

# Perspective

A publication of the Young Lawyers Section  
of the New York State Bar Association

## A Message from the Section Chair

Dear Young Lawyers Section Member:

Welcome to the Spring 2016 edition of *Perspective*, the New York State Bar Association (NYSBA) Young Lawyers Section's (YLS) printed publication. Although hard to believe, this is the last edition of the 2015-2016 term. The year has flown by, and it has been a wonderful year serving the YLS as Chairperson. The Section has had an incredibly ambitious and successful year, as reflected in the wealth of 2015-2016 YLS initiatives, programs and events.

From June 2015 to now, Section membership has nearly tripled. I'm truly honored to have had the opportunity this year to work with so many wonderful people, and I'm proud that the YLS has regained its position as the largest NYSBA Section. Let's keep the growth up! The NYSBA is at the forefront of shaping and protecting the legal profession, both in the state and in the country. It's a forum that brings together incredibly capable legal minds and authorities. It monitors for, and acts on, pressing issues that impact attorneys' lives. To list a couple of examples, if not for NYSBA we would have intrusive mandatory pro bono and financial reporting requirements, and New York State law students would have had no time whatsoever before being faced with, in a matter of months, a completely different bar examination than they

had spent three years preparing for. In addition to these incredibly important big-picture issues, the NYSBA provides us with amazing and unparalleled educational, professional, and networking opportunities. My membership has left me proud and fulfilled, and I am so grateful to have had the opportunity over the past year to lead the largest NYSBA Section, together with my amazing bar colleagues.

The YLS started the 2015-2016 term out with our June Executive Committee Meeting and Supreme Court Admissions Program, which were held in Washington, D.C., on June 14th and 15th, 2015. In a true display of his dedication to young lawyers, NYSBA President David Miranda (a past Chair, and therefore



lifelong honorary member of the YLS) returned early from the 800th anniversary of the sealing of Magna Carta in the U.K. to move the admission of our group of admittees before the Supreme Court of the United States. (We like to think he chose the YLS over the Queen.) Following the admission ceremony, we were honored to have Justice Ruth Bader Ginsburg join our group for an intimate meeting and discussion in our holding room.

On November 6, 2015, we held our Fall Executive Committee Meeting and CLE Program at NYSBA headquarters in Albany, New York. Chair-Elect Erin Flynn was the Program Chair for the CLE Program, and she organized a great program designed to provide attorneys at all stages of their careers with a basic familiarity and understanding of (or refresher in) matrimonial and family law basics, business formations, justice court practice, and landlord-tenant law. Presenters included past YLS Chairs Tucker Stanclift and Sar-

## Inside

### From the Editor's Desk

Keri A. Mahoney

### Unbundling in the New Legal

Marketplace©

Pamela Bucy Pierson

### Taking up a Cause: Why New Lawyers Should Consider Practicing Civil

Rights Law

Cory Morris

4

5

7

### A Beginner's Guide to Legislative Drafting

Deborah Beth Medows

### Why More States Should Not Jump on the Uniform Bar Exam Bandwagon

Ben Bratman

### Scenes from the Trial Academy

9

11

15

ah Gold, current YLS Treasurer John Christopher, and current YLS executive committee member Elizabeth Erickson. Everyone did a great job! Following the Program, all attendees and YLS Executive Committee members were graciously invited by the NYSBA Executive Committee to join the Committee for lunch, which was a wonderful experience.

We rang in the New Year with the NYSBA Annual Meeting, which took place during the last week of January, with thousands of attorneys gathering at the New York Hilton Midtown for an entire week of fantastic programs and meetings. On January 25, 2016, the YLS participated in the 13th annual *Celebrating Diversity in the Bar* networking reception. This was facilitated in part by Tyear Middleton, our wonderful YLS Diversity Committee Chair. On January 27th, we held our half-day CLE Program. The Program, which was chaired by Secretary-Elect Lauren Sharkey, featured an informative lineup of presentations on time management, leadership in NYSBA, career skills, and navigating social media. Later that day, we held our Outstanding Young Lawyer Award Presentation and Luncheon, then our Executive Committee Meeting. The Outstanding Young Lawyer Award Presentation honored recipient Jason Aylesworth for his outstanding service to both the community and the legal profession. In addition to his entertainment law private practice, Jason is an active member in the NYSBA Entertainment, Arts and Sports Law Section, volunteers for numerous not-for-profit organizations (including New York Foundation for the Arts and Brooklyn Arts Council), teaches a "Performing Arts and the Law" course at the Brooklyn College of Performing Arts Management Program, and is an assistant scout leader for Boy Scout Troop 29 in Yonkers. Jason is truly a most deserving recipient of this prestigious award.

We wrapped up Annual Meeting with our Bridging the Gap Program,

which was co-chaired by YLS Executive Committee Members Nicholas Romano and Kristin Gallagher, who put on a fantastic two-day program on Thursday January 28th and Friday January 29th. The Program featured an incredibly impressive lineup of preeminent legal authorities, and keynote speakers NYSBA President David Miranda, Assistant U.S. Attorney Carrie H. Cohen (prosecutor from the Sheldon Silver trial), and Retired U.S. Magistrate Judge Hon. Mark D. Fox.

We just wrapped up our seventh annual Trial Academy, which was held at Cornell Law School in Ithaca, New York from March 30th–April 3rd, 2016. Trial Academy is a five-day trial techniques program. Geared toward new and young attorneys, participants attend morning lectures developed to advance and improve courtroom skills. Morning sessions are followed by lunch and then afternoon breakout sessions, which allow for attendees' direct participation and learning with critique faculty. Co-Chairs Immediate Past-Chair Sarah Gold and Chair-Elect Erin Flynn put on an amazing program, full of outstanding presenters and faculty! Thanks to Sarah and Erin, and all of the other individuals (including NYSBA's Megan O'Toole and Adriana Favreau) and sponsoring Sections who worked so hard to make this year's program great. If you haven't attended Trial Academy yet, mark your calendars for our eighth annual program, to be held in Spring 2017! (Details will be available soon.) Our Spring Executive Committee Meeting was held in Ithaca on March 31st during the Trial Academy.

Thanks to collaboration with the NYSBA *Pathway to the Profession* program, we have more student members than ever before. Recognizing that law students are the future of the legal profession, the NYSBA's *Pathway to the Profession* offers New York State law students an opportunity to take an active role in the NYSBA. In an effort to encourage active participation of law students in our Section,

this year the YLS re-activated its Law Student Development Committee (co-chaired by YLS Secretary Terrence Tarver and Jessy Albaz), which is now tasked with developing and contributing to law student-focused events, and facilitating interaction between our law student members and the Section. To that end, YLS has been active in working with the *Pathway to the Profession* program in reaching out to, and attracting, law student members with programs of interest.

In addition to our Executive Committee meetings and signature programs, the YLS has undertaken many other projects. Our judicial district representatives have coordinated amazing educational, social, and networking events across the state. Our Section liaisons have facilitated events, and a flow of information between YLS and other substantive Sections, which has created many opportunities for YLS member involvement in other Sections' substantive programs.

This year we have two new, wonderful editors working on our YLS publications. Keri Mahoney, the new editor of our print newsletter, *Perspective*, graduated in 2014 as Valedictorian of Touro College Jacob D. Fuchsberg Law Center. Sasha Grandison, the new editor of our monthly e-newsletter, *Electronically in Touch*, is a 2010 graduate of the University of the District of Columbia, David A. Clarke School of Law, where she served as Law Review Associate Editor. Both women have incredibly impressive writing/editing backgrounds, and we are so pleased and honored to have them join our Executive Committee this year. Welcome Keri and Sasha! Our publications are in good hands, indeed.

