Report of the Study Commission on the Future of the Indiana Bar Exam

Findings and Recommendations
12/11/2019
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Letter from the Commission Chair and Vice Chair

Over the ninety years that our state has conducted bar examinations—more than 180 times, testing tens of thousands of applicants—the nature and coverage of the exam have periodically changed as the profession and legal education and the science of testing have evolved.

The Court has asked us to examine a series of questions about the nature of Indiana’s present examination and about potential for change.

Having studied these issues for nearly a year, we conclude that the time for further reform is at hand. Certain straight-forward changes will benefit law students, the profession, and the public.

For most of this century, about three-quarters of the Indiana examination has consisted of elements employed by just about every other state and prepared by lawyers, judges, and scholars participating in the National Conference of Bar Examiners. We recommend adopting an additional tool, the Multistate Essay Exam, a move that would allow Indiana test-takers to present their credentials to two-thirds of the other states (and vice versa). Our recent use of multi-state instruments has already given Indiana a more reliable testing system, and this new arrangement will allow portability that fits the way modern American lawyers practice law. The Indiana State Board of Law Examiners unanimously recommends this reform.

To assure that new lawyers admitted to the Indiana bar understand elements of Indiana’s laws that differ from those of other states, we recommend creating an Indiana-focused experience separate from the existing two-day examinations. Indiana applicants should be required to accomplish this element no later than within six months of passing the bar examination.

We also lift up the need to pay particular attention to differences in bar pass rates experienced by minority law students. These differences are similar to the differences that minority students encounter in law school grades and pre-law testing, but the profession’s goal of equal opportunity requires that we go further in addressing the needs and potential of these students.

We offer our thanks to the members who served with us on the Commission and to the witnesses and experts who agreed to assist. We are also grateful to Bradley W. Skolnik, Executive Director of the Office of Admissions and Continuing Education, and to his staff for all their effort in undertaking this assignment.

Randall T. Shepard
Chair

Nancy H. Vaidik
Vice-Chair

December 2019
Members of the Study Commission on the Future of the Indiana Bar Exam.
Supreme Court staff photo by Josh Hicks
Members of the Study Commission¹

Hon. Randall T. Shepard (Chair)
*Chief Justice of Indiana (Ret.)*

Hon. Nancy H. Vaidik (Vice-Chair)
*Chief Judge, Indiana Court of Appeals*

Hon. Cristal M. Brisco
*Magistrate Judge, St. Joseph Circuit Court*

Hon. Kenton W. Kiracofe
*Judge, Wells Circuit Court*

Andrew R. Klein
*Dean, Indiana University*
*Robert H. McKinney School of Law*

Yvette M. LaPlante
*LaPlante LLP*

Jon B. Laramore
*Executive Director, Indiana Legal Services*

John R. Maley
*Barnes and Thornburg LLP*

Austen L. Parrish
*Dean, Indiana University*
*Maurer School of Law*

Leah L. Seigel
*Barnes and Thornburg LLP*

Cathleen M. Shrader
*Barrett McNagny LLP*

**Ex Officio Members**

Justin P. Forkner
*Chief Administrative Officer, Indiana Supreme Court*

Bradley W. Skolnik
*Executive Director, Office of Admissions and Continuing Education*

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¹ Nell Jessup Newton, Professor of Law and Former Dean at the Notre Dame Law School, served as a member of the Study Commission until July 31, 2019, when she resigned after stepping down as the Dean of the Law School.
Executive Summary

The Indiana Supreme Court issued an order on December 4, 2018, creating the Study Commission on the Future of the Indiana Bar Examination, to evaluate current trends and issues and to make recommendations to the Court.

Following a series of productive public meetings, the review of comments from the Indiana legal community and careful deliberation, the Study Commission recommends the following:

1. The passing score of 264 on the Indiana bar examination should be retained. The Commission was provided no evidence justifying a decrease in the passing score, and recent declines in passage rates do not justify a change. Our state’s passing score of 264 is lower than comparable passing scores in most jurisdictions.

2. Indiana should continue the practice of scaling the written portion of the bar examination to the multiple-choice portion of the exam.

3. Indiana should continue to use a 6-point grading scale for the written portions of the bar examination.

4. The number of subjects tested on the essay portion of the Indiana bar examination should be reduced.

5. The “review” process for unsuccessful applicants under Admission and Discipline Rule 14 should be modified to provide an automatic review, before the release of exam results, of the scores on the written portions of the exam of applicants who are close to passing. The Commission recommends narrowing the eligibility for review from nine points to five points short of passing.

6. Whether an exam has a disparate impact on any particular groups is a “pervasive and complex issue in licensing exams.” Differences in performance among various groups do not automatically mean that an exam suffers from bias. Such disparities are most likely attributable to economic, social, and educational opportunities and differences rather than the nature of the bar exam. As a result, we should take steps to ameliorate the disparity in exam performance by bolstering support for ICLEO and initiating new efforts to ensure access to high-quality bar-exam preparation programs.

7. For nearly a generation, Indiana has joined virtually every other state by employing the Multistate Bar Examination (“MBE”) and the Multistate Performance Test (“MPT”). We recommend using the Multistate Essay Examination (“MEE”) during the afternoon session on the first day of the exam, replacing the six-question Indiana Essay Examination with the six-question MEE. We would thus join 36 other jurisdictions under the rubric of the Uniform Bar Examination (“UBE”). The UBE allows newly minted lawyers to transfer their scores to other UBE jurisdictions, enhancing career opportunities for younger lawyers and recruiting options for Indiana law firms, businesses, and government agencies.
8. To ensure that applicants have been exposed to unique areas of Indiana law, all bar-exam applicants should be required to complete an Indiana state law-specific component—a course, test, or some combination of the two—that is separate from the UBE. Completion of the state-specific component should be required within six months after admission to the bar.

Introduction

The Indiana State Board of Law Examiners ("Indiana Board") administered Indiana’s first bar examination in October 1931. In the 88 years since that first examination, the Indiana Board has administered over 180 bar examinations to aspiring attorneys.

As with much in the legal profession, the Indiana bar examination has evolved considerably over the years. Today, the bar examination is a two-day examination consisting of three distinct components: the MBE, a 200-question standardized multiple-choice examination created and graded by the National Conference of Bar Examiners ("NCBE"), the MPT, also created by the NCBE but graded by the Indiana Board, and the six-question Indiana Essay Examination on certain Indiana law topics not otherwise covered by the MBE, crafted and graded by the Indiana Board.

In recent years, there have been significant changes in bar admissions. Many states, including Indiana, have witnessed substantial, and, in some cases, unprecedented declines in bar examination passage rates. Meanwhile, in the span of less than a decade, the UBE has been adopted by 36 jurisdictions, including sister states Illinois and Ohio, and is being considered by still others.

It is against this backdrop of remarkable change that the Indiana Supreme Court determined there should be an extensive, in-depth analysis of the Indiana bar examination to determine whether changes in the format or content of the examination should be made. The Court established the Study Commission on the Future of the Indiana Bar Examination ("Study Commission") to evaluate current trends and issues in bar admissions and make recommendations.

By Order dated December 4, 2018, the Supreme Court appointed fourteen members of the Indiana bar, consisting of judges, attorneys, academicians, and court agency directors, to the Study Commission. The Court named the Honorable Randall T. Shepard, former Chief Justice of the Indiana Supreme Court, as Chair and the Honorable Nancy H. Vaidik, Chief Judge of the Indiana Court of Appeals, as Vice-Chair of the Study Commission.
Description of Process
The Supreme Court’s Order establishing the Study Commission directed it to address the following matters, in addition to any other matters the Study Commission deemed relevant to its charge:

1. Whether Indiana should modify what is deemed to be a passing score on the Indiana bar examination.

2. Should Indiana continue the practice of scaling the essay portions (Indiana Essay Examination and MPT) of the Indiana bar examination to the multiple-choice portion (MBE) of the examination?

3. Whether Indiana should continue to use the same grading scale to grade the written portion of the Indiana bar examination.

4. Whether any changes should be made to the number of subjects tested on the Indiana Essay Examination.

5. Should any changes be made to the appeals process for applicants who are unsuccessful on the Indiana bar examination?

6. Whether the present content and format of the Indiana bar examination has a disparate impact on any groups.

7. Should Indiana adopt the UBE?

Over the past year, the Study Commission held twelve meetings at the State House in Indianapolis. All meetings were open to the public and meeting minutes have been posted on the Commission’s website at https://www.in.gov/judiciary/ace/2568.htm. The Study Commission invited a broad cross-section of leaders and experts on bar admissions and examinations to appear in person or via Skype video at its meetings to share their views and expertise. The following individuals briefed the Study Commission and provided valuable information and data on the current state of bar examinations:

Roger Bolus, Ph.D.
Senior Partner
Research Solutions Group

Timothy Davis
John W. and Ruth H. Turnage Professor of Law
Wake Forest University School of Law

Marsha Griggs
Associate Professor of Law and Director of Academic Support and Bar Passage
Washburn University School of Law

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

Julian E. Harrell
President
Marion County Bar Association

Daniel F. Johnson
President
Alabama Board of Law Examiners
Kevin M. Kelly  
*Associate Dean for Student and Academic Affairs*  
*University of Wisconsin Law School*

Nicole R. Lefton  
*Assistant Professor of Academic Support and Director of Academic Success and Bar Exam Preparation*  
*Hofstra University Maurice A. Deane School of Law*

John R. Maley  
*Co-Chair*  
*IndyBar Review*

Carlton Lee Martin  
*Immediate Past President*  
*Marion County Bar Association*

Hon. Mary R. Russell  
*Judge (and former Chief Justice)*  
*Supreme Court of Missouri*

Bradley W. Skolnik  
*Executive Director*  
*Office of Admissions and Continuing Education*

Cathleen M. Shrader  
*President*  
*Indiana State Board of Law Examiners*

Andrea Spillars  
*Executive Director*  
*Missouri Board of Law Examiners*

Leslye C. Swigert  
*Director*  
*Themis Bar Review*

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

Judith Welch Wegner  
*Burton Craige Professor Emerita and Dean Emerita*  
*University of North Carolina School of Law*

Patricia D. White  
*Dean*  
*University of Miami School of Law*

The Study Commission also solicited comments from members of the Indiana legal community, including bar associations, attorneys, law school faculty, and law students. Commission Chair Shepard and Vice-Chair Vaidik sent letters to more than 95 local bar associations across the state, to the faculty at the Indiana University Maurer School of Law, the Indiana University Robert H. McKinney School of Law, and the University of Notre Dame Law School, and to law students at these three law schools asking for input about the bar examination. In addition, an email requesting comments regarding the bar examination was sent to the more than 18,000 active attorneys on the Indiana Roll of Attorneys. Over 190 comments and letters were received from members of the Indiana legal community.
Objectives of Bar Admissions

Article 7, Section 4 of the Indiana Constitution provides that the Indiana Supreme Court shall have sole original jurisdiction over the admission to the practice of law. The Supreme Court has established a State Board of Law Examiners consisting of ten members of the bar, two from each Supreme Court judicial district, appointed by the Court.

