

**Minnesota Law Review Symposium Keynote
November 7, 2022***

**Leaving Langdell Behind: Reimagining
Legal Education for a New Era**

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Good morning, everyone. Dean Jenkins, even I'm not old enough to have intersected paths with Christopher Columbus Langdell. . . . Thank you so much for that nice introduction, Josh; and to Leah Reiss and to Dean Jenkins: it's really an honor to be here. And I thank all of you for your participation, and I'm looking forward to the panels later today.

As I prepared my remarks for this Symposium, I had some help from Associate Professor Jon Lee, who was recently at the University of Minnesota and is now at the University of Oklahoma. And Jon as well is moderating a panel on the program later today, and Jon is working on the next gen bar exam. So a shout out and thank you to Jon and really to everyone here at the University of Minnesota Law School. You've shown so much hospitality. It's been really nice.

It's an honor to be here in Walter F. Mondale Hall. The first time I voted was when Vice President Mondale was on the ticket with President Jimmy Carter in 1980. Spoiler alert: they lost. But I was really proud to cast my vote for this pair of progressive leaders, and one of whom hailed from Minnesota.

And also one of my kids went to school here. He graduated in 2014. So I actually haven't been on this campus in eight years, but it brought back some nice memories. And, of course, a lot has changed over the past eight years, as the prior speakers have alluded to; but it's good to be back in Minnesota.

* To watch a full video of the Keynote Address, visit *Minn. L. Rev.*, *1 Opening Remarks and Keynote Address, 107 MLR Symposium*, YOUTUBE (Oct. 7, 2022), <https://youtu.be/nLN5QsR5rqs>.

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But most importantly, I'm honored and humbled to be with all of you and to be part of this conversation about how new lawyers are prepared to serve and how we all have a role in preparing them for service. The focus of this Symposium, *Leaving Langdell Behind: Reimagining Legal Education [For a New Era]*, is both exciting and timely.

At the same time those of you in legal education more at the beginning of the journey—rather than at the end like I'm at—are reimagining your 150 plus year casebook method of instruction, so too are those involved in the lawyer admissions process reimagining how lawyers enter the profession. Of course, already there have been a number of reforms in both lawyer admissions and legal education over the decades, and themes have emerged. And I think . . . they're even more relevant today than they were in the past, but it's interesting to see how some of the same themes keep emerging and re-emerging.

Now it's an altogether different Symposium to talk about the challenges that our democracy faces, but they're on our mind all the time: erosion of respect for the rule of law, disregard for the truth, and increasing polarization in the debate over what should be our shared American values. I was reading Professor Heather Cox Richardson's daily social media post¹ on September 19th about Attorney General Merrick Garland administering the oath of allegiance to 200 immigrants at Ellis Island on the anniversary of the signing of the Constitution—to our country's newest citizens. He spoke of the rule of law as the foundation of our system of government, but that the rule of law is not assured. It is fragile. It demands constant effort and vigilance.

Certainly, as lawyers and law students we bear even greater responsibility to put forth that constant effort and vigilance to ensure that the rule of law remains the foundation of our democratic society amid foundational shifts in constitutional principles. Leah alluded to this, I think, in her remarks. Just last week, Slate reporter Mark Joseph Stern noted that the decisions coming out of the U.S Supreme Court last term, and that will be forthcoming in the current term, . . . will have profound impacts on how faculty teach the Constitution going forward.² The new

1. Heather Cox Richardson, *September 19, 2022*, LETTERS FROM AN AM. (Sept. 20, 2022), <https://heathercoxrichardson.substack.com/p/september-19-2022> [https://perma.cc/TC9C-4LJA].

2. Mark Joseph Stern, *The Supreme Court Is Blowing Up Law School, Too*, SLATE (Oct. 2, 2022), <https://slate.com/news-and-politics/2022/10/supreme-court-scotus-decisions-law-school-professors.html> [https://perma.cc/XX2N-BKLF].

term will see important decisions on affirmative action, the Voting Rights Act, the interface between religious freedom and LGBTQ rights, and the independent state legislature theory, to name a few. As lawyers and law students, the legal environment in which we practice, teach, learn, and study isn't what it was just even two years ago, where tenets so fundamental to the common law—[for example,] *stare decisis*—[are] being re-examined and redefined. I have to wonder what Christopher Columbus Langdell himself would have thought about today's unprecedented treatment of precedent. It's become clear in 2022 and beyond that we need to be conscious of how we tend to the health and resiliency of the rule of law in this country.

