to the 1970s shows that strong newspapers foster a sense of geographic identity and nurture social cohesion and grassroots political activism.<sup>14</sup> They do this by covering local developments over which communities can bond; informing citizens;<sup>15</sup> demanding accountability from local leaders;<sup>16</sup> and promoting fiscal responsibility and governmental efficiency.<sup>17</sup> When local newspapers shrink, fewer candidates run for local office and voter

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<sup>8</sup> *Id.* at 27; *see also* American Society of News Editors, 2008 and 2015 Newsroom Diversity Survey Census, 2008, 2015, <https://www.asne.org/diversity-survey-2008>, <https://www.asne.org/diversity-survey-2015>; Bob Papper, “TV New Employment Surpasses Newspapers,” Radio Television Digital News Association/Hofstra University Newsroom Survey, April 16, 2018; Bureau of Labor Statistics, Employment Statistics Survey, 2018

<sup>9</sup> Abernathy, *supra* n. 2, at <https://www.usnewsdeserts.com/states/new-york/#1536357227283-a4a9d6e4-ccf9>

<sup>10</sup> *Id.* at <https://www.usnewsdeserts.com/states/new-york/#1536357227273-1fcd2118-6dc6>

<sup>11</sup> *Id.* at <https://www.usnewsdeserts.com/states/new-york/#1536357227283-a4a9d6e4-ccf9>

<sup>12</sup> *Id.* at <https://www.usnewsdeserts.com/states/new-york/#1536357227283-a4a9d6e4-ccf9>

<sup>13</sup> *Id.* at <https://www.usnewsdeserts.com/states/new-york/#1536357280470-403f9cb7-ca48> (these statistics do not include *The New York Times*, *Wall Street Journal* or *USA Today*.)

<sup>14</sup> *Id.* at 5.

<sup>15</sup> Putting a Price Tag on Local News, <https://knightfoundation.org/wp-content/uploads/2019/11/Putting-a-Price-Tag-on-Local-News-final-updated.pdf>, at p.1, n. 6.

<sup>16</sup> Why Local News Matters, and What We Can Do to Save It, [https://www.nysba.org/Journal/2019/Dec/Why\\_Local\\_News\\_Matters\\_and\\_What\\_We\\_Can\\_Do\\_to\\_Save\\_It/](https://www.nysba.org/Journal/2019/Dec/Why_Local_News_Matters_and_What_We_Can_Do_to_Save_It/), at 9.

<sup>17</sup> *Id.* at 11.

turnout suffers.<sup>18</sup> Even newspaper advertising performs an essential function: it helps a community's economy to grow by connecting businesses with consumers.<sup>19</sup>

A 2011 report by the Federal Communications Commission found that local newspapers are the best medium to provide the public service journalism that (1) shines a light on the major issues confronting communities and (2) gives residents the information they need to solve their problems.<sup>20</sup> These impacts disproportionately affect our nation's most vulnerable citizens, as studies have shown that residents of news deserts are poorer, older and less educated than the average American citizen,<sup>21</sup> and that residents of low-income areas have less access to traditional publications or digital start-ups.<sup>22</sup>

The loss of newspapers in one state can affect residents in neighboring states. Officials at the Centers for Disease Control and Prevention, for instance, say that it's harder to track the spread of disease without thriving newspapers. That's because news stories traditionally served as an early warning system for the agency, and social media has not done as well in providing that service. Without help from newspapers in identifying and publicizing public health risks, there could be more outbreaks and epidemics.<sup>23</sup> One Stanford University economist recently documented how investigative journalism saved lives and averted environmental disasters.<sup>24</sup>

The decline in local news is accompanied by a decline in readership, and print readers are disappearing at an even faster rate than print newspapers. Over the past 15 years, weekday circulation of dailies and weeklies declined from 122 million to 73 million, or 40%,<sup>25</sup> and the pace of the decline is accelerating.<sup>26</sup> If circulation continues to drop at the same rate, one-half of

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<sup>18</sup> Putting a Price Tag on Local News, *supra* n. 16 at 1, n. 6; *see also* Sarah Cavanagh, "Measuring Metropolitan Newspaper Pullback and Its Effects on Political Participation," Retrieved from the University of Minnesota Digital Conservancy, 2016, <http://hdl.handle.net/11299/182213>; Lee Shaker, "Dead Newspapers and Citizen's Civic Engagement, Communication Faculty Publications and Presentations, 2014, [https://pdxscholar.library.pdx.edu/comm\\_fac/17](https://pdxscholar.library.pdx.edu/comm_fac/17)

<sup>19</sup> Abernathy, *supra* n. 2, at 5.

<sup>20</sup> *Id.* at 8; *see also* Steven Waldman, "The Information Needs of Communities: The changing media landscape in a broadband age," Federal Communications Commission, July 2011, [https://transition.fcc.gov/osp/inc-report/The\\_Information\\_Needs\\_of\\_Communities.pdf](https://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf)

<sup>21</sup> Waldman, *supra* n. 21, at 16.

<sup>22</sup> Waldman, *supra* n. 21, at 17.

<sup>23</sup> Abernathy, *supra* n. 2, at 15; *see also* Helen Branswell, "As towns lose their newspapers, disease detectives are left to fly blind," STAT, March 20, 2018, <https://www.statnews.com/2018/03/20/news-deserts-infectious-disease/>

<sup>24</sup> James T. Hamilton, *Democracy's Detectives, The Economics of Investigative Journalism* (2016).

<sup>25</sup> Abernathy, *supra* n. 2, at 10.

<sup>26</sup> *Id.* at 14.

the surviving newspapers will fold by 2021, according to Nicco Mele, director of the Shorenstein Center for Media, Politics and Public Policy at Harvard University.<sup>27</sup>

### C. Is There a Local News Crisis in the Media Capital of the World?

New York City is the media capital of the world, yet even in this city many communities lack sufficient local news coverage.<sup>28</sup> Here's why:

- The *New York Daily News* (winner of 15 Pulitzer Prizes) was sold in 2017 to the news conglomerate Tribune Publishing (then named “Tronc”), the country’s fourth-largest newspaper chain. Tronc paid \$1 and assumed the newspaper’s liabilities. It cut the newsroom staff, which had already gone through many rounds of layoffs, leaving 50 journalists to cover the five boroughs.<sup>29</sup> By the time of its purchase, the publication’s circulation already had declined to 200,000 from a high of two million in the mid-twentieth century.<sup>30</sup>
- The *Wall Street Journal* eliminated its “Greater New York” section and the reporters who worked for the section were reassigned or laid off.
- *The New York Times* stopped publishing its standalone Metro Section in 2008 and cut the scope of its metro coverage substantially since then. The *Daily Beast* quantified what that meant: *The Times* published 153 metro stories in the last week of January in 2001; 102 in 2009; and just 48 in 2017.<sup>31</sup>
- More than half of the staff at *AM New York* was laid off in October of 2019 after the newspaper was purchased by Schneps Media.<sup>32</sup> In December of 2019, Schneps also bought New York City’s other free daily, *Metro NY*.
- The Tow study, *Media Mecca or News Desert? Covering Local News in New York City*, found that criminal justice, civil courts, and healthcare were going unreported. Several news outlets said environmental and climate change coverage was also lacking. There is

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<sup>27</sup> *Id.* at 14; see also Judith Miller, “News Deserts: No News Is Bad News,” Urban Policy, 2018, Manhattan Institute, October 2, 2018, <https://www.manhattaninstitute.org/html/urban-policy-2018-news-deserts-no-news-bad-news-1150.html>.

<sup>28</sup> Sara Rafsky, *Media Mecca or News Desert? Covering Local News in New York City*, *CJR*, Jan. 21, 2020, at 1, [https://www.cjr.org/tow\\_center\\_reports/local-news-deserts.php](https://www.cjr.org/tow_center_reports/local-news-deserts.php).

<sup>29</sup> Abernathy, *supra* n. 2, at 27.

<sup>30</sup> Jaclyn Peiser, “Daily News Newsroom Cut in Half by Tronc as Top Editor Is Ousted,” *The New York Times*, July 23, 2018, <https://www.nytimes.com/2018/07/23/business/media/tronc-daily-news-layoffs.html>

<sup>31</sup> Paul Moses, *The Daily Beast*, Jan. 21, 2020, <https://www.thedailybeast.com/the-new-york-times-turns-its-sights-away-from-new-york-city>.