The Indiana Board is required to determine whether an applicant possesses the requisite good moral character and fitness to perform the duties and responsibilities of an attorney and has satisfied all of the general qualifications to be admitted to the practice. Admission and Discipline Rule 12. According to Admission and Discipline Rule 17, Section 1, “[n]o person shall be licensed to practice law in this state who has not taken and passed a Bar examination as provided in these rules, except attorneys who are licensed in another jurisdiction and who qualify for admission without examination under the provisions of Admission and Discipline Rule 6.”

Indiana holds two bar examinations annually, one in February and the other in July. The number and form of the questions and topics tested are determined by the Indiana Board with the approval of the Supreme Court. The Indiana Board supervises and administers the exam and it is the responsibility of the Board to certify to the Court the names of the applicants who successfully complete the test.

The purpose of requiring the Indiana Board to certify that applicants for admission have demonstrated they have the requisite character and fitness and have successfully completed the Indiana bar examination is to protect the interests of the public who rely on lawyers to act with the highest levels of integrity and provide quality legal services.

This approach to protecting consumers and the legal system is almost universally embraced. As stated in Section IV(18) of the American Bar Association’s Code of Recommended Standards for Bar Examiners, which sets out the purpose of the examination:

"The bar examination should test the ability of an applicant to identify legal issues in a statement of facts, such as may be encountered in the practice of law, to engage in a reasoned analysis of the issues, and to arrive at a logical solution by the application of fundamental legal principles, in a manner which demonstrates a thorough understanding of these principles. The examination should not be designed primarily to test for information, memory, or experience. Its purpose is to protect the public, not to limit the number of lawyers admitted to practice."

In a similar vein, Study Commission Chair and former Indiana Chief Justice Randall T. Shepard noted in 2001 that the bar-admissions process rests squarely upon two fundamental principles:

"The first is consumer protection. The legal environment in which clients find themselves grows ever more complex and pervasive, and the talent of lawyers who serve them must rise to the occasion. The requirements of graduation from an accredited law school, success on the examination, and certification of character and fitness help assure that only persons who meet a minimum level of competency are “turned loose” on clients, many of whom are ill equipped to evaluate the capabilities..."
of lawyers whom they engage. The second support for this regime is the public trust and confidence of the legal profession. A healthy and helping legal profession constitutes a central pillar in public support for the rule of law.\textsuperscript{2}

Although there is widespread consensus that a bar examination should test for minimum competency, there is likely no consensus on how best to measure “minimum competency.” As Roger Bolus of Research Solutions Group observed, lawyer proficiency and minimum competency can be assessed in a variety of different ways, including written examinations, oral argument, writing samples, apprenticeships, mentorships, computer simulations, video performance tests, etc.

Some commentators have suggested that bar admissions administrators should consider making use of more than written exams in assessing competency. There are, however, practical considerations that must be taken into account when determining how best to measure for lawyer proficiency and minimum competency. Among other things, it is important to consider the costs and challenges that would be associated with the various options. Because of the impracticality and expenses associated with some of the different ways suggested, the administration of a written test developed in large part, if not totally, by the NCBE is the only feasible option available at the present time. Indiana should remain open to other options and approaches as further scholarship and research and innovations from other jurisdictions and professions emerge.

Indiana Bar Examination
When Indiana conducted its first bar exam in 1931, it consisted of 50 essay and short-answer questions to be answered over a two-day period. Applicants answered fifteen questions during both the morning and afternoon sessions on the first day and the morning session of the second day. The Board required the applicants to answer only five written questions during the afternoon session of the second day but advised them that “[a]t the conclusion of the above examination, which should be completed in one and one-half hours, it is anticipated that the Board will examine orally any or all of the applicants and you shall remain in attendance until dismissed.” The early bar exams were administered three times a year, in March, July and October.

Over time, the number of essay questions answered was reduced to twenty and eventually the exam was administered only twice a year, in February and July. In 2001, Indiana adopted the MBE and the MPT. Since then, the examination has consisted of three parts: the MBE, a 200-question multiple-choice examination created and graded by the NCBE, the MPT, also created by the NCBE, and the Indiana Essay Examination, six written essays on certain Indiana law topics not otherwise covered by the MBE.

Multistate Bar Examination
The MBE is a six-hour, 200 question standardized multiple-choice exam developed and scored by the NCBE. It is administered during the morning and afternoon sessions of the second day of the exam. Each session includes 100 questions, and all 200 questions are combined for grading purposes. The subject areas tested on the MBE are: Contracts; Constitutional Law; Criminal Law; Evidence; Real Property; Torts; and Federal Civil Procedure. The MBE was first administered as a component of some state’s bar examinations as early as 1972 and is now used in 54 jurisdictions, including the District of Columbia and four U.S. territories. Louisiana and Puerto Rico are the only jurisdictions not using the MBE.3

MBE questions are developed by specialized drafting committees through a process that generally takes about three years. The committees also address any concerns regarding the questions’ substance, content, bias, realism, and whether the items test minimum competence for the beginning practice of law. Because it is a multiple-choice 200-question examination, the MBE can be equated to ensure scores on each exam have the same meaning from one administration to the next. This process results in scores being statistically adjusted to have the same meaning from exam to exam and to correct for any differences in exam reliability. A multiple-choice examination is the only current testing device that permits these types of adjustments to ensure fairness from test to test.

The MBE represents 50% of the exam score.

3 Unlike other jurisdictions, Louisiana and Puerto Rico’s laws stem not from common law but from code-based legal systems. The fact that neither uses the MBE is therefore not surprising.
Multistate Performance Test

The MPT is a written performance test administered during the morning session of the first day of the bar exam. It consists of two ninety-minute task-related items designed to test fundamental lawyering skills such as problem solving, legal analysis and reasoning, factual analysis, communications, organization and management of a legal task, and recognizing ethical dilemmas. Each MPT is based on a fact situation, with relevant law. The applicant must write a letter, memorandum, or brief applying the hypothetical facts to the law provided. Applicants are allotted a total of three hours to complete the MPT.

All MPT questions are written by specialized committees of lawyers, judges, and law school faculty. Although developed by the NCBE, the MPT is graded locally by each jurisdiction in accordance with the NCBE guidelines. The NCBE provides model answers and specific grading rubrics to each jurisdiction, as well as specialized training sessions for graders in which the graders collectively assess actual MPT answers. MPT rubrics are developed and sometimes tweaked following the administration of the exam by the NCBE based on its initial review of a nationwide sampling of MPT answers. The MPT is used in 48 jurisdictions, including the District of Columbia and four US territories.\(^4\)

The MPT represents 20% of the overall exam score.

Indiana Essay Examination

The Indiana Essay Examination, consisting of six essays written and graded by the members of the Indiana Board, is administered in the afternoon session of the first day of the bar exam. Examinees are allocated a total of four hours to answer the six essay questions. The six questions can be drawn from any one or more of the following eleven potential subject matters:\(^5\)

- Administrative law
- Business organizations
- Family law
- Federal and state personal income tax, corporate tax, and estate and gift tax
- Indiana constitutional law
- Indiana employment law, including wage payment and wage claim statutes
- Indiana debt collection, including garnishment, attachment, and bankruptcy exemptions; and residential landlord-tenant law

\(^4\) A small number of non-UBE jurisdictions may use only one of the two MPT questions on their exam. UBE jurisdictions, however, are required to administer both items, just as Indiana presently does as part of the Indiana bar examination.

\(^5\) As discussed below, of particular concern to the Study Commission was whether recent changes to the Indiana Essay Examination topics impacted passage rates. The new Indiana Essay Examination topics were expanded effective with the February 2018 bar exam. Personal property and negotiable instruments were dropped as topics, and the taxation topic was narrowed in scope. Three new topics were added in their place: Indiana employment law, including wage payment and wage claim statutes; Indiana debt collection, including garnishment, attachment, and bankruptcy exemptions; and residential landlord-tenant law. In addition, statutes of limitation and the Indiana Tort Claims Act were added to the existing pleading and practice topic.
• Indiana debt collection, including garnishment, attachment, and bankruptcy exemptions
• Pleading and practice, including statutes of limitation and the Indiana Tort Claims Act
• Residential landlord-tenant law
• Secured transactions
• Wills, trusts and estates

Following the administration of an examination, the Indiana Essay Examination questions for the next bar exam are developed by the members of the Indiana Board, who may or may not have any specialized knowledge or expertise in the test question area. The draft question and proposed model answer are then reviewed, edited, and finalized by the Indiana Board’s Editing Committee in the months prior to the examination. No pre-testing of questions is done. Each Indiana Essay Examination question is graded by the Board member who wrote the question.

The Indiana Essay Examination represents 30% of the overall exam score.

Grading and Scoring the Exam
The weight accorded to each section of the exam was determined by the Supreme Court when Indiana adopted the MBE in 2001. As noted above, the two written portions of the exam, the MPT and the Indiana Essay Examination, account for 50% of the exam score, and the multiple-choice portion of the test, the MBE, accounts for the other 50% of the exam score.

