In Response to *Professor, Please Help Me Pass the Bar Exam*

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IN RESPONSE TO PROFESSOR, PLEASE HELP ME PASS THE BAR EXAM

Jaylin K. Johnson¹

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I. INTRODUCTION

"Dear Dean:

In the fall of 2022, I started at your law school as a part-time student. Just as the students who walked the halls before me, I spent my 1L year in the library for countless hours learning the nuances of Torts, Contracts, Property, and Criminal Law. Thereafter, I tailored my upper-level courses to ensure exposure to the additional subjects covered by the bar exam—Professional Responsibility, Business Associations, Constitutional Law, Criminal Procedure, Secured Transactions, Wills, Trusts and Estates, Conflicts of Law, and Family

¹ This paper was largely written as a conclusion to a semester-long independent study course focusing on the NextGen Bar Exam and the impacts it will have on future bar exam takers. As such, I would like to thank Professor Kirsha Trychta for not only graciously agreeing to be my advisor for the independent study, but also for the brainstorming sessions, for keeping me apprised of new information released by the NCBE, and for all the advice and guidance along the way. Thank you.
Law. Although my curricular choices tended to be doctrine focused, I took a basic set of skills courses; to satisfy my skills requirements, I completed legal writing in my first year (begrudgingly receiving my only B in law school), a scholarly drafting course, and an externship. I believed—given the time and money (well over $100,000) I invested in my legal education—I was set up for success in practice and on the bar exam. I was wrong.

What I did not know—but you did—was that the bar exam your law school’s curriculum was designed to prepare me for had been replaced with a new bar exam. This change was announced in January of 2021, but you and your faculty failed to meaningfully adjust your traditional curriculum to account for the changes in time for my arrival on campus in the fall of 2022. This new bar exam no longer tests Secured Transactions, Wills, Trusts, and Estates, Conflicts of Law, or Family Law. Worse, this new bar exam tests a wide-variety of practice-related skills that I was never exposed to during my four years at your school, including interviewing, client counseling, negotiation, and legal research. As a final blow, multiple-choice questions—my super-power and probably the reason I even got into your law school in the first place (thank you, LSAT)—are no longer the anchor of the new bar exam. Instead, success on the new bar exam turns equally on one’s knowledge and one’s reasoning/writing abilities. Dean, how did you and your faculty let this happen?

Respectfully, Alex”

The above letter appeared in a paper by Professor Melissa Bezanson Shultz entitled “Professor, Please Help Me Pass the Bar Exam” in September 2021. The letter captures the sentiments of several students preparing to face the dreaded bar exam. Students, who already experience severe anxiety around the bar exam, have been thrown into new levels of concern due to anticipated changes in arguably the most important exam they will ever take.

Professor Shultz proceeds to outline the current bar exam by examining the connection between the current bar exam and law school curriculums. Although some may believe that current law school curriculums were heavily influenced by the content included on the current bar exam, the opposite is actually true; the current bar exam was designed to reflect law school curriculums. This is because law school curriculums, specifically required 1L courses, include the topics entry-level lawyers need to know to competently practice law, which is what a passing score on the bar exam ostensibly confirms.

After exploring the current bar exam, Professor Shultz turns to the NextGen Bar Exam, explaining the reductions in content areas, the expansion of skills testing, and the format changes students can expect to see on the new exam. Present in the conclusion of Professor Shultz’s paper, and running as an underlying theme throughout, is the idea that law schools must begin acting now to successfully transition their curriculums to accommodate the NextGen bar

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2 Melissa Shultz, Professor, Please Help Me Pass the Bar Exam, 69 J. LEGAL EDUC. (forthcoming 2023).
exam. While the new exam will not be implemented until 2026, law schools must be ready to prepare 1Ls for the NextGen bar exam beginning in Fall 2023—only months from now.

This begs the question: what are law schools doing to prepare their students for the new bar exam? It is a broad question, and it does not have a simple answer. As law schools shift to the NextGen bar exam, they have various options available to better prepare their students for the new exam. Some of these options utilize learning mechanisms that already exist in law school curriculums. Others propose new ideas that require significant adaptation from administration, faculty, and students alike.