<sup>32</sup> Marc Tracy, “A New Owner, and Layoffs, for amNewYork,” *The New York Times*, Oct. 11, 2019.

comparatively less coverage of Staten Island than the other boroughs. Government meetings go largely unreported.<sup>33</sup>

- Hardly any of the news outlets in the Tow study said they had much time for investigative stories.<sup>34</sup>

#### D. What's the Bottom Line?

The nation's largest newspaper organizations are ill-equipped to devote time and resources to coverage of local government meetings, investigative stories, and public service journalism. That means that the type of journalism that research shows is most crucial to our democracy is almost non-existent. And that's as true in affluent parts of New York City as it is in rural upstate areas of New York State. Taken to its most extreme, the collapse of the news ecosystem leaves some residents without any source of credible news. And the crisis is only deepening.

### III. Libel

#### A. Overview

The Task Force paid special attention to libel law in considering the impact of law on local journalism. Since the nation's founding, the law of libel has been the province of state law, both as a matter of statute and common law. And as local news organizations faced new and daunting economic challenges, the threat or reality of libel suits took on new significance. In simplest terms, a fear of legal liability can lead publishers to avoid controversial topics or decline to investigate issues that may offend powerful interests in the community.

That concern is not new. In 1964, the U.S. Supreme Court, in its groundbreaking decision in *New York Times v. Sullivan*, recognized that libel laws, intended to vindicate individual reputation, were often misused for another purpose: to silence critics and squelch reporting on subjects that threatened powerful interests. *Sullivan* itself was a case in point. L.B. Sullivan, a police commissioner in Montgomery, Alabama, sued *The New York Times* over an ad placed by supporters of Martin Luther King, Jr. Although the plaintiff was not referenced in the ad, the Alabama courts found that he was defamed by statements in the ad, some of which were slightly inaccurate, about the misconduct of the Montgomery police. In *Sullivan*, the Supreme Court held for the first time that the First Amendment imposed limits on state libel laws. Most significantly, the court held that a public official had to show not only that the story was factually inaccurate and harmed the plaintiff's reputation, but also that the news organization had acted with reckless disregard of the truth—actual malice—in publishing the false statements. At the heart of the Court's ruling was the belief that journalists would engage in self-censorship if the rules of liability were too restrictive and that such a chilling effect would mean that truthful information,

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

not just falsehoods, would not reach the public. The *Sullivan* rule was subsequently expanded to public figures, and the *Sullivan* decision ushered in a series of decisions interposing the First Amendment as a limit on state-law claims that were likely to chill press freedom.

*Sullivan* and its progeny have undoubtedly reduced the number of successful libel suits brought by public figures and officials. Press defendants also have benefited over the past 50 years from the courts' broad interpretation of what constitutes an opinion (which cannot support a libel claim) and the scope of the fair report privilege (which permits vigorous coverage of a range of government documents and proceedings). Still, news organizations, especially small ones, may be deterred from reporting controversial or investigative stories by the mere threat of litigation. As protective as *Sullivan* is, actual malice is rarely decided on a preliminary motion. It has historically been dealt with as a factual question requiring proof of the publisher's state of mind, often discerned from an exploration of the facts surrounding the reporting, writing, and editing of the story at issue. That means that time-consuming and expensive discovery is often required to establish the defense. In essence, the chilling effect that worried the *Sullivan* court is often not obviated by the *Sullivan* rule because litigation risk alone can deter reporting. When the website Gawker was forced into bankruptcy by a privacy suit won by the wrestler Hulk Hogan (funded, at least initially in secret, by a Silicon Valley billionaire), news organizations were put on notice that in extreme circumstances litigation can threaten the survival of news organizations.

With libel law, the challenge for lawmakers in New York and elsewhere is to calibrate the law so that it gives appropriate protection to individuals' reputational interests while freeing news organizations from unwarranted litigation threats, and their attendant costs, intended to silence reporting and commentary needed by citizens.

#### B. Areas of Concern with New York Law

The Task Force found that New York's libel law was largely sound—with one notable exception. New York lags the nation in protecting news organizations, journalists, and concerned citizens from vindictive lawsuits brought to stifle a speaker's commentary, criticism, or dissent. These lawsuits—known as Strategic Lawsuits Against Public Participation or SLAPP suits—typically involve moneyed interests filing legal claims for libel, slander, or other professed torts against individuals or entities who have exercised their First Amendment rights to speak out on a topic. Although SLAPP plaintiffs profess to seek redress through the court system, SLAPP plaintiffs typically file legally flawed claims that cannot survive real judicial scrutiny and thus do not file their claims to obtain a legal victory. Rather, SLAPP plaintiffs bring their claims to burden their targets with expensive and time-consuming litigation and to weaken or silence the speakers.

## 1. Overview of SLAPP Suits

SLAPP lawsuits can target an array of activity protected by the First Amendment, including the right to petition the government for redress of grievances, the right of free speech, and the right of a free press. With respect to petitioning, a SLAPP suit can be brought by a real estate developer who sues those opposing the developer's request for a zoning variance; by a restaurant chain suing those opposing the restaurant's request for a liquor license; or by either against news organizations or journalists reporting on such opposition. SLAPP suits also are brought to silence speech over the many matters of public concern that fall outside petitioning activities, such as when a company sues activists who have opposed the company's labor practices or a news organization that publishes an investigative news piece about the company. Even if SLAPP suits filed against news organizations or journalists lack legal merit and are eventually dismissed, the lawsuits still damage their targets. Even a meritless lawsuit can drag on for years, draining a defendant's resources through costly and time-consuming litigation and discovery, making it more difficult and expensive for the defendant to continue its news reporting operation. Such a lawsuit can also harm the defendant's reputation and morale, regardless of its outcome. Small news organizations and individuals are the most vulnerable to these tactics, given their typically limited resources, and it can be difficult for them to withstand the pressure to settle these suits in exchange for their silence. SLAPP suits can inflict serious harm even before they are filed, since the mere threat of such a lawsuit (with its attendant high costs and delays) can act to chill criticism and debate and the exercise of First Amendment rights that are critical to a robust free press.

Many states across the nation have enacted so-called anti-SLAPP laws to deter people from using courts, and potential threats of litigation, to silence speech. These laws typically provide SLAPP defendants with special procedures to obtain prompt dismissals of meritless SLAPP suits and impose penalties on plaintiffs who file these suits, including payment of a defendant's legal fees.

## 2. New York's anti-SLAPP Laws and Recommendations for Reform

New York's current anti-SLAPP laws are some of the narrowest in the country and their protections should be broadened so that they can meaningfully quell the filing of vexatious SLAPP suits and prevent SLAPP plaintiffs from abusing the court system to silence criticism of matters of public concern.

New York's anti-SLAPP laws (N.Y. Civ. Rights Law §§ 70-a, 76-a and N.Y. C.P.L.R. §§ 3211[g], 3212[h]) currently cover vindictive lawsuits seeking to stifle speech related to a single very narrow area: government petitioning activities. The laws do not cover lawsuits seeking to stifle speech on other matters of general public importance. New York's current anti-SLAPP laws also do not provide clear timetables for early resolution of SLAPP suits or for mandatory

attorneys' fees (or any other mandatory compensatory award) to a defendant that wins dismissal of the SLAPP suit.

Legislators have for years considered amending New York's anti-SLAPP laws to expand their protections and to bring New York in line with the majority of states in this nation that provide broad rights and protections to the targets of SLAPP suits.<sup>35</sup> There has been renewed interest in the Legislature this spring in considering an anti-SLAPP bill.

The Task Force recommends that New York amend the anti-SLAPP laws to accomplish these goals:

- The anti-SLAPP laws should be broadened to protect against vindictive lawsuits seeking to chill speech on any matter of public concern and not just government petitioning activities.
- The anti-SLAPP laws should exempt from their reach legitimate legal advocacy that does not implicate First Amendment concerns—for instance, those related to commercial speech and public interest litigation. A commercial speech exemption would prevent corporate defendants from using anti-SLAPP protections in consumer litigation regarding alleged false advertising or deceptive or fraudulent business practices. A public interest exemption would prevent the use of anti-SLAPP laws in so-called impact litigation that a nonprofit would typically file to obtain equitable relief to advance a moral goal.<sup>36</sup>
- The anti-SLAPP laws should provide a mandatory attorneys' fee award to a defendant who obtains dismissal of the suit.
- The anti-SLAPP laws should make the stay of discovery contained in CPLR 3214 mandatory while a motion to dismiss the suit is pending.
- The anti-SLAPP laws currently provide that the court shall grant preference in the hearing of an anti-SLAPP motion. To provide certainty regarding speedy resolutions of anti-SLAPP motions, the statute should provide for set time limits by which a court will hear and resolve the motion.
- The anti-SLAPP laws should provide a defendant with an immediate interlocutory appeal should the defendant's motion to dismiss the case be denied.<sup>37</sup>

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<sup>35</sup> Most recently, Senate Bill S52 and Assembly Bill A5991 were introduced in early 2019, seeking to amend New York's anti-SLAPP laws. The Assembly bill passed the Judiciary, Codes, and Rules committees and made it to the floor calendar. The Senate bill was introduced and remained in the Code committee.