Now that's quite a list of challenges to lay in front of participants in a symposium focused on legal education, not on the state of our democracy; but if lawyers don't identify the systemic issues we face and seek to solve them, who will? If lawyers don't ask how [we can] use the law as a tool to ensure freedom, equality of opportunity, and justice, who will? There is no profession better suited to take on the task of ensuring that our democracy thrives and that all who live in our society have the opportunity to thrive, and this profession—our profession—has its beginnings—its roots—in legal education, law students, and law faculty.

So the time seems right to ask ourselves, legal educators and bar examiners, who have different but related roles in the law student to lawyer continuum: how can we best work both independently and in collaboration to ensure that tomorrow's lawyers are ready to take on the considerable challenges that we face as a society?

As Josh noted, I'm here today as the president of the National Conference of Bar Examiners (NCBE).³ The NCBE is a non-profit organization that was formed over ninety years ago to bring together now all fifty-six jurisdictions to engage in discussion, education, and collaboration around a mission set by each of the fifty-six high courts to ensure that attorneys licensed in the U.S. are prepared to serve as officers of the court. Now, within each jurisdiction the high court has established a board of bar examiners or a board of law examiners, and that's the entity responsible to the court and to the people of that jurisdiction to assess two key attributes required of every attorney: (1) the

3. Information about the NCBE is available online at *About NCBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/about> [<https://perma.cc/8B38-UMXE>].

requisite character and fitness to serve clients, and (2) the legal competency required to do so.

Today, all fifty-six jurisdictions use a bar exam as a tool in their assessment of legal competency. Almost all [fifty-six] also require graduation from a law school, as you're no doubt aware, though there are some notable exceptions. Diploma privilege exists alongside the bar exam in my home state of Wisconsin.⁴ In New Hampshire, the Daniel Webster Honors Scholar program enables a small number of University of New Hampshire graduates to practice without taking the New Hampshire bar exam;⁵ and in California, Vermont, Virginia, and Washington State, it's possible to sit for the bar exam without graduating from any law school—although the number who successfully complete that path is quite small.⁶

I mentioned these two requirements—a solid, proven, and well-regulated legal education; and a solid, proven, well-regulated assessment—to highlight something that I think isn't discussed enough. But I believe it is important that law schools and boards of bar examiners exist—I would argue, by design—to perform . . . complementary but distinct functions in the education and licensure of new lawyers. In a 1985 decision out of New Mexico, *Matter of Adams*,⁷ that state supreme court found that the

4. See *Diploma Privilege*, UNIV. OF WIS.-MADISON L. SCH., https://www.law.wisc.edu/current/diploma_privilege/#:~:text=Diploma%20Privilege%20allows%20our%20graduates,country%20that%20offers%20diploma%20privilege. [https://perma.cc/Q49U-CLAK]; *Diploma Privilege*, MARQ. UNIV. L. SCH., <https://law.marquette.edu/prospective-students/diploma-privilege> [https://perma.cc/K9CW-5VFH]; *Admission to the Practice of Law in Wisconsin*, WIS. CT. SYS., <https://www.wicourts.gov/services/attorney/bar.htm> [https://perma.cc/K6Z9-CSVD].

5. See *Daniel Webster Scholar Honors Program*, UNIV. OF N.H. SCH. OF L., <https://law.unh.edu/academics/daniel-webster-scholar-honors-program> [https://perma.cc/RU2V-ANMF].

6. See, e.g., Indeed Editorial Team, *Can You Take the Bar Exam Without Going to Law School?*, INDEED (Mar. 10, 2023), <https://www.indeed.com/career-advice/career-development/can-you-take-the-bar-exam-without-going-to-law-school#:~:text=Before%20you%20can%20practice%20law,states%20that%20allow%20this%20process> [https://perma.cc/PE3Q-YBPR].