The passing score on the Indiana bar exam is a combined scaled score of 264 points out of a total possible 400 points. The raw scores for the written portions of the exam are determined by the Indiana Board members grading the examination. Those raw scores are then sent to the NCBE, which then scales the raw scores from the written portion of the exam to the 200-point MBE scale resulting in a scaled score of up to 200 points. Adding an applicant’s score on the MBE to the scaled score from the written portion creates the combined score. Applicants do not pass or fail the separate parts of the exam; the scores from both parts are considered together to reflect an applicant’s overall performance on the exam. All applicants who receive a combined scaled score of 255 to 263 (i.e., those who fail the exam by up to nine points) are presently eligible to request that the written portion of their exam be reviewed and regraded. Following regrading, if the Indiana Board determines an applicant’s score is at least 264, the applicant is deemed to have passed.

Additional Eligibility Requirements
Applicants for admission to the Indiana bar upon examination must also: (1) achieve a passing score on the Multistate Professional Responsibility Examination (“MPRE”) administered separately by the NCBE; (2) be approved by the Indiana Board as to character and fitness; and (3) meet certain other general requirements, such as age and educational requirements.
Declining Passage Rates
As the Supreme Court notes in its order creating the Study Commission, many jurisdictions have recently experienced significant and, in some cases, unprecedented, declines in bar exam passage rates. As the chart below demonstrates, Indiana has not been immune from this trend.

### INDIANA BAR EXAM PASSAGE RATES

#### February Exams

<table>
<thead>
<tr>
<th></th>
<th>First Time Passage Rate</th>
<th>Repeat Takers Passage Rate</th>
<th>Overall Passage Rate</th>
<th>Percentage of Repeat Takers</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 2019</td>
<td>68%</td>
<td>35%</td>
<td>50%</td>
<td>46%</td>
</tr>
<tr>
<td>February 2018</td>
<td>70%</td>
<td>30%</td>
<td>51%</td>
<td>48%</td>
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<td>February 2017</td>
<td>66%</td>
<td>42%</td>
<td>52%</td>
<td>56%</td>
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<td>64%</td>
<td>40%</td>
<td>55%</td>
<td>40%</td>
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<tr>
<td>February 2015</td>
<td>76%</td>
<td>54%</td>
<td>67%</td>
<td>38%</td>
</tr>
<tr>
<td>February 2014</td>
<td>77%</td>
<td>38%</td>
<td>61%</td>
<td>39%</td>
</tr>
<tr>
<td>February 2013</td>
<td>82%</td>
<td>51%</td>
<td>69%</td>
<td>40%</td>
</tr>
<tr>
<td>February 2012</td>
<td>76%</td>
<td>48%</td>
<td>67%</td>
<td>32%</td>
</tr>
<tr>
<td>February 2011</td>
<td>81%</td>
<td>53%</td>
<td>71%</td>
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<td>February 2010</td>
<td>76%</td>
<td>54%</td>
<td>69%</td>
<td>34%</td>
</tr>
</tbody>
</table>

#### July Exams

<table>
<thead>
<tr>
<th></th>
<th>First Time Passage Rate</th>
<th>Repeat Takers Passage Rate</th>
<th>Overall Passage Rate</th>
<th>Percentage of Repeat Takers</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2019</td>
<td>76%</td>
<td>23%</td>
<td>65%</td>
<td>21%</td>
</tr>
<tr>
<td>July 2018</td>
<td>75%</td>
<td>35%</td>
<td>65%</td>
<td>24%</td>
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<td>75%</td>
<td>32%</td>
<td>66%</td>
<td>22%</td>
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<tr>
<td>July 2016</td>
<td>72%</td>
<td>30%</td>
<td>64%</td>
<td>18%</td>
</tr>
<tr>
<td>July 2015</td>
<td>80%</td>
<td>32%</td>
<td>74%</td>
<td>13%</td>
</tr>
<tr>
<td>July 2014</td>
<td>80%</td>
<td>28%</td>
<td>72%</td>
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<td>July 2011</td>
<td>84%</td>
<td>31%</td>
<td>78%</td>
<td>14%</td>
</tr>
<tr>
<td>July 2010</td>
<td>83%</td>
<td>43%</td>
<td>78%</td>
<td>12%</td>
</tr>
</tbody>
</table>
Roger Bolus, Ph.D., Senior Partner, Research Solutions Group, observes that, beginning in 2008, performance on bar exams nationally began a steady decline. During that timeframe, scores on the MBE nationally dropped from an average of 145.6 in 2008 to 139.5 in 2018. There has also been a corresponding decrease in the number of applicants sitting for bar exams. Our experience here in Indiana has mirrored this national trend.

Data suggests that up to half of the recent decline in bar passage rates is explained by lower LSAT scores and undergraduate GPAs among law school graduates. Between 2010 and 2016, every Indiana law school had a drop in its 25th percentile LSAT scores. Students entering law school during this period comprise the bulk of first-time applicants who sat for bar exams from 2013 through 2019.

Bar passage rates in Indiana are also impacted by Indiana’s policy allowing test takers to take the examination an unlimited number of times. As can be seen in the above table, the percentage of repeat takers has increased dramatically from 2009 to 2019, undoubtedly contributing to a decline in overall passage rates.


7 See Change in First-Year Enrollment from 2010 to 2016 and Reported Changes to the LSAT Score at the 25th Percentile (Table) 86 The Bar Examiner 6-10 (Mar. 2017). This is consistent with national trends where the Great Recession saw significant drops in both first-year enrollment and the average LSAT score at the 25th percentile. The 25th percentile is important because it reflects the group most likely to fail a bar examination. See Mark A. Albanese, Ph.D., *The Testing Column, July 2018 MBE: The Storm Surge Again*, 87 The Bar Examiner 30, 32 (Fall 2018).
**Recommendations**

1. The passing score of 264 on the Indiana bar examination should be retained and not modified merely because of a recent decline in passage rates. Indiana’s passing score of 264 is lower than comparable passing scores in a clear majority of jurisdictions.

To pass the Indiana bar examination, an applicant must achieve a score of at least 264 out of 400 possible points (equivalent to a grade of 66%). The current passing score was established when Indiana began using the MBE and MPT in February 2001. Before that time, when the test consisted solely of two days of essay exams, the passing score on the Indiana bar examination was equivalent to a score of 70%.

An examination of the passing-score equivalents for bar examinations around the country reveals that only a small number of jurisdictions have lower passing scores than Indiana. Of the 36 jurisdictions that have adopted the UBE, passing scores range from a high of 280 in Alaska to a low of 260 in Alabama. Only five UBE states (Alabama, Minnesota, Missouri, New Mexico, and North Dakota) have passing scores lower than 264.

The following is a map showing the passing score in each UBE jurisdiction:

![Map of UBE jurisdictions](image)

*Map courtesy of the National Conference of Bar Examiners*

The overriding purpose of the bar examination is not to achieve a certain passage rate, but to determine whether an applicant demonstrates a minimum level of competency to practice law. Determining an appropriate passing score involves a variety of policy considerations as well as conclusions regarding performance standards.
There is no evidence to suggest that the passing score on the Indiana exam should be modified and a clear majority of public comments received by the Study Commission were against lowering the cut score. Recent lower passage rates also do not justify lowering the passing score. The Study Commission, therefore, recommends that Indiana’s passing score of 264 be retained regardless of whether Indiana adopts the UBE.

Still, the Study Commission urges that the Court and Indiana Board periodically evaluate the minimum passing score in the future, with assistance and analysis from testing experts.

2. **Indiana should continue the practice of scaling the written portion of the Indiana bar examination to the multiple-choice portion (MBE) of the bar examination.**

Scaling is the process of placing scores from different tests (or different test components) onto a common scale. It is the only method available to make the testing process comparable, and therefore fair, from one administration to another. Scaling the written portion of the bar examination to the multiple-choice (MBE) portion of the exam is fully consistent with best practices in high-stakes testing. With rare exception, this practice is followed in other jurisdictions when grading bar exams. All UBE jurisdictions are required to scale the raw scores given on the written portion of the exam (the MEE and MPT) onto the 200-point MBE scale.

Scaling is also used in almost all standardized tests, including admissions exams (e.g., ACT, SAT, GRE, and LSAT tests), certification and licensure exams, and K-12 Common Core testing, including the Indiana CORE assessment. In simplest terms, a scaled score is a raw score that has been adjusted and converted to a standardized scale. Scaled scores allow for comparisons between exams. Scaling ensures that those who took a less difficult test are not given an unfair advantage, and that those who took a more difficult test are not penalized.
It is a fundamental principle of sound testing practice that the difficulty of an exam should remain consistent over time. Test takers of equal ability should obtain the same score regardless of when they sat. In essence, a person’s score on a bar exam should not depend on whether he or she sat for the exam in July 2018 or July 2019. The difficulty of a bar exam should not fluctuate from one exam to the other. For example, a scaled score of 264 on the February 2018 Indiana bar exam should reflect the same level of proficiency as a scaled score on the July 2019 Indiana bar exam.

Through a sophisticated “equating” process, testing experts are able to take the necessary steps to ensure that the difficulty of multiple-choice exams like the MBE are relatively constant. As described by Susan Case, Ph.D., the NCBE’s former director of testing:

. . . . equating ensures that MBE scores retain the same meaning over time, regardless of the difficulty of the test form that a particular examinee took and regardless of the relative proficiency of the pool of candidates in which a particular examinee tested.