The purpose of this article is to provide a thoughtful response to Shultz’s Professor, Please Help Me Pass the Bar Exam that considers both the needs of students and the resources available to law schools. As schools are beginning to have discussions about adjusting to the new exam, a voice seems to pipe up from the back reminding everyone that perhaps the only worthwhile change to the bar exam is its abolition. Although conversations about whether the bar exam should be abolished in favor of diploma privilege are useful, they are beyond the scope of this article. Instead, this article will assume that the NextGen bar exam is here to stay and, based on that assumption, will engage in a discussion of the next steps law schools should take in preparation for the NextGen bar exam’s arrival.

First, this article will set out a background of the new bar exam, including how it came about, what changes schools and students can expect to see, and when they can expect to see those changes. Then, this article will delve into a short discussion of how law schools can gauge how well they are already preparing their students for the NextGen Bar Exam before making changes to their curriculums. Next, it will consider how law schools, regardless of their philosophy on bar exam preparation, can integrate the foundational skills found on the NextGen Bar Exam into every aspect of their curriculums. Finally, this article will conclude with a suggestion of on-going steps for both law schools and law students preparing to take the NextGen Bar Exam.

It is also worth noting, before diving into the true substance of this article, that this is not the first time the legal profession has seen a major shift in licensure requirements. In the early days of the United States, lawyers had no licensure requirements at all. Instead, they typically were trained in the profession through apprenticeships and set free to practice law without any overseeing body. With the industrial revolution came a revolution in legal education as well. Because more lawyers were needed, law schools began to crop up around

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4 Id.
the country to teach people how to practice law. As slightly more formal legal education developed, the need for an examination to determine who was competent to practice law arose. By 1860, only two states remained without bar examinations. However, these examinations were often oral and very informal processes. Most states still did not require graduation from a law school in order for a person to practice law, and only nine states required a budding lawyer to work as a legal apprentice for a defined period of time before admittance to the bar.

This historical model of admission to legal practice stands in stark contrast to the standards in the legal profession today. The legal profession has made a shift in licensing requirements before, and it is more than possible for law schools and law students to undergo such a shift again.

II. BACKGROUND OF THE NEXTGEN BAR EXAM

In January 2021, the National Conference of Bar Examiners (“NCBE”) Board of Trustees approved a new bar exam meant to ensure the continual testing of the knowledge, skills, and abilities required for competent entry-level legal practice. The decision came after a Testing Task Force (“the task force”) completed a three-year research study to identify the legal knowledge and skills new attorneys need in their first three years of practice. The task force also intended to determine if, when, and how the legal knowledge and skills should be tested on a bar examination.

Over the course of three years, the task force implemented three phases of research. During the first phase, the task force conducted sessions nationwide to listen as stakeholders from bar admission agencies, the legal academy, and the legal profession shared their opinions on the current bar exam and how it could be changed. The task force then moved on to the second phase, analyzing a survey completed by roughly 15,000 attorneys nationwide. The survey allowed the attorneys to discuss their work and the knowledge and skills necessary to
Finally, in the third phase, the task force assembled committees of bar admissions representatives, legal educators, and practitioners who evaluated the data collected in phases one and two through the lens of their professional experience and judgment and provided advice on what, when, and how content should be tested on the bar exam.

The prevailing views established by these committees included the following:
1. the bar exam should test fewer subjects and should involve a narrower and shallower test of those subjects;
2. assessing lawyering skills should be a greater emphasis on the bar exam;
3. the exam should remain affordable;
4. fairness and accessibility for all candidates must remain paramount; and
5. score portability through the Uniform Bar Exam should be continued.

The bar exam will continue to test foundational concepts and principles along with foundational skills using an exam that assesses skills holistically through a number of question types and formats. Similar to the current bar exam, the NextGen Bar Exam will be offered twice per year. The exam will be computer-based and administered at test centers or on examinees’ laptops at jurisdiction-managed sites. The exam will be scored using a comprehensive model that results in a single combined score. The exam will still be a single-event near the point of licensure.