The YLS is currently holding our fourth annual *Civics Prize Contest*, which is being co-chaired by Lauren Sharkey and Emily Walsh. We are so grateful to the NYSBA Law Youth and Citizenship Committee, which has graciously co-sponsored

the contest with us. The program, which was conceived four years ago by then-YLS Chair Michael Fox, invites New York State 11th and 12th graders to participate, and serves as a platform to enhance students' understanding of U.S. government through their creative participation in the poster and/or essay portion of the contest. As an original chair of the contest, it is a matter near and dear to my heart. Every year, the YLS has been astounded by the creativity and talent that goes into the submissions—we can't wait to receive this year's submissions!

Also this year, we formally added our Young Lawyer Friends of the Foundation Committee as a YLS Standing Committee, and have been increasing activity of and membership in the Committee. This YLS Committee, which is chaired by Naomi K. Hills, interacts with the New York Bar Foundation (TNYBF), which is a nonprofit, philanthropic organization that receives charitable contributions from individuals, law firms, corporations or other entities and provides grants to further its goals of promoting and advancing service to the public, improvements in the administration of justice, legal research and education, high standards of professional ethics, and public understanding of legal heritage. TNYBF makes grants to financially support law-related programs of legal services organizations, nonprofits, bar associations and other organizations throughout New York

State. The YLS is grateful to past Chair James Barnes, who serves as a Director of TNYBF, and who was instrumental in creating our Friends of the Foundation Committee. The YLS is excited to take more of an active role in promoting TNYBF's mission through its Friends of the Foundation Committee. On August 6, 2015, the first gathering of the founding members of the Young Lawyer Friends of The New York Bar Foundation took place at Lincoln Center in NYC for a fabulous Latin Boogaloo concert. Young lawyers can become a member of the Young Lawyer Friends of the Foundation by donating \$30 to TNYBF—it's one of the best, and most meaningful \$30 you can spend!

Our Public Service and Pro Bono Committee (chaired by Erica Weisgerber) has also been active, and is presently planning a volunteer event for this month with City Harvest at the Washington Heights Mobile Market. Kara and Erica are also spearheading a Section initiative to revise our *Now That You've Turned 18* Booklet. This booklet is published by our Committee on Public Service and Pro Bono. The Committee's primary objective is to increase the public's understanding of the law and this publication is provided to give young adults an overview of their basic legal rights and responsibilities.

The year has included countless other programs, and the list of people to whom thanks should be given is far too extensive to make

mention of here. Suffice to say, there are many, many individuals, both in YLS leadership and membership, and also in NYSBA leadership, behind our Section's success this year. These people, and notably, my fellow officers, Chair-Elect Erin Flynn, Treasurer John Christopher, and Secretary Terrence Tarver, as well as our NYSBA staff liaison, Megan O'Toole, have made this year a success, and have made my term as Chair a true honor and privilege. It is amazing to have had the opportunity to serve alongside such wonderful people (including our past Section chairs), in advancing the goals of our Section. If you are not actively involved in the YLS, I highly encourage you to become more involved—contact our Chair-Elect, Erin Flynn (erin.k.flynn@gmail.com—she is presently making appointments for the 2016-17 Term). We have accomplished so much, and, looking ahead, I know that the Section is in the most capable of hands to accomplish even more. My involvement with the YLS has been so incredibly rewarding. Truly, from the bottom of my heart, thank you all for having given me the opportunity to serve you.

Very Truly Yours,

Erica M. Hines, Esq.  
Section Chair  
June 2015-June 2016  
Heslin Rothenberg Farley  
& Mesiti P.C.



# From the Editor's Desk

Welcome to the Spring 2016 journal of *Perspective*. I hope you will find this publication to be informative and helpful as you continue to grow and develop your professional career as a lawyer.

Law is a second career for me; I was a registered nurse before becoming a lawyer. Despite being older and (hopefully) wiser, starting a new professional career as a lawyer fills me with the same strange mixture of anxiety and exhilaration that I felt when I was a young nurse. Lately, I am acutely aware of the confidence and expertise that I built in my first decade of nursing practice. As a

young nurse, every mistake was a learning experience and each day I picked up a tiny piece of confidence.

Like gathering a small grain of sand each day in a small jar, each day the volume of my confidence did not noticeably change but after ten years the jar is full and that young nurse is replaced with a confident, experienced "old" nurse. Now, I find myself with a



near-empty jar again, slowly and laboriously gathering grains of sand.

I hope this journal gives you some sand to fill your jar and I look forward to continuing to grow with all of you. In ten years, may we all look back with admiration and pride on the attorneys that we are today, bask in our ever-growing confidence and expertise, and be reaching a hand back to help the next decade of young attorneys fill up their jars.

**Keri A. Mahoney**  
*Editor-in-Chief*

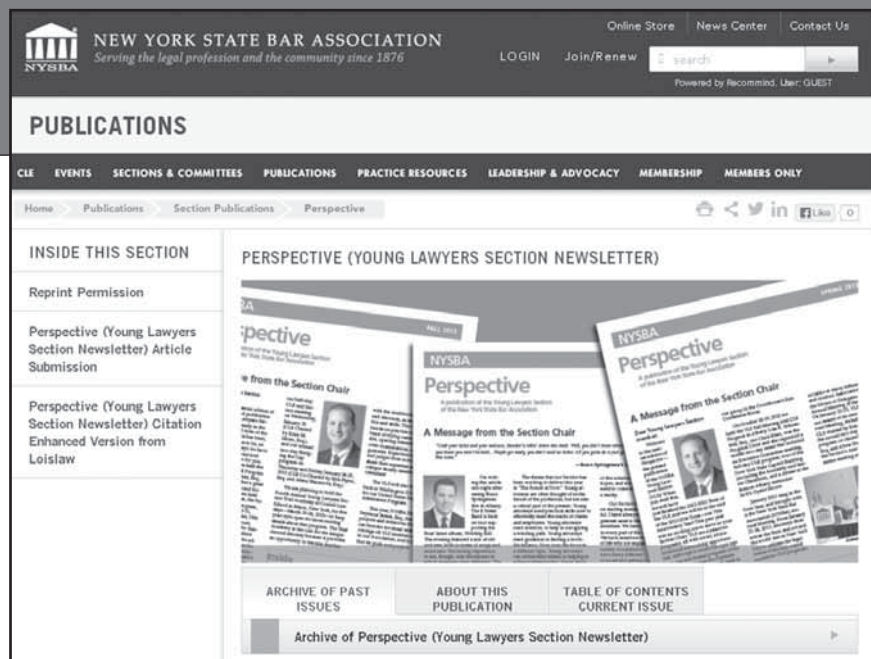
## *Perspective* (the Young Lawyers Section Publication) is also available online

### Including access to:

- Past Issues (2000-present) of *Perspective*\*
- *Perspective* Searchable Index (2000-present)

\*You must be a Young Lawyers Section member and logged in to access.

Need password assistance? Visit our Web site at [www.nysba.org/pwhelp](http://www.nysba.org/pwhelp). For questions or log-in help, call (518) 463-3200.



**Go to [www.nysba.org/Perspective](http://www.nysba.org/Perspective)**

# Unbundling in the New Legal Marketplace©

By Pamela Bucy Pierson

It was the end of the semester. Alan, an impoverished 1L, sat in traffic, frustrated. Parked U-Hauls, SUVs and students carrying boxes and furniture were everywhere. As he watched two coeds struggle with a large flat screen television, Alan thought, "I could make money moving students in and out of apartments." His mind raced.... Bart, a classmate, needed money as badly as Alan and had a big pickup truck.... We could charge \$15, maybe \$20 an hour.... Moving furniture wouldn't be all that different than working out at the gym. Alan called Bart.



By the time Alan reached home, he and Bart had a plan and a name for their business, "Law Man in a Van." They distributed flyers around campus, advertised on Craigslist, posted on Facebook, and within days had dozens of customers. Then they started thinking about the things that could go wrong. What if they dropped someone's flat screen television? Or had a car wreck hauling customers' belongings? Would they be sued? For how much? Could they limit their liability by incorporating? How would they do that? Alan and Bart made a list of questions and scheduled a meeting with Carol, an attorney Bart had worked with.