<sup>36</sup> In 2003, California enacted such exemptions to its anti-SLAPP laws, and they are codified at Cal. Civ. Proc. Code § 425.17(b) and (c).

<sup>37</sup> The Task Force was not unanimous in all of these recommendations. One Task Force member dissents from the recommendations regarding mandatory attorneys' fees, the discovery stay, and the right to an interlocutory appeal, for the reasons he explains in his dissent attached here at

### C. Insurance

The ability of news organizations to withstand unwarranted litigation often depends on the adequacy of insurance coverage. For smaller news organizations facing difficult economic times, the price of policies needed to address the full scope of risk can itself be prohibitive. Lawyers who regularly represent news organizations repeatedly raised this concern to the Task Force. Many general liability policies exclude coverage for media liability. Specific media liability policies are typically expensive. Even when such coverage exists, coverage disputes can limit or eviscerate the value of such coverage.

A full investigation of the problem was beyond the Task Force's mandate and capacity, but we believe the issue deserves serious consideration as a legal issue. Accordingly, the Task Force recommends that NYSBA Insurance Law Committee examine potential legal and commercial solutions to help local news organizations obtain affordable media liability coverage.

## IV. Freedom of Information Law

### A. FOIL's Purposes and Operation

The purpose of FOIL is to promote the public's right to be informed about the processes of executive branch decision-making by affording access to government records. *Capital Newspapers, Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 565 (1986); *Town of Waterford v. N.Y.S. Dep't of Env'tl Conserv.*, 18 N.Y.3d 652, 656-67 (2012) (FOIL is premised "on the overriding policy consideration that the public is vested with an inherent right to know" government operations). The statute was enacted by the Legislature because access to governmental information "should not be thwarted by shrouding it with the cloak of secrecy or confidentiality." Legislative Declaration, *Public Officers Law* § 84. In signing FOIL into law in 1974, then Governor Wilson stressed the importance of open government to a free society and the need for FOIL to engender public understanding and participation. Governor's Memorandum L. 1974, Chs. 578, 579, 580, 1974 Legis. Ann., at 392, cited in *Russo v. Nassau Community College*, 81 N.Y.2d 690, 697 (1993); see also *Capital Newspapers*, 67 N.Y.2d at 565-66 (FOIL ensures public oversight of the "day-to-day functioning of state and local government[,] thus providing the electorate with sufficient information to make intelligent, informed choices with respect to both the direction and scope of governmental activities"). Accordingly, the Court of Appeals has consistently held "that FOIL is to be liberally construed and its exemptions narrowly interpreted so that the public is granted maximum access to the records of government." *Newsday, Inc. v. Sise*, 71 N.Y.2d 156, 150 (1987), cert. denied, 486

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Appendix B. The Task Force respects this member's genuinely held views and thanks him for sharing them as part of this report.

U.S. 1056 (1988). The burden of proof rests upon the government agency claiming the exemption to establish that the requested material is exempt from disclosure. *Pub. Off. Law* § 89(4)(b); *Russo v. Nassau Community College*, 81 N.Y.2d 690, 697-98 (1993).

The press—including community newspapers—has routinely relied on FOIL as a means of obtaining information from and reporting on the activities of a wide array of executive agencies at the State, county, and municipal levels of government. For example, FOIL requests have resulted in public access to booking logs and arrest reports from local police departments and the New York State Police; criminal prosecution records from County District Attorneys’ offices; public school board planning and personnel decisions; the dispensation of State tax benefits in connection with economic zone revitalization initiatives; Health Department investigation and oversight records, including restaurant inspection violation reports; real estate development applications and zoning approvals; and license and permit applications and permissions, for example.<sup>38</sup>

## B. Overview of FOIL’s Deficiencies

New York State’s community newspapers and the public they serve have a direct and vital interest in an effective and reliable Freedom of Information Law. In the course of the Task Force’s public hearings, however, journalists and press lawyers complained about the ineffectiveness of FOIL. They pointed to undue delay and the aggressive use of exemptions by many agencies.<sup>39</sup> At the same time, a lack of resources devoted by governmental bodies to FOIL

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<sup>38</sup> See, e.g., *N.Y. Civ. Lib. Union v. City of Schenectady*, 2 N.Y.3d 657 (2004) (incident reports prepared by city police officers pertaining to use of force); *Moore v. Santucci*, 151 A.D.2d 677, 677 (2d Dep’t 1989); *Scarola v. Morgenthau*, 246 A.D.2d 417 (1st Dep’t 1998) (documents used by District Attorney in prior criminal prosecution were subject to FOIL); *LaRocca v. Board of Education*, 220 A.D.2d 424 (2d Dep’t 1995) (holding settlement agreement among school board and former principal); *Miracle Mile Associates v. Yudelson*, 68 A.D.2d 176 (4th Dep’t 1979) (records relating to development of a shopping center); *Matter of West Harlem Bus. Group v. Empire State Dev. Corp.*, 13 N.Y.3d 882, 886 (2009) (documents related to Columbia University’s construction of new 17-acre campus in West Harlem); *Kwitny v. McGuire*, 53 N.Y.2d 968, 969 (1981) (approved pistol permit license applications on file with the New York City Police Department).

<sup>39</sup> Indeed, professional journalists in this State have described government agencies’ all-too-frequent noncompliance and delay tactics in objecting to FOIL’s ineffectiveness as a means of obtaining the release of non-exempt information. See, e.g., Mark C. Mahoney, “Uphill Battle for Transparency in Government Continues,” *The Daily Gazette*, Mar. 15, 2019, <https://perma.cc/KFP6-SENH> (stating that government officials regularly decide not to follow FOIL and noting that “[a]lmost every day, journalists and citizens encounter public officials who routinely deny access to records without trying to comply with the law, who refuse to follow established deadlines for notification and compliance. . . . Citizens routinely have to fight for basic public documents.”); Jerry Moore, “Partly Cloudy on Sunshine

offices and necessary technology to manage the information flow has compounded the problems, making it harder for requesters to get timely and considered responses even when FOIL officers are serious about disclosure. Requesters also contend with the reality that court decisions have broadened the authority of agencies to deny access to documents in a variety of circumstances.

The Task Force believes there are two fundamental deficiencies in FOIL as drafted: (1) the statute's lack of enforceable deadlines for responses to FOIL requests and (2) the inability of a requester to recover attorneys' fees when prevailing in a FOIL action. In addition, certain court decisions have abetted the lack of disclosure. FOIL has long been understood to require agencies to redact documents and produce them to requesters once properly withheld information is removed. That was seen as the preferred, and in fact required, alternative to withholding an entire document. Court decisions have now cast doubt on the use of redaction to enable the partial release of documents. Second, Section 50-a of the Civil Rights Law, which shields the personnel records of law enforcement officers, has been broadly construed by the courts to keep secret police disciplinary records and other materials that would shed light on police misconduct and the effectiveness of internal disciplinary processes.

#### 1. The Absence of Enforceable Timetables for Disclosure

FOIL's provisions governing the timing of agency disclosures permit delays that can severely diminish if not extinguish altogether the topical news value of requested information. The procedures governing an agency's response to a FOIL request are set forth in § 89(3)(a) of the statute. Under Pub. Off. Law § 89(3)(a), an agency must respond within five business days of receipt of a written request. That response must grant the request, deny the request in writing, or—in a particularly troublesome alternative—provide a statement of the *approximate* date by which the request will be granted or denied, which must be “reasonable under the circumstances.” *Id.* This provision means that agencies never confront a firm deadline to make a determination in response to the request. If and when the agency decides to grant the request (in whole or in part), it must do so within 20 days or, if there are reasonable circumstances preventing the agency from complying with that deadline, inform the requester in writing of the reason the deadline cannot be met and provide a date certain “within a reasonable period” when access will be granted. *Id.*

As a practical matter, the interplay of the above provisions has licensed some government agencies to respond to pending FOIL requests—whether discrete or voluminous—by periodically issuing standard form letters acknowledging receipt of the FOIL request and setting

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Week,” *Watertown Daily Times* (Mar. 13, 2019) <https://perma.cc/KFP6-SENH> (stating that because “New York has an incredibly dysfunctional system when it comes to enforcing the state’s FOIL . . . there’s little incentive for government authorities in New York to adhere to FOIL”).

rolling deadlines for a response. Whether those delays are caused by a lack of resources at an agency or a willful and improper attempt by an agency to keep sensitive information out of the public domain, the effect for news organizations is the same: the public is denied timely access to potentially newsworthy information.<sup>40</sup>

Unreasonable delays in disclosure effectively amount to denials of public access and contravene FOIL's premise that "the public is vested with an inherent right to know and that official secrecy is anathematic to our form of government." *Matter of Capital Newspapers, Div. of Hearst Corp. v. Whalen*, 69 N.Y.2d 246, 252 (1987) (citing *Fink v. Lefkowitz*, 47 N.Y.2d 567, 571 (1979) (internal quotation marks omitted)).<sup>41</sup>

## 2. Weak Provisions for Attorneys' Fees

When requesters are denied information, whether for legitimate reasons or otherwise, the most likely outcome is that the denial will never be challenged in court. In other words, a statutory system that contemplated having the courts be the impartial arbiter of FOIL instead has become a system where agency FOIL officers have the final say.