The task force made recommendations in six categories: (1) structure and format; (2) scoring; (3) content; (4) timing of test administration; (5) mode and frequency of test administration; and (6) implementation.

In terms of structure and format, the task force recommended an integrated exam that combines testing of legal knowledge and skills. An integrated exam allows the examiners to present test takers with real-world scenarios reminiscent of the types of problems new attorneys encounter in
practice. While the current bar exam also tests real-world problems, it does so using stand-alone questions. The Next-Gen Bar Exam will test real-world problems using item sets, or “collection[s] of test questions based on a single scenario or stimulus such that the questions pertaining to that scenario are developed and presented as a unit.” The bar examiners may also present test takers with a variety of question formats in a single item set. These question formats may include selected-response, short-answer, and extended constructed-response items. The NextGen Bar Exam will be scored similarly to the current bar exam. Each test-taker will be given a single combined score that represents the test taker’s overall competency in the practice of law.

The task force then recommended the concepts the NextGen Bar Exam would test. The task force split the concepts into two categories, “foundational concepts and principles” and “foundational skills.” The foundational concepts and principles reflect subjects that test takers can expect to see on the current bar exam. These include: civil procedure; contract law (including Article 2 of the UCC); evidence; torts; business associations; constitutional law; criminal law and constitutional protections impacting criminal proceedings; and real property. The Foundational Skills category includes legal research; legal writing; issue spotting and analysis; investigation and evaluation; client counseling and advising; negotiation and dispute resolution; and client relationship and management.

The task force recognized that some of the foundational skills are performance skills and thus are difficult to assess. “To ensure fairness, those skills that can be objectively measured will be assessed using uniform text- or video-based scenarios that require candidates to construct a written response or select the correct response.” Additionally, the bar examiners intend to develop appropriate assessment methods that consider the accessibility needs of candidates with disabilities.

While some of the questions on the NextGen Bar Exam will require test-takers to already know the applicable legal concepts and principles and be able
to recall them without any assistance, other questions will be answered using a “closed universe of appropriate legal resources (e.g., statutes, cases, rules, regulations)” provided by the bar examiners.\footnote{Id.} According to the task force, “[t]he objective is to reduce the amount of legal knowledge candidates must learn for the exam, while emphasizing skills such as interpreting and applying law.”\footnote{Id.}

Implementing the NextGen Bar Exam is, and will continue to be, an ongoing process. Recently, the bar examiners confirmed that the NextGen Bar Exam will not be administered until 2026.\footnote{Implementing the Next Generation of the Bar Exam, 2021–2026, NAT’L CONF. OF BAR EXAM’RS: NEXTGEN BAR EXAM (Dec. 2022), https://nextgenbarexam ncbex.org/about/implementation-timeline/;} This means that most 1Ls beginning law school in Fall 2022 will still take the current bar exam, but the class entering in Fall 2023 will be the first to take the NextGen Bar Exam.

### III. Trying Current Curriculums Against the NextGen Bar Exam

One of the most important steps that law schools can undertake as they begin planning a response to the changing bar exam is to see where they already are in terms of concepts and skills taught. Although there is benefit in having a “willing and able” attitude toward revamping curriculums and altering course structures to adequately supply students with the conceptual knowledge and skills they need, it is important to remember that law schools are already teaching many of the concepts and skills the NextGen Bar Exam will expect students to know.

One of the best things schools can do is conduct a curriculum mapping exercise to see exactly which foundational skills are taught in which courses. However, before embarking on a curriculum mapping exercise of every class taught within their halls, law schools should first consider a few points. First, it is likely only necessary to examine the presence of the Foundational Skills in the law school curriculum. This is because there are relatively few changes between the Foundational Concepts and Principles on the NextGen Bar Exam and the topics tested on the current bar exam.\footnote{See Attachment 1, which includes comparison charts showing currently tested bar topics and topics proposed for testing on the NextGen Bar Exam. Attachment 1 is on file with Author.} While a more thorough investigation of the law school curriculum will certainly not hurt, time is of the essence in preparing students to take the NextGen Bar Exam. By focusing efforts on mapping the Foundational Skills, law schools can more efficiently begin to plan for adapting to the NextGen Bar Exam.