The equating process requires that a mini-test comprised of items that have appeared on earlier versions of the test be embedded in the larger exam. The mini-test mirrors the full exam in terms of content and the statistical properties of the items. The repeated items provide a direct link between the current form of the exam and previous forms. They make it possible to compare the performance of this administration’s candidates with the performance of a previous group on exactly the same set of items.8

Equating, however, is not possible for written exams such as the MPT and the Indiana Essay Examination because our essay questions cannot be reused in future exams. As a result, essay questions fluctuate in difficulty from one exam to another, and scores fluctuate accordingly. These differences occur because it is impossible for graders to account for differences in the difficulty of written questions, the differences in the proficiency of applicants over time, and the fact that some graders tend to grade essay questions more generously than others. Moreover, the identity of the graders changes with each test administration. As noted by Susan Case:

. . . . This phenomenon is demonstrated by the fact that average essay scores in February tend to be the same as average essay scores in July, even though we know that February candidates are consistently less proficient (as a group) than July candidates. It has also been shown that an essay of average proficiency will

8 Susan M. Case, Ph.D., The Testing Column: Frequently Asked Questions about Scaling Written Test Scores to the MBE, 75 The Bar Examiner 42, 42 (Nov. 2006).
be graded lower if it appears in a pool of excellent essays than if it appears in a pool of poor essays. Context matters.

So what is the outcome of such fluctuations in the meaning of written scores? An individual of average proficiency may have the misfortune of sitting for the bar with a particularly bright candidate pool. This average individual’s essay scores will be lower than they would have been in a different setting. The same individual’s MBE score will reflect his genuine proficiency (despite sitting with a group of particularly bright candidates), but without scaling, his essay scores may drag him down. An unscaled essay score may be affected by factors such as item difficulty or the average proficiency of the candidate pool that do not reflect the individual candidate’s performance. ⁹

Because essay questions cannot be equated, sound testing practice dictates that written bar exam test scores be scaled to the MBE by transforming the raw written scores into a scaled score. This process is a form of indirect or “secondary equating” that adjusts the “raw” written score taking into account the average proficiency of the applicant pool that is identified by the equating of the MBE. Once the average proficiency of a group of test takers is determined based on the MBE, which is equated by repeating questions from one test administration to another, scaling adjusts not only for differences in proficiency from prior years, but also for changes and fluctuations in the difficulty of essay questions and changes in the “harshness” of graders from one exam to another. ¹⁰ Given the unreliability that would be introduced into the exam were the written portion no longer scaled to an equated examination, the Study Commission recommends that the Indiana Board continue to scale the written portion of the exam to the equated MBE.

3. Indiana should continue to use the same 6-point grading scale to grade the written portion of the Indiana bar examination.

The Indiana Board grades the written portion of the Indiana bar examination on a 6-point scale. ¹¹ The following descriptive guidelines are currently provided to the Board members grading the examination to assist in assigning raw scores to each answer:

<table>
<thead>
<tr>
<th>Description</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exceptional</td>
<td>6</td>
</tr>
<tr>
<td>Clear Pass</td>
<td>5</td>
</tr>
<tr>
<td>Pass</td>
<td>4</td>
</tr>
<tr>
<td>Borderline</td>
<td>3</td>
</tr>
<tr>
<td>Clear Fail</td>
<td>2</td>
</tr>
<tr>
<td>Complete Miss</td>
<td>1</td>
</tr>
<tr>
<td>Blank Answer</td>
<td>0</td>
</tr>
</tbody>
</table>

⁹ *Id.* at 42.
¹⁰ *Id.* at 43.
¹¹ While the inclusion of a “zero” for a blank answer technically results in a seven-point scale, this scale is generally referred to as a “six-point” scale.
A 6-point grading scale is used in the vast majority of UBE jurisdictions. In the Report issued by the Indianapolis Bar Association’s Indiana Bar Examination Assessment Task Force, however, the Task Force recommended that Indiana evaluate the 6-point grading system for the written portion of the exam. The Task Force noted that the current 6-point grading system differs from the “historical 10-point minimal competency scoring that Indiana used through 2000.” The Task Force expressed concern that under the more compressed 6-point scale, a “modestly subpar answer,” which might earn a 3/6 will effectively earn fewer points than it would on a broader 10-point scale, where the same answer might have earned a 6/10.

According to the Task Force, an applicant had to score 7 or more points on the 10-point scale used by the Indiana Board before 2000 to achieve a passing score. This means that under the old 10-point scale, graders would review exam answers with the understanding that four scores represent minimally competent work, and six scores represent less than minimally competent work. By contrast, under the 6-point scale currently used by the Indiana Board and most other jurisdictions, graders review the exam with the understanding that three scores represent minimally competent work, two scores represent less than minimally competent work (plus zero for a blank answer), and one is “borderline.” The Study Commission has concluded this comparison demonstrates that there is little difference between using the current 6-point scale or the old 10-point scale. In essence, it will likely make no difference whether Indiana utilizes one or the other.

While the NCBE does not require any particular scale to be used, the MPT and MEE grading workshops conducted by the NCBE for bar examiners in Indiana and other states utilize the 6-point grading scale for purposes of instruction. As described by NCBE President and CEO Judith Gundersen:

... NCBE also conducts hands-on grader training sessions at its Madison, Wisconsin, headquarters the weekend following the bar exam. Graders may attend the grading workshop in person, by conference call, or via on-demand streaming as available following the workshop. . . .

The grading workshop lasts one day and consists of a dedicated session for each MEE and MPT item led by drafting committee members who are experienced grading workshop facilitators. Sessions begin with an overview of the item and grading materials, and any questions about the area of law (MEE) or the assigned task (MPT) are addressed. The participants then set about silently reading several real examinee answers (sent by bar administrators from all over the country) and grading them. Grades are assigned using a 1–6 relative score scale (as discussed later). As professors often do in law school, workshop facilitators rely on the Socratic method from time to time -- graders are called on to explain

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13 Id. at 75.
the grades they gave. This is particularly true if a grade might be an outlier from grades assigned by other graders in the session. Based on the review and grading of the sample of examinee answers and the ensuing discussion between graders and facilitators, grading materials may be refined or grading weights adjusted. Final versions of the grading materials are then made available to graders in user jurisdictions a day or so after the workshop.14

Because there is no evidence that changing the grading scale Indiana now uses on the written portion of the bar exam will make any meaningful difference and the fact that the highly effective NCBE grading workshops for each exam use a 6-point grading scale, the Study Commission recommends that Indiana continue to use the 6-point scale.

4. The number of subjects tested on the essay portion of the Indiana bar examination should be reduced.

Indiana presently tests on the seven MBE topics and, as of February 2018, eleven potential topics on the Indiana Essay Examination. None of the eleven essay topics overlaps with any topics tested on the MBE. As a result, examinees in Indiana are required to study a total of eighteen distinct topics when preparing for the bar exam.15

By contrast, applicants taking the MEE (which include applicants in all UBE jurisdictions) need only study five additional topics to prepare for the essay portion of the examination because MEE topics overlap with the seven MBE topics. As a result, applicants in UBE jurisdictions are tested on only twelve separate topics.

Put another way, Indiana applicants are potentially tested on 50% more subjects than applicants sitting in UBE jurisdictions. By having to study for eighteen distinct topics, as opposed to only twelve, Indiana applicants are at a distinct disadvantage vis-à-vis the applicants in the 36 UBE jurisdictions. This difference may contribute to the fact that Indiana applicants continue to lag well behind the national average on the MBE. For example, on the July 2019 exam the national average MBE score was 141.1, but the average score for Indiana applicants was only 136.87, more than four points below the national average.

The Study Commission is concerned that the sheer volume of topics tested on the Indiana bar exam may result in some level of “cognitive overload” for applicants. If Indiana adopts the UBE, as recommended by the Commission, the number of subjects tested will automatically be reduced to twelve. However, even if Indiana does not adopt the UBE, the Study Commission recommends that the number of topics be reduced so that Indiana applicants do not continue to find themselves at a disadvantage to applicants in a clear majority of states.

15 Based on the descriptions of potential subjects tested on the Indiana Essay Examination, one could reasonably argue that Indiana tests on more than eighteen topics on the exam. For example, pleading and practice not only includes Indiana trial and appellate procedure, but also statutes of limitation and the Indiana Tort Claims Act. Similarly, applicants may potentially be tested on not just federal, but also state personal income tax, corporate tax, and estate and gift tax.
5. The “review” process for unsuccessful applicants under Admission and Discipline Rule 14 should be modified to provide for an automatic review, before the release of exam results, of the scores on the written portion of the exam of applicants who are close to passing.

The current “review” process for applicants initially deemed to have failed the Indiana bar exam is set forth in Admission and Discipline Rule 14:

**Rule 14. Review**

Review of final action by the State Board of Law Examiners shall be as follows:

**Section 1.** The State Board of Law Examiners shall adopt such procedure for review of an applicant, aggrieved by failure of said board to award said applicant a satisfactory grade upon the bar examination, as shall be approved by the Supreme Court of Indiana. All applicants who have achieved a combined scaled score of 255 to 263 shall be eligible to appeal. The eligible examinees must make a written request to appeal on forms provided by the Board within fourteen (14) days of the issuance by the Board of the eligible examinee's results. No response other than the written request to appeal is permitted. The President of the Board shall designate certain of the Board's members as “Appeals Reviewers.” The Appeals Reviewers shall consider and decide all appeals of bar examination results. In the appeals process, all of an eligible examinee's responses shall be subject to review by the Appeals Reviewers. Multistate Bar Examination scores will also be available to the Appeals Reviewers. Eligible examinees that are deemed to have passed after review shall be treated as having passed that administration of the Indiana Bar Examination. No change in score shall be effectuated. The determination by the Appeals Reviewers whether to treat an appealing applicant as having passed the bar examination shall be final, subject to general principles of procedural due process.

Thus, unsuccessful applicants who achieve a scaled score of 255 to 263 may request the Indiana Board to review their scores on the written portion (MPT and Indiana Essay Examination) of the exam. An applicant must timely submit a written request on a simple form provided by the BLE. No advocacy briefs or other material may be submitted.

Over the past thirteen bar examinations dating back to July 2013, a total of 585 unsuccessful applicants requested that their scores be reviewed. Of those 585 applicants, a total of 143, or 24%, have been deemed successful upon review.