Carol recommended that they create an LLC to limit their liability; increase their insurance coverage; obtain "cargo" insurance (required by law); and register their business with the Secretary of State and probate judge in their local county (both required by state law). Carol also advised that they protect their business's name, "Law Man in a Van,"

by acquiring a trademark. "Who knows," she said, "you may want to franchise your moving business after you graduate."

Aware that Alan and Bart were concerned about the cost of legal fees, Carol explained that they could save fees by "unbundling" their legal needs and handling some of the legal issues themselves.

"What is unbundling?" Bart asked. He had never heard the term. Nor have lots of attorneys. Because "unbundling," also known as "limited scope representation," is a new way of delivering legal services, many lawyers don't know about it. They should. Unbundling is good for clients and for lawyers. It helps clients get legal services they need. It also helps lawyers expand their client base and, by providing a mechanism for limiting their role in a case, helps lawyers weed out unresolvable or non-profitable cases.

"Unbundling" occurs when a client and attorney agree that the attorney will handle some aspects of the client's legal matter and the client will handle the rest. For example, Carol suggested that Alan and Bart could handle incorporating their business, obtaining the necessary insurance, and registering their business with the Secretary of State and the probate judge. Forms and instructions are publicly available for all of these tasks. However, if Alan and Bart wanted to trademark their business, Carol advised that they should use counsel.

Business clients have unbundled their legal work for years, keeping some matters in-house and outsourcing others to law firms. Unbundling has not been an option for individual clients until recently, however. Several developments in the legal marketplace have made unbundling viable for individual clients. Today, almost everyone has immediate, free access

to legal advice, forms, and filing instructions through the internet. Some advice is good, and some is not, of course, but the fact is legal advice on simple matters is readily available. Another factor is the high cost of attorneys' fees. The average person cannot pay several thousand dollars for help with a legal problem.

For both of these reasons, a lot of people are going to court *pro se*, which is creating a large burden on the courts. Court systems, government offices and bar associations have responded by creating a variety of free services and online tools to help individuals handle some of their legal issues themselves. Legislatures have also responded. Within the past few years, all fifty states have amended their civil rules of procedure and codes of professional responsibility to make it easier for attorneys to handle some, but not all, of clients' legal needs.

Unbundling a client's legal needs can be tricky, however, which is why law firms like to hire lawyers who know how to do it. Not all cases or clients are appropriate for unbundling. Complex cases and clients with mental illness, limited intellectual ability, or psychological health problems are not good candidates for unbundling. Unbundling legal services can also be a challenge because the applicable rules of civil procedure and codes of professional responsibility vary from state to state. Since failure to comply with duties of professional responsibility can jeopardize a lawyer's license to practice law, it is important for attorneys who unbundle legal services to know how to do so. Here are a few of the unique issues posed by unbundling:

- The professional codes of responsibility in every jurisdiction prohibit counsel from communicating with a party represented by opposing counsel. State legislatures

have addressed this duty in unbundled representations by permitting, for example, communication with a party represented by opposing counsel on matters outside the scope of limited representation (Nebraska), or permitting communication with a party unless counsel is provided notice of the limited scope representation (*Cf.* Washington, Florida, Iowa).

- State laws mandate that when counsel signs and files pleadings, he or she certifies that the pleadings are well grounded in fact and law. Some jurisdictions alter this obligation in unbundled representations somewhat, permitting, for example, counsel to rely on the “self-represented person’s representation of facts, unless the attorney has reason to believe that such representation is false, or materially insufficient.” (*Cf.* Alabama, Arizona, Montana).
- Some jurisdictions require that counsel disclose his or her role in limited representations to the court and opposing counsel (*Cf.*, Nevada, Oregon) and inform the court and opposing counsel when the agreed upon services have been concluded (*Cf.* Washington, Florida). Other jurisdictions simply require the pleadings to state

“prepared with assistance of counsel” (MA).

- Attorneys must avoid representation which creates a conflict of interest with other clients. In limited representations arising from programs sponsored by non-profit organizations or courts where continued representation is not anticipated, many jurisdictions, following the ABA’s lead, limit this prohibition to actual conflicts of which counsel is aware (ABA Model Rule 6.5; *Cf.* Maine, Wisconsin). By absolving counsel from the obligation to conduct a full conflicts check within his or her firm, this approach facilitates unbundling, at least in qualified programs.
- While clarity with one’s client about the scope of legal representation is always a best practice, clarification in unbundled situations is especially important. Counsel in unbundled representations should memorialize, in writing, the scope of the representation prior to entering into a representation arrangement, as well as any changes in the scope of the representation.

Unbundling fits today’s world where self-help is increasingly viable and clients are demanding cost-effective provision of legal services. As Henry A. Callaway, an expert in

unbundling, states: “Unbundling is like going to iTunes and downloading the song you want instead of buying the whole album, or going to Home Depot and checking yourself out with the scanner instead of paying the higher price at the local hardware store.” Lawyers should take note of unbundling as a new way of delivering legal services and become proficient at it, thereby helping their clients and giving themselves a boost in a competitive job market.

**Pamela Bucy Pierson is the Bainbridge-Mims Professor of Law at the University of Alabama School of Law. The topic of limited scope representation is discussed further in her book, *The Business of Being a Lawyer* (West Academic 2014). Professor Pierson is the author of 7 books, over 50 law review and bar journal articles, and has testified before Congress 3 times. The author expresses her appreciation to the Honorable Henry A. Callaway, United States Bankruptcy Court, S.D. AL and Johnathan N. Wilhelm (UA Law, 2015) for their assistance with this article.**

© 2015 by the American Bar Association. Reprinted with permission. All rights reserved. This information or any portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association.

**NYSBA  
WEBCAST**

View archived Webcasts at  
**[www.nysba.org/  
webcastarchive](http://www.nysba.org/webcastarchive)**



# Taking up a Cause: Why New Lawyers Should Consider Practicing Civil Rights Law

By Cory Morris



Unlike any other profession, when you become a lawyer you have the privilege and duty to advocate for those in need of representation—those deprived of their most basic liberties—and a lawyer can change the world with a single lawsuit.

Usually the brunt of ill-founded jokes, lawyers and, more specifically, those attorneys who fight to protect civil liberties, remain a steadfast check on government oppression and an overzealous executive. “The irony of the ‘kill all the lawyers’ proposition is that the quotation actually reflects the system-preserving characteristics of the legal profession and the knowledge that lawyers are a barrier against insurrection.”<sup>1</sup> But lawyers have difficult jobs, suffering from disproportionate rates of substance abuse and mental illness,<sup>2</sup> and often do not derive personal satisfaction from their work. Job prospects and student loan debt aside, perhaps focusing on the difference lawyers can make in our clients’ lives and our potential to make positive change in the world can help ameliorate some of the problems fresh lawyers face. Believe in something, become principled, and fight for a cause.

Law school orientations rarely talk about an epic case of landlord’s rights or a case determining where the jurisdiction of a multinational trust lies but, instead, orientations to the legal profession emphasize the decisions that impact our freedom, privacy, liberty rights, and due process and the pursuit of happiness.

*Brown v. Board of Education*, *Griswold v. Connecticut* and *Chaplinsky v. New Hampshire* impact our everyday lives. The struggle for civil rights is far from over. For example, irrespective of your position on the matter, the Federal Bureau of Investigation’s pursuit of an Apple iPhone has caught the attention of a nation: on one side, the government, while, on the other, everyday privacy rights and the negative liberty implications of a Court order.<sup>3</sup> Indeed, we should be wary of the dangerous precedent the government is trying to set and its implications for free speech, freedom from government compulsion and negative liberty interests.<sup>4</sup>

Think about why it is you became a lawyer, what it means to be an officer of the Court and your oath to uphold, protect, and safeguard the constitution.