7. *In re Adams*, 700 P.2d 194, 196 (N.M. 1985) (“It has been suggested that the bar examination alone should be sufficient to test petitioner’s ability to practice law in New Mexico. Today’s bar examination, however, is streamlined and objectified in recognition of the quality of the legal education provided by accredited law schools. It tests minimal skills and is designed to be used in conjunction with the educational requirements in determining an applicant’s qualifications. The educational requirements, therefore, are an integral part of this two-pronged evaluation process.”) (internal citations omitted).

assessment of legal competency could not rest on just legal education alone or on just a bar exam alone. In a unanimous opinion authored by then Senior Justice Dan Sosa, Jr., (who, parenthetically, before he became a member of the New Mexico High Court founded MALDEF, the Mexican-American Legal Defense and Education Fund in 1965,)⁸ the court held that both a rigorous legal education and assessment through a bar exam were necessary. The court referred to them both as integral parts of a two-pronged evaluation process—this evaluation process. Completion of an approved course of education and success on a licensure's exam is common across most professions, including nurses, dentists, physicians, [certified public accountants], engineers, pilots, and so on.

Now, the role of NCBE is to serve the high courts in fulfilling their obligation to admit lawyers. Our NCBE team—which includes lawyer-editors on our staff, along with a large network of volunteer lawyers, judges, and faculty members from across the country—develop the bar exams that most jurisdictions use as part of their admissions process.⁹ NCBE is at its core both a service organization and a testing organization. Yes, the NCBE develops the bar exam; but at the heart of that work is the shared goal of the bar admissions community: to promote fairness, integrity, and best practices . . . in admission to the legal profession, for the benefit and protection of the public. And I have to believe that these goals are shared by the legal educators here, as they work to educate future lawyers judges and leaders who pass through these classrooms.

So a theme of this Symposium is reimagining or evolving the way we do things, both in legal education and in bar admissions; and, as I believe Justice Sosa would have agreed, the two exist in a state of complement to each other. This is borne out by the

8. Steve Ramirez, *Former State Supreme Court Justice Dan Sosa Jr. Dies at 92*, LAS CRUCES SUN NEWS (Sept. 6, 2016), <https://www.lcsun-news.com/story/news/2016/09/06/former-state-supreme-court-justice-dan-sosa-jr-dies-92/89937500> [https://perma.cc/GL62-TYN7].

9. See generally Timothy Davis, *How Are Questions Written for NCBE's Exams? Part One: Two Multiple-Choice Question Drafters Share the Process*, BAR EXAM'R, Fall 2019, at 25, 25–29, <https://thebarexaminer.ncbex.org/article/fall-2019/how-are-questions-written-for-ncbes-exams-part-one> [https://perma.cc/34D4-JBAQ]; Sheldon F. Kurtz & Alexander W. Scherr, *How Are Questions Written for NCBE's Exams? Part Two: Two Written-Component Question Drafters Share the Process*, BAR EXAM'R, Winter 2019–2020, at 22, 22–28, <https://thebarexaminer.ncbex.org/article/winter-2019-2020/how-are-questions-written-for-ncbes-exams-part-two> [https://perma.cc/DZA8-VY44].

work . . . that I'll discuss a little bit later in my speech and also the efforts [which] began in 2018 to evolve the bar exam to ensure that it will continue to have fidelity to entry-level practice. Both efforts—legal education reform and bar exam evolution—seek to reflect changes in the legal profession, and ultimately each will serve to strengthen our profession as well.

So . . . as the speakers alluded to, there are significant changes coming for the bar exam; and so while that's the case, this isn't the first time that the bar exam has changed through the years. The multi-state bar exam (MBE) . . . was introduced in 1972, followed by the multi-state essay exam (MEE) in 1988 and the multi-state performance test (MPT) in 1997.¹⁰ In 2007, MBE topics were added to the exam.¹¹ In 2015, civil procedure was added to the MBE, and negotiable instruments was eliminated from the MEE.¹² And along the way we have amended subject matter outlines to better reflect the law or to simplify or clarify what is being covered on the exam, and we've conducted periodic practice analyses—which I'll talk [about] a little bit more as I talk about NextGen.¹³ We've done those in 1982, [1992], [2012], and 2019.¹⁴

But exam content isn't the only thing that has changed throughout the years. In response to an increasingly mobile, cross-jurisdiction profession, the NCBE led efforts to envision and implement the Uniform Bar Exam, which is in effect here in Minnesota.¹⁵ The Uniform Bar Exam (UBE) has now been adopted in forty-one jurisdictions, and . . . it allows for score portability for newly licensed lawyers.¹⁶ That is a feature of the UBE that was . . . virtually non-existent eleven years ago, before it

10. *NCBE Testing Milestones*, BAR EXAM'R, Summer/Fall 2021, at 24, 24–26, <https://thebarexaminer.ncbex.org/article/summer-fall-2021/ncbe-testing-milestones> [<https://perma.cc/AAP3-LVC5>]; *NCBE Testing Milestones*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/about/ncbe-testing-milestones> [<https://perma.cc/D9TN-G979>].