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<sup>40</sup> Courts have repeatedly recognized that temporal guarantees are indispensable to effective news reporting. As the Supreme Court reasoned in *Bridges v. California*, 314 U.S. 252, 269 (1941), a ban on reporting news "just at the time [the] audience would be most receptive" would equate to "a deliberate statutory scheme of censorship." See also *United States v. Dickinson*, 465 F.2d 496, 512 (5th Cir. 1972) ("timeliness of publication is the hallmark of 'news,' and the difference between 'news' and 'history' is merely a matter of hours"); *Grove Fresh Distributors, Inc. vs. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) ("The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.") superseded on other grounds as recognized by *Bond v. Utreras*, 585 F.3d 1061, 1068 n.4 (7th Cir. 2009); *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 561 (1976) ("As a practical matter . . . the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly."); *Int'l News Serv. v. Associated Press*, 248 U.S. 215, 235 (1918) ("The peculiar value of news is in the spreading of it while it is fresh.").

<sup>41</sup> When former Governor George Pataki signed the current version of Pub. Off. Law § 89(3)(a) into law in 2005, he noted that avoiding delays in obtaining responsive documents would "ultimately [] result in a more open and accountable government. In addition, the new provision ensuring that records are timely disclosed after an agency determines to grant a FOIL request will prevent unjustified delays in turning over material that FOIL requires to be disclosed to the public." Mem. filed with Assembly Bill No. 6714, at 3, Bill Jacket, L.2005, ch. 22. In practice, and as discussed above in the text, the 2005 amendment has resulted in exactly the opposite by facilitating agency delays in making records available to the public under FOIL.

The statute's weak provisions for awarding fees to requesters when they prevail in FOIL litigation contribute to that reality. Requesters have no assurance of a fee recovery in even the most meritorious cases, making it financially perilous for requesters to initiate even plainly meritorious litigation. The Legislature recognized when adopting FOIL's current attorneys' fees provision in 1982, that a fee-shifting provision was needed to combat a "sue us" attitude within those governmental agencies that did not want to release records. *See N.Y. State Defenders Ass'n v. N.Y. State Police*, 927 N.Y.S.2d 423, 425 n.2 (3d Dep't 2011) (quoting Assembly Mem. in Support, at 4, Bill Jacket, L.1982, ch. 73); *see also* S. Budget Report on Bills, at 11-12, Bill Jacket, L.1982, ch. 73.

In its current form, the attorneys' fee provision has both a mandatory and discretionary component. Fees are mandatory where the requester "substantially prevailed" in a FOIL litigation and the agency had "no reasonable basis for denying access." Fees are discretionary when a requester denied access has "substantially prevailed" in a FOIL litigation and the agency's response was untimely. N.Y. Pub. Off. Law §§ 89(4)(c)(i), (ii). Based on reports given at the Task Force's public hearings, reviewing courts appear reluctant to grant fee-shifting awards, even when the agency engaged in long delays.

### 3. Withholding Entire Documents In lieu of Redactions

Recent judicial decisions have suggested that agencies can withhold all parts of an otherwise public document if any part of the document contains exempt information, even though standard practice under FOIL has been, when practicable, to redact the exempt material and release the remainder of the document. Accordingly, there is now significant doubt about the longstanding and fundamental principle that agencies should only refuse to disclose particular information that squarely falls within an exemption enacted by statute. In a 2018 decision, the Court of Appeals was asked to decide whether police personnel records, which are generally exempt from disclosure under Section 50-a of the Civil Rights Law, could be released once information identifying the officers was redacted. *See New York Civil Liberties Union v. New York City Police Dep't*, 32 N.Y.3d 556 (2018). The Court determined that a police agency was not required to use redaction to disclose police personnel records.

The Appellate Division, First Department, has taken the reasoning of the Court of Appeals a significant step further, holding that the use of redaction to allow for the disclosure of otherwise public documents is required in only one circumstance: "Redactions to records sought under FOIL are available only under the personal privacy exemption." *Judicial Watch, Inc. v. City of New York*, No. 160286/17 (1st Dep't Dec. 17, 2019). Under this decision, agencies can now withhold documents if the documents contain any information exempt from disclosure under a different FOIL exemption.

Advocates for requesters believe those decisions not only undermine public access but are at odds with the statutory language of FOIL's § 87(2), which states, "Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except that such agency may deny access records *or portions thereof* that" fall within a statutory exemption (emphasis added). In addition, they point to *Gould v. N.Y.C. Police Dept.*, 89 N.Y.2d 267, 275 (1996), where the Court said, "If the court is unable to determine whether withheld documents fall entirely within the scope of the asserted exemption, it should conduct an in camera inspection of representative documents and order disclosure of all nonexempt, appropriately redacted material." If redaction is in fact no longer part of New York law, it puts the state at odds with the standard practice used under the federal Freedom of Information Act and under the open records law of multiple states.<sup>42</sup> As Judge Rivera said in her dissent in *New York Civil Liberties Union*, the majority's opinion could mean that "redaction is unavailable even where it may be the sole method to effectuate the statutory goal of promoting government transparency to hold the governors accountable to the governed" (internal quotation marks omitted).

#### 4. Overbroad Exception for Law Enforcement Records under Section 50-a

The Task Force heard of widespread concerns with Section 50-a of the Civil Rights Law, which has come to broadly impede local reporting on matters relating to police and law enforcement. Section 50-a provides that personnel records of law enforcement officials are confidential and therefore not subject to disclosure under FOIL. In practice, the exemption has been used to withhold most documents that would reveal a police officer's disciplinary record and how the officer's police force dealt with the matter.<sup>43</sup> As applied in that broad manner, the law impedes meaningful community-based reporting on police activities and is out of step with laws in other large and diverse states that permit broad access to police disciplinary records. *See, e.g., Kalven v. City of Chicago*, 7 N.E.3d 741 (Ill. App. Ct. 2014).

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<sup>42</sup> *See, e.g., New York Times Co. v. NSA*, 205 F. Supp. 3d 374, 381 (S.D.N.Y. 2016) ("Even where a FOIA exemption applies, the withholding must be narrow, such that '[a]ny reasonably segregable portion of a record shall be provided ... after deletion of the portions which are exempt.'") (quoting 5 U.S.C. §552(b)); ]; New Jersey's Open Public Record Act specifically requires a custodian to "delete or excise from a copy of the public record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record". *N.J.S.A.* 47: 1A-5(g).

<sup>43</sup> *See* Report on Legislation, Civil Rights Committee and Committee on Criminal Courts, New York City Bar Association, May 2018 (<https://s3.amazonaws.com/documents.nycbar.org/files/2017285-50aPoliceRecordsTransparency.pdf>); 2018 Report to the Governor and Legislature, Committee on Open Government, December 2018 (<https://www.dos.ny.gov/coog/pdfs/2018%20Annual%20Report.pdf>)

Originally enacted in 1976, the Civil Rights Law prohibits police and other law enforcement agencies from releasing a discrete category of records—“[a]ll personnel records used to evaluate performance toward continued employment or promotion” that are “under the [agency’s] control” —without the consent of the officer. The text of the statute is in many respects ambiguous, but over time (and particularly as of late) the courts have erred on the side of expanding 50-a, often to a degree and in a manner irreconcilable with FOIL’s mandate of transparency.

