

THE UNIFORM BAR EXAMINATION: A BENEFIT TO LAW SCHOOL GRADUATES

by Veryl Victoria Miles

During the past academic year, I have had the opportunity to discuss with a variety of audiences some of the changes and innovations that have taken place within law schools and some that will be coming to the law school community in the near future. The catalysts for these changes and innovations are a variety of unrelated events, studies, and initiatives, including

1. the 2007 report of the Carnegie Foundation for the Advancement of Teaching recommending that legal education be delivered in a more integrative manner that links learning the law to law practice;¹
2. the impact of the economic recession beginning in 2008 on the legal employment market and law school placement and career services programs;
3. a proposed addition to the ABA Standards and Rules of Procedure for Approval of Law Schools on student learning outcomes and assessments,² which will require law schools to identify more clearly the educational competencies that students should obtain during their legal education and to measure student learning taking place during law school; and
4. the National Conference of Bar Examiners' initiative to promote the Uniform Bar Examination (UBE).

The audiences I have addressed have included law school students, law school deans, judges, and practitioners. As one can imagine, responses to the first three catalysts listed above have varied from school to school, which is understandable given the diversity one finds in the law school community in terms of mission, academic program, student body, and the employment market traditionally served. However, with respect to the fourth catalyst—NCBE's concept and promotion of the Uniform Bar Examination—there has been general interest and support.

In each presentation, I have identified myself as having a dual interest in the promotion of the UBE. The first reason for my interest is my service on the NCBE Special Committee on the Uniform Bar Exam and my belief that a uniform examination used by all jurisdictions is a very pragmatic way to address the increasingly multijurisdictional nature of law practice.

The second reason for my interest in the adoption of the UBE is that I am dean of a law school (The Catholic University of America Columbus School of Law) whose students represent close to 40 different states and bar licensing jurisdictions in any given graduating class year. These graduates will ultimately sit for the bar examination in as many as 25 to 30 different jurisdictions, making the UBE very appealing in meeting the broad bar admissions aspirations of our graduates, while also enhancing

their professional mobility in a fluid legal employment market.

My goal for each presentation has been to provide background information about the UBE, explain the characteristics of the UBE, explore the benefits of the UBE, and inform the audience of concerns raised by interested parties.³ In this article I summarize the information I have provided in these presentations, include some of the reactions to the UBE, and share my thoughts about how the UBE can benefit recent law school graduates, based on experiences at my own institution and commonly shared experiences with law schools in general.

THE UNIFORM BAR EXAMINATION: A RIPENING CONCEPT FOR BAR LICENSURE

One of the observations that I have come away with from each presentation about the UBE is the audience's sense of the UBE as a novel concept for lawyer licensure. The idea of a uniform bar examination, however, has been discussed by various groups within the legal community over the past 20 years. That this has occurred without garnering much traction beyond the discussant groups is revealing in terms of the importance of timing as the key to introducing the UBE throughout the states and effecting its broad adoption.

Two events seem to have helped spark interest in the UBE. In 2002 discussions about the feasibility and merits of a uniform bar examination took place among several groups that would be most impacted or advantaged by such an examination (the bench, the practicing bar, and the legal academy). These groups included the Conference of Chief Justices,

the American Bar Association, and the Association of American Law Schools.

In January 2008, NCBE held a conference to explore the feasibility and desirability of a uniform bar examination with state supreme court justices, bar examiners, and bar admission administrators from jurisdictions that were using the three NCBE tests recommended as the testing components of the UBE. This conference resulted in significant interest in the idea of a uniform bar examination. As

a result of the discussions that followed that conference, a proposal for the UBE was drafted by the NCBE Special Committee on the Uniform Bar Exam.

DEMISTIFYING THE UNIFORM BAR EXAMINATION

A lawyer's understanding of the bar examination process is often reflective of what he or she took away from the experience of taking the exam. For most of us, mention of the bar exam reminds us of an extremely stressful time and an intense focus on learning "how to take the test" in order to get on with the business of being able to practice law. In spite of the memories many may have of the testing experience, the purpose of the examination itself must not be overlooked: to ensure that all new lawyers possess basic competencies for effective practice of law. These competencies include basic knowledge of core legal subjects and professional ethics; basic legal practice skills, including critical thinking, analysis, and problem solving; and effective written communication skills.