## Righting Wrongs and Protecting Civil Liberties

Morris Dees, founder of the Southern Poverty Law Center, is a hardened advocate fighting against hate groups. Bringing the Ku Klux Klan (KKK) to its knees, again and again,<sup>5</sup> Dees helped dismantle the KKK and his organization continues to monitor and fight hate groups. A living legend, “Dees decided to sell his successful book publishing business to start a civil rights law practice that would provide a voice for the disenfranchised.”<sup>6</sup> That legacy continues today, forty years later, litigating cases that have far-reaching impact.

Myron Beldock once said “[p]ower is easily misused by those in power. You either roll over or you fight back.” Although a general practitioner, Mr. Beldock is most remembered for his representation of individuals in high profile cases,

including George Whitmore, Jr. and Rubin “Hurricane” Carter and one of the Central Park Five defendants. Although he had a vast career, it is these cases that the *New York Times* mentioned when Mr. Beldock left us at eighty-six years old.<sup>7</sup>

“In the city of New York, in 1964, a destitute young black man named George Whitmore Jr. confessed to three murders he did not commit.”<sup>8</sup> Claiming he was physically beaten into confessing, Whitmore held onto his innocence.<sup>9</sup> After two trials and three years of incarceration, Beldock took the case.<sup>10</sup> He carefully scrutinized the rape victim and called alibi witnesses.<sup>11</sup> He made clear that Whitmore was the only black male in the identification lineup.<sup>12</sup> “Coerced confessions by Mr. Whitmore became instrumental in the 1966 Miranda decision by the Supreme Court, which required the police to advise suspects of their rights to remain silent and be represented by a lawyer.”<sup>13</sup> Furthermore, coerced confessions “were also decisive in the 1965 repeal of capital punishment in New York State except in the murder of police officers.”<sup>14</sup>

Advocating for Whitmore and others, Myron Beldock epitomized what it meant to take unpopular cases, to fight, and to win. “He was a hero to many civil rights leaders, who called him a crusader for justice.”<sup>15</sup>

## Fighting Official Misconduct

News headlines are rife with police misconduct, racial inequality and protests. Whether it is the public’s right to know, representing whistleblowers, or suing a state actor accused of violating someone’s constitutional rights, representing people who are faced with the overwhelming opposition of the govern-

ment is vital to our system of law. The Federal Government and the Department of Justice may either be incapable or unwilling to step in on our behalf. “Federal prosecutors chose not to levy charges against U.S. law enforcement officers alleged to have committed civil rights violations in 96 percent of relevant cases from 1995 to 2015.”<sup>16</sup> From botched and unscrupulous criminal prosecutions to the failure to prosecute cases, it is often the private bar that is responsible for remedying misconduct and freeing the innocent. Indeed, “[a]bout 40 percent of the 2015 exonerations involved official misconduct, a record. About 75 percent of the homicide exonerations involved misconduct.”<sup>17</sup> This is coupled with astounding facts that fly in the face of everything we are taught: should it not be that ten guilty persons go free rather than one innocent person suffer? “Researchers found that 149 people were cleared in 2015 for crimes they didn’t commit—more than any other year in history.”<sup>18</sup>

Civil Rights Attorney Ron Kuby stated that “[c]ondemning so many to unconstitutional imprisonment is an incalculable human loss. Those who argue that this price must be paid are not the ones who pay it.”<sup>19</sup> As officers of the Court, lawyers shoulder that burden. When choosing a practice area, think about what matters most in your life and the issues discussed in this article. Few can legitimately argue that other legal causes in life are more compelling than these.

## Endnotes

1. David Barnhizer, *Princes of Darkness and Angels of Light: The Soul of the American Lawyer*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 371, 402-03 (2000) (external quotation marks omitted) (referring to the William Shakespeare quote).
2. See Interadmin, *17 Statistics on Drug Abuse Among Lawyers*, INTERVENTION STRATEGIES (Jan. 7, 2014, 10:00 AM), <http://interventionstrategies.com/17-statistics-on-drug-abuse-among-lawyers/>.
3. E.g., Katie Benner & Eric Lichtblau, *U.S. Says it Has Unlocked an iPhone Without Apple*, N.Y. TIMES, Mar. 29, 2016, at A1.
4. See e.g., *Obergefell v. Hodges*, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2584, 2635 (2015) (discussing, at length, the concept of liberty and negative liberty as it existed in the 18th century).
5. J.R. Moehring, *Church Wins \$37.8 Million in KKK Suit*, L.A. TIMES, July 25, 1998, <http://articles.latimes.com/1998/jul/25/news/mn-7055>.
6. *Our History*, SPLC SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/our-history> (last visited Mar. 31, 2016).
7. Robert D. McFadden, *Myron Beldock, Civil Rights Lawyer Who Fought for Lost Causes, Dies at 86*, N.Y. TIMES, Feb. 1, 2016, <http://www.nytimes.com/2016/02/02/nyregion/myron-beldock-civil-rights-lawyer-who-fought-for-lost-causes-dies-at-86.html>.
8. *George Whitmore Jr. dies at 68; exonerated in three N.Y. murders*, L.A. TIMES, Oct. 20, 2012, <http://articles.latimes.com/2012/oct/20/local/la-me-george-whitmore-20121020>.
9. *Id.*
10. McFadden, *supra* note 7.
11. *Id.*
12. *Id.*
13. *Id.*

14. *Id.*
15. *Id.*
16. Lucy Nicholson, *Police avoided federal civil rights charges in 96% of cases over 20 years—report*, REUTERS, Mar. 15, 2016, <https://www.rt.com/usa/335602-police-civil-right-charges/>.
17. Matt Ferner, *A Record Number Of People Were Exonerated In 2015 For Crimes They Didn’t Commit*, HUFFPOST POLITICS, Feb. 3, 2016, [http://www.huffingtonpost.com/entry/exonerations-2015\\_us\\_56ac0374e4b00b033aaf3da9](http://www.huffingtonpost.com/entry/exonerations-2015_us_56ac0374e4b00b033aaf3da9).
18. *Id.*
19. Ronald L. Kuby, *A System for Courts to Redress Wrongs*, N.Y. TIMES, Apr. 23, 2011, <http://www.nytimes.com/2011/04/24/opinion/l24habeas.html?hpw>.

**Cory H. Morris was recently named a Rising Star by Super lawyers. He maintains a practice in Suffolk County, New York and is the Secretary of the Suffolk County Bar Association’s Academy of Law. He received his Bachelor’s Degree in Criminal Justice from Adelphi University in 2008, his Master’s Degree from Adelphi’s Derner Institute of Advanced Psychological Studies in 2010 and graduated Cum Laude from Touro Law Center in 2012. He is the 2013 recipient of the Equality Award from the New York Civil Liberties Union, the 2015 recipient of both *Long Island Business News* 40 under 40 and Huntington Chamber of Commerce 30 under 30 awards. He serves as a Nassau Suffolk Law Services Advisory Board Member and is an adjunct professor at Adelphi University.**



# A Beginner's Guide to Legislative Drafting

By Deborah Beth Medows



As a newly admitted attorney, you need to know how to draft legislation if you choose to work as a legislative attorney. One of my earliest legal experiences

occurred after I was appointed as Assistant Counsel to the New York State Legislative Bill Drafting Commission. I found myself drafting for the New York State Assembly and the New York State Senate, and advising on the constitutionality of the proposed legislation. Legislative attorneys may have different roles and state requirements can differ; you will need to draft within the scope of your role and jurisdictional requirements. However, these are the general lessons that I gleaned from my own experiences.

