

THE MEE

MULTISTATE ESSAY EXAMINATION

THE MEE MARKS A MAJOR MILESTONE

by Judith A. Gundersen

As 2013 comes to a close, so does the silver anniversary of the Multistate Essay Examination (MEE). First administered in 1988 in just 6 jurisdictions, the MEE is now a component of the Uniform Bar Examination (UBE), which has been adopted in 14 jurisdictions, and a component of the bar exam in 17 non-UBE jurisdictions. This article is a retrospective on the evolution of the MEE, beginning with the role of Professor Marygold Shire Melli, generally viewed as the “mother of the MEE,” and includes reflections from longtime MEE Drafting Committee chair Professor Sheldon F. Kurtz. The article also looks to the future as the MEE continues to evolve to suit the changing landscape of bar admissions.

Over the course of the MEE’s 25-year run and the changes the test has undergone since its inception, one thing that has stayed the same is that, whatever its format and content, the MEE has continued to fulfill its purpose of providing jurisdictions with high-quality essay questions. And to best meet jurisdictions’ needs while fulfilling that purpose, the MEE has had various iterations, which even longtime bar examiners and administrators might be surprised to learn about. In fact, the MEE is changing again effective with the February 2014 exam.

THE EARLY YEARS

Marygold (Margo) Shire Melli, the Voss-Bascom Professor of Law Emerita at the University of Wisconsin Law School, was on NCBE’s Board of Trustees (known then as the Board of Managers, which she subsequently chaired) in 1982 when she proposed developing an essay examination to offer to jurisdictions—just as NCBE had done in offering a multiple-choice examination to jurisdictions with the Multistate Bar Examination (MBE) 10 years earlier. Margo said that she felt it was part of NCBE’s mission to make a high-quality essay exam available to all jurisdictions, many of which simply did not have the resources and time to devote to high-stakes question development.

An Ad Hoc Committee to Consider NCBE Sponsorship of Essay Questions was appointed later that year, its charge being to consider and make recommendations to the Board as to whether or not, and, if so, on what terms and conditions, NCBE should offer to provide essay test questions to jurisdictions. The committee prepared a questionnaire to send to jurisdictions to help determine the feasibility of preparing such questions and the scope and use thereof. A subcommittee was appointed in May 1983 to study the jurisdictions’ responses, and Margo was appointed to chair that subcommittee, the Multistate

Essay Examination Committee. Based on a majority of favorable responses from the jurisdictions, Margo circulated to the Board in early 1984 a prepared “Proposal for Multistate Essay Examination.”

The MEE Committee surveyed jurisdictions to determine which legal skills ought to be tested on the essay examination, the subjects to be covered, the number of questions to be offered, and the time to allot per question. Not surprisingly, analysis, legal knowledge and reasoning, issue spotting, and written organization landed at the top of the skills list. Jurisdictions favored the following subjects to be covered:

- The six MBE subjects (Constitutional Law, Contracts, Criminal Law, Evidence, Real Property, and Torts);
- Civil Procedure;
- Corporations; and
- Wills, Estates, and Trusts.

That was the *easy* part. Next, the Board had to create a plan for test development, including forming a drafting committee composed of law professors and practitioners well versed in these nine subject areas. Margo was appointed to chair the MEE Test Drafting Committee (as it was initially called) in November 1985, a position she held until 1990. (Douglas D. Roche of Michigan, who later chaired the NCBE Board of Trustees, had been named in November 1984 to succeed Margo as chair of the MEE Policy Committee.) The Board, the MEE Policy Committee, and the MEE Test Drafting Committee also had to devise and implement policies and processes for every aspect of test development and administration—from formulating test specifica-

tions, soliciting questions, submitting the questions for review by outside content experts, and pretesting the questions, to putting together test forms and providing grading materials and grader training to the jurisdictions. NCBE was already working with ACT to prepare the MBE, so ACT provided test development and administration support to NCBE for the MEE as well. (ACT is the organization responsible for the ACT college admissions test and provides other educational assessment services.)

After years of planning and preparing a bank of test-ready questions, NCBE released the first MEE, which was administered in July 1988 in six jurisdictions: Arkansas, the District of Columbia, Kansas, Maine, Mississippi, and Pennsylvania. The exam in that first iteration consisted of two questions designed to be answered in 50 minutes each, plus four questions to be answered in 20 minutes each, for a half day of testing time.

AFTER YEARS OF PLANNING AND PREPARING A BANK OF TEST-READY QUESTIONS, NCBE RELEASED THE FIRST MEE, WHICH WAS ADMINISTERED IN JULY 1988 IN SIX JURISDICTIONS: ARKANSAS, THE DISTRICT OF COLUMBIA, KANSAS, MAINE, MISSISSIPPI, AND PENNSYLVANIA.