Accordingly, NCBE has developed several different kinds of tests that bar examiners may use

to assess these competencies. The tests have been introduced at different times, reflecting the changing needs and concerns of bar examiners and their desire to be more effective and comprehensive in the ultimate certification of a lawyer's competency to practice. These tests include the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), the Multistate Performance Test (MPT), and the Multistate Professional Responsibility Examination (MPRE).

The UBE is composed of the first three of these NCBE tests. (The MPRE, administered on a schedule different from the regular bar examination administrations in February and July, is not part of the UBE.) Consequently, the UBE tests a broad range of subject matters, skills, and abilities, using multiple testing formats. The sidebar on this page provides a description of each test used in the UBE.

BENEFITS OF THE UNIFORM BAR EXAMINATION

The UBE offers uniformity and consistency in test questions and grading rubrics among participating jurisdictions and ensures the same level of exam quality and comparability of scores among jurisdictions. NCBE maintains committees of test development professionals with years of experience in writing questions, and staff dedicated to assessing the validity of the tests in determining law practice proficiencies. The UBE provides greater transparency in test development, administration, and scoring, and jurisdictions do not have to incur the costs of test development.

UBE scores are portable to other UBE jurisdictions. This feature of the UBE has been received most favorably by all audiences and by student groups in particular. Given the uncertainty many recent law

THE COMPONENTS OF THE UNIFORM BAR EXAMINATION

The three NCBE tests that make up the UBE are the following.*

The Multistate Bar Examination (MBE)

- A six-hour, 200-question multiple-choice examination designed to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns.
- Areas of law covered are Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts.
- The MBE is currently being used by 53 jurisdictions, including 48 states (jurisdictions not using the MBE are Louisiana, Washington, and Puerto Rico).

The Multistate Essay Examination (MEE)

- An examination consisting of nine 30-minute essay questions from which jurisdictions usually administer six of the nine. The UBE includes six MEE questions.
- Areas of law covered are Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates (Decedents' Estates; Trusts and Future Interests), and Uniform Commercial Code (Negotiable Instruments [Commercial Paper]; Secured Transactions). The MEE tests on legal issues that are of general application in all states.
- The MEE is currently being used by 27 jurisdictions.

The Multistate Performance Test (MPT)

- A 90-minute examination requiring the application of fundamental lawyering skills in a realistic situation. Jurisdictions currently may use one or two MPTs for each exam. Each MPT evaluates an applicant's ability to complete a task that a beginning lawyer should be able to accomplish. The UBE includes two MPTs.
- Skills tested are factual analysis, legal analysis and reasoning, problem solving, identification and resolution of ethical dilemmas, written communication, and organization and management of a legal task.
- The MPT is currently being used by 34 jurisdictions.

* For more thorough descriptions of these tests, including sample questions and how the tests are developed, see Susan M. Case, *The Testing Column: Coming Together: The UBE*, THE BAR EXAMINER, Aug. 2009.

school graduates face in terms of where they will practice, a portable bar exam score eliminates the stress of having to select a particular jurisdiction in which to sit for the bar exam. Portability of the UBE score is particularly helpful because the ability to be admitted on motion in most jurisdictions is often unavailable to recent law school graduates who do not meet the “years of practice” requirement—generally five of the past seven years for those jurisdictions that offer motion admission.

Many practitioners find themselves engaging in cross-border or multijurisdictional law practice, making possible nationwide adoption of the UBE attractive to current and future lawyers. Widespread UBE adoption could also result in cost efficiencies in fees for clients with multijurisdictional cases. Moreover, the UBE can enhance both the professional and personal mobility of lawyers.

CONCERNS RAISED ABOUT THE UNIFORM BAR EXAMINATION

What about state-specific testing? Under the UBE testing structure, any individual jurisdiction can continue to test examinees on state-specific law and/or rules of practice and procedure either by attaching an additional test to its bar examination or by adding a continuing legal education or “bridge-the-gap” program requirement to the licensing process.

What about common decisions currently made by each jurisdiction? Other aspects of bar admissions that are of importance to individual jurisdictions will remain within the authority of each jurisdiction.

These include character and fitness decisions, educational prerequisites (e.g., graduation from an ABA-accredited law school), pass/fail cut scores, ADA accommodation decisions, and the duration of UBE score portability.

