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NEW YORK STATE JUDICIAL INSTITUTE
MAY 2014 CONVOCATION/NYS FOCUS GROUP

TRANSCRIPT OF
NYSBA/NYS JUDICIAL INSTITUTE MAY 2014
CONVOCATION/NYS FOCUS GROUP MEETING
February 5, 2015

TRANSCRIPT of the stenographic
notes of the proceedings in the above-entitled
matter, as taken by and before MERCEDES MARNEY, a
Registered Professional Reporter and Notary
Public for the state of New York and Connecticut,
held at the FORDHAM UNIVERSITY LAW SCHOOL, Dean's
Conference Room, 140 West 62nd Street, New York,
New York, on Thursday, February 5, 2015,
commencing 10:30 a.m.

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1 Focus Group Meeting
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14 MEMBER OF THE LATINA PRLDF
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2 MS. MILLETT: Chris, did you want to
3 start by just --

4 MR. CHANG: No. Why don't you start?

5 MS. MILLETT: I thought it might be
6 useful because some of the people here
7 have not participated in a focus group
8 before. It's a function of the institute
9 that they are the ones who organize things
10 around focus groups. So I thought you
11 might talk for a minute just about what a
12 focus group is before we talk substance.

13 MR. CHANG: Okay. There's a
14 committee -- as you know, you're here for
15 us to get your reaction to the proposal
16 that New York State adopted the Uniform
17 Bar Examination.

18 We have found that the judicial
19 institute of what we do is, we have
20 conducted various convocations on a wide
21 range of topics relating to, quote,
22 professionalism in the law. It's related
23 to role of in-house counsel, lawyers,
24 government attorneys. A wide range in
25 topics, including the Internet example

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2 which was conducted here at Fordham Law
3 School some years ago.

4 We have found that, for the purposes
5 of a larger body, which is the committee
6 that's going to make the ultimate
7 recommendations to the Court of Appeals on
8 whether or not to adopt the Uniform Bar
9 Examination, that focus groups, such as
10 this, consisting of participants from a
11 wide range of areas, helps to focus the
12 discussion for the committee in a broader
13 range. Much in the same fashion as you
14 do -- you know, political parties do
15 polling, things of that nature.

16 We also feel that in this context of
17 a smaller group, rather than having 50
18 people in a public hearing, that the
19 issues become framed more clearly, and
20 there's a more articulate discussion and a
21 more substantive discussion of the issues.

22 So the one thing that I found,
23 because I've gone -- Mike and I have gone
24 through this on several occasion. What we
25 encourage at the institute is that you

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2 take your gloves off, and you just put it
3 right out there. And we find that a
4 robust discussion in that regard is really
5 helpful, particularly on topic, a
6 controversial topic such as this.

7 I'm really the flight traffic
8 controller. I got the stenographer here.
9 It's really Eileen. And Mike is a new
10 member of the judicial institute. He has
11 me to blame because I recommended to
12 Paul Saunders, who is the chair, that
13 because of Mike's background as Court
14 counsel and being a partner at Proskauer,
15 he obviously has given some very
16 significant thought to many issues in the
17 profession.

18 These -- I think these two folks, for
19 the purposes of our meeting in focus group
20 today, they will tweak your discussion and
21 kind of go here and there and probe and
22 poke and things like that. So don't take
23 offense. It's really for a good cause.

24 So thank you very much for showing
25 up.

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2 MS. MILLETT: Well, the institute was
3 kind enough looking at some of what the
4 committee on legal ed and admission to the
5 bar has done to put together an outline,
6 which I think many of you got, which
7 really crystallizes into five Roman
8 numerals. Sort of what we should think
9 about discussing.

10 But as Chris has rightly said, this
11 is really meant to be. And I'm saying
12 this with very little experience because
13 the first time I did it was last year in
14 the run up to the May 20th complication
15 that we did jointly with the New York
16 Judicial Institute, coming changes in
17 legal education.

18 Jim, I think, was part of that; am I
19 right? Jim, you were here? And Mike was
20 that of that, too, and Mike actually
21 spoke.

22 But this is a little different,
23 because we are very, very focused on just
24 one topic, which is whether and how the
25 bar exam in New York should change.

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2 So those of you who have the outline
3 in front of you see that -- the way that
4 the five subsets, if you will, of the
5 discussion are talking about the changes
6 in the exam structure, talking about the
7 past rates, talking about the effect on
8 law school programs and whether or not the
9 transition to the UBE is beneficial to
10 New York.

11 Now, I thought what might be useful
12 is if I just very briefly talked a little
13 bit about a report, which I think most, if
14 not all of you, got and have received.
15 And it might be useful, then, to have Jim
16 talk about why he feels that some of the
17 issues that were covered in that report
18 are not ones that he's willing to support.

19 But the issues really boil down to
20 three things. It was the consensus of our
21 committee, which is -- basically, it's
22 about 27 people. Maybe there are 28 of
23 us. It's roughly divided between
24 academics and practitioners. We may be
25 more heavily weighted on the academic side

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of things. Jose has spoken before on our committee on a different issue. So he's interacted with us.

But as you know, this proposal came about, to our minds, rather quickly; and so we felt we had to respond rather quickly. And in actuality, it was in talking with a member of the focus group that we had earlier, in the run up to the May convocation, that I knew that that person, who is a professor at CUNY law school, Sarah Valentine, was working on a paper around the MPT.

Now, some of you around this table may have taken the bar exam that included the MPT, but I did not. As a practitioner, I heard from academics and other professionals what the MPT, but I wanted to know more about it. So I invited Sarah Valentine to come to our meeting to talk about the MPT.

The outgrowth of that was a much broader discussion about the UBE in general, and the outgrowth of that was a

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report that our president, the president of the state bar, asked us to put together. And the issues coalesced around three things. Really concern from practitioners about what they felt was going to be a change in the exam.

And since we have somebody who is closer to being an expert in the exam than I am, Suzanne Darrow-Kleinhaus, who worked on an article with Mary Campbell Gallagher, I would like her to talk a little bit about the exam.

But concern really with whether or not the exam was going to adequately cover New York law, whether the changes would, in some way, do harm to what it meant to acquire a New York State license. That was really one of the first concerns. There are many permutations of that, but I would say broadly that was one of the first concerns.

The other part of the report dealt with the MPT. One of the things that's going to happen with a newly proposed UBE

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is a doubling down, if you will, but adding a second question. And I will let Suzanne, who knows more, talk more about the MPT.

So the second part of that report really suggested that there could be another alternative to the MPT. To adding a second MPT, which is to have it considered that experiential learning count for some credit in the bar exam. So that was one of the other things that we talked about in our report.

The third concern was the bar exam has long taken a view that diversity is important in this profession. I think all of us looking at the numbers cannot feel that the numbers are going in the right direction. And so our concern was particularly with multiple-choice questions because that's where it appears that minorities perform worse. And certainly, on the multistate bar, the numbers in the last go-round have not been wonderful. Our concern was that whatever

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2 we move toward we do no harm to the
3 numbers of those in the minority category
4 who take and pass the bar exam.

5 So that's kind of it in broad, broad
6 strokes. I thought maybe it would be
7 useful to have Suzanne talk a little
8 bit -- look, this is a free-willing
9 discussion. Anybody who wants to jump in
10 can jump in, but I thought Suzanne might
11 want to talk a little bit about the exam
12 since she's probably closer to it than
13 most of us.

14 MS. DARROW-KLEINHAUS: You know, I
15 live breathe and dream the New York bar
16 exam ever since I took it in February
17 1998. I will never forget studying for
18 the experience.

19 Coming to law school after -- as a
20 second career, I was an evening student
21 coming from a business background. And so
22 it was understandable, after I graduated
23 and passed the bar exam, started to work
24 with my classmates who couldn't pass the
25 bar. That's how I got it know it very

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2 well, by helping others working one-on-one
3 with them and really dissecting the bar
4 exam.

5 I've written three books on the exam.
6 I've written "The Bar Exam in a Nutshell,"
7 which is general bar exam book; "Acing the
8 Bar Exam"; and then "The New York Bar Exam
9 by the Issue," which is solely devoted to
10 the New York bar exam. Because I've
11 studied every single issue tested on that
12 bar exam since February 1998.

13 So I'm as familiar as Diane Bosse is
14 with that exam. She says nobody else
15 lives and breathes that exam quite as much
16 as she does. I will call her up after an
17 exam when I would find, like, a problem or
18 when I first found that the New York bar
19 examiners had included MEE essays and
20 tested them out during the administration
21 of the New York bar in July of 2010.

22 Because the New York bar exam
23 questions are so carefully structured and
24 the language is so consistent from
25 administration to administration that when

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they change the name of the bank that they use to, all of a sudden, you know, something else, I said, There's something different about this question. Because over the years the New York bar exam essays, I believe -- as both a practitioner and a teacher, I think they are great questions.

I would always tell Diane, I think these are good questions. What you're doing is testing the law that we're teaching, the law that we're practicing, as I did. And I think they are very great assessment for what it is you say you claim to test, which is the ability of students to read a fact pattern, apply the New York rule, and go through the analysis.

The questions are structured. They're highly structured in New York. They're broken down, at most, six to seven, eight paragraphs a question, and they have usually three to four subissues which are highly structured and issue

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2 specific. They are not all analyzed
3 fully, everything under the sun. They are
4 not kitchen-sink approaches. They are
5 narrow. They're targeted. They require
6 the candidate to read, identify the
7 question that is being asked, and respond
8 to that question. And they do weave into
9 the questions the New York distinctions of
10 law.

11 It is a solid test of a candidate's
12 knowledge of basic New York law. It is
13 broad, but not overly deep. So you need
14 to know the main rules, the main
15 exceptions.

16 And in working with, now, hundreds of
17 candidates since 1998 to prepare them to
18 pass the New York law exam, working with
19 the released essays, helping them learn
20 that law and apply it on the essays and
21 the MBE, but specifically the essays, has
22 been pretty much the focus of my time and
23 energies. And I will be able to speak and
24 hopefully address your questions as we go
25 further in the distinctions between the

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UBE and the New York bar because they are considerable.

MR. CHANG: Can I jump in here? Is there a consensus that New York State should go to the UBE or not? Because I have not been follow this issue very closely. I passed it once and that was fine with me.

MS. GRAYS: Are you asking in this room or asking --

MR. CHANG: Yes, asking in this room. What are people's views on -- I mean, there's that old saying: If it ain't broke, don't fix it. Is there a need to switch?

MR. CARDOZO: In my view, yes.

MR. CHANG: Mike?

MR. CARDOZO: In my view, yes.

MR. CHANG: Why?

MR. CARDOZO: Before you get into the specifics, and obviously issues raised, I think you need to look, by way of background, of where the profession is today and how it is so changed, at both as

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a professional and the world we live in.

We all know about the incredible drop-off of applications to law school, the extraordinary -- and I'm not just talking New York. I'm talking nationwide. We all know about the -- this extreme difficulty of law school graduates across the country to get jobs. And we also all know, just in the practice of law, that this is becoming a very nationwide practice.

Certainly, there's plenty of people who just practice New York law in their law firms, but more and more people have no choice but to deal with other law.

And I think those are very relevant questions. Because I'm sure we've all had the experience of someone we know who passed the New York bar, and then, for one reason or another, is moving to another state. His or her spouse is moving to a different --

MS. MILLETT: Mike, I'm sorry to interrupt you.

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(Off the record.)

MR. CARDOZO: So you think of how do we deal with those phenomena? How do we make the law profession more attractive to students to encourage law school applications, help people get jobs and for someone who, for whatever reason, has to move to or from New York who has passed a bar exam and has to start all over again? If you're moving from New York to California or vice versa.

And that can have enormous economic consequences. There's someone in my office I know whose spouse is a doctor, and he ended up practicing in California, and she came to me very upset that she's got to apply -- not only does she have to find a new job, but she has to take the bar exam. The economic consequences of being probably unemployed until she passes is enormous.

So I think that's a very relevant background to saying, okay, given those facts -- and I'm sure we can debate that,

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2 but I think those are pretty clear
3 facts -- is moving to the UBE a good
4 thing?

5 Now, obviously, we have to have an
6 adequate exam. That, there's no doubt.
7 And so I do take issue to the extent
8 people are questioning the need for
9 greater portability of a law license. I
10 think that is very important.

11 And I also think in this day and age
12 I read the explanation, well, we focus on
13 the New York part on the CPLR and the EPTL
14 and so forth. Very frankly, I think the
15 last time we elected the EPTL was when I
16 took the bar exam, which was a lot earlier
17 than when you took the bar exam.

18 MS. DARROW-KLEINHAUS: But maybe
19 that's because that's not what you
20 practice.

21 MR. CARDOZO: But, therefore, it
22 seems to be what you're getting for
23 substantive matter. Are we testing the
24 right things? Is the question of
25 memorizing the CPLR, when most people are

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not litigators, is that the way to be testing versus the analytical approach to issues?

And certainly I'm no expert on designing bar exams; but, I mean, that's -- in a nutshell, in answer to your question, Chris, this is why I think -- assuming we are testing and being sure that people know how to practice, I think we should be moving to the UBE.

MR. CHANG: Can you tell us who administered -- and this is really education form me -- who administers the UBE and how many states, if any?