Rule 14 currently provides for review only after the names of those who passed the exam have been released to the public. As a “post-release” review jurisdiction, Indiana is a distinct outlier. In 2016, the president of the Indiana Board compiled data on how other jurisdictions handle
appeals and reviews. Of the 56 jurisdictions surveyed, 30 provide for some form of pre-release review, 20 conduct no review or re-grading at all and only six, including Indiana, provide for any post-release review.

The Study Commission recommends that Rule 14 be amended to provide for an automatic review of the written portion of the exam of applicants who are close to passing before the release of the exam results. The Indiana Board would follow the same procedures as it does now, but those applicants who pass following review would no longer be informed (and identified by omission from the successful list) as having failed the bar exam. This approach would be a much more humane notification process. Under the current rule, applicants, including those who eventually are treated as having passed the exam, are initially informed that they failed the exam, are not listed on the publicly disseminated successful list, and likely must tell family, friends and employers that they failed the exam.

Once the Indiana Board completes its regrading, the revised raw scores will be reported to the NCBE, which will then apply the original scaling formula developed for the state. Where an applicant’s raw score has been changed, the applicant’s scaled score will be revised and a new, transferrable UBE score will be generated. Because the original scaling formula is used, there will be no impact on the UBE scores of those whose examinations were not regraded.

The Study Commission further recommends reducing eligibility for review from nine points to five points from passing. The likelihood of success following review is exponentially less for those applicants who fail the exam by more than five points. In the last thirteen administrations of the Indiana bar exam going back to July 2013, the scores of 192 applicants who failed by more than five points were reviewed by the Board, of which only ten, or slightly more than 5%, passed.

6. The question of whether an exam has a disparate impact on any groups is a “pervasive and complex issue in licensing exams.” Differences in performance among various groups do not automatically mean that an exam suffers from bias. Such disparities are most likely attributable to economic, social, and educational opportunities and differences rather than the nature of the bar exam. Accordingly, steps should be taken to ameliorate the disparity in exam performance by bolstering support for ICLEO and ensuring access to high-quality bar exam preparation programs.

The Study Commission affirms the importance of diversity in the profession and of ensuring that the bar exam does not have an adverse impact on any underrepresented groups. Formal research on test performance by minority and majority applicants has been ongoing in the profession since the 1990s. This research demonstrates similar differences among groups in performance on LSAT scores, law school grades and bar exam outcomes. The available research suggests that
such variances are more likely attributable to economic, social, and educational opportunities and differences, rather than the nature of the exam itself.

There are, however, steps that can be taken to ameliorate disparities in bar exam performance, including enhanced support for programs such as the Indiana Conference for Legal Education Opportunity (“ICLEO”) and increased efforts to improve access to bar exam preparation programs for those who may have difficulty affording such programs.

As Roger Bolus observed during his presentation to the Study Commission, the question of whether a professional licensing exam has a disparate impact is a “pervasive and complex issue.” Thorough evaluation is rendered more difficult because most jurisdictions, including Indiana, do not collect data on race or ethnicity. We join the calls for vigilance. In 2006, the American Bar Association (“ABA”) adopted Resolution 113, which urged state bar associations and bar examiners to ensure that bar examinations do not have a disparate impact on bar-passage rates of minority applicants. Ten years later, the ABA adopted Resolution 117, which urged jurisdictions to consider the impact on minority applicants in deciding whether to adopt the UBE in their jurisdiction, and to measure or otherwise track the performance of minority applicants on the UBE subsequent to its adoption. As noted in the Report and Recommendations of the Advisory Committee to Explore the Feasibility of Maryland’s Adoption of the Uniform Bar Examination:

One frequent concern regarding the adoption of the UBE in non-UBE jurisdictions is the test’s reliance on multiple-choice questions for 50 percent of the total score. Maryland allocates only 33 percent of the score to multiple-choice questions. Although there is currently no scholarly consensus on this issue, there is some evidence that female applicants perform better on essay examinations than on multiple-choice examinations. . . . The question of whether minorities also perform better on essay questions than on multiple-choice questions was also raised. There is not sufficient data to determine impact on racial minorities. The primary reason for this lack of data is that neither the NCBE nor testing jurisdictions collect data on race, and there have not been wide-scale studies completed. There are, however, ongoing studies in some jurisdictions to determine whether the UBE and bar examinations in general have disparate passage rates for minority applicants. The Advisory Committee recommends that the [Maryland State Board of Law Examiners] continue to monitor these studies, and report to the Court of Appeals.16

16 Report and Recommendation, Advisory Committee to Explore the Feasibility of Maryland’s Adoption of the Uniform Bar Examination to the Court of Appeals of Maryland at 7 (Aug. 31, 2017) (citing Roger Bolus, Reliability Estimates for the Maryland Bar Examination: Comparison Under Alternative Formats 12 (2017); 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, at 4
Most jurisdictions, including Indiana, do not collect data on race or ethnicity. Thus, evaluating whether bar examinations have a disparate impact on racial or ethnic minorities is more difficult. Representatives of the Marion County Bar Association who appeared before the Commission suggested that this data be collected in the future. The Study Commission is cognizant, however, that the collection of such data may raise the concern that the data was being used in a way to disadvantage some groups, notwithstanding the fact that the grading of bar examinations is done revealing solely the exam number and the graders are not given access to any identifying information about the applicants.

Members of the Study Commission for the Future of the Bar Exam meet in the Indiana State House.
Supreme Court staff photo by Josh Hicks

In April 2015, the New York State’s Advisory Committee on the Uniform Bar Examination recommended that New York adopt the UBE, beginning with the July 2016 test.\(^{17}\) As part of its deliberations, the Committee considered whether adoption of the UBE would have an adverse impact on any “discrete demographic groups.”\(^{18}\)

The New York Advisory Committee acknowledged there are differences in passage rates by race and ethnicity, but examined whether there was anything specifically about bar exams or other factors that explained these differences. The Committee noted that it “approached this question mindful that the current under-representation of various groups within the legal profession is a

\(^{18}\) \textit{Id.} at 56.
highly complex, multi-layered and nuanced issue, with root causes and social realities that transcend the bar exam.”19

“The Advisory Committee determined after studying various reports that there is no basis to believe that switching to the UBE would result in a decreased bar passage rate for women and minorities. Testimony and data showed that no jurisdiction that has adopted the UBE has reported any adverse impacts on the bar passage rates of any particular group.”20 The New York Advisory Committee observed that “the proposition that members of certain racial and ethnic groups fare better on certain types of questions, meaning multiple choice versus essays and performance tests, is not supported by the statistics maintained by the [New York Board of Law Examiners].”21 It further noted that “bar passage gaps close dramatically after two attempts, further suggesting that there are various factors that affect first-time test takers, including economic, educational and socio-political disparities unrelated to individual abilities.”22

The New York Advisory Committee concluded that “there is simply no available evidence suggesting that the UBE would negatively affect (or, for that matter, positively affect) any

19 Id. at 57.
20 Hon. Jonathan Lippman, Embracing the Uniform Bar Exam in New York: Toward a More Rational Bar Admissions Process Promoting Essential Lawyer Mobility, 23 Prof. Lawyer 8, at 10-11 (2016). Judge Cynthia Martin of the Missouri Court of Appeals, Western District, provided data to the New York Advisory Committee from University of Missouri at Kansas City Law School (UMKC) demonstrating that during the four years since Missouri had adopted the UBE, the passage rate among African American and Hispanic applicants from UMKC had risen from approximately 81% to approximately 86%. Justice Rebecca Berch of the Arizona Supreme Court, however, testified that there was “no discernable impact on the pass rate of minorities” as a result of adopting the UBE in Arizona. See New York Report, supra note 19, at 60 (footnotes omitted).

There was, however, data indicating some impact on women, since women tend to score slightly lower than men on multiple choice questions and slightly higher than men on essays. Id. (footnote omitted). The Advisory Committee concluded that “the data suggest that the discrepancy is very small and mirrors the gender differential on other standardized multiple-choice tests, including the LSAT and MCAT. Id. (footnote omitted). Given the known impact on both gender groups, the equal weighting of the written and standardized components of the exam is further justified.

22 Id. at 57 (footnote omitted).
particular demographic group. Rather, from all indications, virtually all the people who would pass the existing test would pass the UBE. Virtually all the people who would fail the existing test would fail the UBE.”23

The New York Advisory Committee did recommend that the New York Board of Law Examiners collect data to study any adverse impacts that the UBE had on applicants. In August 2019, New York announced the completion of a comprehensive three-year study of the impact of New York’s transition to the UBE.24 The New York Court of Appeals summarized the results as follows:

The ultimate conclusion of the report is that the impact of New York adopting the UBE on the performance of candidates taking the bar examination, overall and grouped by race, ethnicity, and gender, was small at most and generally positive. The increases seen in mean bar examination scores and passing rates, as well as differences in performance by gender and racial and ethnic groups were generally, but not exclusively attributed by the NCBE to differences in background information used in the study, including undergraduate grade point averages, Law School Admission Test scores, and law school grade point averages.25

The New York study, which was conducted by staff from the Research Department of the NCBE, attributes differences in performance by gender and racial and ethnic groups primarily to differences in other data evaluated in the study, including undergraduate grade-point averages, LSAT scores, and law-school grade-point averages.

Aaron Taylor, the Executive Director of AccessLex Center for Legal Education, notes there are several structural hurdles that minorities and applicants from lower socio-economic backgrounds face in connection with the bar exam that effects passage rates. Those who cannot afford bar exam preparation courses, who must work while studying for the exam, and who come from larger households are at the greatest risk of failing. These factors seem to indicate a correlation

23 Id. at 61.
between socio-economic status and success on the bar exam. According to an analysis of bar
exam success factors performed by the Indiana University Robert H. McKinney School of Law,
students from the law school who reported not working at all passed at a much higher rate than
students who reported working 25 hours or more per week and could not take a week or two off
before the exam for studying.26

Hon. Kenton W. Kiracofe, Judge, Wells Circuit Court
Supreme Court staff photo by Josh Hicks

Overall, minority and socio-economically disadvantaged applicants tend to score lower on bar
examinations. There is no indication that this phenomenon is due to the composition of any bar
examination. Rather, the strong implication is that lower test scores are attributable to societal
factors that cannot be cured by a bar examination. More importantly, the current research shows
that moving to the UBE will not result in lower passage rates. Adopting the UBE in Indiana
would merely entail replacing the six-question Indiana Essay Examination with a similar six-
question MEE, so it is highly unlikely that moving to the UBE would, in and of itself, have a
disparate impact on minorities and those from lower socio-economic backgrounds.