Second, examining the presence of Foundational Skills in every course in the law school curriculum is a lofty undertaking; it is also one that, eventually, becomes counterproductive because many courses in the curriculum are taken by
only a handful of students. The skills taught in these smaller courses are not reflective of the skills taught to most of the students who graduate from the law school. Thus, schools should focus on mapping the courses that all students are required to take before graduation. This will allow schools to see which Foundational Skills all students will be introduced to.

Finally, some courses naturally lend themselves to teaching a wider range of Foundational Skills than others. For example, Constitutional Law is a course in which the theory of the law is discussed almost constantly, but practical applications are often set aside. When Constitutional Law is compared to a course like Legal Analysis, Research, and Writing, the latter course clearly requires students to learn and utilize more lawyering skills. This does not devalue Constitutional Law, nor does it mean that courses based in legal theory cannot also teach lawyering skills. However, it does mean that when these courses are placed side-by-side, a reader could be misled into thinking that theoretical courses fail to teach students necessary information—this is a false inference. At the current time, theoretical courses are more concerned with Foundational Concepts and Principles than with Foundational Skills.

A. Foundational Skills Group 1: Issue Spotting and Analysis, Investigation and Evaluation

When deciding which Foundational Skills to test on the NextGen Bar Exam, the bar examiners identified the following seven key skills: legal research; legal writing; issue spotting and analysis; investigation and evaluation; client counseling and advising; negotiation and dispute resolution; and client relationship and management. The examiners then split these skills into groups. The first, Foundational Skills Group 1, is comprised of issue spotting and analysis and investigation and evaluation. When the NextGen Bar Exam is administered, examinees will be expected to display competency in the following seven subskills within this Group:

1. In a client matter, identify which Foundational Concepts and Principles are likely to affect the outcome of the matter.
2. In a client matter, identify which facts implicate which Foundational Concepts and Principles.
3. In a client matter, identify the applicable standards of review and/or burdens of proof that will apply to legal issues in the matter.
4. In a client matter, identify the strengths and weaknesses of the client’s position and the opposing parties’ positions based on the relevant legal rules and standards.
5. In a client matter that requires additional factual development, identify which facts need to be explored, and/or the best strategy

41 See Final Report, supra note 10.
for exploring those facts, in order to be able to evaluate the strengths and weaknesses of the client’s position and the opposing parties’ positions based on the relevant legal rules and standards.

6. In a client matter, identify gaps in information obtained, suggestions for improvement, and/or grounds for objection (if applicable) based on a transcript of another lawyer’s interview, deposition, or examination of a fact witness.

7. Assess the probable outcome of a claim, motion, discovery matter, or objection based on the relevant legal rules and standards.42

The following table is a useful tool for seeing exactly where these skills are taught in the law school curriculum. In order to complete the chart, curriculum mappers should pull syllabi from the classes all students must take. Then, in each column, mappers can place a mark to show that the relevant foundational skill is being taught in that class. For instance, in the example chart below, there is an “x” at the convergence of Appellate Advocacy and Skill 3, meaning that after completing Appellate Advocacy students should be able to “identify the applicable standards of review and/or burdens of proof that will apply to legal issues in the matter.”

<table>
<thead>
<tr>
<th>Foundational Skills Group 1: Issue Spotting and Analysis, Investigation and Evaluation</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
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<tr>
<td>Appellate Advocacy</td>
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<td>Civil Procedure: Jurisdiction</td>
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<td>Civil Procedure: Rules</td>
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<td>Constitutional Law I</td>
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<td>Contracts</td>
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<td>Criminal Law</td>
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<td>Introduction to Legal Research</td>
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<tr>
<td>Legal Analysis, Research, and Writing</td>
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<tr>
<td>Legislation and Regulation</td>
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| Professional Responsibility | | | |
| Property | | | |
| Torts | | | |

Mappers may also expand upon this chart by including details such as the exercises professors use to teach each skill or how competence in the skill is evaluated. This chart is meant to be a tool for mappers to use in evaluating their current law school curriculums and thus should be altered to match the informational needs of individual schools.