MR. CARDOZO: I certainly don't claim to be an expert --

MR. CHANG: Can anybody explain --

MS. MILLETT: There are 14 states. It's administered by the National Conference of Bar Examiners. I know, Mike, what you said a minute ago was anecdotal about your associate or partner moving to California, but California doesn't have the UBE.

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2 MR. CARDOZO: Yes.

3 MS. MILLETT: And the portability
4 issue -- I mean, we're making an
5 assumption on the portability issue that
6 once New York does something, everybody is
7 going to follow suit. Usually, New York
8 is the exception. So I don't see that
9 people follow suit all the time when
10 New York does something. But the states
11 that currently have the UBE, there are
12 only two on the East Coast. I believe
13 it's New Hampshire and --

14 MR. PEREZ: Alabama.

15 MS. MILLETT: Alabama. And, you
16 know, I don't know that anybody in
17 New York is widely interested in going to
18 Montana, Wyoming, or any of the other 14
19 UBE states.

20 MS. DARROW-KLEINHAUS: North Dakota.

21 MS. MILLETT: Or Missouri --

22 MR. CARDOZO: People can be moving
23 here.

24 MS. MILLETT: -- and that's a
25 problem.

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2 MR. CARDOZO: And maybe we're trying
3 to protect our monopoly, which I don't
4 think --

5 MS. MILLETT: No, it's not a
6 monopoly. We already know with the market
7 crashing or the recession that we had in
8 2008 that there are at least two or three
9 law school classes of graduates that are
10 not lawyers practicing in the way that
11 many of us or all of us were trained in.

12 If you have a portability
13 component -- people want to come to
14 New York. People aren't -- you know, no
15 offense to anyone who is from those
16 places, but that's not where people are.
17 That's not where the main types of jobs
18 are or the center of legal activity that
19 people want to be a part of. It's here in
20 New York.

21 So I'm concerned that, if we have
22 this portability component, a market
23 that's already very challenging as it is
24 for graduates, would become more
25 challenging if people from all of those

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2 states, who, more than likely want to come
3 here -- I'm sorry. You look like you want
4 to say something.

5 MR. CARDOZO: Well, I'm listening;
6 because I don't think we should have a bar
7 exam --

8 SPEAKER: To protect.

9 MR. CARDOZO: -- assuming testing
10 right things -- to protect our monopoly.
11 That troubles me.

12 MS. MILLETT: I'm concerned with that
13 point, though.

14 MR. CHANG: Can I just -- hold on.
15 Let me just procedurally -- because this
16 is unlike a deposition or a trial where
17 only one person is talking.

18 Let's go off the record for a second.

19 (Off the record.)

20 JUDGE RIVERA: Jenny Rivera.

21 Just for point of clarification, you
22 asked about the UBE in this context.

23 The reality is that New York has
24 adopted every part of the UBE but the one
25 that we are now debating, which is the MBE

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which is the essays. We do the MPRE. We have parts of the MBE. We do the 300 questions DNB [phonetic] this is the only one part that we have not yet adopted to then be sort of completely in sync with the NCBE's -- let me finish -- the NCBE's standardize testing format and the bar test.

So I just wanted to clarify that.

Now, the question of the essays -- first of all, I didn't say this before. I'm grateful to the state bar and the judicial institute for doing these focus groups. They are going to be extremely helpful to us. And I also share the remark about candor, and it seems you didn't have to tell this group twice.

The only other thing is I hope, at some point in the conversation, not to drive anyone in that direction, that we will have a discussion about the substance of the exam. Michael has already started this, in addition to the portability, about what is it we believe we need to

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2 test? Because what we test is minimum --
3 it is not the full range of knowledge of
4 New York law. You know that and every
5 student who has to prep for the bar knows
6 that.

7 So I just wanted to clarify a little
8 bit about what the proposal is and, if
9 people don't already know, there are New
10 York multiple-choice questions on the
11 existing bar. We have -- of course,
12 they're talking about different kinds of
13 multiple-choice questions, but it is not
14 that we do not currently use
15 multiple-choice questions to test New York
16 law. We use that format, too.

17 That was just point of clarification.

18 MS. GRAYS: There are two issues,
19 right? There's a substantive issue that
20 you raised about whether the bar exam
21 itself needs to be revised in some way.
22 And I think there have been -- even before
23 this issue with the UBE, there have been
24 some concerns about, Does the bar exam
25 test, right, the appropriate knowledge?

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2 That's one issue, and I think we can
3 have a very robust discussion to
4 Judge Rivera's point about that.

5 So that's one point, the substantive
6 issue.

7 The portability issue is a separate
8 issue, and I think that may be what causes
9 additional concern for folks about other
10 people coming into the New York market.

11 I'm not trying to be territorial with
12 New York, but you kind of indicated that
13 you didn't think that that was the case by
14 raising your eyebrows. But the -- but
15 let's separate the issue and talk about
16 the substantive component to Judge
17 Rivera's point, because I think the
18 portability muddies the issue a bit as far
19 as people coming into New York and people
20 going out of New York. I mean, at least
21 from what -- you had asked the question:
22 What are people thinking about this?
23 That's some of the conversation that I've
24 heard and some of the concerns, about
25 people coming into New York and how many

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people are really going to leave New York and go to other places with a more portable exam -- test results.

Sorry. I was going too fast.

MR. NEUSTADT: Ted Neustadt.

One question about the portability issue before this, because I talked to some students here. I talked to a bunch of people. I didn't go and say, Wouldn't the UBE be great because you would be portable? I was trying not to load it up. I was trying not to load the question, but I was just trying to generalize.

In this job market, I talk to a lot of people that talk about the issue Mike is talking about. And not just because they have to move. But people who were talking about things, like, I'm looking for a job and which bar exam am I going to take, and do I have to take one? What if I take the New York and New Jersey bar and then I get a job offer in Connecticut? Do I have to take the Connecticut bar again?

This issue of portability is a

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genuine issue. The issue about people coming here was not my question. I was concerned about our students and their concern. And I think the idea of that you're not taking two or three bar exams consecutively is a consideration.

So I agree that -- I think the idea of the UB is a good one. I think the nuts and bolts are very, very important, but I don't think the portability issue is a nonissue. I think it's a significant value to people who are sitting for the bar in the next year or two and job market.

MR. CHANG: Jim.

MR. BEHA: Portability is not --

MR. CHANG: Just identify yourself.

MR. BEHA: Jim Beha.

MR. CHANG: Thanks.

MR. BEHA: It's not my particular hobby. Of course I will get to that one before the morning is out.

First of all, we do have a monopoly. The Court of Appeals has a monopoly on who

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gets admitted. And that's true, in some variation, in every state. So it's not about whether there is a monopoly. There are state practices in every state that are controlled by every state.

To me, the portability issue -- obviously different states -- there's a morass of rules among the states as to when you can import yourself or expert yourself, depending on your point of view, and with rare exceptions, the more popular states tend to be extremely territorial about this. I'm not sure about Connecticut; but I'm sure about New Jersey, and I'm real sure about Florida, and I'm most sure about California.

And the question of "Are people porting out?" is always a fair question. Just as the question of other people coming in.

I am, frankly, much more concerned about what we would be doing if we allowed people to port in based entirely on the

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2 MBE, plus this very brief multiple-choice
3 that they would have to take again in
4 terms of what other restrictions we would
5 then place on them as practitioners.
6 Because -- and this may be shortsighted,
7 but I don't think that our continuing
8 legal education requirements are
9 sufficient in that regard for people who
10 have not had some prior framework
11 grounding in New York law.

12 And while I think the bar prep is not
13 necessarily a sensible or efficient way to
14 do that, it gets it done in a way. And I
15 would like to know what the substitute is.

16 Unlike our former corporation
17 counsel, who has had experience in a wide
18 range of practice, I'm a litigator who
19 happens to get asked about their wills all
20 the time. I'm usually smart enough to
21 say, Oh, you should talk to an expert in
22 that field.

23 There are a few things here and there
24 that it is worth knowing because they can
25 come up. And above all, you don't want to

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2 give bad advice.

3 Now, as a litigator, I know that
4 anything I did five years ago, the law has
5 changed, and so it's all bad advice. But
6 these are things that -- just like doctors
7 get asked -- we get asked, people asked
8 us. There are things we should have some
9 grounding in.

10 I know a very, very good corporate
11 tax lawyer who knows nothing about
12 New York State estate and trust taxation.
13 That strikes me as a mistake, but that's
14 how narrow practice is these days. But
15 for the clientele of the New York bar in
16 general, practice is not so narrow for the
17 clientele of a highly specialized
18 corporate law firm. It may be.

19 I think, whether it's the bar exam
20 and bar prep or something else, we need to
21 be very concerned about whether people who
22 are admitted to the bar in this state are
23 adequately grounded in the peculiar arts
24 of New York practice. And, to me, that
25 trumps everything else, including what's

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2 in the bar exam.

3 Ironically, it also leads to my
4 hobbyhorse, which is turning the test of
5 knowledge of New York into a one-hour
6 multiple-choice test. If there is any way
7 to make the existing New York
8 multiple-choice better, I think that's
9 great. There is no reason why we
10 shouldn't make a test better within its
11 constraints.

12 But even though I want people to know
13 something about New York law, as someone
14 who can count on my fingers and toes, I'm
15 extremely concerned about the effect of
16 this separate requirement.

17 The SALT letter, which some of you
18 may have read, deals with this in part.
19 And I'm not sure if they are accurate or
20 anecdotal in saying that, on the existing
21 multiple-choice New York test, about
22 50 percent is the average score. And I
23 don't know what the curve is around it.

24 But let's just say that if, to have
25 rough numbers, 80 percent of people,

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2 85 percent of people who take the New York
3 bar eventually pass, then you got to guess
4 that a very substantial portion of those
5 people passed the bar exam while getting
6 less than half the questions right on the
7 New York multiple-choice.

8 Whether this is a question of
9 diversity and disparate impact or just a
10 question of really, really bad impact,
11 there's a substantial chance that, if we
12 have this new requirement, people who
13 otherwise did just fine on the rest of the
14 exam, are going to wash out in this one
15 hour.

16 Now, aside from having one hour be
17 the litmus test for two days' worth of
18 exams, I just don't think that's a good
19 thing. I want people tested on New York
20 law; but I want it as part of what I call
21 a blend, which is the totality of the
22 exam. Again, recognizing that there are
23 many ways the exam can be improved. And
24 anytime you can improve it, you should.
25 It's a blend.

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2 What particularly troubles me is --
3 yes, they say this multiple-choice test
4 will be different. I'm sure it will be
5 different. Maybe it will be so dumped
6 down that 80 percent of the people will
7 get 60 percent of the questions right, but
8 I'm not sure if that's a good objective.
9 But what troubles me is it's not very hard
10 to do the math that the board of law
11 examiners and tell us: How many of the
12 people who passed the bar last year got
13 less than 60 percent on the
14 multiple-choice?

15 I think if that answer came out, jaws
16 would drop. And I think we ought to do
17 the jaw-dropping before we adopt the
18 proposal and not when the first year's
19 results come in. Hobbyhorse has not --

20 MS. MILLETT: I just want to follow
21 up very briefly to one point that Jim has
22 made, because the numbers are really
23 important. And Jim was just talking a
24 minute ago about the peculiarities of
25 New York law and ensuring that people are

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2 well-grounded in those distinctions and
3 peculiarities. That is a singularly
4 important point; because New York, again,
5 is different from a lot of states.

6 And while many of us around the table
7 practice at large law firms, that is not
8 so for 67 percent of lawyers who are
9 admitted to practice in New York. They
10 are associated -- they're either solos, or
11 they are associated with firms of three or
12 less.

13 I think, in a declining economy and
14 market where it's harder and harder for
15 people to get jobs and many, many of those
16 people are coming out and hanging out
17 their shingles without very much in the
18 way of mentoring, which is not part of
19 this discussion but is another problem
20 that we have, we want to ensure that those
21 people who are giving advice know what
22 they are talking about. And in large
23 measure, the rules in New York are very
24 different than they are in the other parts
25 of the country.

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2 MR. CHANG: Are you assuming --
3 you're assuming there's a premise that, by
4 reason of taking the New York State bar
5 exam, those folks who are graduating and
6 going to small firms or operating as a
7 solo practitioner are, quote, grounded to
8 practice. I'm not so sure that's
9 necessarily the case.

10 I mean, I was a member of the
11 disciplinary committee of the first
12 department for 12 years. I was the
13 hearing panel chair. And just in a very
14 concrete area, attorneys who are hanging a
15 shingle, either in Manhattan or Onondaga
16 County, don't know the basic rules about
17 maintaining an escrow account.

18 So if you're telling me that, because
19 of peculiarities of New York law and the
20 intricacies of it, taking the bar exam is
21 going to make you a competent practicing
22 law in New York, I don't know.

23 MS. MILLETT: I'm not saying that at
24 all, Chris. What I am saying is that if
25 we go to an exam which has less emphasis

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2 on the peculiarities and distinctions of
3 New York law, we will have more difficulty
4 with those solos who are coming out and
5 hanging out their shingles. And so that's
6 a concern, and it ought to be a concern.

7 And I'm voicing the concern -- not
8 just a concern that I have, but the
9 concern of many of the people who are on
10 our committee and the concern of the state
11 bar.

