Study Commission on the Future of the Indiana Bar Examination

Notice of Meeting Wednesday, February 20, 2019
1:30 PM

The second meeting of the Study Commission on the Future of the Indiana Bar Examination will be held on Wednesday, February 20, 2019 at 1:30 pm (Eastern time) in Room 319 of the Indiana State House.

Patricia White, Dean of the University of Miami School of Law and the Chair of the ABA’s Commission on the Future of Legal Education, and Nicole Lefton, Assistant Professor of Academic Support and Director of Academic Success and Bar Exam Preparation at Hofstra University School of Law, will be making presentations to the Commission via Skype.

Hon. Randall T.
Shepard Chair

Hon. Nancy H.
Vaidik Vice Chair

Study Commission on the Future of the Indiana Bar Examination

Meeting Minutes
February 20, 2019

Members present: Hon. Randall T. Shepard (Chair); Hon. Nancy H. Vaidik (Vice Chair); Hon. Cristal Brisco; Dean Andrew Klein; Yvette LaPlante; Jon Laramore; John Maley; Leah Seigel; Cathleen Shrader; Justin Forkner (Ex Officio); Bradley Skolnik (Ex Officio). The meeting convened at 1:30 p.m.

1. Call to Order

Chief Justice Shepard, Chair, called the meeting to order at 1:30 p.m.

2. Presentation by Patricia D. White, Dean and Professor of Law, University of Miami School of Law

Patricia D. White, Dean of the University of Miami School of Law, and Chair of the ABA’s Commission on the Future of Legal Education appeared before the Study Commission via Skype video conferencing. She was joined by Andrea P. Sinner, Staff Director of the ABA’s Commission on the Future of Legal Education.
Chief Justice Shepard thanked Dean White for taking the time to speak to the Study Commission. He noted that Dean White was invited to brief the Study Commission on her views regarding testing issues as well as the research she is engaged in as a member of the ABA’s Commission on the Future of Legal Education.

Dean White stated that for 18 years she served as a member of the National Conference of Bar Examiners’ (NCBE) committee that drafts torts questions for the Multistate Bar Examination (MBE). During her tenure, she observed changes in the development and format of MBE questions. Specifically, she noted that the NCBE removed any questions from the MBE that have contingencies. Dean White also indicated that in the past not all MBE questions were pre-tested like they are now. Instead, before MBE scores were posted, the drafting committees would meet and review MBE questions that did not test well. If it was determined that a question contained ambiguities or was otherwise flawed, the NCBE might determine that more than one answer should be deemed correct. Similarly, if it was determined that a question was too easy or too difficult, it might be thrown out.

According to Dean White, the decline in MBE scores and passage rates coincided with the aforementioned changes. She expressed concern that she has not received any real answers as to whether the changes in the development and format of MBE questions are related to plummeting test scores. She contends that passage rates declined at some law schools despite the fact that admission standards have not diminished.

Dean White also expressed concern regarding how many subjects are tested in some jurisdictions, including her home state of Florida. She noted that Florida potentially tests 32 subjects (representing an accumulation of MBE topics, Florida specific law on the same MBE topics and other Florida specific topics) on its bar exam.

Dean White stated that she believes the Uniform Bar Examination (UBE) is a good instrument, but she would like to see further evaluation of the MBE component, including an analysis of what topics should be tested.

Chief Judge Vaidik, Vice-Chair of the Study Commission, inquired about UBE jurisdictions that have incorporated a state specific component as part of the admission process. Dean White opined that those jurisdictions that have online tests on state specific law are good models. These tests create a motivation for bar applicants to learn state specific law. One concern, however, is that these tests are may not be developed in consultation with testing experts and psychometricians.

In response to a question about the Multistate Performance Test (MPT), both Dean White and Ms. Sinner felt it was an effective tool.

Dean White discussed a few of the studies that have been undertaken by the AccessLex Institute. These studies include, among other things, an analysis of what constitutes minimum competency as well as an evaluation of how many subjects should be tested on a bar exam. Among the items being evaluated is the relationship between performance on the MBE and the overall number of topics being tested in a state. In essence, how can we have uniform scoring on the MBE if
applicants are taking exams under different circumstances owing to the fact that in some jurisdictions a greater number of topics are tested on the bar exam.