**B. Foundational Skills Group 2: Client Counseling and Advising, Negotiation and Dispute Resolution, Client Relationship and Management**

The bar examiners next identified a second core group of Foundational Skills involving client interactions. Like Group 1, Group 2 is also comprised of seven subtopics, including:

8. In a client matter, identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments to make, and/or how to respond to arguments, based on the relevant legal rules and standards, and consistent with the client’s objectives.

9. Given a transcript of another lawyer’s interaction with a client, identify gaps in information obtained and/or suggestions for improving the lawyer’s effectiveness.

10. In a client matter, list 2-3 points that favor your client’s position and 2-3 points that favor the opposing party’s position.

11. In a client matter, list 2-3 benefits and 2-3 drawbacks of two approaches to settling disputed issues, consistent with the client’s objectives.

12. In a client matter, list 2-3 resolutions in which both sides of the dispute could potentially be satisfied.

13. In a client matter in which your client has 3-5 objectives, but where your experience suggests that only one of them is attainable, identify the one objective that you would recommend as the top priority.

14. In a client matter, identify or describe your client’s BATNA (Best Alternative to a Negotiated Agreement) and a realistic “best case” outcome you would advise seeking through negotiation and/or “worst case” outcome you would advise
accepting, consistent with the BATNA and the client’s objectives.  

Mappers should again use a version of the chart above to examine where the Group 2 skills are already being taught in their curriculums.

C. Legal Research and Legal Writing and Drafting

Although the bar examiners combined some of the skills into groups, as shown above, they intentionally left two skills—Legal Research and Legal Writing and Drafting—in their own categories. The Legal Research category includes only two subskills:

15. In a client matter that requires interpretation of a statute, rule, or constitutional provision, identify which words or elements in a provided excerpt seem legally significant and/or potentially ambiguous.
16. Given a collection of legal resources and excerpts from a client file, identify the most important legal and factual issues to be resolved and the relative weight that will likely be given to different resources/file materials by the court or other tribunal.

The final essential skill identified by the bar examiners is Legal Writing and Drafting. This skillset, like the Legal Research skillset, is placed in its own category. However, like the Group 1 and Group 2 skillsets, it encapsulates seven subskills, including:

17. Draft the specified sections of a complaint or an answer to a complaint.
18. Draft the specified sections of an affidavit.
19. Draft or edit selected specified provisions of a contract.
20. Draft an email to a client, explaining the legal implications of a course of action, updating the client on the status of the client’s matter, and/or providing advice on the next steps to be taken in the matter.
21. Draft the analysis section of an objective memorandum.
22. Draft the specified sections of a motion or brief.
23. Draft the specific sections of a mediation brief.

Mappers should use the chart a final time to determine where these skills are present in the current curriculum.

43 Id.
44 See Foundational Skills Chart on 108–09.
45 Id.
After completing this curriculum mapping exercise, schools will have a better idea of where their curriculum stands concerning the NextGen Bar Exam. In addition, schools will likely find that they are already teaching many of the Foundational Skills that will be tested on the NextGen Bar Exam. The natural inclination may be to immediately attempt to fill the gaps to ensure they cover any skills missing in the curriculum. Yes, this is necessary, but schools should take another step before making alterations.

IV. APPROACHES TO BAR EXAM PREPARATION

Before forming action plans for adapting to the NextGen Bar Exam, schools should take a moment to consider the foundation of their pedagogy. Law schools often take one of three approaches when preparing their students for the bar exam. These three approaches—the laissez-faire approach, the teaching-to-the-test approach, and the hybrid approach—result in students leaving law school with varying skill sets. Thus, the approach a school chooses to take when it comes to preparing its students for the bar will significantly influence how the school can, should, and will react to the introduction of the NextGen Bar Exam.