12 MR. CARDOZO: What is the rule --

13 JUDGE RIVERA: Jenny Rivera.

14 The New York law exam that's
15 separate -- what's proposed as a separate
16 50 multiple-choice exam is meant to focus
17 on what is unique rules of New York. It's
18 going to focus on, obviously, New York
19 State procedure, administrative law,
20 professional conduct, areas that are not
21 tested on, again, the one part of the UBE
22 that we have not adopted, the MBE, the
23 essays.

24 Otherwise, where the essays align
25 with New York -- and I, too, would like to

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believe we are that unique, but we are not, having been a law professor for almost 20 years. There are some unique rules. That is true. But there are plenty of errors where there is tremendous alignment.

So the New York law exam is not meant to be a mini test of New York law but rather meant to be a test that picks up the gaps and ensures that we have coverage of New York law where the MEE is not able to do that.

I just want to clarify that, under the existing exam, it's certainly possible to mask a very bad storm on one day with an excellent score on another day. That is not the proposal on the table. You are going to have to pass the score cutoff for both of these separate exams, the MEE as well the New York law exam. You are not going to be able to mask the way you do now.

Again, for better or for worse, people may have different feelings about

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2 that. It's just my point of
3 clarification.

4 MR. CHANG: Thank you, Judge.
5 Mike.

6 MR. CARDOZO: There are certain
7 rules, as I recall, that if practicing in
8 another state for a certain number of
9 years -- what? Five years?

10 MR. NEUSTADT: Five years.

11 MS. MILLETT: Reciprocity.

12 MR. CARDOZO: It is ironic to think
13 that we have, under our existing rules, if
14 you've been practicing law in another
15 state for five years, you can be admitted
16 to the bar, as I understand it, in this
17 state without knowing a single -- without
18 demonstrating a single piece of knowledge
19 of New York law.

20 So think about that and tell me -- I
21 doubt that there's been greater number of
22 disciplinary proceedings for people who
23 have been waived in. But if -- for all
24 this time period, we have been allowing
25 these people in because presumably they've

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2 become relatively experienced
3 practitioners. Although no one is --
4 after many years. But the world has not
5 fallen down.

6 So I think the real test -- and I
7 think Judge Rivera was alluding to it,
8 does someone, A, know how to think like a
9 lawyer? That's what the bar exam, I
10 think, should be testing.

11 And, yes, there are peculiarities,
12 and so we should test a little bit about
13 that, but it's not the end of the world
14 if -- anyone can come into New York State
15 after five years and not know a thing
16 about New York law.

17 MS. MILLETT: Again, I think the
18 numbers would be useful. This is
19 something that we've asked for, and I
20 don't know that we have it. I would love
21 to know how many people take advantage of
22 that five-year rule, practice rule. You
23 know, is it 5 percent of the practitioners
24 in the state? Is it 2 percent of the
25 practitioners? Is it 10 percent?

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2 I would love to know how many people
3 take advantage of that. Because you make
4 an excellent point. I wonder how many of
5 those people are running around the state.

6 Jose had his hand up. I thought you
7 had something to say.

8 MR. PEREZ: No. Just in response to
9 Mr. Cardozo's, I guess, earlier comment
10 about the portability, and I think it kind
11 of follows up your latest comment, like
12 New York reciprocity. Each state sets
13 their own reciprocity rules, if any.

14 So my understanding of the UBE, each
15 state also sets its own passage rate. So
16 as to the portability, a passing score of,
17 say, New York with the UBE does not
18 guarantee admission into one of those
19 limited 14 states.

20 Again, each state determines their
21 own passage rate on the UBE. So passage
22 of the New -- whatever the New York
23 passage rate -- proposed passage rate, as
24 I understand it, is lower than some of the
25 other states. That would not necessarily

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2 guarantee admittance into that other
3 state. So, again, those external
4 portability benefits may not necessarily
5 ring true.

6 MR. CHANG: Bruce --

7 MS. MILLETT: I'm sorry to interrupt,
8 Chris.

9 We have an extra table here, and the
10 folks from Fordham were asking -- would
11 you like us to put it here so you have
12 something to lean on to write or --
13 because we have that table?

14 (Off the record.)

15 MS. MILLETT: I'm sorry, Chris.

16 MR. CHANG: Bruce, do you get the
17 same sense from the students that Ted
18 articulated earlier, that graduating
19 students want portability or it's a
20 concern of theirs?

21 MR. NEUSTADT: I don't want to
22 overstate what I said --

23 MR. GREEN: No, I don't know if they
24 exclusively tie it into the bar, but I
25 would say that many of my students don't

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2 know where they are going to go practice,
3 even towards the end of law school and
4 even at graduation. And I would say quite
5 a number of them move states within the
6 first five years during the period when
7 you can't waive in.

8 So they have a lot of things on their
9 mind, like passing a bar exam and
10 graduating. I'm not suggesting that this
11 is the foremost issue for them; but I
12 think, as a practical matter, it's
13 important.

14 I would just say, in response to your
15 earlier question, or somebody's earlier
16 question, about how the people in the room
17 feel -- obviously, I'm getting the sense
18 that people feel differently -- I feel
19 very much the way Michael does. But I
20 should express my bias, which is that I'm
21 a drafter of one of the multistate exams,
22 the MPRE. And I've, you know, known the
23 national conference people for a long time
24 because I was involved in the MacCrate
25 Report. And I know it's a dream of theirs

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2 one day to have everybody adopt the
3 Uniform Bar Exam so that, you know, our
4 scores will be portable. That's not to
5 say that we can't, in New York, have the
6 gold standard because we could have the
7 highest pass rate in the galaxy, but we
8 would all take a uniform bar.

9 The way -- I'm a little more extreme
10 than anybody in the room because, if it
11 were up to me, I wouldn't include a
12 separate New York exam. My basic view is
13 this: The top students are going to pass
14 whatever bar exam you throw at them. And
15 this is all -- makes a lot of money for
16 bar review courses.

17 The top students in my school and
18 everybody else's schools have developed
19 the analytic skills, the ability to learn
20 the law, the ability to communicate on
21 paper, et cetera. That is largely being
22 tested. And if my students went to
23 Nebraska or Louisiana or wherever, the top
24 students would pass the bar exam as well.

25 When they pass the bar exam and get

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sworn in, I think they are not terrible well qualified to practice law. And I think that's true of the graduates of all of our law schools in New York and elsewhere without supervision, mentoring, et cetera, and they develop it. And ideally they are smart enough, as they're ethically obligated to do, not to take on things they are not qualified to do and to learn the things they are going to do.

Even among my students who go put up a shingle in small practices and have general practices, it's still highly specialized, if you think about the huge range of things that lawyers in New York State and the US do. And they develop because they've done well and have the basic abilities to learn. They're going to learn the things they need to do and not commit malpractice until they do that.

I think, to the extent that we're viewing the bar exam as sort of a gatekeeper to keep out people who are not qualified to learn to become good lawyers,

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2 it will work well whether it's the UBE,
3 the New York State bar exam or whatever.
4 And that being so, I don't see personally
5 the need for a distinctive New York
6 portion, but I recognize that it has
7 symbolic significance.

8 I don't think most of my students
9 will remember very much of what they
10 learned for the bar exam and -- back on
11 the bar exam. Until they practice,
12 they're not going to need to.

13 But I do think it has some symbolic
14 purpose in influencing, maybe to some
15 small degree, what people take in law
16 school. But I don't think that's even,
17 for me, terribly important.

18 Most people, I believe, and I could
19 be corrected, who take the New York bar
20 are not from New York area law schools.
21 Certainly, many are not. Some of them are
22 not from the US law schools, except for
23 the one you're -- common-law country. I
24 don't think you even have to go to a US
25 law school.

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2 And so, you know, I don't think that
3 sort of -- to the extent that some subtle
4 influence on what law schools are
5 teaching, I don't think that's important.
6 I don't think it's effective. I don't
7 actually think it's a good idea. I think
8 that if you want to make law schools use
9 something, you should tell them what to do
10 and not try to influence them indirectly.

11 But having said all that, I recognize
12 that, to a lot of people, the
13 distinctiveness of New York practice is
14 important. It's, I think, adequately
15 served by having a 50-question exam.
16 We're really, as Judge Rivera suggested,
17 just swapping out -- you know, adding one
18 more practice essay, some number more
19 New York multiple state questions, and
20 taking out some number of New York essay
21 questions.

22 It's not a radical change. It's not
23 going to affect scores. It's not going to
24 affect what people study. It's not going
25 to affect what people remember when they

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2 actually get sworn in and practice.

3 To me, at the end of the day, the
4 mobility issue is really important because
5 that's the one thing that really changes
6 here. And I do think it's important to my
7 students whether they are aware of it or
8 not.

9 MS. MILLETT: Bruce, you made some
10 very definitive statements here. It's not
11 going to affect scores. It's not going to
12 be a huge change for a lot of people.

13 There's someone here who has a rather
14 unique perspective because he's taken the
15 bar exam here in New York, and he's taken
16 the bar exam abroad. And there is another
17 change, which is the MPT. There are will
18 be two MPT questions on the proposed --
19 under this UBE proposal.

20 And the person I'm talking about is
21 Stephan Grynwajc.

22 And I think, Stephan, you have a
23 unique perspective on that because you've
24 taken this exam. You've taken the MPT.
25 And I'd really like you to share that with

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the folks in the room.

MR. GRYNWAJC: I was hoping that we would get to the substance of the exam, really.

MS. MILLETT: Which is what we're getting to.

MR. GRYNWAJC: Yeah. And I think -- yeah, I mean, I look at it from the view point of 4500 students who are taking the exam today.

Many of them, when they come from other states, will have no exposure whatsoever to New York law at all. They will take the two months' preparation course for the exam. But I do think that for those who don't get a proper grounding in New York law from the law school and are not being adequately tested on the exam on New York law, I think it creates a risk for clients; and I think it doesn't necessarily do a service to the state to license those lawyers on the those basis.

So I think it's important that we maintain a status and standard for

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2 New York law on the exam.

3 Now, we can debate as to whether
4 50 multiple-choice questions is enough.
5 That is the substance I think we need to
6 talk about.

7 The MPT, yes, I took the exam at a
8 time that the entity was effectively
9 enforced. And I think that, if you look
10 at the exam of the MPT, it generally
11 comes -- and that's part of the timing and
12 also what the format of the exam is -- but
13 it comes at the end of the first day. At
14 that time a lot of students get tired.

15 The foreign-trained lawyers, English
16 is not their first language. If you look
17 at the format of the MPT, which has a file
18 to review, a lot of reading and so on, it
19 takes them longer to read. It takes them
20 longer to write. And in the end, from
21 everybody that I've spoken to, most of the
22 students who are foreign-trained students
23 do not type the exam. They write the
24 exam.

25 If you go to the Javits Center, in

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2 the room that everybody is writing the
3 exam, it's like the United Nations.

4 So I do think that it will have an
5 impact if you start adding another exam --
6 another MPT to the exam. It will impact
7 the foreign-trained lawyers more than it
8 would impact, I think, the other
9 candidates.

10 Now, I also know that it's in format
11 of writing a brief and all of that, all of
12 which I'm torn from practically testing
13 somebody's readiness to practice law, but
14 I also think that students who are trained
15 in the US, who do summer associateships in
16 law firm, get to do a lot of those briefs.

17 When you come from a foreign country,
18 you don't do that the same way, and the --
19 is different. So I do think that adding
20 that element just to think it will
21 actually test the readiness for
22 foreign-trained lawyers in particular, I
23 don't think is the case.

24 So I think these are the points that
25 I had from the MPT. I think it's -- it

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will have adverse effect, I think, on foreign-trained lawyers. But that, again, takes it -- that's my perspective in connection with the MPT.

MS. MILLETT: That's what I was asking about specifically.

Again, when we asked someone to come to our committee to talk about the MPT -- because I think most of us on the committee have not taken -- you didn't take the MPT, right, Joel?

MR. STRAUSS: No. And I wanted to make a point about the MPT --

MR. CHANG: You know what would be helpful for us dinosaurs? And I end with dinosaurs. Can somebody, just for the record, explain what the MPT is?

MS. MILLETT: I think Suzanne is probably best qualified to do that.

MR. CHANG: Great. Thank you.

MS. DARROW-KLEINHAUS: The multistate performance test --

MR. CHANG: By the way, this -- I will never take a bar exam ever.

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2 (Laughter.)

3 MS. DARROW-KLEINHAUS: The multistate
4 performance test was added in July 2001 in
5 New York following its edition in a number
6 of other states. Many states have now
7 added that component. It is a 90-minute
8 timed -- you are suggested to take about
9 90 minutes to answer it. Time is critical
10 on this part of the exam.

11 It's given in New York in the
12 afternoon of the first day. There are two
13 essays. You're given two essays and this
14 MPT, which is like a client file, and the
15 candidate makes their own assessment with
16 respect to time. But if you follow the
17 clock, since you have three hours, you
18 need 90 minutes for the MPT, and you
19 should apportion the other 90 minutes.

20 So when you get your MPT packet, you
21 are given a file, which you are supposed
22 to simulate what you would have in law
23 practice. The partner gives you a test to
24 perform. And all of the materials are
25 structured very nicely. They are very

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similar. The National Conference of Bar --

MS. MILLETT: I'm passing around the 2005 MPT from the National Conference of Bar Examiners. It's the last one that they released.

