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Doing Right by Nevada: Adopting the Uniform Bar Exam

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Dean's Column



BY DEAN DANIEL W. HAMILTON,
UNLV WILLIAM S. BOYD SCHOOL OF LAW

DOING RIGHT BY NEVADA: ADOPTING THE UNIFORM BAR EXAM

All of us, the UNLV Boyd School of Law, the Nevada Supreme Court, the Board of Bar Examiners and the state's practicing bar, share a strong commitment to maintaining the high quality and integrity of the Nevada bar. We have a responsibility to the citizens of the state to ensure that capable, responsible and representative candidates are admitted to practice. Equally importantly, our job is also to ensure that qualified Nevadans and others are not precluded or discouraged from taking the bar exam and serving our citizens. Nevada's bar exam is increasingly out-of-step with the exams of a majority of jurisdictions across the country and with those of many of our neighbors. Without reasonable and necessary change, mirroring changes that have already taken place nationwide, we are doing our citizens a disservice.

In 2017, Nevada's Supreme Court took significant first steps toward bringing Nevada's bar exam into alignment with those of our neighbors around national best practices. Now is the time to continue that progress and ensure that Nevada is not left behind the majority of jurisdictions around the country. 2018 should be the year that Nevada joins the now-30 states, including every state in the Mountain West, that have already adopted the Uniform Bar Exam (UBE).

No bar exam can perfectly test which law students are competent to practice law, just as no written exam in law school can perfectly assess a student's knowledge and skills in a particular subject area. Being a good lawyer requires many capabilities, including good judgment and decision-making skills, oral communication skills, perseverance, sound ethics and empathy, as well as the legal knowledge and writing ability that are more easily tested by a written exam. That said, it is certainly appropriate to use a written bar exam to set a minimum floor of legal knowledge and writing ability. We owe it to our stakeholders and the communities we serve to administer a bar exam that reflects national best practices and that is rigorously reviewed and vetted on an ongoing basis. Adoption of the UBE will enable Nevada examiners and our Supreme Court to access data gathered across jurisdictions—data that is routinely studied and analyzed,

to ensure that our own state's exam is reliable, predictable and fair.

Predictability and Reliability

Like any licensing exam, Nevada's bar exam should – as much as is possible – reliably predict the competence of those individuals who have prepared to enter the practice of law. If it joins the 30 states that have adopted the UBE, Nevada will benefit from essay questions that have undergone rigorous testing and analysis by both subject matter experts and statisticians. The Board of Bar Examiners will likewise have the benefit of well-developed and tested rubrics as they grade UBE essays.

We share our Supreme Court's interest in collecting data that will help us assess both the competence of candidates for the Nevada bar and our own students' preparation for the practice of law in the state. Adoption of the UBE will provide access to national and Nevada-specific data, together with analyses of that data by statisticians and other professionals skilled in bar exam metrics and standards. That data will allow us to better assess the preparation of our own candidates for the bar and to compare Nevada's candidates to those in other jurisdictions.

Fairness

A statistically valid test, developed and assessed by

professionals, and subjected to regular examination and review, with data that supports its validity, is a fairer exam for all test-takers. For too long, Nevada's bar exam has disadvantaged our own citizens – both those seeking admission to the profession and the communities served by the practicing bar. Nevadans who wish to practice in the state and serve its citizens should not face far-higher hurdles in Nevada than they do in neighboring states. Continuing to administer a bar exam that is out-of-step with national best practices and that is not subjected to rigorous and ongoing review and analysis hurts us all and fails to help us maintain a practicing bar that is well-qualified, capable, ethical and representative.

Flexibility and Nevada Focus

Any concerns that adoption of a Nevada UBE would foreclose coverage of Nevada-specific issues are misplaced. The UBE envisions that each jurisdiction determines whether

to include a state-specific component on its bar exam. Eighteen of the current UBE jurisdictions have opted to include state-specific questions on their bar exams, and Nevada could certainly elect to similarly include Nevada-specific multiple choice or essay questions.

Moreover, individual UBE jurisdictions continue to establish admission requirements, set passing scores, grade essays, determine timing requirements for score transferability, and assess character and fitness.

Professionalism

The UBE was created by, and continues to be studied and improved by, professionals trained in test development and administration. What the UBE will bring to Nevada and its test-takers is a statistically valid exam, created and tested by professionals with well-vetted questions of consistent difficulty.