Schools that utilize the laissez-faire approach to bar preparation place little emphasis on bar preparation. Instead, these schools focus on teaching students to think like lawyers through a limited set of first-year required courses. After those required courses are met, students are free to pursue the topics that interest them; they are not required to take further courses tested on the bar exam. These schools, and the students that graduate from them, rely heavily on bar preparation companies to prepare them for the bar exam.

Law schools employing the laissez-faire approach to bar preparation may not require large curriculum changes as the NextGen Bar Exam approaches. Because the NextGen Bar Exam is still intended to test the foundational concepts and skills needed for minimally competent legal practice, schools that already focus most of their efforts on teaching students to think and make decisions like lawyers may be able to continue teaching as they always have. They, and their students, will still rely heavily on bar preparation companies—perhaps even more so in the coming years as the NextGen Bar Exam is implemented.

In contrast, schools that utilize the teaching-to-the-test approach require their students to take several courses geared toward areas tested on the bar exam. At these schools, students rarely finish their required courses after their

48 Id. (manuscript at 24).
49 Id. (manuscript at 25).
50 Id. (manuscript at 24).
51 Id. (manuscript at 25).
first year. Instead, they must take classes throughout their 2L and 3L years that address most of the topics tested on the bar exam.

Teaching-to-the-test schools will likely require more overhaul as they approach the NextGen Bar Exam. These schools will want to make sure that the required courses still align with those tested on the exam. Additionally, as the NextGen Bar Exam places such focus on lawyering skills, schools that teach-to-the-test will likely need to offer courses that teach the Foundational Skills directly, such as Interviewing, Negotiation, and Counseling courses, or Client Management courses.

In between the laissez-faire approach and the teaching-to-the-test approach lies the hybrid approach. Schools utilizing the hybrid approach do not attempt to fully prepare their students for the bar exam, but they do give their students some exposure to topics tested on the bar exam in required upper-level courses. These schools still lean heavily on bar preparation companies to prepare their students for the bar exam, but they also attempt to complete some preparation through the required curriculum.

Most schools will likely find themselves aligning with the hybrid approach. As such, this paper will proceed by addressing solutions for those schools. In a school utilizing the hybrid approach, students are still tasked with completing a large portion of bar preparation using a bar preparation company. However, students are also required to take many courses that teach the doctrine and skills tested on the bar exam. Although the required first-year courses will likely be the same for all students, each student’s second and third-year experience may vary widely, making it difficult to generalize about the skillset each student will have upon graduation.

Some students may opt for transactional paths, while others may want to be litigators. Still others may already have their sights set on a career in academia and will choose to forego classes in the traditional lawyering areas entirely. Given this vast amount of variation, schools must begin considering how to prepare all students, regardless of their academic path, for the NextGen Bar Exam.

V. Changing Curriculums in Preparation for the NextGen Bar Exam

There are a few options available to law schools as the NextGen Bar Exam approaches. Different law schools will encounter different pros and cons...
when considering how to prepare their students for the NextGen Bar Exam. This article proposes that the best option available to law schools with hybrid-approach curriculums is to focus on including the Foundational Skills in assessment across the curriculum.

A. Assessment-Focused Revamp

An assessment-focused revamp involves all professors altering their assessment practices to make sure that they are adequately examining their students’ abilities to perform Foundational Skills. It is important to emphasize that alterations in assessment cannot be limited to only bar-tested courses. Instead, students must be required to engage with the Foundational Skills in every course so that, by the time they sit for the bar exam, they are already accustomed to using those skills in their work. Engaging with and being assessed in Foundational Skills in every course also ensures that all students are exposed to the Foundational Skills regardless of their areas of emphasis.

Altering assessment practices to incorporate the Foundational Skills may require some creativity. For example, a criminal law professor could write an exam that involves a client charged with murder. The exam could then require the student to counsel the client, explaining the relevant law and the likely outcome if the client chooses to go to trial considering the facts provided. An exam like this would require the student to demonstrate both an understanding of the law and skills in client counseling. This is an easy way to structure exams so that students are required to utilize Foundational Skills while showing their legal knowledge.