The Court of Appeals initially—and correctly—recognized that Section 50-a was enacted with a narrow purpose: to protect police officers from “time-consuming and perhaps vexatious investigation into irrelevant collateral matters in the context of a civil or criminal action.” *Capital Newspapers Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 569 (1986) (internal quotation marks and citation omitted). In *Burns*, accordingly, the Court declined to apply section 50-a to preclude disclosure in “a nonlitigation context.” *Id.*

The Court’s subsequent cases, however, have unmoored Section 50-a from that narrow legislative goal. Just two years after *Burns*, the Court applied Section 50-a outside the context of pending litigation and held that it barred disclosure of inmate grievances against correction officers (as well as related administrative decisions) sought under FOIL. *Prisoners’ Legal Servs. v. N.Y.S. Dep’t of Correctional Servs.*, 73 N.Y.2d 26 (1988). The Court also took a broad view of the records covered by 50-a, stressing that “[d]ocuments pertaining to misconduct or rules violations by correction officers . . . are the very sort of record” that the law intended to keep confidential. *Id.* at 31. Over a decade later, the Court relied on *Burns* in denying FOIL requests for the disciplinary records of 18 police officers punished for their role in an off-duty incident with civilians. *Daily Gazette Co. v. City of Schenectady*, 93 N.Y.2d 145 (1999). The Court reasoned that there remained a risk that the records would be used “to embarrass or humiliate the officers involved,” even absent any pending or even threatened civil or criminal action. *Id.* at 159.

As interpreted, then, Section 50-a makes opaque to the public much of the disciplinary process within law enforcement agencies concerning individuals entrusted to protect citizen safety and empowered to use force against them; namely, any record “of significance to a superior in considering continued employment or promotion.” *Luongo*, 150 A.D.3d at 19.<sup>44</sup> And the law is

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<sup>44</sup> To their credit, some lower courts have rejected attempts to broaden the scope of “personnel records” to include all documents with some possible bearing on officer discipline. See *Patrolmen’s Benevolent Ass’n of the City of N.Y. v. de Blasio*, 171 A.D.3d 636 (1st Dep’t 2019) (body-worn camera footage); *Prisoners’ Legal Servs. of N.Y. v. N.Y.S. Dep’t. of Corr. & Community Supervision*, 173 A.D.3d 8, 14 (3d Dep’t 2019) (unusual incident reports, use of force reports and misbehavior reports). See also *Matter of New York Civil Liberties Union v. New York City Police Dep’t*, 32 N.Y.3d 556 (2018) (agency cannot be compelled to disclose redacted record of a record constituting a “personnel record” as described in Civil

categorical: disclosure is forbidden even where an officer’s reasonable expectation of privacy is minimal and the public interest in disclosure is significant (say, because the misconduct was severe and the allegations were found substantiated). The state of New York is “nearly alone” in maintaining such a law.<sup>45</sup> As an independent panel commissioned by the NYPD pointed out in a January 2019 report, the statute “keeps the public in the dark about police discipline, breeds mistrust, and reduces accountability.”<sup>46</sup>

### C. Recommendations for FOIL Reforms

#### 1. Establish Clear Timetables to Remedy Delays

To prevent unjustifiable delays in the release of non-exempt government records, the Task Force supports an amendment establishing a clear and concise timeframe for agencies to respond to FOIL requests, as follows:

- A grant or denial of the right to inspect or copy records provided for under this article shall be made to the person or entity requesting the right by the agency official who has custody or control of the public record within 10 business days of the request. In the event of a denial, that official shall in writing give the specific reasons for the denial and indicate the procedures for appealing the denial. Except for good cause shown, any reason not specifically set forth in the denial shall be deemed waived by the agency.
- Failure to comply with a request to inspect or copy agency records within the 10-business day period shall be deemed a denial of the request and permit a requester to commence an Article 78 proceeding without filing an administrative appeal. However, an agency shall be exempted from the 10-day requirement if it certifies to the requester that the request appears to call for production of more than 500 pages of records or that the agency is facing exceptional circumstances that go beyond predictable agency workload. Such a certification will extend the initial period of 10 business days to 30 business days.

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Rights Law §50-a); *Matter of Luongo v. Records Access Appeals Officer*, 168 A.D.3d 504 (1st Dep’t 2019) (denying petition to compel disclosure of personnel orders “which contain factual details regarding misconduct allegations and punishments imposed on officers”).

<sup>45</sup> The Report of the Independent Panel on the Disciplinary System of the New York City Police Department (Jan. 25, 2019),

<https://www.independentpanelreportnypd.net/assets/report.pdf> at 44 (hereinafter, “Independent Panel Report”).

<sup>46</sup> *Id.* at 5.

The proposed amendment expands the initial agency response time from the five business days in current law to a more practicable 10 business days, which affords agencies double the time in which to respond to FOIL requests. The goal is to promote more meaningful and informed agency responses at their inception, rather than the reflexive issuing of form acknowledgment-of-receipt letters.<sup>47</sup> Further, when FOIL requests for non-exempt records require the disclosure of extensive documents that may require redaction or are otherwise burdensome for an agency, the agency has the flexibility of extending the deadline by 20 business days. By establishing a controlling legal deadline of 30 business days for the production of responsive records, the proposed amendment lends clarification while accommodating the interest of the agency by providing a reasonable time period in which to comply with FOIL requests for even voluminous non-exempt records, as well as the interest of newsrooms in obtaining government information without protracted delays.<sup>48</sup>

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<sup>47</sup> Notwithstanding the enlarged time for an initial agency response proposed by the amendment, the Task Force strongly recommends that agencies make documents routinely compiled in the course of performing their governmental responsibilities—*e.g.*, meeting agendas and minutes—readily accessible by posting them on their official websites within five business days.

<sup>48</sup> For examples of states that have adopted specific deadlines for responding to open records act requests, *see* ARK. CODE ANN. §25-19-105(e) (“If a public record is in active use or storage and therefore not available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour within three (3) working days at which time the record will be available for the exercise of the right given by this chapter.”); MISS. CODE ANN. §25-61-5(1)(a) (“a public record of the public body shall be provided within one (1) working day after a written request for a public record is made. No public body shall adopt procedures which will authorize the public body to produce or deny production of a public record later than seven (7) working days from the date of the receipt of the request for the production of the record.”), *see also* MISS. CODE ANN. §25-61-5(1)(b) (“in no event shall the date for the public body’s production of the requested records be any later than fourteen (14) working days from the receipt by the public body of the original request.”); N.M. STAT. ANN. §14-2-8(D) (“A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.”); R.I. GEN. LAWS. §38-2-3(e) (“A public body receiving a request shall permit the inspection or copying within ten (10) business days after receiving a request. If the inspection or copying is not permitted within ten (10) business days, the public body shall forthwith explain in writing the need for additional time to comply with the request [and] may have up to an additional twenty (20) business days to comply with the request [under certain circumstances].”).

Significantly, under the proposal, an agency's failure to meet the deadlines will free the requester to seek judicial redress through an Article 78 action. Under current law, a requester cannot file suit until the FOIL officer denies her request and she commences an administrative appeal that is denied. Requesters are often left in limbo with no opportunity to go to court because there is no opportunity to appeal when the initial decision is delayed, short of declaring the delay a "constructive denial." By amending the law to permit requesters to go to court after the deadlines are missed, the law would afford a remedy to requesters and bring state FOIL into line with the practice in the federal Freedom of Information Act.

## 2. Strengthen the Fee-Shifting Provision

Fee shifts are important in FOIL to incentivize agencies to meet their obligations and to stop the practice of forcing journalists and other requesters to pay the costs of getting records that they are entitled to have and should have been given without litigation.

The Task Force, accordingly, supports the following amendment to § 89(4)(c) of the Public Officers Law to provide for mandatory fee shifting in appropriate circumstances:

A court with jurisdiction shall order an agency found to have unlawfully denied access to public records to provide the records at no cost to the prevailing petitioner and, further, shall award reasonable attorneys' fees and costs to the prevailing petitioner. A petitioner shall also be awarded such fees and costs when the filing of an Article 78 petition is a cause of an agency's grant of access to public records that had previously been denied to the petitioner.

The proposed amendment would encourage state and local government agencies to comply in good faith with FOIL's disclosure requirements. In addition, the proposal, in line with federal law, addresses the problem created when an agency forces requesters to file suit and then moots the case by releasing the documents rather than risking an unfavorable court decision, leaving the requesters to bear their own cost for the unnecessary litigation.

## 3. Explicitly Authorize Redaction

The recent court holdings cast doubt on the use of redaction, which has been an important device for releasing public documents that also contain some information that can be properly withheld. The key provision of FOIL provides that "Each agency shall . . . make available for public inspection and copying all records, except that such agency may deny access to records *or portions thereof*" that fall within an enumerated exemption. *Pub. Off. Law* § 87(2) (emphasis added). To assure that the legislative intent is fully realized, the Task Force recommends that FOIL be amended to make clear that agencies have an obligation to segregate disclosable

information from exempt information and release the material in redacted form when such segregation is practicable.