MS. DARROW-KLEINHAUS: Look at it. They put together the file. It has a table of contents. The first thing in the file is the task memo. It's a memo to the candidates, which outlines some of the background facts and tells the candidate what it is they would like them to do. What is your task? Are you to write a memo? Are you to write a brief? And they identify.

And it's usually two issues that the candidate is given to assess, to evaluate. It could be in the form of a client letter. It could be in the form of a memo. It could be in the form of a brief. But they are typically two issues that are outlined that the candidate has to address.

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2 And in order to address that problem,
3 everything that the candidate needs to
4 answer that question is contained in the
5 universe they are given. It's like a
6 closed-universe assignment that students
7 would have their first year in their legal
8 writing or legal process class, where it's
9 closed and that the cases that they need
10 to know to give them the law is contained
11 within that packet.

12 So half of the file is considered the
13 factual portion they call the client file
14 where there may be interrogatories. There
15 may be letters back and forth. There may
16 be purchase orders, depending on the
17 nature of the problem. The problem could
18 be in any area of the law whatsoever:
19 Bankruptcy, Indian law. Because the law
20 itself is not relevant since the law is
21 provided to the candidates in the law
22 library in the form of cases and/or
23 statutes or both.

24 Like the practice of law, a lot of
25 the material that may be given is

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2 irrelevant to solving the problem, which
3 adds to the difficulty in working under
4 timed constraints in that the candidate
5 has to read their problem, identify --
6 here, this one says: Draft an opinion
7 letter to the president of a company
8 explaining something. It's about
9 liability -- oh, from -- someone died.
10 This is a products liability problem. I
11 can tell it right away. It's either
12 products liability or we have a warranty
13 problem.

14 If there is any particular format
15 that the bar examiners wish you follow in
16 putting your response together, they give
17 you a separate memo, which is the
18 instruction memo on how to organize your
19 brief or your opinion letter. They give
20 you precise guidelines.

21 Here it is. The following guidelines
22 are to be used in preparing your opinion
23 letter. Begin the letter with a brief
24 intro statement of the question. Then
25 they want a concise one-sentence answer.

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2 So at the very time that the
3 candidate is taking this, or within
4 90 minutes, they have to absorb what their
5 task is. They have to follow the
6 guidelines that they are given in putting
7 together that response. It's different in
8 different occasions. There are a lot of
9 generalities, but you have to follow what
10 is unique to your problem.

11 And then you have to go through
12 what's usually about 30-something pages or
13 30 and 40 pages of materials before you
14 can respond.

15 JUDGE PRUDENTI: Gail Prudenti. I'm
16 the Office of Court Administration and a
17 member of Judge Rivera's committee.

18 Let me just ask you this: ^I was the
19 first year examination. I believe it was
20 in 1979. So then are you telling me they
21 went to a change in this examination --

22 MS. DARROW-KLEINHAUS: We have the
23 multistate component.

24 JUDGE PRUDENTI: Okay.

25 MS. DARROW-KLEINHAUS: The MBE is a

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full day in itself. That's the second day. That's 100 multiple-choice questions in the morning, the 100 multiple-choice in the afternoon.

JUDGE PRUDENTI: Got it.

MS. DARROW-KLEINHAUS: This is part of the New York data, where New York used to have six essays.

MS. MILLETT: And the 50 New York multiple-choice questions.

MS. DARROW-KLEINHAUS: Well, what they did was they eliminated one of the essays. And they have now only five essays, 50 New York multiple-choice questions, and this one multistate performance test.

MR. CHANG: Let me ask this question: When a perspective graduating law student is taking a bar exam course, okay, do they get trained in this? I mean, on -- do they get practice exams, and they write them and all that stuff?

MS. DARROW-KLEINHAUS: What we have done in law schools and in bar review

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2 companies is they have factors into the
3 bar review program a number of experiences
4 for students to work through the MPT.

5 There is a lecture on the MPT, which
6 breaks it down how to approach the
7 material, how to organize your time with
8 practice time to write one out, and then
9 feedback is given. And then they tell the
10 students, you know, you should practice
11 additional ones during the course of your
12 bar prep.

13 We have integrated it, many of us, in
14 our law school courses that are for bar
15 exam preparation, including MPT and ^^^.
16 We've always done that at Touro. And
17 we've increased that at Touro because what
18 we have found is that, because this is a
19 minimum 90-minute writing experience,
20 students don't want to do it. They put it
21 off to the very last moment. They say
22 it's only 10 percent of their overall
23 grade. Well, I can do this. I just have
24 to read. They give me the law.

25 And the problem is it's a very timed

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2 exam, and you need to be very conscious of
3 time. And you need to be -- you need to
4 practice writing and thinking and reading
5 that quickly to organize the materials, so
6 that we have required more and more
7 simulations to practice and prepare for
8 this. Because it is not easy even if --

9 MR. CHANG: It's like preparing for
10 the SATs.

11 MS. DARROW-KLEINHAUS: For the MPT.

12 MS. ESCALERA: Nitza Escalera.

13 I was going to say it, and I know --
14 bring in the New York State Board of
15 Examiners. So the students learn all
16 about the structure of the exam. So it's
17 not a surprise to them.

18 MS. DARROW-KLEINHAUS: It's not a
19 surprise and they know it. And the bar
20 review courses include it, and many of our
21 in-house for credit bar programs cover it
22 as well. But you can't just do one of
23 these. It's like eating one potato chip.

24 In order to become proficient, in
25 order to gain experience, and you can work

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2 effectively and efficiently under those
3 conditions, you need to practice it
4 multiple times.

5 Now, some people don't need that
6 many. You do it once or twice. Okay. I
7 understand it. The structure is similar.
8 I'll take that up. Some people naturally
9 read and write more quickly. But for many
10 of our candidates taking the bar, and not
11 just our many foreign-trained students,
12 writing and thinking, you know, it takes
13 longer to do that. And so significant
14 more practice is required.

15 Over the years, as I have gone
16 through our bar --

17 MR. CHANG: Let me jump in here.

18 In third year in law school
19 curriculum now, in the second -- second
20 semester, as opposed to the fall semester,
21 are law schools in New York teaching
22 courses or giving courses, bar exam
23 courses?

24 JUDGE RIVERA: Yes. Yes. The ABA
25 has given them credit for that. The

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students get credit, yes. And some people, who actually are the bar review companies, do those courses.

MR. CHANG: Really?

JUDGE RIVERA: Yes.

MS. DARROW-KLEINHAUS: This has been true since 2008 when --

MR. CHANG: I know. I told you I would find someone.

JUDGE RIVERA: And --

MR. NEUSTADT: And, Chris, some of them now type their exams. You may have heard.

MR. CHANG: Whoa. They do that, too?

SPEAKER: You can bring in a laptop. You can bring in a computer.

MR. CHANG: This is too fast for me.

MS. MILLETT: Chris, I just want to pick up on a point that is being made by Suzanne, and that Stephan made, but I think needs to be amplified.

MR. CHANG: Okay.

MS. MILLETT: And it's another way in which New York is different from other

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2 states.

3 I think the 2012 numbers that the
4 board of law examiners released indicated
5 that 29 percent of people who take the
6 New York bar exam are foreign graduates.
7 And that number is growing. I don't think
8 Stephan really -- in our committee, we had
9 much more of a broader discussion about
10 this with somebody who was an expert in
11 the MPT who's writing about the MPT.

12 And you correct me if I'm wrong,
13 Stephan, but I thought I understood you to
14 say that, when you look around the Javits
15 Center or look in any forum where the exam
16 is being given, you can tell the foreign
17 students because they do not have laptops.
18 And they don't have computers because
19 that's not the way they are taught in
20 foreign jurisdiction. So they are, with
21 pen and paper, writing out and outlining
22 those exams.

23 What Sarah Valentine communicated to
24 us, and you were there Joel, and you were
25 there Stephan, and you were there -- oh,

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2 Jim wasn't there, I'm sorry.

3 Is that, as you said, Suzanne, an
4 exam is speediness. I mean, it is, it's a
5 test of speediness. And so if you, as a
6 foreign student, are having to read the
7 amount of material that all of you see,
8 because I've passed it around, digest
9 that. You're outlining it in longhand.
10 And now you then have to begin to write
11 your response to, it similar to the way
12 that you would do an essay, all though --
13 and I think we were told that it's not
14 very different than what you would do with
15 an essay, all though it is supposed to be.
16 It isn't.

17 And now the foreign student is being
18 asked to do two of those.

19 And I think what we heard Stephan say
20 is that, in his view, that is going to
21 make the exam more difficult. So A
22 counter point to your point, Bruce, that
23 it isn't going to change the scores,
24 because I think it will.

25 MR. CHANG: Doesn't all this suggest

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2 that the bar exam, in large part, is
3 really just developing some mastery of
4 test-taking technique, as opposed to
5 really becoming an expert in civil
6 procedure.

7 MS. MILLETT: But is that what we
8 really should be doing to try to put
9 people into our licensing scheme? That
10 they should be mastering test taking
11 technique?

12 MR. CHANG: That's not changed
13 since --

14 MS. MILLETT: Joel wants to say
15 something.

16 MR. CHANG: Oh, I'm sorry. Go ahead,
17 Joel.

18 MR. STRAUSS: Joel Strauss.

19 And this is something I mentioned at
20 our last committee meeting when Professor
21 Valentine was talking about the MPT. I've
22 gone back and forth, in my own head, when
23 I first learned of the MPT and -- also, I
24 took the bar exam like 25 years ago, there
25 was no MPT then.

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My initial reaction was, hey, this really is sort of like real practice. You're giving someone a file.

But then after further thought and speaking with Professor Valentine, I was thinking, this really is not testing. This is not real practice.

In what practice would we give an associate 90 minutes to go through all the information that they need to do -- and do an opinion letter? It's not real world. All it does is reflect probably that somebody -- if somebody does well on the MPT, they took a great bar review course that taught them how to attack it and get it done in 90 minutes. It doesn't reflect practice.

In the real world, I mean, I know I tell -- you know, when I have partners or whoever would say, you know we've got to get this done. I would say, "Do you want it done right or do you want it done fast?"

I think we all want it done right.

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2 And we're talking here about adding
3 another MPT, which is not really -- if the
4 bar exam is in any way supposed to test,
5 you know, if people are practice ready,
6 that's a whole other question whether it
7 does or not. I mean, I don't think the
8 MPT really -- I don't think there's any
9 relationship between doing well or passing
10 the MPT, and are you practice ready.

11 All it shows is someone took a really
12 good bar review course that taught them
13 how to attack this MPT question.

14 In real life, you know, doing all
15 that in 90 minutes, I don't think any of
16 us would advocate doing it fast rather
17 than doing it right.

18 MR. CHANG: Jim.

19 MR. BEHA: If I might, because I've
20 now been involved in discussions about how
21 you should examine people for admission to
22 the bar, going back almost 15 years. And
23 there's a certain tendency, whenever we do
24 this, is to go back to the beginning
25 because the question of whether the bar

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2 exam is a sufficient test of competence,
3 is the -- is a root question about the bar
4 exam.

5 I think the answer to that question
6 is, of course not, but it's something.

7 And it's something that can always be
8 made better, but in a New York context,
9 where it's being administered to tens of
10 thousands of people a year, so sitting
11 down with an interviewer and spending a
12 couple hours chatting, is not an answer to
13 how you can run the New York Bar exam.

14 I think that we get derailed from the
15 narrow proposal in front of us, even
16 though I actually agree with a lot of what
17 you're saying, Joel, when we go back and
18 say, let's deconstruct the bar exam all
19 over again. We have a couple of
20 fundamental questions, I think, that
21 govern whether we should be doing the UBE
22 rather than the New York test. One of
23 them is administrative. I'm sure there
24 are people on the Board of Law Examiners
25 who would love to be, including Diane, who

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2 would love to be doing the UBE because it
3 would be a hell of a lot less work for
4 them. And institutional, that's a fair
5 question.

6 But for the profession, that's
7 perhaps not the question. The question
8 is, what is the effect of changing the
9 exam going to be on admitting people to
10 our practice?

11 Is it going to make them more likely
12 to be credible members of the bar or less
13 likely?

14 It's a portability question, all
15 though that carries with it all the
16 baggage of, once we decide to be portable,
17 who is going to persuade all those other
18 people, particularly in Florida and
19 California, that they should because
20 California -- which is going in a
21 completely different direction on this.
22 But portability is an issue.

23 And whether it starts the process of
24 acquainting people, whether they are
25 foreign trained, or whether "foreign"

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simply means from Massachusetts, with New York law. That's a fair question to ask as well.

Within the narrow constraint, we either have what we have now, or we have the UBE, it seems to me, those are the critical questions, with that added subtext of, what do you think about this separate component and how it's going to work? Is it going to screw people or is it going to be good? And what will we do with people who don't pass that and pass the rest of the exam and have to take it again, which is an administrative nightmare.

Those are the practical questions.

We already spent an entire year with a convocation talking about the bar exam, as to whether it's a sufficient gate keeper, and we just can't go back there.

MS. MILLETT: Joel had a question -- I'm sorry, you had a question.

MR. CORDOZA: Michael Cordoza.