This approach also requires coordination and cooperation among the faculty. If all faculty are assessing the same few skills, then naturally, some skills will be left unassessed. Therefore, the faculty must work together to ensure that all skills are assessed in some way across the required curriculum and that the assessment of skills is evenly emphasized across the elective curriculum as well.

There are a few cons to this approach. First, presumably, professors are already utilizing the assessment methods they believe to be best suited for testing their students’ understanding of the subjects. Therefore, asking professors to alter their assessment practices may receive pushback, especially from professors who believe that teaching students how to think like lawyers is more important than preparing them for the bar exam.

Second, although it may sound simple to re-write exams so that Foundational Skills are being tested, coordinating those rewrites to ensure that all Foundational Skills are being tested is another matter. Certain subjects will naturally lend themselves to testing certain skills. For instance, it makes sense for students in Civil Procedure to be tested on drafting a complaint and answer to a complaint. However, some subjects will not lend themselves as easily to an assessment of Foundational Skills. This means that some professors will need to be creative with how they assess their students. It could also mean that some professors may need to consider turning away from a single exam at the end of
the semester and consider other assessment options. While this is not necessarily a negative, it does require quite a bit of change in a short time span.

Finally, a revamp of assessment practices will have a downside for students as well. It is a tradition in law school for students to ask those in the classes above them for advice as exam season rolls around. In the first few years of an assessment revamp, this option will be taken from younger students, as their older peers will not be able to share stories of their experiences in a helpful way. This will likely leave younger students, who are already unimaginably stressed as they face their first law school exams, feeling like they are completely in the dark.

The cons that law schools will face as they consider revamping their assessment practices to prepare for the NextGen Bar Exam may, on some level, be necessary evils. There are always ways to mitigate the cons. For instance, administrators and academic support teams can offer to assist professors with the development of new assessment practices. Law schools can also facilitate discussions among the faculty to ensure that Foundational Skills are being assessed across the required curriculum. Additionally, as students and professors both adjust to the new assessment practices, law schools can disseminate information and moderate conversations between professors and students to fill in student-to-student information left by an assessment revamp.

There are also many pros to an assessment revamp. First, by altering assessment practices throughout the faculty and curriculum to ensure that all Foundational Skills are assessed within the required curriculum, law schools will be able to say that every student at their institution is exposed to all the skills necessary to achieve a passing score on the bar exam. This is a major selling point for any law school, and it is one that only benefits students. Additionally, by the time they graduate, students will have had many opportunities to answer exam questions similar to those they may encounter on the bar exam, meaning students can enter their seasons of bar preparation feeling more prepared. Finally, because the bar exam is meant to make certain that new attorneys entering the legal profession are minimally competent to practice law, assessing students in a similar fashion throughout their law school careers provides further evidence that they are prepared to practice.

As mentioned above, a promise that students will be asked to demonstrate all Foundational Skills tested on the bar exam within their required law school curriculums is a massive selling point for any law school. It is the job of law schools to teach students how to be lawyers, however, it cannot be denied that students expect their schools to prepare them for the bar exam—after all, it does not matter how many lawyering skills a student has; if they cannot pass the bar, they will never be allowed to put those skills to use as a lawyer.

An additional but related pro is that students will graduate having had the opportunity to use the Foundational Skills in a testing environment. As students prepare for the bar exam, this will be an invaluable experience. If practice makes perfect, allowing students to practice Foundational Skills through
their law school assessments is one of the best ways to help them prepare for the bar exam.

Finally, assessing students in a way similar to how the NextGen Bar Exam will assess them only provides further assurance that students are competent to practice law. After three years of completing assessments that measure their ability to use Foundational Skills in real world scenarios, students will be able to move into the actual practice of law with confidence that they are ready for successful legal careers.

There is another aspect of placing an emphasis on Foundational Skills in an assessment that is both a pro and a con depending on how it is viewed. Before students can be assessed in ways that utilize Foundational Skills, students will need to be introduced to those skills. This means that Foundational Skills must be incorporated into course syllabi and taught to students throughout the duration of a course. The main downside to this is that course syllabi are often aspirational. Professors already struggle to cover all the material they set out to cover. Adding another topic to the course requirements only puts more pressure on professors and may be met with resistance. However, increasing student exposure to Foundational Skills and allowing them opportunities to practice Foundational Skills in classroom settings will only increase student mastery of those skills. While this will undoubtedly help students prepare to take the NextGen Bar Exam, it will also help ensure that students graduate law school equipped with the skills they need for the practice of law.