THE MIDDLE YEARS

Use of the MEE grew steadily but slowly. By 1990, eight jurisdictions were using the MEE, with Alabama and West Virginia being the latest adopters. In an effort to spur growth, NCBE held a series of regional meetings and again surveyed jurisdictions to find out what it was they wanted in an essay exam. As a result, the MEE underwent fairly significant changes to test specifications and format. MBE subjects were eliminated to make way for six MEE subject “families” covering nine non-MBE subjects spread over seven questions. The six families and nine subjects were

- Business Associations (Agency and Partnership, Corporations);
- Conflict of Laws;
- Family Law;
- Federal Civil Procedure;
- Trusts and Estates (Decedents' Estates, Trusts and Future Interests); and
- Uniform Commercial Code (Commercial Paper [now Negotiable Instruments], Secured Transactions).

All seven questions were designed to be answered in 30 minutes each, and it was anticipated that most jurisdictions would select six of the seven questions for a three-hour block of testing time.

The revised MEE debuted in July 1993. By then, the list of MEE jurisdictions had grown to 13, and most of the 13 used six of the seven questions. Test booklets were printed by NCBE with all seven questions, and jurisdictions instructed examinees to cross out the question(s) that the jurisdiction had decided to eliminate. NCBE provided a packet of color-coordinated answer booklets for each question to facilitate keeping track of answer booklets and assigning them to the appropriate graders.

The number of MEE jurisdictions remained stable throughout the rest of the 1990s into the early 2000s. To further encourage use of the MEE, non-MEE jurisdictions were permitted to try out an MEE question; a jurisdiction could review the available questions and select the one it wanted to use for one exam administration. This resulted in modest expansion of MEE use, growing to 19 jurisdictions by July 2006.

In the meantime, the MEE underwent some behind-the-scenes changes that jurisdictions might have been unaware of. In 2005, the NCBE Board of Trustees voted to bring in-house all test devel-

opment responsibilities from ACT. Testing staff devised a comprehensive plan for implementing the changes, which, NCBE was happy to report, went without a hitch.

MEE EXPANSION

As early as 2004, the MEE Policy Committee had begun to receive inquiries from MEE jurisdictions about adding MBE subjects back to the MEE. NCBE once again surveyed both MEE and non-MEE jurisdictions to gauge which new subjects, if any, should be covered by the MEE and whether adding them might prompt new jurisdictions to pick up the MEE. As a result of these surveys, NCBE learned that reintroducing the MBE subjects had a lot of appeal. However, MEE jurisdictions also wanted to maintain the non-MBE subject coverage to which they had become accustomed.

A plan was devised to offer nine questions per MEE test form, from which jurisdictions could select however many questions they wanted to administer. NCBE would then custom-print each jurisdiction's test booklet to contain only those questions that the jurisdiction had selected. In 2006, the MEE Policy Committee finalized plans for expanding MEE test specifications to include all six MBE subjects, in addition to the existing nine MEE subjects, effective with the July 2007 exam, and made the announcement to the bar examining world. (For each test form, six of the questions were from the six MEE subject families, and three questions were from randomly chosen MBE subjects.)

It was a big undertaking to prepare such a significant expansion of questions and subjects per exam. Fortunately, the MEE Drafting Committee, chaired by Sheldon F. Kurtz, Professor of Law at the University of Iowa College of Law, was composed of members with subject matter knowledge

in all 15 subject areas that were to be covered. MEE expansion also required NCBE's testing staff and IT Department to update the question database and exam-ordering processes for jurisdictions to be compatible with the new nine-item format. As always, every MEE question was subjected to the rigors of NCBE's test development process: multiple Drafting Committee editing sessions, outside expert review, pretesting, and, finally, editing by NCBE testing and editorial staff. In July 2007, the first nine-question MEE was administered, with customized test booklets for each jurisdiction.

Since then, use of the MEE has grown to 30 jurisdictions. (Alaska's first administration of the UBE in July 2014 will bring this number to 31.) Surely, some of that growth is due to the adoption of the UBE, which was first administered in Missouri and North Dakota in February 2011. In July 2014, just three and a half years later, the number of jurisdictions administering the UBE will have grown to 14.

Through the July 2013 exam administration, all UBE jurisdictions—unlike non-UBE jurisdictions that administer the MEE—were required to administer a common set of six MEE questions from the nine available questions in order to underscore the concept of uniformity and transportability of UBE scores. The six MEE questions included as part of each UBE administration were selected by NCBE testing staff in light of UBE jurisdiction ratings and input. Effective with the February 2014 administration, the process of choosing a common set of six questions among nine will no longer be necessary, as discussed below.