Well, I agree that, and I'm not sure

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that I feel confident as a lawyer, to know how best to test ones aptitude. Maybe the professors here would know that. But I don't know that I could say whether two NTs [phonetic] are better than one, and those kinds of issues. And I agree that I think the question we have to focus on is, does the proposal result in not being able to be sure, or less able to be sure, that people are qualified to practice law in New York. It seems to me that that's the issue we have to focus on.

As I read the literature that has been developed, that relates to whether or not we want to emphasize more in the test; and therefore, we should scrap what's before us. Emphasize more of the so-called uniqueness of New York law, or at least test it on an essay basis more than the multiple choice question.

I think that's the question. And I as I said before, I for one am not persuaded that doing it one way versus the other is productive because I do think

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2 that it require an applicant to memorize
3 the EPTL or the CPLR, what have you, is
4 not the way to go.

5 MS. GRAYS: As a follow up on that.

6 Just to your point, about what's the
7 issue. I mean, Michael, you're getting
8 to, what's the real heart of the issue,
9 right?

10 And I pose this to the judges, what's
11 the problem that we're trying to solve?

12 Why did Judge Lippman believe, at
13 this point in time, we needed to look at
14 adopting a uniform bar exam.

15 There have always been concerns about
16 the bar exam itself, and I understand
17 that. But is he looking at this as being
18 a solution to that? Why now and why this?
19 Judge.

20 JUDGE RIVERA: I can only say what he
21 said publicly, which is, he is very
22 concerned about portability. He believes
23 that it is a very different practice from
24 what it was, and he wants to ensure that
25 people have a certain amount of mobility.

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2 And even if there are, right now, not as
3 many applicants as perhaps he would like
4 to see, the UBE.

5 Unless you have the UBE, you don't
6 get those states. You are exactly where
7 you were. Exactly where you were without
8 the UBE. So there's definitely a
9 possibility that people will be able to
10 use the score in a way that's portable,
11 and that is helpful to them.

12 He also, of course, has said that he
13 anticipates that New York, being a leader
14 on many, many issues, would be at the
15 forefront of this change. And would lead
16 the nations. And that is his view on
17 that.

18 I think the other thing is that, and
19 he's said, you know, the bar exam should
20 be about teaching -- excuse me. Testing
21 particular quantifiable general principles
22 and rules, and will find another way to
23 also test wherever there are these unique,
24 discrete aspects of New York lawyer that
25 we feel are so significant that you need

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2 to test on them. Because I don't think
3 anyone around this room -- again, I wasn't
4 teaching for almost two decades, I would
5 not want to be my students' first client.

6 We all anticipate that the lawyer you
7 are, three weeks out of the bar, is not
8 the lawyer you will be 10 years. Right?

9 We know that experience, mentorship
10 and supervision, that counts. That's how
11 you hone your skills.

12 The point of the bar is not to test
13 someone who -- a tenured, skilled lawyer.
14 The point of the bar is to test a certain
15 amount of competency.

16 I don't know if Judge Prudenti wants
17 to add to the Chief's position on this.
18 But that is what he shared publicly and
19 that is certainly what he shared with me,
20 that we need to lead the nation. And he
21 thinks this is the right direction. This
22 is the trend.

23 The individual states with their
24 little individual tests, does a disservice
25 to the profession and to graduates.

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2 JUDGE PRUDENTI: If I could just add,
3 just in my discussions with him, I think
4 he feels strongly about, and I join him,
5 and I will tell you based on my own
6 personal experience, then I will just be
7 speaking for myself.

8 The fact is that it is a different
9 world. You know, the world has changed.
10 And while we like to -- you know, change
11 isn't easy. Whether we want it or we
12 don't want it, it's not an easy thing to
13 do.

14 I think that he feels strongly, that
15 the world we're living in, and in the
16 global society in which we live, and
17 especially living in the United States,
18 that it is incumbent upon leaders in the
19 legal community, from all walks of life,
20 to constantly be trying to become better
21 and constantly be trying to address the
22 concerns that arise in the practice every
23 day.

24 What many of you may not know about
25 me is that I also went to a foreign law

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school. And I went to one of the foreign university in Great Britain, 35 years ago. More than I would like to admit. I had to petition the Court of Appeals at that time, to take the New York Bar. They came back with the determination that said, yes, I could take the examination. And I took the bar examination with a fabulous bar review course and a fabulous tutor who ended up becoming my husband. And the rest is history. And the rest is history.

But my first job out of law school, believe it or not, was an entry level clerk. Entry level clerk at the Suffolk County Surrogated Court. And I remember the surrogated at that time was a real taskmaster. And I walked into his office and -- I was very thankful to have gotten my first job. At that point I would stay in Scotland or England and be an international law firm, but I miss my family too much and came home.

And I remember Judge Signarelli saying to me, Gail, don't feel bad that

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2 you went to law school out of this
3 country. All lawyers who graduated from
4 law school, and take the bar exam, are
5 useless.

6 And he said, so, you are now going to
7 become very familiar with the EPTL and the
8 SPCA, and you are going to become a good
9 lawyer.

10 Fast forward, I've been in private
11 practice for more than a decade. Boutique
12 law firm, dealing with trusts and estates.
13 I've been a judge. I'm in my 24th year as
14 a judge. I've sat in probably every court
15 imaginable to anybody in this room. And I
16 can honestly say, it is a different world.

17 And to answer one of the questions,
18 and I've gone back and lectured at the
19 University College of London, and also
20 Aberdeen Negra, and what I have seen,
21 there is a great interest in the world in
22 all of us being the most professional that
23 we can be as lawyers. And that being an
24 attorney is a profession. And it's an
25 international profession. And I think

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2 what the Chief Judge is trying to achieve
3 is to bring New York, our global center
4 you know, into the world in which we now
5 live.

6 MR. CHANG: If I could just follow up
7 that comment, and to Judge Rivera, one of
8 the -- we did a convocation, which Mike
9 spoke at, about changes in legal training,
10 law school and so forth. And that was a
11 result of the judicial institute of
12 looking at a problem. And the consensus
13 in the institute, I'm not speaking on
14 behalf of it, is that the legal
15 profession, post 2008, has undergone a
16 paradigm shift and it's not going back.

17 And I think Judge Lippman in his
18 comments, during the convocation, up in
19 White Planes, basically said, there has
20 been a change and we have to get ahead of
21 it. We have to get ahead of it in the way
22 we train our lawyers, our law students.
23 And we have -- this is another change.
24 And I think this issue, the portability,
25 is probably what he's saying, is that

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we've got to get ahead of the curve on this thing. Because that is something that can quip our lawyers -- young lawyers going forward, in terms of dealing with the paradigm shift.

MS. MILLETT: The other thing that Judge Lippman, I think, articulated -- and you know, it's part of what you are describing, Chris, as the paradigm shift is that the economics have changed.

You know, not only is it harder for lawyers to get jobs, it's -- you know the cost of legal education is greater. And all of those things are part of what you are describing when you talk about the paradigm shift.

I think also, part of what underlines Judge Lippman's view is that, we need to think about those things and think about what makes it -- what could potentially make it easier for candidates to either pass the bar exam in New York, perhaps leave New York and go other places. But the economics is also a driver. And I

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think that's something -- one of the underpinnings of what the chief judge is thinking about.

Am I right about that, Judge Rivera?

Stephan, a foreign graduate. Then Suzanne.

MR. GRYNWAJC: I would like to add something. I think when Diane Bossy [phonetic] came, one of the discussions we had was really about, what is deemed practice readiness?

When is somebody fit to practice law? Whether, is it mastering analytical skills being able to know the law enough of where you practice.

And I appreciate what you just mentioned. I'm a French lawyer. I'm a citizen living in Wales, about to be sworn in as a Canadian lawyer and a New York lawyer. So I'm able to see how different country's lawyers get tested.

To the point that Mike was rating before about the CLE not being a proper, ongoing training for lawyers, post

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2 admission.

3 The UK has just abandoned the CPE,
4 which is the equivalent of the CLE. And
5 when you qualify as a lawyer in France,
6 once you pass the exam, then you go for 18
7 months bar school, when you actually get
8 to the analytical piece -- for 18 months
9 school where you actually learn all the
10 practical skills. You don't learn that in
11 law school as much.

12 So I think the question is really, in
13 my opinion is, should we focus on
14 analytical skills, should we focus on
15 knowledge of the law?

16 And I think the question is, is
17 multiple choice of 50 questions, enough,
18 of that testing of the law. And the
19 format as well, which I understand is
20 going to be moving away from the fact
21 based type of questions to more of the law
22 itself, knowing the law. I think the new
23 format is going to be different than what
24 it is, even on the multiple choice.

25 I think the concern that I see from

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2 being a sole practitioner, is that in New
3 York, 48 percent of lawyers are sole
4 practitioners. On top of those 48
5 percent, you have 22 percent of lawyers
6 work in firms of two to 10 people.

7 A lot of those lawyers will come out
8 of the bar exam, some of them will have a
9 lot of experience, and then it's time to
10 go into a practice. And many of them
11 can't find a job, and they are going to
12 start practicing from day one.

13 And I am concerned that if you don't
14 have any post admission training that is
15 adequate by way of the CLE, where do you
16 get to test those people on the knowledge
17 of the law, if you don't do it at the time
18 of the bar exam?

19 Bear in mind, again, that many of
20 them would not have gone through three
21 year JDs. And so I think we need to
22 understand that this is the one chance
23 that we have to really test the knowledge
24 of the law. And the question is the
25 balance of moving away from 40 percent of

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2 the exam being on New York law, to moving
3 away.

4 And I understand the point of having
5 to secure 60 percent, which is a good
6 argument. But I'm just concerned about
7 just the amount of New York law that is
8 ultimately tested and weather or not it
9 should be more about testing the local law
10 as opposed to the ethical skills.

11 JUDGE RIVERA: I would like to just
12 clarify, you have to keep in mind, it is
13 not necessarily a correct assumption to
14 believe that the 50 questions of the New
15 York law exam are the only opportunity in
16 which, principles upon which New York law
17 is based will be tested.

18 The MEE does, indeed, align with much
19 of New York law. I just want that clear.

20 SPEAKER: And I would like to just,
21 as a comment, I agree with you. In
22 Scotland, what they have developed is a
23 diploma program where, after you get your
24 degree, you take a year where you do your
25 practical skills and you're trained in

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2 actually what it's like to practice, you
3 know, in a law office.

4 But I think that what we're missing
5 is, and now we're talking about something
6 different, is that the law schools have
7 done a great job in their clinical
8 programs, okay, in preparing students for
9 the practice of law.

10 You know, I think all of the law
11 schools in New York now have clinical
12 programs that I have found admirable. I
13 know at Touro there's a guardianship
14 program, clinics. And there are many
15 other clinics, where they do a fabulous
16 job at Hofstra. There's one in family
17 law. All are great. And I think there's
18 different ways to train lawyers to be
19 ready to practice.

20 I don't know of any examination --
21 okay. You're looking at someone who never
22 took a CPLR class, who never took an EPTL
23 class or whatever. But with serious
24 study, okay, with very serious study,
25 taking a bar exam and having -- taking a

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2 bar review course and having someone study
3 with them, pass the New York Bar the first
4 time.

5 So I think what we're trying to
6 accomplish here, I don't think we
7 necessarily can prepare someone to
8 practice law, day one, in a law office or
9 in a courthouse, or anywhere else.

10 MS. DARROW-KLEINHAUS: I would like
11 to look at something a little different
12 and leave portability aside. I'd like to
13 look at the actual differences between the
14 EPT and the current New York bar exam,
15 because I don't think that one is a simple
16 substitution for the other. But it will
17 have an impact based on the reallocation
18 of percentages of different components of
19 the bar exam.

20 I would not be as concerned if it
21 were a simple switch, but it isn't. So
22 for example, my goal -- you know, I want
23 students to get their law license because
24 if they don't pass the bar examination,
25 whatever incarnation you give it, they're

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2 not going anywhere. They're not going to
3 practice anywhere, portable or not. They
4 are not even useful until they get their
5 license.

6 So if we look for a moment at what
7 the UBE does that's so very different in
8 which I believe will impact the bar
9 passage rate, which is what we need to
10 look at, for the first, the most important
11 part is they are going to change the
12 weight of the MBE from 40 percent to
13 50 percent of the overall score.

14 This by itself, to me, and to others
15 who have studied racial disparities,
16 gender disparities, is of critical
17 significance because the essays and the
18 MPT are then scored or scaled. They are
19 scaled to the score on the MBE. So
20 everything will flow. The bar passage
21 rate is set by the score on the MBE.

22 My concern here is that not everybody
23 does well on multiple choice exams. And I
24 do believe --

25 MR. CHANG: Could you explain, for

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the record, what is the present format of the New York State bar exam, because the acronyms are flying around.

MS. DARROW-KLEINHAUS: Happy to do so.

The Multi-State bar exam is 200 multiple choice questions. That's the MBE. The Multi-State bar, those are 200 multiple choice questions which now cover civil procedure, criminal law and criminal procedure, contracts and article II sales, evidence, institutional law, torts and property. That's the general common law rules that are tested. And that is administered on the second day of the bar exam. And that's, I believe, in every jurisdiction uses the MBE, which is designed and implemented -- the questions are crafted and designed by the National Conference of Bar Examiners. I believe Louisiana is the only jurisdiction which abstains.