1. **Write simply.** Drafting is practical poetry for lawyers, as we artfully select words to shape society. However, unlike flowery and abstract poetry, which adumbrates imagery that leaves the audience guessing as to its intended meaning, in the realm of drafting, you must be deliberate, intentional, and clear with your word usage. Although poets are fond of synonyms, in drafting, consistency is key. Think about how your verbiage may be construed so as not to accidentally convey a different intention than that of the legislative sponsor. When you draft legislation, state exactly what needs to be said in the most straight-forward manner possible. Don't worry about dazzling the reader with your erudite diction and the impressive caliber of jargon; you can save that for some other forum like a cocktail party, if you must. We both know you are

smart if you are taking your free time to read a piece on legislative drafting, when there is a plethora of other things that you could be doing right now. However, in the context of legislative drafting, your brilliance will be conveyed by how you can articulate an idea into bill form in the clearest and most concise manner possible. If you write in a confusing manner that can later be misinterpreted in application and enforcement, it can create issues that can be the subjects of lawsuits that waste time, money, and judicial resources.

2. **Write carefully.** Legislative drafting can be very technical. Precision is key, and be careful with your citations to other laws.
3. **Write purposefully.** Word choice can be critical and powerful. For example, think about how differently the words "shall" or "may" can be construed, although in a non-legislative context it might not seem as important. Similarly, be aware of the connotations of the various documents that you write, because they can have major practical consequences when applied. As Mark Twain opined, "the difference between the almost right word and the right word is really a large matter—it's the difference between the lightning bug and the lightning."<sup>1</sup> Never underestimate the power that words can make, so consider carefully every word that you put in your legislative drafts.
4. **Do your research.** You need at least a rudimentary understanding of the issue about which you are drafting. If you don't understand the substance of what you are draft-

ing, that poses a challenge. However, you may have many assignments to draft, so you might not have the opportunity to research as much as you would like. Understand that you may have time constraints and work as effectively and efficiently within that time frame.

5. **Do not automatically rush to recreate the wheel.** You might get an assignment that looks mind-bogglingly difficult, and we have all been there. Take a deep breath and relax. Chances are that some other jurisdiction has faced the same issue. Look at how other states have drafted similar legislation. States obviously have different laws and different formats for legislative drafting. Yet, researching how other states have worded their legislation can serve to lend general ideas that you may not have previously considered. Be careful, however to use those models only for that purpose, because those laws are specific to their jurisdictions.
6. **Ask.** Do not be afraid to ask questions, both substantively and stylistically. Especially as a newly admitted attorney, chances are whatever kind of assignment comes your way, your colleagues have likely encountered something similar in their professional experiences. Always clarify with the office sponsoring the bill if you need clarification for issues such as the timing of the bill (including when it should go into effect or expire), or regarding the severity of a criminal penalty, which can have tremendous consequential effects on people's lives.
7. **Contextualize the bigger picture and your role in the**

**process.** This point cannot be overemphasized. You may not necessarily believe in the bill that you are drafting, but unless it is unconstitutional or morally unconscionable, it is your job to draft it if the legislator wants that drafted because the people elected the legislator, not you, to represent their societal needs and interests. You must respect the legislative process and you need to act appropriately as a drafter within the scope of your duties by drafting legislation with which you may at times disagree. (Generally speaking, there are many fine pieces of legislation to which intelligent minds may disagree, and that is the spirit of democracy.) As a legislative attorney, always remember the bigger picture, and that you are playing a role in helping society, and take your own ego out of the equation. Additionally, the first time that many people draft legislation, a rookie mistake is to be concerned that what they are being tasked with drafting is not currently in state law. That is absolutely correct, because the entire point in drafting legislation is to help develop future laws! Rather than worrying if something is currently in the law, instead, drafters should be more concerned with whether something would be constitutional. Also remember how powerful drafting skills can be and how important legislative drafting is in affecting society. Much ink has been spilled on the legacy of Robert Moses because he was able to harness the skills of legislative drafting to accomplish his goals.<sup>2</sup>

8. **Be patient.** Drafting can be tedious and frustrating, especially as a newly admitted attorney with little or no experience in drafting. Know that you are not alone. Even the Founding Fathers took the time to master the drafting process; the

Declaration of Independence went through several rough drafts.<sup>3</sup> After all, we now today quote the inimitable words promising “life, liberty, and pursuit of happiness,”<sup>4</sup> for the immeasurable impact that this document has had upon our nation’s history. We do not think of the prior drafts over which the drafters of these words labored, because the end result is what counts the most. If Thomas Jefferson, a future President of the United States and savant, cut his teeth drafting that language, then you are in good company as you rework your own legislative drafts. Have patience and remind yourself that not all the bills that you will draft will be passed, especially in their early forms. However, what will later pass into law might surprise you, so treat everything you draft with significance and the gravity as if it might one day become law.

9. **Masterful legislation takes teamwork.** Depending on your position, you may need to be in touch with legislators; your co-workers or fellow drafters; and the administrative assistants whose daily help ensures that your office runs smoothly. Working in legislative law can present time-sensitive deadlines, so you need to work together with others to achieve the best results possible.
10. **Develop your drafting style.** When drafting legislation, there is a certain magic to the process of being able to turn concepts into what will later become law. As you get more comfortable honing your drafting skills, you will understand that everyone has different styles of drafting. Conceivably, “if five drafters were set on the same Bill, each might emerge with a different product,” suggesting that “legislative drafting is an art rather than a precise science.”<sup>5</sup> Read through

legislation drafted by others in order to develop a sense of what techniques work well in your own constantly-developing drafting style.

As President Barack Obama stated, “A good piece of legislation, is like a good sentence; or a good piece of music. Everybody can recognize it. They say, ‘Huh. It works. It makes sense.’”<sup>6</sup>

## Endnotes

1. *The Lightning Bug vs. the Lightning*, AMA, July 2, 2012. <http://www.amanet.org/training/articles/The-Lightning-Bug-vs-the-Lightning.aspx>.
2. Paul Goldberger, *Robert Moses, Master Builder, is Dead at 92*, N.Y. TIMES, July 30, 1981. <http://www.nytimes.com/learning/general/onthisday/bday/1218.html>.
3. Julian P. Boyd, *The Papers of Thomas Jefferson* (1950).
4. The Declaration of Independence.
5. Geoffrey Bowman, *The Art of Legislative Drafting*. <http://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/media/190031/dale.pdf>.
6. Dan Amira, *By President Obama's Own Standard, This is a Bad Compromise*, N.Y. MAG., August 1, 2011.

**Deborah Beth Medows is a Senior Attorney in the Division of Legal Affairs at the New York State Department of Health, where she delivered the 2015 CLE on Ethics. She has additionally served as an Associate Counsel to the Speaker of the New York State Assembly, and as an Assistant Counsel to the New York State Legislative Bill Drafting Commission. She edited a written symposium through Harvard Law School's *Journal of Law and Technology's Digest*, delivered various legal presentations, published a number of articles in various law journals, and serves as a mentor to law students. She can be reached at [dbmedows@gmail.com](mailto:dbmedows@gmail.com). This information reflects solely the opinion of the author and does not speak for the views of any current or prior employers.**

This article originally appeared in the *Harvard Journal on Legislation* (<http://harvardjol.com/>) and is reprinted with permission.

