

Blue Ribbon Commission on the Future of the Bar Exam

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Re: Public Comment for Hearing April 7, 2022 Re Admission on Motion For Out-of-State Attorneys in California and For California Attorneys in Other States

To The Commission:

This BRC is not functioning in the context of a blank slate. Other California and ABA Commissions, licensing experts, and commentators have considered this reciprocal attorney licensing concept, in addition to the nationally promulgated licensing *Standards* and recent Supreme Court First Amendment *professional speech licensing* precedent overruling the Ninth Circuit.

Initially, the arc of history teaches many lessons about evolving standards of decency and conceptual changes from the antiquated sun revolves around the earth that held sway for 1500 hundred year: To all “men are created equal” to include women, Blacks, Hispanics, gays and lesbians in the created equal umbrella.

Barbara McClintock¹ was born in 1902. She earned a Ph.D. from Cornell in 1927. She is an American scientist and cytogeneticist who was awarded the 1983 Nobel Prize in Physiology or Medicine. McClintock studied chromosomes and how they change during reproduction in corn. She developed the technique for visualizing corn chromosomes and used microscopic analysis to demonstrate many fundamental genetic ideas. One of those ideas was the notion of genetic recombination by crossing-over during meiosis—a mechanism by which *chromosomes exchange information*. One day in 1930, she stood with a group of scientists in the cornfields around Cornell University, pondering the results of a genetics experiment that did not pan out according to the received wisdom. After a half hour, she jumped up and shouted “Eureka I have found it.” Barbara McClintock spent so much time with her plants in the preparation of their genetic material that she knew them intimately as individuals. She literally took the time to make friends with them and to see them in their own terms. *She developed a feeling for the organism*. The problem was nobody believed her because her theory contradicted the received wisdom of that era. She was derided for her “jumping genes²” theory. Her colleagues thought she had gone mad. This was decades before Watson and Crick’s Noble Prize work on the DNA double helix and decades before the gene cloning and recombination scientific advances. McClintock said, “*When you suddenly see the problem*, something happens that you have the answer – before you are able to put it into words. It is all done subconsciously. This has happened to me many times. I am so absolutely sure I don’t have to tell anybody, I’m just sure this is it.” In reference to her decision 20 years earlier to stop publishing accounts of her work because nobody believed her, she wrote in 1973:

Over the years I have found that it is difficult if not impossible to bring to consciousness of another person the nature of his tacit assumptions when, by some special experiences, I have been made aware of them. This became painfully evident to me in my attempts during the 1950s to convince geneticists that the action of genes had to be and was controlled. It is now equally painful to recognize the fixity of assumptions that many persons hold on the nature of controlling elements in maize and the

¹ [Barbara McClintock - Wikipedia](#)

² Robert M Sapolsky, *Behave: The Biology of Humans at Our Best and Worst*. Penguin Publishing Group. Kindle Edition, Chapter 47 Dr. Sapolsky is a professor of Neuroscience at Stanford and a MacArthur Genius Award recipient.

manners of their operation. One must await the right time for conceptual change. ³ (Emphasis added)

As noted above, this BRC is not the first Blue Ribbon Commission to study reciprocal admission on motion concept in California. *The Future Of The California Bar: The Final Report of the Commission on the Future of the Legal Profession and the State Bar of California* (April 1995), included the Hon. Susan Y. Illston of the Northern District of California and Central District of California Judge Lourdes Baird. Several other attorneys serving on this *Futures Commission* were subsequently appointed to the federal bench including: Andrew Guilford, and Marsha Berzon. The *Futures Commission* also included the Hon. Candace Cooper, the Hon. Lois Height, the Hon. Harry Low, the Hon. Campbell Lucas, the Hon. Elwood Lui, and the Hon. Cruz Reynoso. It also included former Presidents of the State Bar, San Francisco Public Defender Peter Keane, and California law school deans. The *Futures Commission* was designed to provide recommendations for “Twenty – five years from today.” See Exhibit A.

Futures Commission Final Recommendation 11 provides:

Reciprocity in admissions should be available to active members of other jurisdictions in good standing, subject to prerequisites, including: (a) membership in other jurisdictions for at least three years; (b) satisfaction of California’s moral character and ethical standards; and (c) other jurisdictions afford reciprocity to California attorneys.

Futures Commission Final Recommendation 12 provides:

California should support a national licensure program, e.g., for attorneys who litigate cases exclusively in federal courts.

It cannot be disputed the *Futures Commission* Recommendations endorsed by numerous California and federal judges are well founded. It is reasonably believed the State Bar of California spent a million dollars on this comprehensive study.

Subsequently, as a direct result of the American Bar Association’s MJP Commission (2000) recommending admission on motion, the California Legislature unanimously enacted Senate Bill 1782 asking that the California Supreme Court to

³ See footnote 1. Wikipedia.

commission a study to implement reciprocity. *See* Exhibit B. Twenty years ago the UBE had not been pioneered and only twenty-five states had adopted reciprocal admission. The California Commission adopted a wait and see approach to what other states do. The Commission recommended and California Supreme Court adopted limited admission on motion for indigent services counsel Rule 9.45 Registered legal services attorneys and Rule 9.46. Registered in-house counsel.

In 2012, the ABA 20-20 Commission again studied the issue of reciprocal licensing. It held public hearings all over the United States. It received written and public testimony from virtually every arm of the bar. It recommended reciprocal licensing for lawyers with three years of experience who are ABA graduates.

Presently, forty-two states have adopted admission on motion. Some provide reciprocity for California's non-ABA graduates. However, approximately twenty-five states provide tit-for-tat reciprocity, which means California lawyers are not eligible because California does not provide reciprocity. The trend toward national licensing and admission standards is also reflected by the thirty-eight states that have adopted the Uniform Bar Exam.

As noted above, Barbara McClintock avers that if you really want to understand something you have to take "the time to make friends with them and to see them in their own terms." If the BRC members want to develop "a feeling for the [reciprocity] organism," it is suggested that each member read Suffolk Law School Dean Andrew B. Perlman's Georgetown Law Review Article, *A Bar Against Competition: The Unconstitutionality of Admission Rules for Out-of-State Lawyers*. *See* Exhibit D.

Dean Perlman's article also does not take into consideration recent Supreme Court First Amendment *professional speech licensing* precedent and the testing *Standards*, which, perhaps, may be addressed in the future as the attached provides ample food for thought.

Thank you for your consideration and attention.

Respectfully submitted,

/s/ Joseph Robert Giannini
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