MR. CHANG: So that's the MBE, and that's 200 multiple choice?

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2 MS. DARROW-KLEINHAUS: 200 multiple
3 choice.

4 MR. CHANG: And that's on the second
5 day?

6 MS. DARROW-KLEINHAUS: Yes. And
7 everything then would be scored. And it
8 would 50 percent -- it's 50 percent of the
9 UBE score. So when we're looking at the
10 UBE exam, 50 percent is weighted by the
11 score on the MBE.

12 The other part of the UBE, which
13 would be the first day, you would have now
14 two MPTs for 20 percent. The MPT is the
15 Multi State Performance Test. Those 90
16 minute exams. So now you would have three
17 hours with two exams.

18 So the candidate, first thing in the
19 morning, comes in and gets two of these
20 packets, for three hours, to go through
21 and do two completely different
22 assignments. Go through two completely
23 different law libraries and problems.

24 In the afternoon, they would have the
25 three essays.

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2 What else do they get in the
3 afternoon?

4 MR. CHANG: Three or six.

5 MS. DARROW-KLEINHAUS: No. There are
6 six. That's right, six. I'm sorry. Six
7 of the Multi-State essays.

8 MR. CHANG: I see.

9 MS. DARROW-KLEINHAUS: Those are the
10 Multi-State essays which would replace the
11 New York essays.

12 MR. CHANG: And that's in the
13 afternoon?

14 MS. DARROW-KLEINHAUS: That's in the
15 afternoon.

16 Each one is supposed to be 30 minutes
17 long. However, looking at them, I guess
18 reasonable minds can disagree and we can
19 talk about the content and the difference,
20 specifically, with regard to why and how
21 the MEE is different than the current New
22 York Bar exam essay's. There is a
23 difference between them.

24 I will agree with Judge Rivera, that
25 there is overlap in terms of some of the

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law that's generic, where New York does not have so many distinctions. And those would be in the area, the general areas of torts and property and contracts.

MR. CHANG: But let me stop you there. Let's go back to the 200 multiple choice.

Currently, it's 200 multiple choice in the second day. And under the UBE format, would that be 200 multiple choice.

MS. DARROW-KLEINHAUS: Yes, it's the same thing.

JUDGE RIVERA: The UBE is a grouping of different tests. That's what I was saying.

And the proposal is truly about adopting the MEE, because we've already taken all the other parts out of the UBE, many of tests.

I'm sorry to go back to that.

MR. CHANG: That's fine.

JUDGE RIVERA: I guess it's better to actually say, for purposes of this conversation, that we're talking about the

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proposal as opposed to saying, the UBE,
because then --

MS. DARROW-KLEINHAUS: The one thing
I forgot to add though, is that New York
proposes to add, on that second day, the
day of the MBE, with the 200 multiple
choice questions, that would be the day
that the 50 New York multiple choice
questions would be administered as well.
So it would be a seven-hour day of maybe
250 multiple choice questions.

JUDGE RIVERA: Also, the reality of
the proposal is now to decouple and to
allow students -- graduates, excuse me, to
take it other times. Those were some of
the recommendations. And that is also
before the committee.

MR. NEUSTADT: Is that like the MPR,
the idea you can take it as a stand-alone?

JUDGE RIVERA: Correct. Correct.

MR. CHANG: So that would be maybe on
a separate day?

JUDGE RIVERA: Actually, if the
proposal was adopted, and if this

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particular proposal was part of the larger proposal that is adopted by the Court of Appeals. Graduates are not being required to take the New York Bar exam on the same day that they take the UBE. They would have the option.

MS. DARROW-KLEINHAUS: So now looking at the construct of the percentages and how they are weighted, you would be increasing the MPT score from 10 percent to 20 percent, because it's now doubled. You have two of them.

MR. CHANG: Right.

MS. DARROW-KLEINHAUS: And you've now decreased the essay writing component from 40 percent of the score, to 30 percent of the score.

This may not seem to be a big difference, because the numbers still add up to 100. But how they are arranged does make a difference because different students have different strengths and weaknesses.

And in my experience in looking at

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numbers of performances on the MPT, to now double that score, students tend to do less well on that because of the time nature of that exam, and the requirement of reading so much. Reading comprehension skills are tested heavily and the writing skills, all together, in that now -- well, now you have two of them in the three hours. So each one of those -- now you're increasing the weight of the MPT. So that may have --

In fact, we haven't studied it. We haven't done that kind of research to see what would happen as you change and recalibrate how the scores are created for a passing score.

MS. MILLETT: The transcriber has asked for a five-minute break.

JUDGE RIVERA: Absolutely.

MR. CHANG: Absolutely, yes.

(Off the record.)

MR. CHANG: There are a couple other areas we would like to cover. Could somebody answer, if it can be answered,

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whether or not the proposal would have a
disparate impact on minorities and why.

Is there any empirical evidence?

MS. GRAYS: Can you say "diverse"?

It's not just minorities. It's also
gender too.

MR. CHANG: Eileen mentioned to me
there are certain stats, which I found to
be surprising. Maybe somebody can
articulate that.

MS. MILLETT: The only thing I was
mentioning to Chris on the break, and it's
in the Law Review article that was
published by the University of
Massachusetts, Law Review article that was
done by a number of authors. I think
Eileen Calfman [phonetic] is one of them.
I think I mentioned it in my testimony.

MS. DARROW-KLEINHAUS: Andrew Cursio
[phonetic].

MS. MILLETT: Cursio is one of them.

Women tend to do not as well as men
on multiple choice exams. I don't know if
there's a particular status attached to

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2 that.

3 MS. DARROW-KLEINHAUS: Oh, there is.

4 MS. MILLETT: You may know more than
5 I, Suzanne.

6 The only other two things I knew
7 about was a study done by the City Bar,
8 that was in 1992. So these are old, you
9 know.

10 And the Law School Admission Counsel
11 in 1998, which, you know -- I will dig
12 those numbers out. But, you know, people
13 of color, minorities across the board, and
14 again, these studies are old, don't do as
15 well on the Bar exam. Here they are:
16 "Stats for First Time Takers." The City
17 Bar '92 report on admission to the Bar in
18 the 21st century.

19 The data that they collected, they
20 said, confirmed the existence of a
21 disparate impact. White first-time
22 takers, pass rate between 85 and
23 88 percent. And blacks, between 50 and
24 58 percent.

25 The "Law School Admission Counsel"

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2 study done in 1998, for first-time Bar
3 rate, for whites, 92 percent pass rate.
4 For blacks, 61 percent. For Native
5 Americas, 66 percent. For Hispanic
6 75 percent.

7 So the one thing we do know is the
8 differential in performance has persisted
9 over time, even though the breadth of the
10 differential has decreased.

11 And the only other studies -- I don't
12 know where it is. I want to think that
13 it --

14 JUDGE RIVERA: You're talking about
15 first-time taker stats?

16 MS. MILLETT: Yes. That's what I
17 said, yes.

18 I do know, and I was not connected
19 with the committee at the time, that when
20 there was a proposal to raise the cut
21 score in New York, progressively, over
22 three-year period, there was data that was
23 collected that did support the fact that
24 it was going to adversely effect
25 minorities.

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2 Now, I don't have my hands on that
3 data. I can't tell you where it is
4 exactly. Maybe Suzanne knows.

5 MS. DARROW-KLEINHAUS: I think I
6 pulled what you were referring to. It was
7 dated November 2006. It was a summary of
8 the October 2006 report, prepared by the
9 National Conference of Bar Examiners, for
10 the New York Board of Law Examiners, which
11 assess the impact of the increase in the
12 passing score on the New York Bar exam.

13 MS. MILLETT: The only thing I would
14 say, as a general proposition, before we
15 go further, is that, we can't say, at all,
16 that we believe that the UBE, or this
17 proposal, which of course is the UBE and
18 the New York law exam, will definitely
19 impact the rates at which minorities, you
20 know, pass or don't pass the Bar exam.

21 What we are saying is that we have
22 some concern that these changes, not make
23 things worse. And so what we have asked
24 for, and it's a different proposition, is
25 that we begin to collect the data.

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Because we don't really have good data right now for how people -- the stats that I just read to you, for example, are 1992 and 1998. So we don't really have good data today that will tell us where are these numbers stacking up.

However, if we are going about the business of changing the Bar exam, and for many reasons that many people have discussed here, our attempt to make things better. Let's ensure that we are, in no way, making things worse for any of the groups that I have just described.

MR. CHANG: Let me make a suggestion. And that is, everybody get lunch and we can work through lunch.

(Off the record.)

MR. CHANG: In terms of timing, can somebody tell us what the view is, in terms of the timing?

MS. MILLETT: An implementation question, is that what you're asking?

MR. CHANG: Correct.

MS. MILLETT: I think Judge Rivera is

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2 probably best poised to answer that.

3 Chris is asking about the timing,
4 with regard to implementation, what the
5 thought is.

6 JUDGE RIVERA: The recommendation on
7 the table to, the Chief initially had
8 hoped, when he scheduled the first
9 commentary, the chief had anticipated,
10 when the first comment period was
11 announced, to have wrapped up the review
12 of the issues, and fully vetted the
13 questions in time to have this summer's
14 Bar under the new proposal. But
15 considering that there were requests from
16 some of the people in the room, and many
17 institutions and practitioners and deans
18 that wanted more time. That's where we
19 are today.

20 So I think now, the question is what
21 the recommendation is. So obviously the
22 February-Bar is not affected, because
23 that's now. And the July-Bar is not
24 affected. Past that, that's up for grabs.

25 In many ways, we have asked and we

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2 have had testimony about what more time
3 people would need. And for the most part,
4 people have said that they now have had
5 enough time, given that the -- if the
6 proposal was adopted, it would not go into
7 effect for this summer.

8 MR. CHANG: Ted.

9 MR. NEUSTADT: I have a question that
10 goes back to something Suzanne was saying,
11 and this goes to one of my concerns is
12 about the proposal.

13 The emphasis on multiple choice
14 questions and how almost critical multiple
15 choice questions become here, because it's
16 not just that the MBE becomes 50 percent
17 instead of 40 percent. Whereas, it used
18 to be, I think there's currently 50 New
19 York multiple choice questions on the
20 exam. But they are a factor. Now they
21 are a gate keeper. In other words, if you
22 get 100 percent of the MBE right and
23 100 percent of the essays right, but you
24 get 29 of the 50, you do not pass the New
25 York Bar exam.

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2 JUDGE RIVERA: That is correct.

3 MR. NEUSTADT: Which means it is a
4 multiple choice test taking exam -- I
5 mean, not exclusively that. But under the
6 current proposal, the multiple choice
7 questions become the threshold.

8 JUDGE RIVERA: That's true.

9 MR. NEUSTADT: And I think that is a
10 concern.

11 JUDGE RIVERA: The MBE is 200
12 multiple choice.

13 MR. NEUSTADT: Right. But this just
14 says, we add 10 percent more to the MBE.
15 And then we make the New York questions,
16 not only important, we make them -- that's
17 my concern not only important we make
18 that.

19 JUDGE RIVERA: I said that at the
20 beginning, that is correct.

21 MR. NEUSTADT: So that's the concern
22 I have, is that it becomes a -- the
23 multiple choice questions become
24 paramount. And I don't know whether --
25 what ever the issues people have with the

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2 New York Bar exam, does that address some
3 of those questions, I don't know. It's
4 now standardized testing, not essay
5 questions.

6 MR. CHANG: Bruce.

7 MS. MILLETT: I want Bruce to speak,
8 but I just want to add a question to his
9 comment. Which is, I wonder if you, as an
10 academic, and maybe Bruce, you as an
11 academic, have seen differences in the
12 rates at which people of color pass essays
13 versus multiple choice questions, whether
14 you have any anecdotal information on that
15 or any information on that.

16 MR. GREEN: I was going to raise
17 this, because I think my anecdotal
18 information is really worthless. And one
19 can -- there's like people, like
20 cyclometricians, who actually get Ph.Ds to
21 do this stuff.

22 And so, I was going to say, I did go
23 to a program years ago on law teaching,
24 which the claim was made by people who
25 were in the program that, at least on law

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2 school exams, there's a very strong
3 correlation between how you do on the
4 traditional law school essay exam and how
5 you do on multiple choice exams.

6 MS. MILLETT: So the two correlate,
7 is what you're saying?

8 MR. GREEN: I'm just saying, that was
9 the claim made by the people who were
10 teaching at Gonzaga [phonetic] in their
11 law teaching program at a certain point in
12 time. Whether that's true of Bar exams or
13 not, I don't know.

14 So what I was going to suggest is, I
15 would be very interested in knowing the
16 correlation between how people do on the
17 MBE, the MEE, the MPTs, the MPRE,
18 whatever, you know, some people here are
19 assuming, I think, that there's a
20 difference between how people do on
21 multiple choice exams and how they do on
22 essay exams when they are taking Bar
23 exams. My intuition would be otherwise.

24 You know, my students have spent 20
25 years of their life taking multiple choice

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2 exams and, you know, a lot of time in law
3 school taking essay exams. And I don't
4 see a difference. When I see their
5 transcript, there's no big difference in
6 their grades, in general. And I don't
7 think in essay exam courses or multiple
8 choice exam courses, you know.