#### 4. Repeal Section 50-a of the Civil Rights Law as an Exception to FOIL

As discussed above, the application of Section 50-a to restrict disclosure under FOIL has become an obstacle to the public's understanding of the actions of police and other law enforcement personnel and the efforts by law enforcement agencies to investigate and address misconduct. All government employees enjoy protection from unwarranted disclosure of their personnel records through FOIL's privacy exemption. In addition, records can be shielded from disclosure through FOIL's law enforcement exemption when there is risk of interference with a criminal investigation or proceeding, or when disclosure could endanger the life or safety of any person.<sup>49</sup> As the state's Committee on Open Government said in its 2018 report, those exemptions adequately address concern for the privacy of law enforcement officers. We are concerned that Section 50-a, as a result of the broad interpretation of the statute given by the courts, has denied the public needed access to important police records. To reinstate the proper balance between confidentiality and disclosure, the Task Force believes that Section 50-a should, at a minimum, be amended such that it does not apply to FOIL requests, and access to law enforcement personnel records is determined by the exemptions set out in FOIL.<sup>50</sup>

#### 5. Provide Necessary Resources to FOIL Offices

In our public sessions, requesters often voiced their frustration with FOIL officers who engaged in foot-dragging or proffered inappropriate and meritless reasons to withhold a document. But we also met with government employees who impressed us with their concern about public access. However, a common refrain in the testimony was that many agencies and local governments are simply underfunding their FOIL offices or failing to make FOIL operations a

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<sup>49</sup> See *Pub. Off. Law* § 87(2)(b), (e), (f). In particular, the personal privacy exemption recognizes that there is typically—but not always—a stronger privacy interest (and correspondingly weaker public interest) in disclosure of unsubstantiated allegations of wrongdoing. See, e.g., *Scaccia v. N.Y.S. Div. of State Police*, 138 A.D.2d 50, 53-54 (3d Dep't 1988) (finding that "final decision sustaining charges of misconduct" following internal disciplinary proceeding did not fall within privacy exemption); *Daily News L.P. v. Giuliani*, 1997 N.Y. Misc. LEXIS 750, \*32 (Sup. Ct. N.Y. Cnty. Apr. 21, 1997) (requiring that Department of Investigation disclose name and identifying details of employee in closing memorandum that substantiated charge of misconduct); but see *Thomas v. N.Y.C. Dep't of Educ.*, 103 A.D.3d 495, 497 (1st Dep't 2013) (noting that "why a government agency determined that a complaint concerning a violation of federal law . . . is allegedly unsubstantiated" is "of significant public interest").

<sup>50</sup> The question of whether the limits on court orders for production of law enforcement personnel records in civil and criminal matters, which are now found in 50-a, should be maintained, modified, or repealed, is beyond the scope of the Task Force's work.

budgetary priority. The root causes of FOIL’s failures are many. But adequate funding and staffing of FOIL units and upgrading needed technology to manage agency information is the one step that could cure many of the problems facing FOIL requesters and strike a blow for real transparency. The Task Force urges the Legislature to show a real commitment to openness by earmarking funds specifically to finance expanded FOIL operations at the state agencies that are the leading recipients of FOIL requests.

## **V. Pro-Active Transparency Efforts**

### **A. Background**

Pro-active disclosures practices—that is, an agency’s disclosure of information without waiting for a FOIL request—is an important ingredient in helping assure that necessary government information is available to journalists and to citizens.<sup>51</sup> In 2013, Governor Cuomo issued Executive Order 95, “Using Technology to Promote Transparency, Improve Government Performance and Enhance Citizen Engagement. The principal focus of the executive order was the creation of an open data website, which would allow New York citizens to access governmental data without the need for a FOIL request. Through the New York State Office of Information Technology and Services (“ITS”), the state launched OpenNY. The City of New York has undertaken a similar effort, launching NYC Open Data. The State Comptroller provides similar open data through Open Book New York. Agencies have been working to identify information that can be made available through these open sources.

As a result of these efforts, millions of data points about government in New York are available and are being accessed by New York citizens and businesses. At a time when news organizations have fewer resources to devote to reporting, the availability of data is critical to how the press operations as a watchdog on government spending and activities. The efforts undertaken by ITS, the City of New York, and the State Comptroller are valuable and should be encouraged and expanded.

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<sup>51</sup> In its sessions seeking public input, the Task Force also heard about another vital area of pro-active transparency: the ability of journalists and citizens to have access to both court documents and proceedings. Over the past decade, New York has significantly expanded the use of online dockets to provide remote access to those seeking information about court proceedings and access to judicial documents. With smaller newsroom budgets, regular coverage of the courts has declined in many parts of the state. Such coverage is vital tool in enhancing the public’s understanding of the courts and in ensuring that the courts administer justice fairly and efficiently. However, the Task Force heard of otherwise public documents not being placed on public court dockets. Full review of the court’s transparency initiatives is beyond the scope of this report, but the Task Force endorses efforts to make court records more accessible digitally and to remove the procedural obstacles news organizations often encounter in challenging court sealing or closing in individual cases.

But in looking at the issue of pro-active transparency, the Task Force discovered three significant gaps in the effort to make governmental information more freely available. First, many local governments lag far behind. They either lack sufficient technology or are not using the technology they have effectively. In some localities, finding even basic information, like a town code, can be challenging for even veteran government watchers. Second, concerns were expressed that the information made available through the portals was often not the kind of information that journalists and local news organizations find most valuable in providing government oversight. As a result, they still had to resort to FOIL requests and face the problems discussed above. Third, the open meetings law (Public Officers Law, Article 7), which is designed to implement pro-active transparency, remains flawed and regularly unenforced. The law requires, for instance, that meeting notices go out one week in advance of a meeting. It also contains provisions for making meetings available through live streaming. The law also requires that resolutions, laws, and other materials to be discussed at a meeting be made available “to the extent practicable as determined by the agency or department.” The law also encourages records to be posted on the governmental website, but again only when “practicable as determined by the agency or department.” Because of the qualifying clause, local governments are free to make minimal effort or no effort to make materials available.

## B. Recommendations

The Task Force encourages state and local governments to continue to fund initiatives to make data available pro-actively. But, in conjunction with such expansion, the Task Force has three recommendations.

### 1. Identify Necessary Information for Disclosure

State and local agencies should engage with activists and journalists to try to better define the kind of information that would be most useful in their efforts to provide real oversight to government. The agencies face problems in making sure protected personal information is not released and in identifying the kind of information that is most valuable to journalists and others. Nonetheless, releasing data for the sake of releasing data rarely leads to real transparency, despite the amount of money and effort spent on such disclosure regimes. “Smart release”—crafted disclosures that target the kinds of information citizens really want and need and are entitled to have—is both a better use of resources and a better approach to transparency.

### 2. Improve Disclosure at the Local Level

The Legislature should enact laws that require counties, towns, and villages to make certain basic information about governance, from meeting dates and meeting agendas to codes and board decisions, available online through the local government’s website in a format that prominently displays the links to the information. Journalists and citizens should be able to come to a municipal or county website and see immediately the most basic documents of governance.

### 3. Fix the Open Meetings Law

The Task Force recommends that the Legislature amend the open meetings law in two ways: (1) the enumerated document disclosures set out in the statute should be mandatory not elective and (2) there should be meaningful deadlines for disclosures designed to put documents into the hands of citizens prior to meetings. As an enforcement mechanism, board and council decisions should be voidable if undertaken in violation of the notice requirements.

## VI. Nonprofit News Organizations

As traditional for-profit local journalism has declined over the past decade, nonprofit news organizations have worked to fill the void. Given the difficulty of finding robust revenue models to support for-profit efforts, nonprofit news organizations have seen a rapid expansion over the last decade and may offer the best chance to restore local coverage and to deliver news and information to communities in New York. While nonprofits can help alleviate the crisis in local journalism, these newer players require philanthropy, investment, and support to become sustainable.

### A. The Growth of Nonprofit Journalism

There are now more than 200 nonprofit news organizations throughout the country, employing over 2,200 journalists and generating revenue of over \$350 million. <https://inn.org/innindex/>; <https://www.bloomberg.com/news/articles/2019-04-25/silicon-valley-is-killing-local-news-can-charity-bring-it-back>. These nonprofit organizations have worked to fill critical gaps in news coverage and have made significant impact.

The nonprofit world of news is becoming increasingly complex, as nonprofit ventures seek different ways to engage with communities, funders, and philanthropic organizations and to reshape how local news is thought of and supported. Nonprofit models to meet local journalism needs have taken a variety of forms, at the national, state, and local level.