# Why More States Should *Not* Jump on the Uniform Bar Exam Bandwagon

By Ben Bratman

*This article appeared originally on the website JD Journal (www.jdjournal.com) on June 17, 2015, not long after New York announced its adoption of the Uniform Bar Exam (effective with the July 2016 examination). Since that time, six additional jurisdictions—Iowa, New Mexico, District of Columbia, Vermont, and South Carolina and New Jersey—have announced their adoption of the UBE, bringing the total to 22. This article also makes reference to attributes of the three-day California Bar Exam that, upon that exam's July 2017 shift to a two-day format, will be eliminated. Specifically, California will shift from two three-hour performance tests to one 90-minute performance test.*

In May 2015, New York became by far the most populous and prominent state to adopt the Uniform Bar Exam, the standardized licensing test for lawyers created and promoted by the National Conference of Bar Examiners.<sup>1</sup> New York is the 16th state to take on this uniform test commonly referred to as the UBE.<sup>2</sup>



With such an influential state on board, the UBE is now all the rage. New York Court of Appeals Chief Judge Jonathan Lippman predicted that his state's move would trigger a "domino effect" ultimately leading to adoption of the UBE throughout the country.<sup>3</sup> The president of the Florida Bar predicted that the northeastern states will soon follow New York's lead and also acknowledged that Florida will give accelerated consideration to the UBE.<sup>4</sup> And UC Irvine Law School Dean Erwin Chemerinsky argued in an L.A. Times op-ed that California should join New York in adopting the UBE.<sup>5</sup>

Before other states choose to fall like dominoes and crown the UBE as the predominant or sole bar exam in the nation, the entire uniform exam initiative merits closer scrutiny. To be sure, adoption of the UBE throughout the country would make law licenses much more portable for beginning lawyers recently out of law school. That is a worthy goal, but the UBE is a dubious and potentially damaging

means for achieving the desirable end of greater interstate license portability, especially because there is a different and more benign way to achieve that end.

A comprehensive consideration of the UBE and all that comes with it reveals five reasons why additional states should step back from the precipice and be very cautious about joining the UBE bandwagon.

## 1. The UBE perpetuates a flawed bar exam and is fundamentally inconsistent with recent trends in legal education and the legal profession

The UBE is a collection of three testing instruments, each authored and sold to states by the National Conference: The Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPT).<sup>6</sup> The MBE is a six-hour multiple-choice exam with 200 questions testing knowledge of Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Real Property, and Torts.<sup>7</sup> The MEE includes essay questions covering the MBE subjects and five additional ones.<sup>8</sup> The MPT requires applicants to complete assigned written lawyering tasks relying on furnished legal and factual materials.<sup>9</sup>

Right now, the vast majority of states already administer the MBE, all states administer essay questions (about half use the MEE), and about two-thirds of states administer the MPT.<sup>10</sup> Full adoption of the UBE would therefore prop up and perpetuate the current bar exam model—a model that is the subject of vocal and

growing criticism from various constituencies and on many fronts.

Prominent among the criticisms is that the exam fails to adequately evaluate many basic lawyering competencies and focuses too heavily on substantive knowledge of law, thereby requiring applicants to engage in extensive memorization solely for the sake of the test.<sup>11</sup> Meanwhile, responding to the demands of the legal marketplace, legal education is increasing its emphasis on experiential learning and skill development.<sup>12</sup> As Professor Dennis Honabach has noted, "the UBE sustains and reinforces an anachronistic over-emphasis on general subject matter knowledge just at the moment when we should all be dynamically shifting focus and resources toward experiential learning and skills training."<sup>13</sup>

The presence of the MPT redeems the UBE to a limited extent, as the MPT does not test substantive knowledge of law but rather evaluates only lawyering skills.<sup>14</sup> However, the MPT evaluates a narrow range of skills and, as discussed below, receives the lowest scoring weight among the three UBE components.

## 2. The UBE would represent a regressive change to the current bar exam in several states

By adopting the UBE, a state agrees to administer the MBE, six MEE questions, and two MPT questions.<sup>15</sup> They also agree to weight the individual scores as follows: 50% MBE, 30% MEE, and 20% MPT.<sup>16</sup> The MBE scores are scaled based on level of difficulty, and scores on the written portions of the exam (MEE and MPT) are then scaled to the MBE.



Among the states that have not yet adopted the UBE are several that, giving some credence to criticisms of the bar exam, do not follow the National Conference's lead. Some do not use all of the three tests, and many others decline to use the number of questions or the 50/30/20 score weighting that the National Conference recommends—the same that it requires of UBE states.<sup>17</sup> Currently, for example, at least eleven states that administer the MBE weight it at less than 50% of the overall score,<sup>18</sup> believing that the ability to write answers is a better reflection of fundamental competencies than the ability to answer multiple-choice questions. In addition, three states (California, Oregon and Georgia) plus the District of Columbia choose to weight the performance test at more than 20%,<sup>19</sup> believing that less than 80% of a bar exam score should depend on questions that require recall of memorized law.

As a result, in the case of numerous states, adoption of the UBE would actually be a step backward in that it would increase the role of multiple-choice questions and/or decrease the role of performance test questions. That is reason enough for those states not to accept the UBE. The circumstances of New York's decision are illuminating in this respect. New York has been using only one MPT question accounting for a mere 10% of the overall score.<sup>20</sup> The Advisory Committee that recommended adoption of the UBE to the Court of Appeals defended its recommendation in part by noting the resulting increase in skills testing through a second MPT question.<sup>21</sup> New York's decision to adopt the UBE is thus a powerful precedent for about a dozen other states, including California, not to adopt the UBE but to *reject* it.

### 3. The advantage of having a national testing organization set a singular scoring methodology for all bar exams is overstated

To be sure, the National Conference has greater testing expertise and resources than does any individual

state. The organization employs psychometric experts and apparently has concluded that the combination of the MBE, MEE and MPT at the scoring weight of 50/30/20 is an appropriate mix to establish maximum testing reliability and validity. (Reliability is the extent to which multiple exams over time produce consistent results; validity is the extent to which the exam tests skills relevant to the profession.<sup>22</sup>)

As a multiple-choice exam, the MBE is indeed an anchor of testing reliability, but reliability in testing, like anything, can be taken to an extreme. The problem is that the MBE does very little to achieve testing *validity*.<sup>23</sup> For that reason, and given the possible adverse impact of multiple-choice tests on ethnic groups underrepresented in the legal profession,<sup>24</sup> the MBE should be weighted as low as possible to achieve reliability of overall exam scores.

Finding the right balance between reliability and validity is not an exact science, and 50% as the weight for a multiple-choice test with high reliability and low validity is not a magic number. Michael T. Kane, Ph.D., a veteran educational testing expert and former Director of Research for the National Conference, has written that "any weighting system that assigns at least 40% to the objective component works reasonably well" as long as the remaining elements are scaled to the MBE.<sup>25</sup> (The vast majority of states using the MBE do in fact scale their written test components to the MBE.<sup>26</sup>) As of this writing, Delaware, Mississippi, North Carolina, Texas and Virginia all weigh the MBE at 40% of the overall score, and Pennsylvania at 45%.<sup>27</sup> Merely for the sake of the UBE, these states should not be compelled to increase the extent to which they premise competency determinations on an applicant's ability to answer multiple-choice questions. Should any state, including the five additional ones that weight the MBE at less than 40%, wish to change its method of scoring to achieve greater testing reliability, it can surely do so on its own volition—separate from any decision about joining the UBE.

Another quirk of the National Conference's mandated scoring weight for UBE states is its allocation of the remaining 50% between the MPT (20%) and the MEE (30%). Nearly 20 years after the MPT was introduced, and after considerable movement in legal education toward greater and more varied skills training, what is the current basis for still giving lesser weight to performance test questions than to essay questions? The MPT might be modestly more expensive to produce,<sup>28</sup> but it is surely the most valid testing instrument on the bar exam,<sup>29</sup> evaluating more lawyering skills than essay questions do while not requiring recall of memorized law.