11. *Id.*

12. *Id.*

13. *See infra* notes 65–69 and accompanying text.

14. BAR EXAM'R, *supra* note 10 (referring to the 1982 and 1992 practice analyses as “content validity stud[ies],” and the 2012 practice analysis as a “job analysis study”).

15. *See Uniform Bar Exam*, MINN. ST. BD. OF L. EXAM'RS, <https://www.ble.mn.gov/bar-exam/uniform-bar-exam> [<https://perma.cc/2WA8-ZZ6Q>].

16. *See List of UBE Jurisdictions*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/ube/list-ube-jurisdictions> [<https://perma.cc/UT47-JSJJ>].

started. To date—not including a lot of people from the July exam because results are still coming in—over 215,000 people have taken a Uniform Bar Exam, and over 41,000 people have transferred scores to a second or third jurisdiction.¹⁷ So that’s over 41,000 bar exams that didn’t have to be taken.

As with past innovations in the bar exam, we’re developing the NextGen Bar Exam hand-in-hand with legal educators, the courts, and the larger legal community. This multi-year project began in 2018 under the leadership of the Honorable Rebecca White Berch.¹⁸ She was the retired Chief Justice of the Arizona Supreme Court, and—maybe of particular interest to the people in this room—Chief Justice Berch was the former director of the legal writing program at Arizona State University College of Law for several years in the 1980s and the 1990s.¹⁹ In 2018, Chief Justice Berch was the chair of NCBE’s Board of Trustees—that’s the governing body that guides the work of NCBE.²⁰ Our board is made up of a diverse group of supreme court justices, federal and state court judges, attorneys, bar examiners, bar admissions administrators, and legal educators.²¹

Set to debut in 2026, the NextGen Bar Exam will feature testing of a broader range of foundational lawyering skills, utilizing a focused set of fundamental legal concepts and principles.²² This new exam is designed to balance litigation and transactional skills and settings, and will reflect many of the key

17. See *2022 Year in Review*, NAT’L CONF. OF BAR EXAM’RS 13 (2022), <https://www.ncbex.org/assets/Uploads/NCBE-2022-Year-In-Review-Final.pdf> [<https://perma.cc/Q2E2-59XY>] (stating that 233,827 Universal Bar Exam (UBE) scores had been earned and 44,713 UBE scores had been transferred to another jurisdiction as of January 1, 2023).

18. See Hon. Rebecca White Berch, *Letter from the Chair*, BAR EXAM’R, Spring 2018, at 1, 1–2, <https://thebarexaminer.ncbex.org/article/spring2018/letter-from-the-chair-4> [<https://perma.cc/AWQ6-CHN7>] (announcing the start of a “three-year future-oriented study of the bar exam”); see also Judith A. Gunder- sen, *President’s Page*, BAR EXAM’R, Spring 2018, at 3, 3–6, <https://thebarexaminer.ncbex.org/article/spring-2018/presidents-page-4> [<https://perma.cc/5ND7-JZ9Q>] (detailing plan for aforementioned study).

19. See *Rebecca White Berch*, ARIZ. CTS. OF APPEALS DIV. ONE, <https://www.azcourts.gov/coa1/Former-Judges/REBECCA-WHITE-BERCH> [<https://perma.cc/ZG8Y-KWZL>].

20. See *Id.*

21. See *2022 Year in Review*, *supra* note 17, at 24 (listing the members of the NCBE’s Board of Trustees).

22. See *About the NextGen Bar Exam*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org> [<https://perma.cc/ERZ2-4C2Y>].

changes that law schools are making today, building on the successes of clinical legal education programs, alternative dispute resolution programs, and legal writing and analysis programs.²³ And while legal education does not drive the content of the bar exam, and the bar exam doesn't likely drive legal education curriculum, both have identified a shared set of foundational skills that are critical to the competent and ethical practice of law.