26 Bar Success Literature Review and Survey Report, Indiana University Robert H. McKinney
School of Law (November 11, 2016). This is consistent with findings made in a study of the
2004 Texas bar examination where the authors observed “that a significant portion of the
differences in bar exam scores between applicants is not attributable to differences in their
admissions credentials, law school grades, gender, or racial/ethnic group. A small but
statistically significant piece of this remaining variance is related to whether the candidate
worked for more than 20 hours during the five weeks leading up to the exam. And, Black and
Hispanic applicants were 1.5 times more likely to be among those who worked during this period
than were other applicants. A few other preparation factors also were related to scores, such as
participation in lecture and discussion sessions presented by a commercial bar review course.”
Klein and Bolus, supra note 28.
As to gender differences, there is some indication that males perform slightly better on the multiple-choice portion of the bar exam and females perform slightly better on the essay portion of the exam. Because both the current Indiana bar examination and the UBE allocate 50% of the score each to the MBE and the essay portion of the exam, neither the current Indiana exam nor the UBE would seem to have a disparate impact on applicants by gender.

As ongoing research and vigilance continue, the Study Commission believes that there are actions that can be taken to ameliorate the disparity in passage rates, including taking steps to enhance the ICLEO program and provide more opportunities for access to bar-preparation programs. The development of relatively low-cost bar exam preparation courses and materials would be an important step in the right direction that would benefit applicants from lower socio-economic backgrounds who may not be able to afford more expensive traditional bar preparation courses.27 Both Aaron Taylor, Executive Director of AccessLex Center for Legal Education Excellence, and Judith Gundersen, President and CEO of the NCBE, outlined some of the steps that their organizations are taking to make relatively low-cost bar exam preparation materials and courses available to examinees. The Study Commission recommends that the Court ask the ICLEO Advisory Committee and the Race and Gender Fairness Commission to study additional steps that Indiana could take.

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27 If Indiana becomes a UBE jurisdiction, as recommended below, bar prep course costs might fall because national providers could offer their UBE curriculums without having to invest in producing materials on Indiana-specific essay topics.
7. For nearly a generation, Indiana has joined nearly every other state by employing the MBE and the MPT. We recommend using the MEE in place of the 6-question Indiana Essay Examination. We would thus join 36 other jurisdictions under the rubric of the UBE. Adopting the UBE should reduce the cognitive overload on future applicants by reducing the number of subjects tested one-third, thus likely increasing the passage rate. Further, the UBE allows newly minted lawyers to transfer their scores to other UBE jurisdictions, thus enhancing career opportunities for younger lawyers and recruiting options for Indiana law firms, businesses, and government agencies.

The UBE is a uniformly administered, graded, and scored examination developed by the NCBE. The test consists of the MBE, the MPT and the MEE. To earn a UBE score, an applicant must take all three portions of the examination in the same UBE jurisdiction and in the same administration. Applicants who take the UBE may transfer their scores to seek admission in other UBE jurisdictions within a certain amount of time after the scores are earned, typically three years. UBE jurisdictions accept transferred scores if the scores meet or exceed the jurisdiction’s passing score, subject to any limitation on the number of times an applicant may retake the exam. Receiving jurisdictions may not require an applicant to have passed the exam in the testing jurisdiction.

Since its creation in 2011, the UBE has already been adopted by 36 jurisdictions.
Indiana already utilizes two of the three UBE components—the MBE and the MPT. The weighting of the three UBE components is identical to the current Indiana exam in that the MBE is weighted 50%, the MPT is weighted 20% and the six-question MEE is weighted 30%.

While the UBE is uniformly graded and scored by the individual user jurisdictions, each user jurisdiction retains full independent authority to:

- Determine who is eligible to sit for the bar exam and who shall be admitted to the practice of law;
- Determine the underlying educational requirements to sit for the examination;
- Make all character and fitness determinations;
- Make their own policies and rules regarding how many times an applicant may retake the bar exam;
- Make all decisions regarding the granting of testing accommodations under the American With Disabilities Act (ADA);
• Grade the written (MPT and MEE) portions of the exam;

• Develop and implement a jurisdiction-specific component through a separate test, course, or some combination of the two, if the jurisdiction so chooses;

• Accept MBE scores earned in a previous examination or concurrently in another jurisdiction for purposes of making local admission decisions if they wish. Note: candidates must sit for all portions of the UBE in the same UBE jurisdiction and in the same administration to earn a portable UBE;

• Establish their own passing score; and

• Determine how long incoming UBE scores from other jurisdictions will be accepted.

Content of the UBE
Indiana already uses two of the three components of the UBE—the MPT and the MBE. If Indiana adopts the UBE, the only change to the structure of the exam would be that the six-question MEE would replace the six-question Indiana Essay Examination so there would be little, if any, difference in the administration of the exam.

The format of the MEE is very similar to the Indiana Essay Examination. Although both consist of six essay questions, the MEE is designed to be completed in three hours, rather than the four hours allotted to answer the Indiana Essay Examination. Considering the fact that the first day of the current Indiana bar examination is a grueling seven hours (three hours in the morning for the MPT and four hours in the afternoon for the Indiana Essay Examination), reducing the length of the exam day will likely inure to the benefit of the examinees who have to return on the second day of the exam for another six hours to complete the MBE.

Moreover, unlike the Indiana Essay Examination, the MEE questions are subject to a thorough development process. The question-drafting committees consist of attorneys, judges, and law-school faculty with subject-matter expertise who draft, review, and modify proposed questions. All questions are further reviewed by outside subject-matter experts who provide their feedback and comments to the drafting committees. The questions are then pre-tested, confidentially, by recent test-takers, and the questions and grading rubrics are modified as necessary. No individual state has the resources to do this.

Portability of UBE Scores
A score earned by an applicant in one UBE jurisdiction may be transferred to another UBE jurisdiction under conditions set by the transferee jurisdiction. According to the NCBE, through June 6, 2019, a total of 16,307 UBE scores had been transferred between jurisdictions since the
inception of the exam in two states in 2011. In the most recent full reporting year (2018), a total of 4,825 scores was transferred into other jurisdictions. 28

To facilitate portability, UBE jurisdictions are required to do the following: generate a UBE total score as a whole number on a 400-point scale (which Indiana already does); accept transferred UBE scores that meet the jurisdiction’s individual passing standard, whether or not the score meets the passing standard in the state where they applicant took the test; and submit all UBE scores to a central registry maintained by the NCBE. While UBE jurisdictions agree to accept transferred UBE scores, they retain full authority to impose other general qualifications and to make character and fitness determinations, regardless of whether an applicant’s UBE score meets the jurisdiction’s passing standard. In addition, UBE jurisdictions determine how long incoming UBE scores from other jurisdictions will be accepted. The majority of jurisdictions appear to accept UBE scores from an applicant who sat for the exam in another jurisdiction within the prior three years. Indiana currently has a rule concerning the staleness of a bar examination score. Under Admission and Discipline Rule 17, Section 3, a passing score on the Indiana bar examination is only good for two years. If the applicant is not admitted within that time frame, the applicant must again take and pass the examination.

**Indiana Should Adopt the UBE**

The Study Commission believes that adoption of the UBE would benefit bar applicants, the Indiana legal profession, and consumers.

Adopting the UBE will reduce by one-third the number of subjects Indiana tests from eighteen to twelve. Many of the experts the Commission called opined that reducing the number of subjects tested may result in higher passage rates. Leslye Swigert, Director of Themis Bar Review—a bar review provider in Indiana and elsewhere—thought that test takers in states with the UBE have an advantage over those states like Indiana that test applicants on more topics. Judith Gundersen, President and CEO of the NCBE, speculated that when jurisdictions adopt the UBE, greater attention paid to the test might result in an increase in scores. Patricia White, Dean and Professor of Law at University of Miami School of Law and Aaron Taylor, Executive Director of the AccessLex Center for Legal Education Excellence, spoke of an AccessLex study currently looking at the relationship between the total number of topics tested in a state and the performance on the MBE. It seems axiomatic that more subjects tested result in a higher cognitive load.

Indiana’s grades on the MBE support the notion of cognitive overload. In July 2019, the average MBE score of an Indiana applicant was more than 4 points lower than the national average MBE score. This result is hardly an anomaly. As the following chart demonstrates, on only one occasion have Indiana applicants equaled or exceeded the MBE national average on the thirteen bar exams administered from July 2013 to the present.

### February Exams

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>February 2019</td>
<td>131.04</td>
<td>133.9</td>
</tr>
<tr>
<td>February 2018</td>
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<td>132.8</td>
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<td>February 2017</td>
<td>132.27</td>
<td>134.06</td>
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<td>February 2016</td>
<td>133.73</td>
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<tr>
<td>February 2015</td>
<td>137.47</td>
<td>136.2</td>
</tr>
<tr>
<td>February 2014</td>
<td>135.17</td>
<td>138.0</td>
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### July Exams

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>July 2019</td>
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<td>141.1</td>
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<tr>
<td>July 2018</td>
<td>135.19</td>
<td>139.5</td>
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<td>July 2017</td>
<td>137.35</td>
<td>141.7</td>
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<tr>
<td>July 2016</td>
<td>136.08</td>
<td>140.3</td>
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<tr>
<td>July 2015</td>
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<td>139.9</td>
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<td>July 2014</td>
<td>138.14</td>
<td>141.5</td>
</tr>
<tr>
<td>July 2013</td>
<td>141.32</td>
<td>144.3</td>
</tr>
</tbody>
</table>

The Study Commission thinks that reducing the “cognitive overload” that now puts Indiana applicants at a disadvantage will be good for them and, it hopes, good for passage rates. Moreover, it sees no evidence that the increased number of testing topics assists in the determination of whether an applicant has demonstrated the necessary level of competence to practice law.