For many jurisdictions, essay questions are a means for testing knowledge of local law, but if local law can instead be covered through supplemental state CLE courses or tests (a premise of the UBE that actually makes sense), then it is fair to ask whether a bar exam should emphasize essay questions or, dare I say, include them at all. These queries become even more pertinent as law school professors continue to increase their usage of performance test-style questions and other alternatives to traditional essay questions.<sup>30</sup>

### 4. National implementation of the UBE would decrease the chance of meaningful bar exam reform by taking power away from states and giving it to the National Conference

The National Conference is already a powerful and influential player in bar examinations. Through national implementation of the UBE, it would gain even greater power. As a result, effecting bar exam reforms would be a formidable challenge. Effecting more fundamental reforms to the licensing system—e.g., replacing at least some of the bar exam as we know it with a clinical component akin to that required in medical examinations—might require nothing short of a coup. In the words of Brooklyn Law School Dean Nicholas W. Allard, "[t]aking on a powerful organization with a virtual monopoly over the bar-

exam system is daunting.”<sup>31</sup> If the UBE becomes the predominant bar exam in the United States, the monopoly will move beyond virtual, and the challenge of reforming the bar exam will move beyond daunting.

Maximizing the National Conference’s influence through national adoption of the UBE is especially problematic because it would all but eliminate a very important player in bar exam innovations: the states themselves. The last significant reform to the content of the bar exam, the addition of the performance test, came about in no small part because of the initiative of states.<sup>32</sup> Indeed, more than a decade before the MPT appeared on bar exams, Colorado and Alaska created and administered their own performance tests as a counterweight to the multiple-choice portion of the exam.<sup>33</sup> California also offered performance tests long before the MPT was born,<sup>34</sup> and to this day the California Performance Test stands apart as a three-hour test, allowing for more in-depth skills evaluation than the MPT’s 90-minute version.<sup>35</sup> Colorado and Alaska have already adopted the UBE.<sup>36</sup> If California and the rest of the states do so, where does the next important innovation in bar exams come from, and how long will it be before we see it?

The Executive Director of the National Conference has endorsed the current construct of the exam and has written that any future evolution of the exam will be “more glacial than volcanic.”<sup>37</sup> The legal profession and legal education have undergone and continue to undergo profound change that could hardly be described as glacial. The bar exam needs to change commensurately (albeit cautiously), and meaningful change is far more likely to happen—and to happen sooner—if states continue to play an influential role in advancing exam reforms. The National Conference can and should play a significant role in supporting and working with states, as it did in the evolution of the performance test decades ago, but states adopting the UBE will end up with little influence in that relationship or on any future changes to the exam.

## 5. There is another means for achieving license portability that has far fewer drawbacks than the UBE

The advantages of the UBE pertaining to license portability have been well touted. Law School graduates can take the UBE in any participating jurisdiction, and after receiving their score, they can promptly seek admission to any UBE state where that score is deemed passing (e.g., minimum of 260 in Alabama and Minnesota; 280 in Idaho).<sup>38</sup> UBE scores are valuable only to recent takers though, as they expire in two to five years, depending on the state.<sup>39</sup> Each UBE state also sets its own character and fitness requirements, and some states require an additional test or course on local law.<sup>40</sup>

In contrast, if a beginning lawyer who has already taken the bar in one state seeks admission in a non-UBE state, in most cases he or she will have to take a bar exam again.<sup>41</sup> In some states, California and Florida included, this remains true no matter how many years the applicant has been practicing law.<sup>42</sup>

However, given the UBE’s drawbacks, it is not the best means for achieving the laudable goal of license portability. In a very important respect, we already have a uniform bar exam. The MBE, as mentioned earlier, is offered in 49 states and is a very reliable test from a psychometric perspective. Why not allow applicants who achieve a passing score on the MBE on any jurisdiction’s bar exam to apply for admission to any other state without the necessity of taking the bar exam again? Minnesota, North Dakota, and the District of Columbia already permit this,<sup>43</sup> and other states need only follow their example.

A state adopting this approach in lieu of the UBE would be giving full faith and credit to whatever the written portion of the exam is in the original jurisdiction instead of forcing applicants to take its written portion. Since most states scale the scores from their written tests to the MBE, the policy is psychometrically sound. In fact, in many cases, the written tests of the

two states at issue would be very similar, and the only variable would be awareness of local law, which could be covered through a CLE program.

Instead of putting its energies into national adoption of the UBE, which would decrease the quality of the bar exam in many states and drastically reduce state autonomy and flexibility, the National Conference could simply push for more states to adopt the policy already maintained by Minnesota, North Dakota, and D.C. We already have a uniform bar exam, and the National Conference already has enough power.

## Endnotes

1. Stephanie Clifford & James C. McKinley, Jr., *New York to Adopt a Uniform Bar Exam Used in 15 Other States*, N.Y. Times, May 5, 2015, available at [http://www.nytimes.com/2015/05/06/nyregion/new-york-state-to-adopt-uniform-bar-exam.html?\\_r=0](http://www.nytimes.com/2015/05/06/nyregion/new-york-state-to-adopt-uniform-bar-exam.html?_r=0).
2. *Id.*
3. *Id.*
4. Noelle Price, *The Uniform Bar Exam Debate*, JD Journal, May 22, 2015, available at <http://www.jdjournal.com/2015/05/22/the-uniform-bar-exam-debate/>.
5. Erwin Chemerinsky, Op-ed, *It's time for California to accept the Uniform Bar Exam*, L.A. Times, May 11, 2015, available at <http://www.latimes.com/opinion/op-ed/la-oe-0511-chemerinsky-standard-bar-exam-20150511-story.html>.
6. *Uniform Bar Examination*, Nat'l Conf. of B. Examiners, <http://www.ncbex.org/exams/ube/> (last visited June 11, 2015).
7. *Multistate Bar Examination*, Nat'l Conf. of B. Examiners, <http://www.ncbex.org/exams/mbe/> (last visited June 11, 2015).
8. *Multistate Essay Examination*, Nat'l Conf. of B. Examiners, <http://www.ncbex.org/exams/mee/> (last visited June 11, 2015).
9. *Multistate Performance Test*, Nat'l Conf. of B. Examiners, <http://www.ncbex.org/exams/mpt/> (last visited June 11, 2015).
10. *Comprehensive Guide to Bar Admission Requirements*, 2015, Nat'l Conf. of B. Examiners, at 25-26 (Feb. 2015), available at <http://www.ncbex.org/pubs/bar-admissions-guide/2015/index.html#p=1>.
11. See, e.g., *Society of American Law Teachers Statement on the Bar*, 52 J. Legal Educ. 446, 446-47 (2002) [hereinafter *SALT Statement*]; Nicholas W. Allard, Op-Ed: *Too Much Power Rests with the National Conference of Bar Examiners*, Nat'l Law Journal, March 26, 2015, available at <http://www.nationallawjournal.com/id=1202721713085/OpEd-Too-Much-Power-Rests-with-the-National>