9 But I don't know, I don't think we
10 should be relying on our anecdotal
11 impressions or intuitions or whatever,
12 that is something for sure that the
13 National Conference of Bar Examiners could
14 tell you.

15 Now, from my perspective, I just
16 think, the changes we are talking about,
17 are kind of tiny. And my intuition would
18 be that they are good. So there's really
19 are two things.

20 One is adding a practice exam. You
21 know, years ago people complained that law
22 school wasn't practical enough. And I was
23 in a group, in January, of law students
24 and they were asked, what is your biggest
25 complaint about law school? And the

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2 recurring answer was: It's not practical
3 enough. And so there's been a move about
4 practice readiness and more clinical
5 courses and simulation courses, et cetera.

6 This is the MPT, a somewhat symbolic
7 attempt or whatever, to emphasize to a
8 very small degree, the practical skills.

9 Does it really get at it?

10 None of this gets at what real life
11 practice is about. Not the essay, not the
12 multiple choice and not the MPT. But it's
13 a way to try to test it in a little way
14 and suggest to students that this is
15 important.

16 So if you go from one to two
17 questions, to me, that's all to the good
18 because it's what students want. It's
19 what the Bar wants, more practice
20 readiness.

21 The New York part of it, you go from
22 essays, which will test maybe six issues
23 or nine issues, or whatever it is, of New
24 York law, to 50 multiple choice questions,
25 which will test more about the variations

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2 between New York law and, you know,
3 general law.

4 And you can compensate for not
5 knowing it by doing well on the other
6 pieces, because you will have to pass that
7 too.

8 So if, unlike me, you actually think
9 that it's very important to get students
10 thinking about the distinction between New
11 York law and national uniform law, it
12 seems to me we do it in a bigger way, with
13 the multiple choice test.

14 In the end of the day, you know, I'm
15 not sure that any of it matters very much.
16 And therefore again, I think the
17 uniformity point is important.

18 But if you think these things matter,
19 I don't know why your intuition would be
20 that we're making things worse. But
21 again, I think, you know, you can ask the
22 national conference for statistics.

23 MS. MILLETT: You made a wonderful
24 point there, Bruce. We should ask the
25 National Conference of Statistics.

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2 You do know that a group of law
3 school deans has written to the National
4 Conference of Bar Examiners in the
5 aftermath of the July 2014 exam. Because,
6 across the board, people did worse on the
7 multi-state portion. That's been
8 documented.

9 We would love to have information on
10 all the other portions of the exam as
11 well. But the ask came back with: It's
12 not us. It's who you're putting into your
13 law schools. And it's really not our
14 problem. And we don't have an answer for
15 you.

16 That in and of itself, I think
17 creates the question about accountability.
18 Because here we are, ceding responsibility
19 for an exam that is largely controlled by
20 New York State to a national organization
21 that doesn't appear to feel as though they
22 have much in the way of accountability to
23 anybody.

24 So I would like to know, as you would
25 like to know -- and I think all of us are

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2 responsible for not having done the ask,
3 how do people perform on the various
4 different components of the exam, the MPT,
5 the MEE, the MBE. How do people perform
6 on those different components of the exam.
7 And let's go further, how do minorities
8 perform on those different components of
9 the exam.

10 I mean, forget about just the Bar
11 exam itself. This is a very complex
12 problem. But it seems to me as lawyers we
13 have a responsibility. I know I feel,
14 when I walk into a room, for my entire
15 career, I'm the only person that looks
16 like me. And I would like to see that
17 change.

18 And we have a responsibility -- I
19 mean, I look at what's happening in my own
20 firm, and I don't think we're anecdotal.
21 You know, we started with about a dozen
22 partners and we now have three people of
23 color. And the numbers are not going in
24 the right direction, we need to examine --
25 and there are many, many aspects of what

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2 we should be examining, but this is just
3 one. And so I think we need to do the
4 ask.

5 If the National Conference of Bar
6 Examiners is not willing to give us the
7 answers, then we have to ask ourselves a
8 question: Why are we dealing with them?

9 Or, what can we do to insist that we
10 get some of the answers to, what are not
11 difficult questions.

12 MR. GREEN: I was going to say, I
13 think -- the question I was asking is,
14 does format matter, or is there a strong
15 correlation between people's scores and
16 the different formats.

17 I assume that the New York people can
18 answer that as to New York test takers
19 also, so that's another source of
20 information.

21 MS. MILLETT: I'm not suggesting
22 they've gathered the data, though, Bruce.

23 JUDGE RIVERA: To clarify, NCEE, if
24 you want racial and ethnic data, doesn't
25 have it unless the states keeps it and

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2 gives it up. And states don't. New York
3 does. New York does.

4 And the answer to the question is,
5 it's constant across racial and ethnic
6 groups. There is not a difference.

7 There is a difference. That was
8 absolutely correct, when somebody said
9 before, for women. Women do have a little
10 bit less of a -- the rate is a little
11 lower in their score on the multiple
12 choice. That is absolutely true. And no
13 one knows why that is.

14 MR. CHANG: That's surprising because
15 I think it would be the other way around.

16 MS. DARROW-KLEINHAUS: Not
17 necessarily.

18 I reached out to Dr. Nancy Johnson,
19 who is one of those people. She's a
20 lawyer and a Ph.D., and an expert in
21 studying these numbers and statistics --

22 MS. MILLETT: A cyclomatrician?

23 MS. DARROW-KLEINHAUS: Yes, that's
24 it. She's one of those.

25 MR. CHANG: One of Bruce's favorites.

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2 MS. DARROW-KLEINHAUS: She's done
3 extensive work on the Bar exams, so I
4 reached out to her.

5 She works with students on the Bar
6 exam, and she's been studying the numbers,
7 and so forth, for years. So I said,
8 please, my head spins with these numbers,
9 please tell me this: If we're thinking
10 about moving from the 40 percent to the
11 50 percent in New York to go with the UBE,
12 should I be concerned? And she said, yes.

13 She said, there is a statistical
14 difference in the performance in gender
15 for multiple choice tests. And she said
16 that when New York adopted the MBE all
17 those years ago, and California as well,
18 they gave considerable thought and
19 planning to how much to equate the MBE as
20 part of the overall score to compensate
21 for those differences. And it's largely
22 between -- women are more verbal and do
23 better at the writing part. Then men seem
24 to favor the more, whatever process is
25 involved, in going to the correct answer

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2 choice on a multiple choice test.

3 And I have found that replicated in
4 my work with students on the law school
5 level, that when we have included, you
6 know, an essay component and a multiple
7 choice component in our final exams,
8 across the board, when I'm meeting with
9 students, the women are saying, I wrote a
10 perfect essay. The teacher said it was a
11 great essay. I got all my points and then
12 I lost them all on the multiple choice.
13 And then I find the opposite to be true
14 when I meet with male students.

15 So I'm saying that this is a factor
16 we need to consider if we're going to
17 change how we equate and weight the
18 scores.

19 MR. CHANG: Maybe men guess better.

20 JUDGE RIVERA: That's possible. But
21 across racial and ethnic groups in New
22 York data, that it's a constant. It's
23 not.

24 MR. GRYNWAJC: I think it would be
25 great to get those numbers regarding

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minorities. Because I think that places New York at a different level than a lot of other states, because they don't have the same diversity in other states. I think that would be a strong argument to say, what works for other states might not work for New York because the make of the student is just different. And I think that would be --

JUDGE RIVERA: The demographics, yes.

MS. GRAYS: One of the concerns raised by the Bar Associations is one the speed with which this is being implemented, and that there wasn't as much of a comment period. I know that has been rectified.

The other concern is just the data that we've been talking about. Some of you are more in the weeds on this, but as far as the practitioners and getting the input from the Bar, and looking at the issues of diversity and the profession, understanding what the impact would be in that respect. The states that currently

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have this implemented, except maybe for Alabama, to the point that Stephan raised, doesn't have the same kind of diversity mix. And so our concern and questions have been, well, are there any studies? Are there any statistics that we can look at that would help us understand what the impact would be, and how we can prepare for that.

And so by slowing it down, that does help. But still, having that data will help us in order to be able to gauge what kind of impact this is going to be, and at least be more informed.

JUDGE RIVERA: The NCBE has informed us that they have not heard from any of the UBE jurisdictions that there has been, what we are focusing on right now, on the racial and ethnic disparities that have been in any way different from whatever they were before --

MS. GRAYS: Okay.

JUDGE RIVERA: -- with the other exam.

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2 And we did have testimony in Albany
3 from someone from Missouri, which was the
4 first UBE state who said that they also
5 have not heard of any, or seen any,
6 disparities that we're talking about, in
7 the sense of an increase in the numbers.

8 Now that's from the NCBE. And as
9 I've already said, the data that I think,
10 Eileen, you were referring to, the score,
11 the passing score was increased, I believe
12 that data is still on the website for the
13 Bar -- Board of Law Examiners, so people
14 can look at it.

15 And I agree with you, it's several
16 years old not, but people can look at it.

17 I just want to make a comment. I
18 will not be in my role as Chair of the
19 committee or a member of the Court of
20 Appeals. I will say this, again, as a
21 former academic for 20 years (inaudible).

22 The numbers are very distressing.
23 The diversity issue is a very serious one.
24 And the committee appreciates that, just
25 speaking from my own perspective.

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2 The issue about the disparities on
3 the Bar, dwarfs the issue of admission to
4 law school.

5 There are fewer Latinos who go to my
6 school than when I went to school 30 years
7 ago. That's not possible. That's NYU and
8 that's New York. I do not understand it.
9 And that is true across the country.

10 The numbers are very disturbing. And
11 we are going to be at a point where it's
12 not just you as a practitioner, but where
13 law students are the one or the two in the
14 room. And New York, I hope, will not end
15 up there.

16 But I say that because, as you said,
17 and you've heard me say it before, it's a
18 very nuance, complex issue, the diversity
19 in the pipeline. But the question about
20 the Bar being a barrier, in many ways,
21 dwarfs this much bigger, and much more
22 sensitive issue. And that, to me, is a
23 question for the law school and for our
24 profession. And I do think --

25 MR. CHANG: Judge, are those

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2 numbers --

3 JUDGE RIVERA: Don't put my hat back
4 on.

5 (Laughter).

6 Did you get that on the record, I
7 took my hat off.

8 (Laughter.)

9 MR. CHANG: No. No. As I learned
10 very early on, Your Honor, when I address
11 a judge as Your Honor, I always stand up.

12 Are those numbers post 2008?

13 JUDGE RIVERA: Which numbers?

14 MR. CHANG: The law school
15 admissions.

16 JUDGE RIVERA: That's been going on
17 for some time.

18 MS. MILLETT: For some time. Even
19 before -- there's been a decline. And
20 things have just gotten worse.

21 JUDGE RIVERA: The law schools can
22 speak to it.

23 And the people who know this know
24 that the numbers for the men of color know
25 it is true. It is absolutely a crisis.

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2 This is the same crisis we had in college
3 in -- this is the pipeline. It's a
4 corrosive pipeline.

5 MS. MILLETT: Stephan had his hand
6 raised, but I just want to add something
7 to the comment that Judge Rivera made.

8 I was at the hearing in Albany and
9 listened to the testimony from the judge
10 from Missouri, the first state to
11 implement the UBE. The dean of CUNY Law
12 School, Michelle Anderson, asked her
13 pointedly, whether or not she had any
14 information on how people of color do on
15 the Bar exam in Missouri, or if she had
16 any information about the numbers. And
17 her response was, she did not.

18 Now this is anecdotal, but my husband
19 was a Vista volunteer and he went to
20 Missouri and took the Missouri Bar exam.
21 And then came back and then took the New
22 Jersey Bar, but he was there for two
23 years. He said, at that time it was all
24 essays. And it was a very simple Bar
25 exam. And what he remembers, because it

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2 stood out to him as being rather inane, so
3 I'm putting this in the record, was that
4 one of the questions was, Could you please
5 describe the pros and cons of no-fault
6 insurance.

7 And he thought it was not only the
8 simplest Bar exam he's ever taken, and he
9 took four, but the most inane. So I will
10 just tell you what his comment was, and
11 that's just anecdotal.

12 JUDGE RIVERA: Now, with the UBE,
13 they won't get that.

14 MS. MILLETT: It's probably a much
15 better Bar exam now, under the UBE. But I
16 have to say that, maybe that was the
17 reason they went to the UBE. I don't
18 think anyone thinks that New York is a
19 terrible Bar exam. That's really my
20 point.

21 JUDGE RIVERA: On that question, this
22 is going back to that question about
23 getting the national numbers. The schools
24 have them. The schools have to give them
25 up or not, because the states don't have

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them. New York has them. We keep them.
We choose to do that.

Other states don't necessarily choose
to do that. We don't have those numbers
that way.

MS. MILLETT: And that's what I've
said, we haven't done the ask. So we
don't have the numbers. But I think it
would be useful for us, going forward,
particularly because this is a significant
change in so many ways, to do the ask, and
to get those numbers.

But Stephan, you had your hand
raised.