The importance of lawyering skills has been a theme of legal education study and reform for decades, made even more essential today as large law firms have cut back on their own training programs. Many new attorneys start out and practice in smaller firms with government or as solo practitioners. In his website, *Legal Evolution*, University of Indiana Professor Bill Henderson recently wrote about the impact that remote and hybrid working arrangements are having on the number of opportunities for new lawyers to have in-office interactions collaborations and learning experiences²⁴ The bottom line is we can no longer assume that the first few years of a new attorney's practice will involve the amount of professional mentorship and support that once existed, that probably many of us enjoyed. And . . . our associations and law schools have sought to fill that gap, but their programs can go only so far.

Of course, law schools have long focused on teaching lawyering skills and also on fostering professional identity in students; and recently the ABA section on legal education and admissions to the bar revised Accreditation Standard 303(b) to require schools to provide substantial opportunities to students for the development of their professional identity as lawyers.²⁵ In their new book on professional identity formation for law students, . . .

23. See generally *Final Report of the Testing Task Force*, NAT'L CONF. OF BAR EXAM'RS (Apr. 2021), <https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf> [<https://perma.cc/L93F-PFLF>] (describing the Task Force's process for identifying reforms to the bar exam and resulting recommendations).

24. Tom Sharbaugh, *Will Remote Work Adversely Affect the Training, Productivity, and Retention of Lawyers?*, LEGAL EVOLUTION (July 17, 2022), <https://www.legalevolution.org/2022/07/will-remote-work-adversely-affect-the-training-productivity-and-retention-of-lawyers-317> [<https://perma.cc/8Q8H-HSCE>].

25. See Neil W. Hamilton & Louis D. Bilonis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer's Professional Identity, Part 1: Understanding the New Requirements*, NAT'L ASS'N OF L. PLACEMENT (May 2022), <https://www.nalp.org/revised-aba-standards-part-1> [<https://perma.cc/PH3P-E2AY>].

Professor Neil Hamilton, from St. Thomas's Holloran Center, and Dean Emeritus Louis Bilionis, of Cincinnati Law, stressed that professional identity formation starts in law school and continues as the law student becomes the lawyer.²⁶ Professional identity, they say, is that a student understands, internalizes, and demonstrates a commitment to serving clients, the profession, and the rule of law—as well as a commitment to continuous professional development toward excellence in the competencies needed to serve others in the profession's work.²⁷ So while state supreme courts and bar examiners and admissions boards have different roles from the legal educators in attendance here today, we all share this professional identity and commitment to the rule of law and striving toward excellence in all the competencies needed to serve, and we all know that lawyering skills . . . matter to competent service.

As I prepared for this Symposium, I ran across a passage published in the *University of Pennsylvania Law Review*, and here's what it said: "Today's law students are, on the whole, brighter, more outspoken, and more impatient with social injustice and institutional inertia than their predecessors."²⁸ That's . . . true in a nutshell isn't it? When do you think that passage was written? This year? Last year? 2020? Not even close. It was written in 1971. Fifty-one years later, it's still true.

I think that law students are always likely to be impatient with injustice and bright; and I think that's why they go to law school in the first place; and I think it's lucky for us that that's the case; and I hope as lawyers we share that impatience.

Back when that *Penn Law Review* Article was written, some of the cutting edge proposals for legal education reform included clinical work skills training.²⁹ Beyond merely thinking like a lawyer or asking simplistic questions about the arguments for and against each party, the author Professor Robert Gorman went on to write about dispute resolution by negotiation and mediation, document drafting, and information gathering; he also

26. *Id.*

27. *Id.*

28. Robert A. Gorman, *Proposals for Reform of Legal Education*, 119 U. PA. L. REV. 845, 845 (1971).

29. See, e.g., Robert S. Haydock, *Clinical Legal Education: The History and Development of a Law Clinic*, 9 WM. MITCHELL L. REV. 101, 106–07 (1983) (describing how the William Mitchell Law School created its first clinics in the 1972–1973 school year).