Further, the UBE allows applicants to move between jurisdictions without incurring the substantial costs of taking another bar exam. This benefit is particularly appealing to recent law school graduates who, in many instances, do not know for sure in what city and state they will find employment.\(^\text{29}\) For example, the deadline for first-time applicants to apply for the February

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\(^\text{29}\) Andrea Spillars, the Executive Director of the Missouri Board of Law Examiners, told the Study Commission that when she goes to law schools in Missouri and Kansas, she finds that as many as 40% of students do not know, for sure, where they will start their legal careers.
bar exam is November 15th and for the July exam is April 1st. Some states have even earlier
deadlines. As a result, many applicants have not yet found law-related employment at the time
that they submit their applications to sit for a bar exam, whether it be in Indiana or elsewhere.
The UBE is also very beneficial for new lawyers who may be looking to have a multi-
jurisdictional practice. Not surprisingly, in one nationwide poll of 2016 law school graduates,
more than 90% were in favor of the UBE.30

Adopting the UBE recognizes the realities of today’s legal market in which it is far more
common than it may have been a generation ago for lawyers to move from firm to firm, city to
city and, in increasing numbers, from jurisdiction to jurisdiction. As the Advisory Committee to
the New York Court of Appeals observed in recommending that New York adopt the UBE,
“score portability would prove beneficial to law school graduates who are seeking employment
in other jurisdictions, as well as the legal profession as a whole, which increasingly expects
attorneys to engage in multi-jurisdictional or cross-border transactions.”31

The UBE is a highly reliable exam that is subject to rigorous standards of test development. As
noted above, the questions on the MPT, MEE, and MBE go through multiple stages of drafting,
review and revision by experienced teams of subject-matter experts consisting of attorneys,
Knowing that their test scores are portable relieves some of stress that many students experience
during the bar application process.

30 Teresa Lo, Law School Graduates Want Uniform Bar Exam to Go National (Dec. 14, 2016),
available at https://www.jdjournal.com/2016/12/14/law-school-graduates-want-uniform-bar-exam-to-
go-national/ (archived on Dec. 9, 2019 at https://perma.cc/N39D-GPNU). This is consistent with
the comments from the various stakeholder groups surveyed in connection with this Report.
31 New York Report, supra note 16, at 8; see also id. at 38-43 (discussing in detail the advantages
of portability).
judges, law professors, and the NCBE’s attorney-editors. Before questions are included for scoring in an exam they are pretested and checked for bias. Judith Gundersen also indicated that the NCBE holds bias workshops annually for drafters and editors of test questions. This rigorous process can take as long as three years for a test item to go from drafting committee to being included for scoring in an exam.

Unfortunately, this level of rigor cannot be duplicated by any one jurisdiction’s board of law examiners in drafting its own questions. While the Indiana Board diligently strives to draft quality questions for the Indiana Essay Examination, it lacks anything approaching the resources, technical support, and subject-matter expertise available to the NCBE in preparing test items. Nor does the Indiana Board have the luxury of pretesting Indiana questions the way the NCBE does with drafts of proposed MEE questions.

The NCBE also provides extensive support and resources for graders of both the MEE and MPT that are not available for the graders of the Indiana Essay Examination. It prepares detailed grading materials with suggested point allocations for graders. The NCBE also hosts grading workshops the weekend after the bar exam, which graders may attend in person, via webinar, or by on-demand streaming. The goal of the workshops is to familiarize graders with the answers they will see when they grade the papers in their home jurisdiction, to discuss and refine grading weights, and to identify grading issues. This process helps increase the level of consistency in the grading across the country and within the jurisdiction itself.

Adoption of the UBE, particularly when coupled with an Indiana state-law component discussed later, will benefit consumers. The test provides a high-quality, uniform system of assessment of minimum competence. All questions and test items have been carefully developed and vetted by testing experts and leading subject-matter experts to ensure they are a sound measure of competency.
One of the cornerstones of testing standards employed by testing experts is “validity,” i.e., does a test effectively measure what it is purporting to assess. In the case of a bar examination, the overriding objective is to ensure that applicants demonstrate they have the minimum level of competency before they are licensed to provide legal services to the public. Because of the level of rigor used in developing the test, the Study Commission has concluded that the UBE, when combined with an Indiana state-law component, is the most effective measure of attorney competency presently available.

It should be noted that support for adoption of the UBE was not unanimous. A minority of Study Commission members expressed concern, among other things, that the UBE does not test on the peculiarities of Indiana law. While this omission admittedly is a limitation of the UBE, a clear majority of Commission members believe that the advantages and benefits of adopting the UBE far outweigh any disadvantages. Currently, Indiana-specific topics that could be tested on are limited to Indiana Essay Examination subject matters. If a goal is to expose applicants to the unique characteristics of Indiana law, that goal can be more effectively achieved through the implementation of an Indiana law-specific component in the admission process similar to the ones adopted in twenty of the UBE jurisdictions discussed below, which would not be limited in scope to the eleven Indiana Essay Examination topics.32

8. If Indiana adopts the UBE, it should take steps to ensure that applicants have been exposed to unique areas of Indiana law. All bar-exam applicants should be required to complete an Indiana state law-specific component—a course, test, or some combination of the two—that is separate from the UBE. Completion of the state-specific component should be required within six months after admission.

One of the concerns expressed regarding the UBE is that it does not test applicants on jurisdiction-specific law. UBE jurisdictions, however, may require completion of a jurisdiction-specific law course, test, or some combination of the two that is separate from the UBE. Twenty of the UBE jurisdictions have already taken advantage of this opportunity. Admission and Discipline Rule 17, Section 5 currently requires that, “[s]ince the bar examination attempts to

32 In addition to evaluating whether changes should be made to the bar exam, including the adoption of the UBE, the Study Commission also considered whether Indiana should adopt a diploma privilege provision similar to that in Wisconsin. Under Wisconsin’s diploma privilege rule, graduates of the state’s two law schools are eligible for admission without taking the Wisconsin bar exam, provided they satisfy all other requirements. Wisc. Sup. Ct. Rule 40.03. While the members of the Study Commission have great respect for the high quality of instruction in Indiana’s law schools, they believe that a bar examination is the most effective measurement of minimum competency.
establish the applicant’s ability to practice law in the State of Indiana, questions requiring answers determining and understanding of Indiana law will be expected.”

If required, the jurisdiction-specific component generally must be completed by all applicants whether they are testing locally or transferring their UBE scores in from another jurisdiction. Of the thirty-six UBE jurisdictions, fifteen have adopted a pre-admission jurisdiction-specific law component, five have adopted a post-admission jurisdiction-specific law competent, and sixteen have adopted no local law component.

This map shows UBE jurisdictions that require a pre-admission component in blue, jurisdictions that require a post-admission component in green, and jurisdictions that do not require a jurisdiction-specific component in red. The same information is displayed in tabular format below the map.
<table>
<thead>
<tr>
<th>UBE Jurisdiction-Specific Law Component Requirement</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>No component</td>
<td>Alaska, Arkansas, Colorado, Connecticut, Illinois, Iowa, Kansas, Maine, Minnesota, Nebraska, New Hampshire, North Dakota, Rhode Island, Utah, West Virginia, Wyoming</td>
</tr>
<tr>
<td>Pre-admission component</td>
<td>Alabama, Arizona, Maryland, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virgin Islands, Washington</td>
</tr>
<tr>
<td>Post-admission component</td>
<td>District of Columbia, Idaho, New Jersey, Oregon, Vermont</td>
</tr>
</tbody>
</table>

Several states have developed interactive online modules and programs on state law that applicants must successfully complete before admission. Meanwhile, other jurisdictions, including Montana and New Mexico, require applicants to attend a live in-person seminar program. A number of states, such as Missouri and New York, have developed online tests that applicants must complete to be eligible for admission. An overview compiled by the NCBE of
the jurisdiction-specific components required by jurisdictions mandating a pre-admission state law component, as of the date of this publication, is in Appendix C. 33

If Indiana adopts the UBE, the Study Commission strongly recommends that applicants be required to complete an Indiana state law component. Regardless of whether Indiana requires a course, a test, or some combination of the two, the state-specific component should focus on the distinctive characteristics of Indiana law that all newly admitted lawyers should be familiar with, such as the Indiana Tort Claims Act, the peculiarities of Indiana pleading and practice, and family law, etc.

A clear majority of Study Commission members prefer that applicants be required to attend an in-person, day-long Indiana law educational course covering the unique characteristics of Indiana law on topics determined by the Indiana Board and approved by the Court. These programs could be offered by approved educational sponsors in accordance with specific requirements and standards established by the Indiana Board. All programs should be subject to approval by the Indiana Board much the same way that the Applied Professionalism programs for newly minted lawyers are now subject to approval by the Indiana Commission for Continuing Legal Education. Completion of the Indiana-specific law course should be required no more than six months following admission.

Adoption of a state-specific component ensures that applicants are exposed to unique features of Indiana law while still providing them with the benefits and advantages of the UBE.

Appendix A: Letter Regarding UBE Recommendation

The undersigned three members of the Commission proudly join in the Report and its recommendations as to Topics 1-6 and 8. However, as to the Commission’s recommendation regarding Topic 7, adoption of the Uniform Bar Exam, we respectfully do not agree. We appreciate the invitation from the Commission’s Co-Chairs to submit a brief letter outlining our views on this topic, and do so here with respect and admiration for our fellow Commission members.

We recognize there are potential benefits to the UBE, including: (a) the ability to rely on the NCBE for pre-tested Multistate Essays; and, (b) portability of UBE scores for specified periods of time (presently two to five years) with transfer/application fees as determined by each UBE jurisdiction. In consideration of our concerns regarding moving to the UBE, on balance we favor instead retaining the current format for the Indiana Bar Exam with several modifications. Our views are summarized as follows.