Nationally, a number of exciting initiatives have emerged to support local journalism, including (1) the American Journalism Project (<http://www.theajp.org/>), a venture philanthropy fund that invests in nonprofit local news startups and provides them with business and technical expertise; (2) the ProPublica Local Reporting Network (<https://www.propublica.org/local-reporting-network/>), an arm of the nationally known investigative reporting nonprofit ProPublica, brings its investigative resources to local reporting entities to help cover one topic in-depth; (3) Report for America (<https://www.reportforamerica.org/>), which places reporters in existing newsrooms in need, and funds half of their salaries, in order to foster reporting as public service; (4) NewsMatch (<https://www.newsmatch.org/>), a national matching-gift campaign launched by the Knight Foundation to grow fundraising capacity in nonprofit newsrooms and promote giving to journalism among U.S. donors (available to members of the Institute for Nonprofit News); and

(5) Philadelphia's Solutions Journalism project, which brought together 15 news organizations to report for one year on a single topic of prisoner re-entry into society and is premised on the idea of collaboration and creating local news ecosystems.

States and statewide organizations also are working to support local journalism. The Colorado Media Project (<https://coloradomediaproject.com/>) has engaged a broad-based coalition of civic leaders, students, academics, philanthropists, business leaders and journalists, among others, to strengthen Colorado's diverse local news ecosystem and to develop partnerships and programs designed to increase newsroom capacity, support collaboration, and engage community.

New Jersey enacted legislation to create the Civic Information Consortium, a first of state-level public charity to support local news. The consortium is charged with strengthening local-news coverage and boosting civic engagement by funding innovative media and civic-technology projects throughout the state. The bill establishing the consortium passed the state legislature with overwhelming bipartisan support in 2018 and was signed into law by Gov. Murphy, although the state has struggled to fully fund the effort, with partial funding starting only in 2020.

At the local level, the *Salt Lake City Tribune* recently converted from a profit-seeking entity into a tax-exempt organization. *The Tampa Bay Times* transferred its ownership to a nonprofit organization while keeping the news organization as a taxable for-profit. *The Philadelphia Inquirer* is pursuing a hybrid model, where the news company was transferred to a newly formed public benefit corporation that operates alongside a separate endowment designed to encourage innovation. *The Seattle Times* partners with an existing community foundation to fund coverage of various local issues, and it has sparked the creation of similar partnerships in news organizations around the country.

In addition to these larger local news organizations, smaller local entities are also pursuing innovative nonprofit models.

*The City* is an independent, nonprofit, digital news outlet that debuted in April 2019. It is dedicated to hard-hitting and impact-oriented reporting covering local news in New York City. It is backed by almost \$10 million in starting capital from major philanthropies and individuals. <https://thecity.nyc/>.

*The Akron Devil* is a monthly arts and culture print magazine that broke new ground by transitioning to a cooperative ownership model that allows its readers to share ownership of the publication at various levels. <https://thedevilstrip.com/co-op/>.

*Next City*, a Philadelphia based nonprofit publisher with a focus on helping improve social, economic, and environmental change in cities launched an innovative pay-what-you-want-for-content model to view its webinars. <https://nextcity.org/>.

*The New Jersey Sustainability Reporting Hub* pursues collaborative journalism projects, including national/local partnerships and local outlets teaming up. <https://srhub.org/>.

## B. The Challenges Facing Nonprofit News Organizations

Local journalism nonprofits and reporting collectives (nonprofit organizations that share resources in gathering news) face challenges to their success and sustainability.

1. Local journalism as a public good. Despite growing evidence that the crisis of local journalism is also a crisis of democracy, the public is accustomed to thinking about local news as a for-profit revenue product and not a public good. For nonprofit local journalism to succeed in a meaningful way over the long term, local journalism must be thought of as a public good and a civic service, akin to hospitals, libraries, and universities, which both communities and funders should support philanthropically as a cornerstone to our democracy. Journalism, however, is not on the list of causes and institutions that the public naturally thinks of when choosing philanthropic causes to support. Absent this cultural shift and growing of the philanthropic pie, it will remain challenging for nonprofit entities to obtain the financial support required to sustain nonprofit local journalism.

2. Complex legal landscape. Each of the nonprofit models highlighted above carries different legal liabilities. Transitioning from a for-profit to a nonprofit model is particularly challenging and requires expert legal advice to navigate successfully. The form the transition takes can vary, including (for example) an asset transfer or a merger with an existing 501(c)(3) organization as the surviving entity. There is the potential for significant tax liability depending on the structure of the organization and the way the assets are sold or converted to a tax-exempt vehicle. Nonprofit news organizations also need to comply with various laws and tax regulations that impact how a news entity can function (*e.g.*, bars on endorsing political candidates or lobbying governments). There are also important corporate governance practices that nonprofit news organizations should follow, as mandated, for instance by New York's Not-for-Profit Corporation Law and the federal tax code.

3. Lack of resources to fund legal attacks and access to information. All news organizations need legal resources to defend against unfounded legal attacks and harassment and to protect public access to information. This need is especially acute for local news organizations lacking robust resources of their own.

4. Perceived First Amendment barriers to government assistance. Both journalists and the public at large may believe that governments must stay out of local journalism because governments cannot support journalistic efforts consistent with the First Amendment. There certainly are constitutional barriers to what government can do to help solve the crisis in local journalism, but we have seen both in the U.S. (with some public support for public broadcasting) and abroad (with organizations like the BBC) that government support can be undertaken

without compromising journalistic independence. In addition, it is possible to consider non-content-based legislative initiatives, like tax relief, that do not raise the same concerns about independence.

5. Insurance. Nonprofits face the same challenges regarding insurance coverage discussed above.

### C. Ways in Which the Bar Association Can Assist

Rather than make unique recommendations in respect to nonprofits, the Task Force instead underscores that the recommendations identified throughout this report in regard to libel reform, amendment of FOIL, insurance, and pro bono initiatives, will enhance the burgeoning work of nonprofits. In addition, we believe NYSBA has a role to play in initiating an important public conversation about the viability of public funding of nonprofit news organizations (and, more broadly, news organizations however they are organized as incorporated entities). The issues are complicated, and for that reason the Task Force recommends that NYSBA launch a longer-term study of the feasibility of legislative support for local news, including whether New York State could replicate New Jersey's Civic Information Consortium in some shape or form or provide unique tax incentives for subscribers to news outlets or to owners who donate community business assets and seed philanthropic trusts to meet local needs. There are a variety of proposals for governmental support that are actively being discussed.<sup>52</sup> NYSBA, as the preeminent association of lawyers in the state, is uniquely situated to help New York explore the possibility of public support because of its expertise in the areas of law that would be implicated and the association's broader concern for civic engagement, checks and balances on government, and the imperative of honest government.

## VII. Discount and Pro Bono Legal Services

One of the more direct ways that the legal profession can support "free expression in the digital age" is by providing legal services to underfunded news organizations on a free (pro bono) or discounted basis. The Task Force examined several existing methods and identified gaps.

### A. Background

It is critical for a news organization to have access to adequate legal services, in order to serve its own needs as an organization, and to serve its audience. One lawsuit can put a news organization—even a large one—out of business as we saw in the Gawker case. And one stonewalled Freedom of Information request can prevent a community from having access to important information about its government and elected officials.

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<sup>52</sup> See Nicholas Lemann, "Can Journalism Be Saved?," N.Y. Review of Books, Feb. 27, 2020.

However, it is not just high-profile or urgent matters that require legal support. While today's news outlets tend to be less profitable than the media powerhouses of the past, they still have basic enterprise needs—contracts, tax, HR issues—that require legal support.<sup>53</sup> Thus, support is needed not just from bar's media lawyers but from those with expertise in contracts, labor and employment, and other business areas.

Various models exist for providing free or low-cost legal services, and for connecting those in need of such services with those who provide them in various areas of the law. There are also similar efforts aimed at journalists. (See Appendix A.) The Student Press Law Center provides legal support for campus-based journalists. The Reporters Committee for Freedom of the Press (RCFP) recently launched the Local Legal Initiative, a foundation-funded initiative to embed legal resources in states most in need of them. However, this effort will only support five states initially, and New York is not among them. Moreover, there is only so much a single attorney can do to help an entire state's worth of news outlets. In addition, law school clinics provide free legal services on a pro bono basis, in a variety of fields. In the last few years, a number of new clinics have launched with a focus on First Amendment free speech issues, some with funding from the Stanton Foundation; including, in New York State, one at Cornell Law School<sup>54</sup> and the Civil Liberties & Transparency Clinic at University of Buffalo School of Law. The Yale Law School houses the Media Freedom Information and Access Clinic. Such clinics typically function as a small private law firm. The advantage is that they are generally free to those who qualify and are selected as clients. However, clinics may be limited by geography and bar admissions in terms of representing individuals or organizations in court, and they are further limited by the constraints of a student-driven resource whose primary purpose is pedagogical (i.e., they are not fully resourced year-round and are limited by student schedules).