A LAW SCHOOL PERSPECTIVE ON THE BENEFITS OF THE UBE

In my role as dean of a law school, one of my principle concerns is the successful and speedy licensure

of our graduates. Several variables, however, can make this process complicated and inefficient—variables that could be significantly reduced or eliminated by widespread adoption of the UBE. Based on conversations with two members of our administration who provide

the vast majority of bar counseling and career advice to our graduating students—Jessica Heywood, Director of Career and Professional Development, and Georgia Niedzielko, Assistant Dean of the Office of Academic Affairs—I have provided below three examples of how the UBE can be beneficial to recent law school graduates. These examples apply not only to students graduating from our law school but to a certain extent to graduates of law schools throughout the country.

Simplifying Bar Selection and Maximizing Employability

Because bar application deadlines in many jurisdictions are set months in advance of the July bar exam administration, most graduating students are required to select a jurisdiction in which to sit for the bar exam long before they have received an offer of employment. Accordingly, law school bar

counselors and career advisors spend countless hours in the winter and spring helping graduating students decide which bar is appropriate in cases where a graduate does not yet know what type of employer he or she will be working for or the state in which he or she will be working. (For example, the place of licensing is not as important for an attorney to be eligible to work for the federal government as it is for an attorney to be eligible to work for a private firm, for which the place of licensing allows the attorney to practice in that firm's market.) Employment statistics collected by NALP (the Association for Legal Career Professionals) indicate that in 2009, almost 40% of graduating law school students nationwide did not receive offers of employment until after graduation.⁴ Thus, many graduating students are in essence forced into making a decision about where to take the bar exam because of an application deadline as opposed to being able to make this decision based on actual post-graduation employment.

Many students at Catholic University anticipate practicing in the Washington DC area immediately after graduation with the intent of moving to their home state or another state after acquiring a few years of experience in DC. Because of the "years of practice" requirement attached to the admission on motion rules of most jurisdictions, we therefore advise these students that it will be necessary for them to take another bar exam to be admitted in each jurisdiction in which they wish to practice in the early years of their careers.

However, because the admission on motion rule of the District of Columbia allows lawyers who have obtained an MBE score of at least 133 and an MPRE score of at least 75 to be admitted *regardless* of years of practice, most law school graduates planning to practice in the District of Columbia upon graduation

will take the bar exam in another jurisdiction and use the admission on motion rule for licensure in the District of Columbia. Accordingly, very few of our graduates actually sit for the bar exam in the District of Columbia, and many simply use DC's admission on motion procedure. Graduating students interested in maximizing their employment opportunities in both the short and long terms and wanting to avoid taking a second bar examination when they ultimately return to their home state or move elsewhere initially think these goals are achievable in this way.

While this may sound like a reasonable solution, it may not result in the greatest maximization of short-term employment opportunities in the greater Washington DC area. Many Maryland and/or Virginia firms based in DC require lawyers to also hold licenses from those jurisdictions. Therefore, if the graduate obtained his or her first license in a state other than Maryland or Virginia, the graduate has limited his or her employment options to firms that only require attorneys to have a DC license or to the federal government, which accepts bar licensure from any jurisdiction. In reality, the graduate will still need to sit for the bar examination in Maryland and/or Virginia to maximize employment options with Maryland- and Virginia-based firms and state and local governments, including public defenders' and prosecutors' offices. Widespread adoption of the UBE would resolve these bar selection problems by allowing recent graduates to sit for the bar exam in any jurisdiction and then simply transfer the UBE score to the new jurisdiction of their choice.

Making the Most of Bar Counseling and Bar Preparation Programs

Virtually all law schools offer bar preparation programs for graduating students in order to enhance

student readiness for the bar preparation regimen that follows graduation—essentially giving students a “head start” opportunity. At law schools where a majority of the graduates sit for the bar exam in one jurisdiction, it is relatively straightforward for the law school to design a bar preparation program for its students.