A. Erosion of Control Over Minimal Competency Determination

Presently Indiana retains control over selection of Indiana topics for testing, writing the six Indiana essay questions, and grading those essays and the MPTs using whatever grading approach the Indiana Board of Law Examiners selects. Additionally, Indiana is presently free to select the weight to be given to the MBE, and whether to scale Indiana essays to the MBE. As a UBE jurisdiction, however, Indiana would lose these powers, and be required to adhere to NCBE grading guidelines for uniformity. We prefer that the Indiana Supreme Court and the Indiana Board of Law Examiners retain more control over determining minimal competency for admission to the Indiana Bar.

B. Importance of Indiana Law

Indiana Admission and Discipline Rule 17, § 5 has long provided, “Since the bar examination attempts to establish the applicant's ability to practice law in the State of Indiana, questions requiring answers determining an understanding of Indiana law will be expected.” The Indiana Bar Exam has historically tested multiple Indiana law topics that have unique features, such as Indiana Constitutional Law, Indiana pleading and practice, and Indiana family law. This has resulted in students learning substantial Indiana law prior to admission, both from bar review courses on Indiana law to a motivated audience, and at Indiana University McKinney School of Law, which provides multiple course offerings on testable Indiana law topics.

If Indiana were to adopt the UBE, bar review providers would of course discontinue Indiana topics. In addition, and perhaps more importantly, Indiana law schools would no longer have the need or incentive to offer courses on Indiana subjects, such as Indiana Constitutional Law and Indiana family law. Although some exposure to Indiana law can be provided via a CLE-type of offering for Bar admittees, the depth, breadth, length, and intensity of the offering
will not approach that of bar review and bar preparation, and the audience would not be as motivated. We view this as a significant concern for the Bar, bench, and the public.\textsuperscript{34}

C. Concern Regarding Pass Rates

Indiana has now had years of reduced overall bar passage rates (compared to prior averages) since adoption of the Multistate components in 2001. The decline was not anticipated and is largely unexplained, other than for several years where lower LSAT scores correlate to some decline.

In the current format of Indiana’s exam, Indiana is free to: (a) lessen the reliance on MBE by reducing the percent allocated to MBE; (b) reduce the number of Indiana topics that are potentially tested (as recommended by the Commission in this Report); and, (c) continue essay grading without using relative rank-ordering grading. If Indiana were to adopt the UBE, however, it would be required to use the 50% MBE allocation, and adhere to the grading guidelines developed by NCBE, which promotes rank-ordering grading.\textsuperscript{35}

Based on the evidence presented to the Commission, adoption of the UBE is not expected to materially increase pass rates. A study on New York’s recent adoption of the UBE found:

The . . . impact of New York adopting the UBE on the performance of candidates taking the bar examination, overall and grouped by race, ethnicity, and gender, was small at most and generally positive. The increases seen in mean bar examination scores and passing rates, as well as differences in performance by gender and racial and ethnic groups were generally, but not exclusively attributed by the NCBE to differences in background information used in the study, including undergraduate grade point averages, Law School Admission Test scores, and law school grade point averages.

\textsuperscript{34} New York adopted the UBE in 2016. In 2019 the New York State Bar Association launched a task force to study the impact of moving to the UBE. According to the NYSBA, “A main concern is whether newly admitted lawyers have the requisite knowledge of New York law.” The Co-Chair stated, “There are nuances in New York law that are basic to practice but which may no longer be emphasized in law schools, we believe that it is time for a careful evaluation of the UBE’s impact on the profession, legal education and our clients.”

\textsuperscript{35} See, e.g., “It’s All Relative – MEE and MPT Grading, That Is,” Judith A. Gundersen, The Bar Examiner (June 2016) (“NCBE trains examiners to grade the MEE and MPT on a relative basis – making distinctions between papers and rank-ordering them according to whatever score scale the jurisdiction has in place. * * * The 1-6 scale used at the workshop simply means that a score of 6 is reserved for the best papers among all answers . . . . It is better than a 5, which is better than a 4, and so on, all the way to a 1 – a paper that is among the weakest papers. * * * A paper need not be completely devoid of content to get a 1 if the other papers are strong”).
It is possible that the reduced number of essay topics to study could enhance applicant performance, but New York had a significant reduction in topics when it moved to the UBE and pass rates did not improve materially.

If pass rates continue to be lower, many law students will continue to not pass the exam after a substantial and non-dischargeable investment in attaining their legal education. This is of concern for law students, the Bar, and the public alike.

D. Conclusion

We recommend that Indiana proceed with the other recommendations of the Commission’s Report, but not adopt the UBE at this time.

Respectfully submitted,

Kent Kiracofe
Yvette LaPlante
John Maley
Appendix B: Resolution Adopted by the Indiana State Board of Law Examiners

November 21, 2019

Hon. Randall T. Shepard  
Hon. Nancy H. Vaidik  
Study Commission on the Future of the Indiana Bar Examination  
via email to barstudy@courts.in.gov

Re: Resolution Adopted by the Indiana State Board of Law Examiners

Dear Chief Justice Shepard and Chief Judge Vaidik:

On November 15, 2019, the Indiana State Board of Law Examiners unanimously adopted the following Resolution:

BE IT RESOLVED, on the 15th day of November 2019, the Indiana State Board of Law Examiners, after thorough consideration, supports adoption of the Uniform Bar Examination in Indiana, if accompanied by a high-quality Indiana law-specific component.

The Indiana State Board of Law Examiners commends and thanks the Study Commission on the Future of the Indiana Bar Examination for its diligence and hard work. If the State Board of Law Examiners can be of any further assistance to the Study Commission, please contact me at any time.

Sincerely,

Bradley W. Skolnik  
Executive Director  
Office of Admissions & Continuing Education
Appendix C: State Law Components in the UBE States

MISSOURI

Missouri Educational Component Test (MECT)

- Open-book online test with review materials consisting of 11 outlines (“Missouri Materials”).
- 33 multiple-choice questions pertaining to the outlines.
- Passing score of 28; applicant must retake MECT until passing score is achieved.
- (Missouri Board of Law Examiners, Missouri Educational Component, courts.mo.gov/page.jsp?id=325)

WASHINGTON

Washington Law Component (WLC)

- Open-book online test with review materials consisting of 15 outlines (“WLC Research Materials”).
- 60 multiple-choice questions pertaining to the outlines to be answered in four hours.
- Passing score of 80%; applicant must retake WLC (with 24-hour or 72-hour waiting period for second or subsequent attempts) until passing score is achieved.

ALABAMA

Course on Alabama Law

- Online video course set consisting of 8 learning modules.
- (Alabama State Bar, Admissions Office, Frequently Asked Questions, alabar.org/faq.action#171)

ARIZONA

Course on Arizona Law

- Approximately 6 hours of video instruction with supplemental materials and knowledge checks.
- (Arizona Judicial Branch, Arizona Law Course Online Registration, azcourts.gov/educationservices/Committees/JCA/Online-Registration)
MONTANA

Montana Law Seminar

- Mandatory in-person course offered the Thursday following the bar exam.
- (State Bar of Montana, Admissions Information, montanabar.org/page/AdmissionInfo)

NEW YORK

New York Law Course (NYLC), New York Law Exam (NYLE)

- Online course and online open-book exam.
- Applicants view recorded lectures on 12 subjects covered by the NYLC and the NYLE and must answer questions during each lecture.
- Comprehensive course materials for the NYLC and the NYLE, and on which the NYLE questions are based, are available for study online.
- (The New York State Board of Law Examiners, NYLC & NYLE Course Materials & Sample Questions, nybarexam.org/Content/CourseMaterials.htm)

NEW MEXICO

Class in New Mexico Law

- Mandatory in-person course offered the Thursday following the bar exam.
- (New Mexico Board of Bar Examiners, Required Class in New Mexico Law, nmexam.org/event/required-class-in-new-mexico-law-7/)

SOUTH CAROLINA

Course of Study on South Carolina Law

- Course of study consisting of 11 video modules, 30 to 50 minutes in length each.
- Three true-false or multiple-choice questions at the end of each module.
- (South Carolina Bar, Course of Study FAQs, scbar.org/shop-cle/cos/course-study-faqs/)

MASSACHUSETTS

Massachusetts Law Component (MLC)

- 50-question multiple-choice exam with substantive outlines provided upon registration for the MLC.
**VIRGIN ISLANDS**

*Virgin Islands Law Component (VILC)*

- Open-book, online 90-minute test based on outline materials.
- 50 multiple-choice questions pertaining to the outlines.
- Passing score of 70%; applicant must reregister to retake the VILC until passing score is achieved.
- (Supreme Court of the United States Virgin Islands, Virgin Islands Law Component, https://supreme.vicourts.org/offices_of_the_court/bar_admission/regular_admissions/virgin_islands_law_component)

**NORTH CAROLINA**

*North Carolina State-Specific Component of the Uniform Bar Examination*

- Online course consisting of 6 one-hour video courses on 6 subject areas.
- Three quiz questions to be answered at the conclusion of each subject area video.
- (Board of Law Examiners of the State of North Carolina, Course Instructions, ncble.org/nc-state-specific-component-course-instructions)

**MARYLAND**

*Maryland Law Component (MLC)*

- Open-book, timed online test based on outline materials.
- 50 multiple-choice questions pertaining to the outlines to be answered in 90 minutes.
- A minimum of 40 of the 50 questions must be answered correctly; applicants must retake a new set of 50 MLC questions until passing score is achieved.
- (Maryland Courts, State Board of Law Examiners, Maryland Law Component, mdcourts.gov/ble/mdlawcomponent)

**TENNESSEE**

*Tennessee Law Course (TLC)*

- Online course approximately 7.5 hours in length with supplemental outlines.
  (Tennessee Board of Law Examiners, Tennessee Law Course, ttle.org/?page_id=57).