MR. GRYNWAJC: I would love to throw
in again, the foreign trained lawyers. I
mean, looking at the mass of the students,
I mean, you're looking at 4,500 of them
which is 30 percent. If this was impact
on them, it would impact the whole scoring
in New York. And I think you won't get
national numbers for them, because on
foreign trained lawyers are not allowed to
take Bar exams in many states, so most of

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2 them come here.

3 MS. MILLETT: Yes.

4 MR. GRYNWAJC: So you would have to
5 look at that as how they do on every
6 portion on the exam. Without the benefit
7 of looking at it on an international
8 level, it has to be based on that.

9 And moving the exam away from, say, X
10 number of essays to X number of -- one
11 additional MPT and so on. Get numbers
12 based on that, because that's as much as
13 you can get. New York is the state where
14 most of them are.

15 MS. MILLETT: I think that's right,
16 because the next state after New York,
17 that has the highest percentage of foreign
18 graduates, is California. And that's
19 minuscule in terms of the actual numbers
20 of people who take that exam in California
21 versus New York.

22 MS. DARROW-KLEINHAUS: Can I just add
23 something to what he just said.

24 I had given this some thought, and I
25 wrote it out because I'm better when I

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2 write it when I am to speak. And I wrote
3 that, I recall that extensive research was
4 done when New York increased the Bar from
5 660 to 665, to see who would have fallen
6 within that gap, and may not have passed
7 the Bar exam.

8 So to see how much of an impact there
9 would be, how many people would be
10 affected.

11 So now I wondered whether New York
12 could do similar research. Two things.
13 With regard to the -- well, I guess we
14 can't do it with regard to jurisdiction,
15 which have adopted the UBE, to see if
16 there's been a change in their Bar pass
17 rate. Because now, based on what happened
18 in 2014, we saw a tremendous drop. And we
19 are speechless in trying to understand how
20 that occurred.

21 But more specifically with regard to
22 New York and what concerns me, is whether
23 a statistical equating of New York's Bar
24 takers, over the past three years, could
25 be done to see whether the students who

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passed the New York Bar exam, would have passed, given the proposed UBE revised component percentages.

So that if we were to shift, and take, now, the MBE instead of being worth 40 percent, would have been worth 50 percent. And we reduced the essay scores to the 30 percent and we double the MPT to 20 percent, would those candidates have passed?

MS. MILLETT: How would you do that?

MS. DARROW-KLEINHAUS: Statistical equating. That's what that cyclometric person is for. They love numbers.

(Laughter.)

JUDGE RIVERA: They ran the numbers. It's negligible.

MS. DARROW-KLEINHAUS: They did that? When Diane came, she said they didn't do --

JUDGE RIVERA: They didn't, in three years, no. It's not three years --

MS. DARROW-KLEINHAUS: I don't know. But we haven't seen anything.

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2 JUDGE RIVERA: I know you haven't. I
3 understand you haven't.

4 MR. CHANG: Just over all, what is
5 the pass rate? Do we know what the pass
6 rate is these DAYS, just generally?

7 MS. DARROW-KLEINHAUS: So there would
8 be notes?

9 MR. GREEN: It can change every time.

10 THE COURT: Is it within a range? I
11 mean, does it go from 25 percent to
12 85 percent?

13 JUDGE RIVERA: I'm sorry, you mean
14 the pass rate on the Bar?

15 MR. CHANG: Yes.

16 JUDGE RIVERA: It just went down.

17 MR. NEUSTADT: It's what, 70 percent
18 or something like that?

19 JUDGE RIVERA: Yes, it's in the 70s.

20 Since you are absolutely correct
21 about foreign students. Foreign students
22 have the lowest Bar pass.

23 The actual Bar pass rate, if you
24 remove the foreign students, it's a little
25 bit higher.

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2 MR. NEUSTADT: I'm curious, is there
3 a lot of feedback coming back from, say,
4 schools regarding the LLM issue? Because,
5 in this age for contracting enrollments,
6 for a lot of schools, LLMs are a very
7 important part of their community. And
8 obviously, teaching them to pass the Bar
9 exam would be an important part of their
10 marketing ability. And I don't know if
11 the schools are getting feedback -- are
12 they giving feedback with that factor in
13 mind?

14 JUDGE RIVERA: I don't remember
15 seeing anything like that. I know the New
16 York State Bar has raised it, yes.

17 MS. MILLETT: It came up in the
18 context in the proposal that the New York
19 State Bar -- well, our committee actually
20 put before the membership, I guess, maybe
21 a year ago, which had to do with
22 experiential learning.

23 Unfortunately, Jim was the head of
24 that subcommittee. And we came up with a
25 proposal suggesting that there be 12 hours

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2 of mandatory clinical study, or
3 experiential learning, as a requirement
4 for graduation.

5 Right now, as you know, it's
6 recommended. There's a recommended amount
7 and different schools do different things.

8 We got a letter from NYU and Cornell,
9 and their concern was with basically, all
10 though they didn't say it in so many
11 words, their foreign students. Because
12 their foreign students obviously would not
13 have the opportunity, they don't come
14 under JD programs, they don't have to do
15 those 83 credits. And the question was,
16 if you make this a requirement, you know,
17 they have 24 credits that they have to
18 fulfill, you know, this was going to be a
19 cost factor.

20 And obviously, as you know, next to
21 Georgetown, NYU is the second largest in
22 population of LLMS across the country. So
23 this, I think to them, was a significant
24 economic factor, that was going to harm
25 their pocketbook. And so they were

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2 totally against that proposal.

3 The proposal that we have currently,
4 on the table, which relates directly to
5 the MPT, is an option. That rather than
6 doubling down on the MPT, that the Board
7 of Law Examiners consider some amount of
8 credits of experiential learning as a
9 prerequisite to passing the New York Bar
10 exam.

11 Now, I understand that there are -- I
12 haven't taught for two years, but I was on
13 the administrative side of things, I
14 understand that that would be very
15 difficult, perhaps, administratively.

16 I don't know that being something
17 difficult means that it's a challenge that
18 we should toss aside. Because if, in
19 fact, all of us are concerned about
20 people, day one, when you're finished with
21 law school and you've taken the Bar exam,
22 being profession-ready, as opposed to
23 practice-ready, part of what our concern
24 is that experiential learning component.

25 And all though many, many law schools

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2 are doing it, it's not required that they
3 do it. You know, the ABA now has six
4 credits. You've got California is, how
5 much, 12, I think, credits. New York
6 hasn't gone in that direction.

7 But it was our view that, if, in
8 fact, we want to make the passage into
9 licensing more meaningful, that we should
10 be focusing on that experiential learning
11 piece.

12 And I know, Joel, you have some
13 concerns about it, in that regard.

14 MR. STRAUSS: Yeah. I think that, if
15 you talk to people, practitioners, what do
16 we want?

17 We want people practice-ready. And
18 those clinics that so many of the law
19 schools have really been beefing up in the
20 last few years, are so important.

21 Before I left for here, I was talking
22 to a couple of my partners about this very
23 issue. And they said, their experience
24 is, even though it was a long time ago, in
25 those clinics -- even though, you could be

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2 doing civil litigation bites. One of my
3 partners said, the best experience I had
4 was a semester I did in criminal law
5 clinic and I got to examine witnesses and
6 all that.

7 I mean, those are the experiences.
8 And I agree, maybe we should be thinking
9 about, instead of adding another MPT,
10 maybe adding some more clinical experience
11 during the third year of law school. And
12 that would sort of dove tail with another
13 point I wanted to make. And I know it's
14 late.

15 I mean, I'm also a CPA. I don't know
16 how many of you are familiar with the CPA
17 exam, but it is a brutally hard exam.
18 Over three days. The passage rate of
19 first-time takers, hovers between 48 and
20 50 percent I think, over the last few
21 years.

22 In most states, you can take the CPA
23 exam, which is a national uniform exam,
24 and remember, a lot of CPAs do tax work,
25 which could differ from state to state.

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2 But it tests basic competencies in very
3 broad areas over these three days.

4 In most states, you can take the CPA
5 exam the day you graduate college or get a
6 masters in accounting. But you can't get
7 licensed without one to two years of
8 supervised work experience, which has to
9 be fully documented. New York, depending
10 if you have 120 undergraduate credits or
11 150, the first is one year of work
12 experience, versus two. Before you get
13 licensed.

14 You passed the exam, but you're not
15 getting licensed without some real
16 experience. And if we're talking about
17 people being practice-ready and being able
18 to hang up a shingle, maybe we should be
19 thinking about that kind of a model.
20 We're doing it now in New York for CPAs.

21 MR. CHANG: Just one final question,
22 and that is, is there a cost difference
23 between the exams? Is that an issue?

24 MR. NEUSTADT: In the materials, it
25 says it's three or four times as much. I

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2 don't understand why.

3 JUDGE RIVERA: Yes. People are not
4 going to see that charge right now. It
5 does cost money.

6 MS. GRAYS: Right now, they are not
7 going to see it?

8 JUDGE RIVERA: They are not going to
9 see it now because it's already in the
10 budget and students are not going to pay
11 more, if there was a change.

12 The other thing is, if New York went
13 to the UBE, and other states going to the
14 UBE, the hope is, of course, that would
15 scale down some of the cost, because you
16 have many more takers. Not to mention
17 that New York would negotiate a good
18 price.

19 MS. GRAYS: I have one question. The
20 judge, Judge Lippman, is interested in
21 leading the charge, right, sort of being
22 the leadership in having us go toward a
23 national sort of exam, right?

24 Is that fair to say?

25 JUDGE RIVERA: Yes. I think this is

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2 a -- he's a proposal that very much
3 supports --

4 MS. GRAYS: The question is, what's
5 next?

6 I mean, New York, if we just do it as
7 the expectation that, oh, others will
8 follow the line. We were talking about
9 how some other jurisdictions are actually
10 becoming a bit more entrenched.

11 So is there -- and I know his term is
12 going to be expiring soon, but from those
13 who are on the Court, what's the next
14 step?

15 Let's say we do this, and we go
16 through all this pain and anguish and we
17 make the change. Is it -- I don't think
18 it's magically that California and Florida
19 are going to be like, okay, New York has
20 done it, so let's do it.

21 So what's the next step?

22 If we're going to go through this,
23 and one of the reasons he wants to do this
24 is to demonstrate leadership, what else
25 happens after that?

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2 JUDGE RIVERA: What else happens
3 after that?

4 MS. GRAYS: Yeah. Is he lobbying and
5 going to California? Is he going to
6 Florida?

7 JUDGE RIVERA: Certainly, I think, it
8 sends a message. I mean, we've been
9 talking about New York law and the gold
10 standard of practicing in New York, not
11 the law, but the standard of practicing in
12 New York.

13 New York is a leader, there's no
14 doubt about it. It really is.

15 The NCBE knows that also. They
16 anticipate that if New York came on board,
17 that other states would blink and think
18 more deeply about it. It would be nice if
19 perhaps the northeast corridor would go
20 along with it.

21 I know one thing, it seems that
22 everyone -- if the UBE proposal is
23 adopted, there will certainly be a lot of
24 review of the results. Because everyone
25 has said, if you do this, you have to

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2 track and you need to do reviews. So I
3 would assume that if we take the proposal,
4 we're going to do that.

5 MS. MILLETT: Another comment about
6 cost. And sorry to interrupt you, but
7 there's been some folks around the table
8 that have commented about portability.
9 And one of the discussions that we've had
10 is that the exam is really not portable,
11 in the sense that if you want to take --
12 if you want to be admitted in another
13 state, you have to, in some instances,
14 take their state Bar exam. But you also
15 are going to have to pay to take that
16 portion of the exam.

17 So that's something else that's part
18 of the cost factor. That it isn't just
19 the fact that you've taken the UBE,
20 perhaps the New York Law exam, that there
21 is an additional cost that you have to
22 incur if you're going to go to another
23 state to take their exam, or to be
24 admitted to practice in those states. So
25 that's part of what the cost --

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2 MR. CHANG: That works both ways. If
3 you want to practice in New York, you have
4 to register as an attorney. That's just
5 the price of -- cost of doing business.

6 MS. MILLETT: It's going to just make
7 it more expensive for people.

8 MR. CHANG: Well...

9 MS. MILLETT: And it may not
10 necessarily -- and it's something that
11 goes to the issue of portability.

12 JUDGE RIVERA: They don't have to
13 take the Bar exam in more than one
14 state --

15 MS. DARROW-KLEINHAUS: You have to
16 take their component. Five out of the 14
17 UBE jurisdictions have their own state or
18 component. So you can't just move there
19 and hang out your shingle.

20 JUDGE RIVERA: You can't do that here
21 either, because even if you passed the New
22 York Law exam, you've got to get the
23 character of fitness, and you've got to
24 comply with the other requirements.

25 MS. DARROW-KLEINHAUS: And don't you

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have to do that in other states as well,
pass the character of fitness --

JUDGE RIVERA: That's what I'm
saying. That's already status quo.
You're not going to get less portability
going to the UBE. We're already in that
place.

MS. MILLETT: Is there any other
comments that people -- Chris, I don't
know, you said you wanted to be fully
educated.

MR. CHANG: No. I'm fully educated.
Judge, good to see you.

MS. MILLETT: Jose, do you have
anything else you want to say?

No?

MR. CHANG: Folks, is 1:00. Thank
you very much. Thank you, everybody.

(Whereupon, Focus Group session
concluded at 1:00 p.m.)