B. Other Options

There are, of course, other options that law schools may look to when considering how to prepare their students for the NextGen Bar Exam. For instance, the West Virginia University College of Law could choose to incorporate the Foundational Skills in courses throughout the curriculum without a focus on assessment. However, professors already struggle to cover all the material in their syllabi; adding the Foundational Skills to the proposed course agenda is no guarantee that the Foundational Skills will actually be taught. Additionally, if students know they will not be tested on the Foundational Skills, they are less likely to focus on learning them.

Another option law schools may pursue is to create a course meant solely to teach Foundational Skills. For this to accomplish the goal of exposing students to all of the tested Foundational Skills, the course will need to be required for all students. However, this requires available faculty to teach the course. At a small law school, arranging for someone to teach a regularly offered required course would be difficult. Further, only teaching the Foundational Skills in a single, targeted course will not allow for students to master the skills in the same way that repeated instruction and assessment throughout their time in law school will.

Given these points, an assessment-focused approach provides law schools the best opportunity to adequately prepare their students for the NextGen Bar Exam. An assessment-focused approach ensures that students are exposed to
Foundational Skills repeatedly throughout all of their classes. By testing students via Foundational Skills concepts, law schools can be sure that students have chances to practice applying their legal knowledge along with Foundational Skills so that when they sit for the NextGen Bar Exam, they are as comfortable as they can be with their own experience.

C. Faculty Preparation

As a final note, one of the most important things law schools can do in preparing for the changes to the NextGen Bar Exam is to prepare their faculty. As talk of the NextGen Bar Exam continues to swirl, law school faculty will naturally become more anxious and will begin having questions about how the new exam will impact their courses. A great way to counter this is to invite the faculty to a presentation so they can be as fully informed as possible. At the end of this presentation, the faculty should leave knowing (1) how their courses currently compare to the requirements of the NextGen Bar Exam; (2) what they can expect in terms of changes to the curriculum; and (3) how they will be supported during the period of transition.

Providing the faculty with the results of the curriculum mapping exercise will also provide them with a great deal of peace of mind. This is because they are likely to see that they are already doing well by their students; they will see that they are teaching many of the Foundational Skills that the NextGen Bar Exam will test; and that they will not need to drastically change their day-to-day teaching. By doing this, faculty will be able to see how their current courses compare to the requirements of the NextGen Bar Exam so they may begin to formulate ideas of how to integrate additional skills into their syllabi.

Providing the faculty with a list of changes they can expect to see in the curriculum will allow them to anticipate the impacts those changes will have and to weigh in with their own ideas. Change is always daunting, but providing the faculty with the ability to know exactly how those changes will occur will allow for a smoother transition, which will only benefit students.

Finally, providing the faculty with the support they need during the transition is essential. While the NextGen Bar Exam will pose obstacles for students taking the exam and administrators attempting to ensure those students are prepared, the faculty will also suffer tolls in altering their teaching and assessment practices. Letting them know they are supported from the start will make the transition easier for all involved parties.

VI. CONCLUSION

The upcoming administration of the NextGen Bar Exam poses several obstacles to law students, law professors, and law school administrators. In just over three short years, all parties will need to be sure that students are comfortable applying a range of Foundational Skills on the most important exam they will likely ever take. Although the transition into preparing students for the
NextGen Bar Exam will be a quick one, it does not have to be difficult. Law school administrators and faculty should be having conversations now about how they plan to adjust to the new exam. Law schools that take a hybrid approach to bar preparation should highly consider integrating Foundational Skills into their assessment practices across the curriculum to ensure that students are prepared to use these skills when they take the bar. If schools take action and make these changes quickly, then they can rest easy that they will have served their students well in the face of the NextGen Bar Exam.