A common theme with law school clinics and other projects such as the RCFP's Local Legal Initiative is their reliance on one or a few major funders. Like a poorly diversified stock portfolio, this can translate to risk and uncertainty for a project's long-term sustainability, as they are vulnerable to shifts in funders' priorities and resources, and funding is not guaranteed in

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<sup>53</sup> *The Legal Needs of Emerging Online Media: The Online Media Legal Network After 500 Referrals*, Digital Media Law Project of the Berkman Center for Internet & Society at Harvard University (April 2014) at 15. "When the OMLN was launched [in 2009], the DMLP expected a majority of its work would involve urgent responses to legal threats. The DMLP was surprised to see how few matters required urgent referral, and how many matters were instead from clients proactively considering their legal needs." And "...there remains much that has not changed in the nature and needs of journalism as it flourishes online. Rather, what has changed is journalists' monetary ability to obtain counsel for the sorts of issues that these ventures have always faced." *Id.* at 14.

<sup>54</sup> Clinics have been established across the country, including at Vanderbilt, Duke, and Arizona State.

perpetuity. As a result, those dependent on such gifts would be well advised to devote at least some time to fundraising to ensure their longevity.

## B. Recommendation

The Task Force believes that there is a concrete step that the bar association can take to help connect smaller news organizations with legal resources: a bar-sponsored referral network. The Task Force recommends that the association investigate creating such a network aimed exclusively at services for journalists and news organizations. Such a dedicated network would be a visible testament to the association's commitment to marshaling legal resources in the aid of transparency and democracy. There are models that the state bar could draw upon in designing a network:

- The Institute for Nonprofit News, formerly known as the Investigative News Network (“INN”), has partnered with the nonprofit Media Law Resource Center (“MLRC”) to create a "Legal Connect" project that helps connect nonprofit news organizations that are members of INN with affordable counsel. INN membership is available to nonprofit news organizations.
- From 2009 to 2017, the now-defunct Online Media Legal Network provided a nationwide referral network to connect independent online journalists and journalism organizations with affordable legal services. The OMLN model is instructive. The referrals themselves were free; participating lawyers and firms were encouraged but not required to offer services pro bono. The network made over 500 referrals for over 260 clients. While the model was successful, it was forced to shut down when its funding was not renewed; however, the online portal still exists and could be re-activated if a new entity were willing to take it on.

The precise scope of the network, including the nature of services to be offered, the fee structure, and the eligibility of those who can access it, would require further study but such a network would fill an obvious need and play to traditional strengths of the bar association: connecting lawyers to New Yorkers will legal needs in pursuit of a greater good.

The Task Force also recommends that NYSBA develop programs and initiatives to provide pro bono legal representation to local news organizations defending against SLAPP suits or seeking access to information. The bar association can sponsor programs specifically designed to educate practitioners outside of New York City on basics of media law. It can also encourage the recognition of assistance to organizations as important pro bono work, especially within New York's innovative Pro Bono Scholars Program for third-year law students. Such programs would allow the bar association to form alliances with existing press-freedom groups that provide support to news organizations.

## Appendix A

### Resources

There are numerous organizations and partnerships that provide legal services in support of local journalism. Below are listings of organizations that provide pro bono (free) legal services to news organizations; referral networks that help connect news outlets with media counsel, often on a discounted basis; and other resources.

#### Pro Bono Legal Services

- **The American Civil Liberties Union** and its local affiliates take on a variety of cases championing individual rights, including freedom of speech. <https://nyclu.org>
- **The First Amendment Coalition** defends the public’s right to know and freedom of speech. <https://firstamendmentcoalition.org/>
- **The Knight First Amendment Institute at Columbia University** defends the freedoms of speech and the press in the digital age through strategic litigation, research, and public education. <https://knightcolumbia.org>
- **The Press Freedom Defense Fund** provides essential legal support for journalists, news organizations and whistleblowers “targeted by powerful figures.” <https://www.pressfreedomdefensefund.org/>
- **Reporters Committee for Freedom of the Press** provides pro bono legal support for public interest journalism. <https://www.rcfp.org/feln-announcement/>
- **Law School Legal Clinics** operate like small, student-driven law firms, taking on selected clients pro bono. Clinics serving media clients in New York State include:
  - **Cornell Law School First Amendment Clinic** represents the interests of news outlets, journalists, researchers and other newsgatherers. <https://www.lawschool.cornell.edu/Clinical-Programs/first-amendment-clinic/About-us.cfm>
  - **University at Buffalo Law School - Civil Liberties & Transparency Clinic** defends free speech, privacy and other individual rights while pressing for greater transparency and accountability in government. <https://www.law.buffalo.edu/beyond/clinics/civil-liberties.html>
  - **Yale Law School Media Freedom & First Amendment Clinic** aims to support robust investigative journalism in the digital age and to advance the public’s right of access to information needed for democracy to function. <https://law.yale.edu/mfia> The clinic recently launched a **Local News Initiative** to provide journalists at small and nonprofit news sites in New England with pro bono legal services to support their newsgathering and defend their publications. <https://law.yale.edu/mfia/projects/local-news-initiative>

(Other law schools with clinics devoted to First Amendment and freedom of expression legal matters include those at Arizona State University, Duke, George Mason University, Michigan State University, Southern Methodist University (launching fall 2020), Tulane, UCLA, University of Georgia, University of Virginia, Vanderbilt, and Washington University in St. Louis.)

### Referral Networks

- **MLRC Legal Connect, in partnership with the Institute for Nonprofit News (INN)** – a referral service connecting nonprofit news organizations with affordable media law specialists. Available to INN member organizations. <https://inn.org/inn-support-services/legal/legal-connect-referral-services/>

### Grant-Making Foundations

There are also a number of foundations that make grants to strengthen local journalism. For example:

- **Knight Foundation:** <https://knightfoundation.org/press/releases/knight-foundation-focuses-on-building-the-future-of-local-news-in-300-million-five-year-commitment/>

## **Appendix B**

### **Dissent of Mr. Mark H. Alcott to Portions of Section III**

I agree with virtually all of this outstanding report. I commend the committee for its prodigious effort in bringing this important issue to the House.

However, I disagree with and dissent from the proposals for mandatory fee – shifting, automatic discovery stays and interlocutory appeals in anti— SLAPP lawsuits. This is strongly contrary to the general practice trends in civil litigation in New York, which trends are supported by strong policy considerations and have historically been advocated by NYSBA. I don't see why this one type of case and one category of parties should be singled out for such extreme preferential treatment, and the report does not make a persuasive argument for doing so.

Like most US jurisdictions, New York generally adheres to the American Rule, pursuant to which each side bears its own legal fees regardless of outcome. The few departures from this doctrine are designed to benefit impecunious individual plaintiffs who otherwise could not sue. Uniquely, the proposal in this report would benefit the corporate defendant – and only the defendant. (The proposal does not require defendants who lose libel cases to pay the plaintiff's legal fees.) The report understandably decries the plight of small media companies who have difficulty financing the defense of libel cases (although nothing is said about the role of insurance.) However, most libel cases are brought by individuals against cooperate media companies whose resources dwarf those of the plaintiff. Those large corporations too would get the benefit of fee-shifting under this proposal.

The proposals for automatic discovery stays and interlocutory appeals are also troublesome. At one time, these were standard under New York practice, and they made litigation in our state courts cumbersome and time-consuming. Corporate defendants routinely moved to dismiss at the threshold, and then appealed the denial of such a motion, thereby staying all discovery, substantially delaying the case and effectively tying the plaintiff up in knots. Our Association advocated reforms that substantially eliminated such dilatory tactics. This proposal brings them back.

The law provides remedies for abuse of process, malicious prosecution and improper litigation practices. This report does not explain why these are inadequate and must be augmented for libel cases, but only for libel cases.

It is particularly troublesome that these provisions, especially fee-shifting, would be mandatory and not left for adjudication based on the facts and circumstances of the particular case. I am not aware of any other New York statute to that effect, and the report offers no good explanation for it.

In the aggregate, these provisions are access – barring. They put the would - be libel plaintiff at such great risk that some valid or plausible claims will not be brought. That is not something that the State Bar should support.

Finally, in the interest of full disclosure, I must report that I have nothing to disclose. I have never represented a libel plaintiff against a media company. I have represented libel defendants in many cases, and at one time gave frequent libel advice to a daily newspaper. It has been many years since I have had a libel matter of any kind. In short, I have no axe to grind. My only interest is in ensuring a fair statute and process.



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