- Conference-of-Bar-Examiners?slretu  
rn=20150513163906.
12. See Dennis R. Honabach, *To UBE or Not to UBE: Reconsidering the Uniform Bar Exam*, 22 No. 2 Prof. Law. 43, 47-48 (2014).
  13. *Id.* at 44.
  14. *Multistate Performance Test*, *supra* note 9.
  15. *Uniform Bar Examination*, *supra* note 6.
  16. *Uniform Bar Examination—UBE Scores*, Nat'l Conf. of B. Examiners, <http://www.ncbex.org/exams/ube/scores/> (last visited June 11, 2015).
  17. *Comprehensive Guide*, *supra* note 10, at 25-26 & 29-30.
  18. *Id.* at 29-30.
  19. *Id.*
  20. *Id.* at 30.
  21. *Advisory Committee on the Uniform Bar Examination, Final Report to Chief Judge Jonathan Lippman and to the Court of Appeals*, at 2 & 50-51 (April 2015), [https://www.nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT\\_DRAFT\\_April\\_28.pdf](https://www.nycourts.gov/ip/bar-exam/pdf/FINAL%20REPORT_DRAFT_April_28.pdf) (last visited June 11, 2015).
  22. Susan M. Case, *The Testing Column: What Everyone Needs to Know about Testing, Whether They Like it or Not*, B. Examiner, June 2012, at 29, 29-31, available at [http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-Examiner%2Farticles%2F2012%2F810212beTestingColumn.pdf](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2012%2F810212beTestingColumn.pdf).
  23. See Stephen P. Klein, *The Costs and Benefits of Performance Testing on the Bar Examination*, B. Examiner, Aug. 1996, at 13, 15-16 (on file with author), available at [http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-Examiner%2Farticles%2F1996%2F650396\\_Klein.pdf](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F1996%2F650396_Klein.pdf) ("If score reliability was the only criterion of test quality that had to be satisfied, the bar exam would consist of entirely multiple-choice questions.").
  24. See *SALT Statement*, *supra* note 11, at 450-52.
  25. Michael T. Kane, *What the Bar Examination Must Achieve: Three Perspectives*, B. Examiner, Sept. 2012, at 6, 13, available at [http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-Examiner%2Farticles%2F2012%2F810312beKane.pdf](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2012%2F810312beKane.pdf).
  26. *Comprehensive Guide*, *supra* note 10, at 29-30.
  27. *Id.*
  28. See Klein, *supra* note 23, at 19.
  29. See *id.* at 15-16 (defending the use of performance tests as a tool for achieving test validity).
  30. See Ben Bratman, *Improving the Performance of the Performance Test: The Key to Meaningful Bar Exam Reform*, 83 UMKC L. Rev. 565, 602 n.269 (2015) (collecting several sources), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2520042](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2520042).
  31. Allard, *supra* note 11.
  32. See Judith Gundersen, *Happy Birthday, MPT!*, B. Examiner, Nov. 2007, at 18, 18, available at [http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-Examiner%2Farticles%2F2007%2F760407\\_Gundersen.pdf](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2007%2F760407_Gundersen.pdf).
  33. *Id.*
  34. *Id.*
  35. *Description and Grading of the California Bar Examination—General Bar Examination and Attorney's Examination*, The St. B. of Calif., [http://admissions.calbar.ca.gov/Portals/4/documents/gbx/BXDescriptGrade\\_R.pdf](http://admissions.calbar.ca.gov/Portals/4/documents/gbx/BXDescriptGrade_R.pdf) (last visited June 11, 2015).
  36. *Comprehensive Guide*, *supra* note 10, at 32.
  37. Erica Moeser, *President's Page*, B. Examiner, Mar. 2012, at 4, 5, available at [http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia\\_files%2FBar-Examiner%2Farticles%2F2012%2F81012bePresidentsPage.pdf](http://www.ncbex.org/pdfviewer/?file=%2Fassets%2Fmedia_files%2FBar-Examiner%2Farticles%2F2012%2F81012bePresidentsPage.pdf).
  38. *Uniform Bar Examination*, *supra* note 6; *Comprehensive Guide*, *supra* note 10, at 32.
  39. *Comprehensive Guide*, *supra* note 10, at 32.
  40. *Uniform Bar Examination*, *supra* note 6; *Comprehensive Guide*, *supra* note 10, at 32.
  41. *Comprehensive Guide*, *supra* note 10, at 34.
  42. *Id.*
  43. *Comprehensive Guide*, *supra* note 10, at 25 & 27.

**Ben Bratman is Associate Professor of Legal Writing at the University of Pittsburgh School of Law. In addition to teaching legal analysis and writing to first-year students, Bratman is extensively involved in the School's bar exam preparation initiatives. He has published various articles and commentaries on bar exams, bar exam reform, and the intersection between bar exams and legal education.**

## Request for Articles



If you have written an article and would like to have it considered for publication in *Perspective*, please mail or e-mail it to:

Keri Mahoney, Esq.  
The Law Office of Keri Mahoney, PLLC  
5507-10 Nesconset Highway, Suite 264  
Mount Sinai, NY 11766  
[keri@kerimahoneylaw.com](mailto:keri@kerimahoneylaw.com)

### Guidelines

Articles can range from op-eds, current events pieces, short-form law reviews, and articles that highlight certain aspects of law or policy. Articles should be submitted in electronic document format (pdfs are NOT acceptable), and include a brief bio.

[www.nysba.org/Perspective](http://www.nysba.org/Perspective)





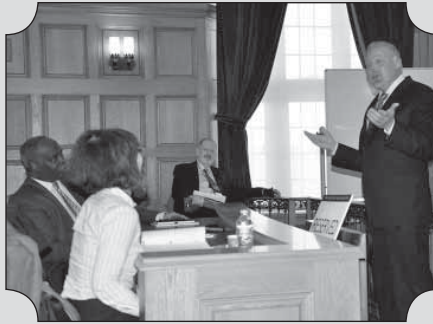
Scenes from the  
Young Lawyers Section  
**TRIAL ACADEMY**

March 30–April 3, 2016  
Cornell Law School • Ithaca, NY













## 2017 Young Lawyers Trial Academy

Save the Dates: Wednesday, April 5 – Sunday, April 9, 2017 • Cornell Law School

## **Law Office of Alena Shautsova**

*Where Experience and Passion Collide*

### ***Full Service Immigration Law Firm***

- ✓ **Consulting on Criminal Immigration Issues**
- ✓ **Representation in Removal and  
Deportation Proceedings**
- ✓ **Citizenship and Naturalization**
- ✓ **Immigration Waivers**
- ✓ **Business and Investment Visas**
- ✓ **Asylum**
- ✓ **Marriage and Fiancé Visas**

Offices in Brooklyn and  
Syosset

Tel. 917-885-2261



**Go to [www.shautsova.com](http://www.shautsova.com)**



NEW YORK STATE BAR ASSOCIATION  
**YOUNG LAWYERS SECTION**  
One Elk Street, Albany, New York 12207-1002

**ADDRESS SERVICE REQUESTED**

PRSR STD  
U.S. POSTAGE  
**PAID**  
ALBANY, N.Y.  
PERMIT NO. 155



This newsletter is published for members of the Young Lawyers Section of the New York State Bar Association. Members receive the newsletter free of charge. The views expressed in articles in this newsletter represent only the viewpoint of the authors and not necessarily the view of the Section.

We reserve the right to reject any advertisement. The New York State Bar Association is not responsible for typographical or other errors in advertisements.

**Accommodations for Persons with Disabilities:**

NYSBA welcomes participation by individuals with disabilities. NYSBA is committed to complying with all applicable laws that prohibit discrimination against individuals on the basis of disability in the full and equal enjoyment of its goods, services, programs, activities, facilities, privileges, advantages, or accommodations. To request auxiliary aids or services or if you have any questions regarding accessibility, please contact the Bar Center at (518) 463-3200.

Copyright 2016 by the New York State Bar Association.  
ISSN 0743-6475 (print)      ISSN 1933-8511 (online)

## PERSPECTIVE

**Editor**

Keri Mahoney  
The Law Office of Keri Mahoney, PLLC  
5507-10 Nesconset Highway, Suite 264  
Mount Sinai, NY 11766  
keri@kerimahoneylaw.com

**Section Officers**

**Chairperson**

Erica M. Hines  
Heslin Rothenberg Farley & Mesiti PC  
5 Columbia Circle  
Albany, NY 12203  
emh@hrfmlaw.com

**Chairperson-Elect**

Erin Kathleen Flynn  
Law Offices of Eric Franz  
747 Third Avenue, 20th Floor  
New York, NY 10017  
erin.k.flynn@gmail.com

**Secretary**

Terrence Lee Tarver  
Sullivan, Papain, Block, McGrath & Cannavo, PC  
1140 Franklin Avenue, Suite 200  
Garden City, NY 11530  
TTarver@triallaw1.com

**Treasurer**

John P. Christopher  
Sahn Ward Coschignano & Baker, PLLC  
333 Earle Ovington Blvd, Suite 601  
Uniondale, NY 11553  
JChristopher@swcblaw.com