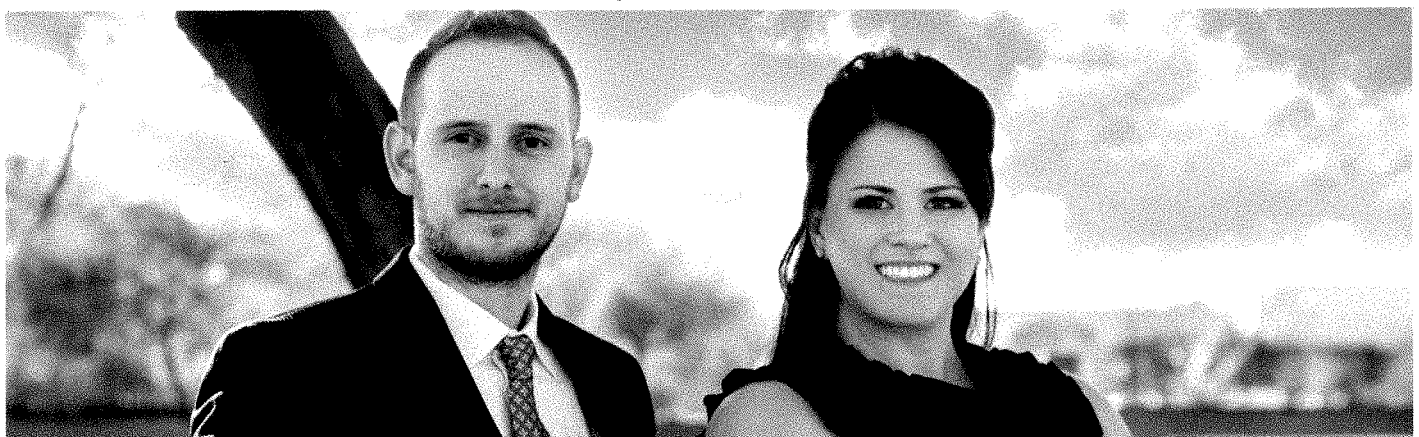
The success of Boyd graduates on the Nevada bar exam belies the

historical difficulty of the state's exam. Boyd graduates have consistently outperformed others on the Nevada bar exam. In every year, from 2005 forward, Boyd student first-time takers have passed the Nevada bar at a higher rate than first-time student takers from other law schools, with an average of seven to eight percentage points separating Boyd first-time student takers from other first-time student takers. Similarly, over the same period, all Boyd takers have outperformed all bar takers every year with an average spread of four to five percentage points between Boyd graduates who take the bar exam and all other examinees.

In a time of declining applications to law schools nationwide, Boyd's commitment to quality and high admissions standards has remained unchanged. The law school's success in attracting strong candidates from Nevada and beyond has resulted in incoming classes whose credentials remain as high as ever, in terms of both LSAT scores and undergraduate

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Reisman Sorokac is proud to announce that Jacqueline Walton, Esq., and Robert R. Warns III, Esq., have been named Members of the firm.



Mr. Warns concentrates his practice in state and federal courts, administrative agencies, and private mediations and arbitrations, focusing on complex commercial litigation. He has been an active trial lawyer in Nevada since 2010, when he joined Reisman Sorokac. Mr. Warns has been selected to the *Mountain States Super Lawyers* "Rising Stars" list for four consecutive years, and he has been named a "Legal Elite" by *Nevada Business Press*.

Ms. Walton focuses her practice in the areas of real estate, government affairs and corporate matters. She has been practicing in Nevada for 10 years and joined the firm in 2011. Ms. Walton has also been selected to the *Mountain States Super Lawyers* "Rising Stars" list for four years running, and has been named a "Legal Elite" by *Nevada Business Press*. She is a 2016 graduate of Las Vegas Metro Chamber of Commerce's highly-selective "Leadership Las Vegas" program.



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DOING RIGHT BY NEVADA: ADOPTING THE UNIFORM BAR EXAM

point averages, and our students continue to find great success in employment. The law school enjoys one of the highest judicial clerkship rates – at 33 percent – in the country. Moreover, our 2017 incoming class was one of the most – if not the most – diverse in the country, and our students are active and engaged in community service. Thanks to our faculty and the rigor and quality of instruction at the law school, our 2017 national ranking rose to number 62 (out of nearly 200 ABA-accredited law schools), and our lawyering process and alternative dispute resolution programs are ranked second and ninth in the nation, respectively.

The law school is proud of its students' achievements on the Nevada bar exam, and we have every confidence that Boyd test-takers will continue to excel on the exam and outperform others, no matter what form of exam is in place. But our current exam leaves Nevada behind other jurisdictions and jeopardizes our

ability to attract well-qualified attorneys and prospective attorneys to the state. Moreover, it forecloses opportunities for Nevadans and other individuals to serve the state and its residents.

The past ten years have witnessed steady and persistent change as jurisdictions across the country have reconsidered their approaches to attorney licensing and the examinations that determine the success of applicants to the bar. Those jurisdictions have recognized and acknowledged that there is a better way to do things when it comes to attorney licensing. The majority of states have moved toward the UBE, a standardized, national bar exam that is professionally developed and reflects best practices. We are well past the tipping point. It is time to put behind us a test that disadvantages Nevadans for no good reason, when our neighbors, together with the majority of jurisdictions across the country, have moved forward. Let's do

right by Nevada and Nevadans and adopt the UBE in 2018. **NL**

DANIEL W. HAMILTON is the fourth dean of the UNLV William S. Boyd School of Law. He assumed the deanship in July 2013, and joined the Boyd School of Law faculty as the Richard J. Morgan Professor of Law. He came to UNLV from the University of Illinois College of Law, where he was the Associate Dean for Faculty Development and Professor of Law and History. Hamilton received his Ph.D. in American legal history in 2003, from Harvard University. He received his Juris Doctorate from George Washington University and his Bachelor of Arts from Oberlin College. His research and writings primarily focus on American property ideology and the legal and constitutional issues raised by the Civil War.

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