EVERYTHING OLD IS NEW AGAIN

In 2012, after much deliberation and discussion, NCBE's Board of Trustees and MEE Policy Committee decided to cut back on the number of questions offered per test form from nine to six—but

REFLECTIONS FROM MEE DRAFTING COMMITTEE CHAIR PROFESSOR SHELDON F. KURTZ

When told about this article recognizing the MEE's 25th anniversary, Professor Sheldon F. (Shelly) Kurtz, Professor of Law at the University of Iowa College of Law and MEE Drafting Committee chair since 1990, asked to share the following observations about the challenges and joys of being on this committee, plus one of his favorite stories to tell in his years as chair.

For me, as chair, the primary challenge to ensuring that MEE quality standards are maintained is to recruit and retain dedicated committee members with both the subject matter knowledge and the technical drafting skills required to prepare questions in 15 discrete areas of law who also possess the interpersonal skills to work collaboratively in an intense, communal drafting environment twice a year.

On a personal level, one of the nicest things about serving on the committee has been the opportunity to develop great friendships with academics and lawyers around the country who have participated in both Drafting Committee meetings and grading workshops. I can say that we work hard, but we enjoy every minute of it.

And, of course, my favorite anecdote is about my cab ride in Phoenix about 10 years ago with Diane Bosse, chair of the New York Board of Law Examiners, who peppered me with questions about my admission to the New York Bar in 1967 and my current status as a member of the New York State Bar Association, of which I was very confident, even though I had long ago left the state of New York.

A few days after that cab ride conversation, I received a cryptic one-line e-mail from Diane, which read: "You are no longer a member of the New York Bar." I believe that line was followed by "Have a nice day." Diane and I have a good laugh about this every time we see each other!

to keep the MBE subjects as part of the MEE (along with the nine existing MEE subjects). This was due in large part to the recognition that all MEE jurisdictions had embraced the inclusion of MBE subjects on the test and brought the current MEE in line with the six-question configuration used as part of the UBE. Customizing test booklets and providing grading assistance for nine questions, some of which had little pickup among user jurisdictions, had proved to be administratively challenging and not cost-effective. Many options were considered to maintain content coverage, simplify development and delivery, and embrace and encourage UBE growth.

That growth of the UBE—which, as mentioned earlier, required adopting jurisdictions to administer a common set of six MEE questions—seemed to be pulling the MEE Policy Committee in the direction of settling on *one* common set of six questions rather than offering non-UBE jurisdictions different options. Therefore, based on the MEE Policy Committee’s recommendation and the Board’s vote, effective with the February 2014 exam, the MEE will consist of a common set of six questions offered to *all* MEE jurisdictions—UBE jurisdictions and non-UBE jurisdictions alike. Of course, non-UBE jurisdictions will be free to select as many of the six as they wish and supplement them with their own state-authored questions should they choose. (NCBE will not, however, print customized test booklets for jurisdictions selecting fewer than six questions.)

NCBE’S GRADING SUPPORT FOR JURISDICTIONS

Throughout the MEE’s many iterations, one thing that has not changed is NCBE’s commitment to juris-

dictions in providing high-quality essay questions as well as grading support in the form of detailed grading materials and training to MEE jurisdictions. NCBE holds an MEE (and MPT) Grading Workshop the weekend after the exam, with sessions for each question led by experienced facilitators who are also content experts. Graders may attend the workshop in person or via conference call. All workshop sessions are taped and then edited for later on-demand viewing for those who cannot participate during the workshop weekend. Final grading materials are uploaded for all graders the week following the workshop.

POSSIBLE FUTURE CHANGES

As readers of the *Bar Examiner* know, NCBE is in the midst of a content validity study, which is aimed at providing evidence to support the extent to which NCBE’s battery of tests is evaluating examinees in ways that are relevant to entry into the legal profession. The first step of the validity study, a job analysis, has already been completed; it provides a snapshot of what newly licensed lawyers are doing on a day-to-day basis as well as identifying what knowledge, skills, and abilities new lawyers believe that they need to carry out their work.¹

The job analysis data may provide reasons for making modifications to all NCBE tests, including the MEE. With the encouragement of the NCBE Board of Trustees and the Long Range Planning Committee, the MEE Policy Committee and MEE Drafting Committee have begun discussing the job analysis data and plan to recommend what changes, if any, might be made to the MEE in terms of subject areas and format.

Changes to the MEE, if any, as a result of the content validity study will be well publicized to give law schools, jurisdictions, and examinees ample time to prepare. What the job analysis does validate is that the newly licensed lawyer believes it critical that he or she communicate effectively in writing—and that is something that the MEE is designed to test.

Despite the success and increasing popularity of the MEE, NCBE will continue to evaluate the test, as it does with all its tests, to ensure that it continues to meet jurisdictions' needs in testing the qualifications of prospective lawyers. 

NOTE

1. The NCBE job analysis, entitled *A Study of the Newly Licensed Lawyer*, is available on the NCBE website at <http://www.ncbex.org/publications/ncbe-job-analysis/>.

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