Dean White and Ms. Sinner indicated that although the NCBE has a monopoly on testing and expressed concern that it does not share a great deal of data, they do have a positive view of the organization’s new President and CEO Judith Gundersen. They also noted that the NCBE has established its own Testing Task Force charged with undertaking a three-year study to evaluate whether changes should be made to the bar exam to ensure that it tests the knowledge and skills necessary for admission to the bar.

3. Presentation by Nicole R. Lefton, Assistant Professor of Academic Support and Director of Academic Success and Bar Exam Preparation at Hofstra University
Maurice A. Deane School of Law

Nicole R. Lefton is an Assistant Professor of Academic Support and Director of Academic Success and Bar Exam Preparation at the Hofstra University Maurice A. Deane School of Law. For nearly 8 years she served as Curriculum Director and then Director of Academics at Kaplan Bar Review, where she played a key role in the launch of Kaplan’s bar review course and development and maintenance of academics for the company’s bar review program in over forty states. She also served for several years as an Adjunct Professor at the Yeshiva University Benjamin Cardozo School of Law where she taught Lawyering Skills and Legal Writing. She appeared before the Study Commission via Skype video conferencing.

Professor Lefton provided the members of the Study Commission with an overview of the format and content of the UBE. The UBE consists of the MPT, the Multistate Essay Examination (MEE) and the MBE. She noted that 35 jurisdictions have now adopted the UBE.

Professor Lefton states that she really likes the MPT because it consists of closed universe practice and performance questions. She feels it is the closest thing to testing what a young associate at a law firm might be required to do. It focuses on practical skills such as reasoning, organization, time management, etc. The MEE, meanwhile, requires an in-depth analysis of legal topics on which applicants are given 3 hours to answer 6 essay questions (approximately 30 minutes per question). The NCBE provides each jurisdiction with a grading rubric and each state grades on its own. However, there is no overall calibration among jurisdictions to ensure grading uniformity across the country. Although a UBE score is portable from one UBE jurisdiction to another, each individual state sets its own cut score.

She further noted that while New York has adopted the UBE, it has also developed a state specific component as part of its admissions process. In addition to achieving a successful score on the UBE, applicants are also required to successfully complete the state specific component in order to be eligible for admission.

The New York state specific component consists of two parts. First, all applicants are required to watch a series of videos on New York law. They are also provided with an outline of state specific New York law. After applicants watch the videos, they are then required to take the New York Law Exam, an online 50 multiple choice question test offered four times a year. The test is
entirely open book and applicants are required to correctly answer 30 of the 50 questions in order to be successful on the exam.

Professor Lefton expressed concern regarding the effectiveness of the New York Law Exam. She indicated that only one of her students was ever unsuccessful on the exam and is unsure that it results in applicants learning New York law.

In response to a question regarding the effect that the UBE has had on passage rates in New York, Professor Lefton said that passage rates initially increased, but have declined on more recent exams.

Professor Lefton also discussed a number of skills building classes that the Hofstra University School of Law is incorporating into its curriculum. These include courses that provide instruction on how to read cases and draft briefs, as well as focusing on legal analysis, writing and analytical reasoning. The law school also requires students to take certain core courses on subjects tested on the bar exam. In addition, students whose grade point averages fall below a certain level are required to take courses on additional topics tested on the exam.

During their final semester of law school, all Hofstra law students are required to take a three-credit “Perspectives” class. The course, taught by an outside bar review provider, covers four of the seven MBE topics. According to Professor Lefton, the class is a form of bar review course that is part of the law school curriculum.

Professor Lefton concluded by expressing her concern that passing the bar exam requires a whole different skill set than law school.

4. Future Meetings

Chief Justice Shepard advised the members of the Study Commission that the following speakers are tentatively scheduled for future Commission meetings:

a. March Meeting

Hon. Mary R. Russell
Missouri Supreme Court

Andrea Spillars
Executive Director
Missouri Board of Law Examiners

b. April Meeting

Judith Wegner
Former Dean
University of North Carolina School of Law
c. **May Meeting**

   Aaron N. Taylor  
   Executive Director  
   AccessLex Center for Legal Education Excellence

**d. June Meeting**

   Judith A. Gundersen  
   President and CEO  
   National Conference of Bar Examiners

5. **Adjournment**

   The meeting adjourned at 3:45 p.m.