For law schools where a significant number of recent graduates sit for the bar exam in several different jurisdictions, the law schools (and therefore the students) have to become familiar with the test specifics and subject coverage of many different bar exams. My law school, Catholic University, is one of these schools. The good news is that because Catholic has a critical mass of students sitting for the exam in Maryland, Virginia, and New York, we have developed a strong base of bar preparation programming and information that we can readily provide to students for those exams. While we have a number of graduating students who sit for the bar exam in other states, our bar preparation programming is sufficient to assist all of our students with initial bar preparation readiness. However, students who take the bar exam in a jurisdiction other than our three primary jurisdictions (aside from DC itself) still need to do research to understand the specifics of that particular jurisdiction’s exam.

For example, the student who seeks admission in Colorado will find that Colorado uses the MBE, MEE, and MPT—in other words, the same exam components that Catholic covers in detail in its bar preparation program. Thus, the student can benefit from our general programming; however, he or she will still need to determine what subjects are tested in the Colorado-specific essay portion, including subjects that may be different from those covered in the MEE.

On the other hand, the student who seeks admission in the state of Washington will find that the Washington exam is dramatically different from the exam taken by almost all other graduates. Washington does not use the MBE, and its exam consists entirely of state-specific essay questions. Accordingly, students who sit for the bar exam in Washington do not benefit from the MBE portion of our bar preparation programming; they do, however, benefit from the rigorous essay preparation that we offer.

Nationwide adoption of the UBE would eliminate the challenge for law schools of developing different bar preparation courses for students who intend to practice in different jurisdictions.

Enhancing Lawyer Mobility

As I mentioned before, one of the attractions of the UBE is that it enhances the graduating student’s professional and personal mobility. I see examples of this need for mobility with every graduating class. The pressure of having to take two bar examinations to accommodate such needs so early in the graduate’s career is stressful personally and economically.

For example, let’s assume that a graduating student’s spouse is about to be stationed in California (a state that does not provide for admission on motion or accept an MBE score received in another jurisdiction) but within three years expects to move back home to New Hampshire (a state that requires a lawyer to have practiced for five of the past seven years to be admitted on motion). The individual requirements of each bar exam create serious barriers. In this example, the student will need to prepare for the California examination and then in short order prepare for another bar exam in New Hampshire, incurring significant expense and needing to wait

for the second bar exam's results before being able to obtain employment in New Hampshire.

In summary, widespread adoption of the UBE would allow lawyers to move from one jurisdiction to another as their careers and personal needs require. It would also dramatically decrease the amount of time and thought examinees spend trying to decide which bar to take, while enhancing the ability of the examinee to focus on what all bar examinations ultimately seek to assess—basic knowledge of law, professional ethics, and skills necessary for the effective practice of law.

ADOPTION OF THE UNIFORM BAR EXAMINATION: PROGRESS REPORT

At the time of publication of this article, the state bar examination and admission authorities of Missouri and North Dakota have adopted the UBE and are scheduled to launch the UBE for the February 2011 bar examination administration. Twenty-two jurisdictions use all three of the UBE test components (MBE, MEE, and MPT) and are likely candidates for adoption of the UBE. Approximately 10 additional states are said to be seriously considering adoption of the UBE over the next two years.

While it is my hope that all jurisdictions will ultimately adopt the UBE, it is clear that the process will take time. Jurisdiction concerns about providing the fullest licensing protections for their citizenry need to be addressed. As more members of the legal community become aware of the UBE, however, its novelty will disappear and its appeal as a reasonable option for law practice licensure will increase. ■

NOTES

1. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Carnegie Foundation for the Advancement of Teaching/Jossey-Bass 2007).

2. See American Bar Association Section of Legal Education and Admissions to the Bar, Standards Review Committee Student Learning Outcomes Subcommittee, May 5, 2010, Draft, Chapter 3: Program of Legal Education, available at <http://www.abanet.org/legaled/committees/comstandards.html> (find "Drafts for Consideration at Standards Review Committee Meetings"; then find "Meeting Date: July 24–25, 2010"; then find "Standards 301–307: Student Learning Outcomes").
3. The primary source of information for these presentations is "Essays on a Uniform Bar Examination" from the February 2009 issue of the *Bar Examiner*. The essays in this collection, written by a range of authors, including bar examiners and administrators, judges, and law school deans and faculty members, explore the benefits of and concerns raised by the UBE.
4. Association for Legal Career Professionals, Class of 2009 National Summary Report, available at <http://www.nalp.org/uploads/NatlSummaryChartClassof09.pdf>.



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