mentioned interdisciplinary study and bringing in other disciplines such as data analysis, economics, and public policy.³⁰ Some of these themes regarding the importance of teaching and learning lawyering skills also came through loud and clear in the publication of the seminal *MacCrate Report* in 1992, also published by the [American Bar Association (ABA)] Section on Legal Education and Admissions to the Bar.³¹ A central message of that report was that legal educators, practicing lawyers, and members of the judiciary together are engaged in a common enterprise: the education and professional development of a great profession.³² “At the heart of the common enterprise is the development of the lawyering skills and professional values essential to a competent and responsible profession along a continuum that starts before law school, reaches its most formative and intensive stage during . . . law school . . . , and continues throughout a lawyer’s professional career.”³³ The *MacCrate Report* had a large influence on legal education,³⁴ and . . . it underscored the importance of teaching foundational skills.³⁵

I will tell you that the report had a profound impact on the bar exam. Prior to the *MacCrate* study, NCBE had co-sponsored experiments with the California Committee of Bar Examiners,

30. Gorman, *supra* note 28, at 847–50.

31. AM. BAR ASS’N, EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT].

32. *Id.* at 3 (“Legal educators and practicing lawyers should stop viewing themselves as separated by a ‘gap’ and recognize that they are engaged in a common enterprise—the education and professional development of the members of a great profession.”).

33. Robert MacCrate, *The Shared Responsibility for a Profession*, 80 MARQ. L. REV. 745, 746 (1997); accord MACCRATE REPORT, *supra* note 31, at 3.

34. See, e.g., Graham C. Lilly, *Skills, Values, and Education: The MacCrate Report Finds a Home in Wisconsin*, 80 MARQ. L. REV. 753, 754–55 (1997) (showing, as an example, the influence of the MacCrate Report on legal education in Wisconsin); Marquette L. Rev. Volume 80 Ed. Bd., *Preface [To Issue Three]*, 80 MARQ. L. REV. 691, 691 (1997) (explaining why the Editorial Board of the Marquette Law Review chose to dedicate an entire Issue to “candidly address[ing] problems facing legal practitioners, educators, and academics today, and prompt[ing] our readers to reflect on how we can all work to improve the integrity and public perception of our chosen profession.”).

35. See MACCRATE REPORT, *supra* note 31, at 138–40 (listing ten “foundational lawyering skills”).

producing a California-specific performance test;³⁶ but it wasn't until the *MacCrate Report* was published and called for greater emphasis on skills training for law students and recommended that the bar exam include skills testing that the momentum shifted nationally. NCBE, working with a pioneering team of clinician drafters, developed the multi-state performance test (the MPT).³⁷ The *MacCrate Report* was published in 1992,³⁸ and in . . . February 1997, four states administered the MPT for the first time.³⁹ . . . [A]nd the rest is history. Today the MPT is administered in [fifty of the fifty-six] jurisdictions,⁴⁰ and it assesses six of the ten *MacCrate* . . . skills.⁴¹

Fifteen years later, in 2007, yet another study was released which also emphasized lawyering skills, and that was the *Carnegie Report*.⁴² This report lauded law schools for the rapid socialization into the standards of legal thinking, mainly through the Langdellian case dialogue method of testing.⁴³ That's a mouthful. I have to tell you that that concept really hit me hard when I walked into this room. I was telling Leah and Josh: if

36. See Judith A. Gundersen, *Happy Birthday, MPT!*, BAR EXAM'R, Nov. 2007, at 18, 18, <https://thebarexaminer.ncbex.org/article/november-2007> [<https://perma.cc/KPY6-UYLF>].

37. See *Multistate Performance Test (MPT)*, BAR EXAM'R, <https://thebarexaminer.ncbex.org/2019-statistics/the-multistate-performance-test-mpt/#:~:text=The%20National%20Conference%20of%20Bar,minute%20MPT%20items%20per%20administration.> [<https://perma.cc/W45Q-WS4S>].

38. See MACCRATE REPORT, *supra* note 31.

39. See, e.g., *The MPT (Multistate Performance Test)*, Alexander v. BTI and Bell, DENVER UNIV. STURM COLL. OF L. 2, <https://www.law.du.edu/documents/aap/Practice-PT-Summary-Judgment-Torts.pdf> [<https://perma.cc/N3EK-C6HY>] (“The National Conference of Bar Examiners Inaugurated the Multistate Performance Test (MPT) in 1997. This publication is a reprint of one of the first two MPTs, which [were] administered in February 1997 in four states: Georgia, Hawaii, Iowa, and Missouri.”).

40. See *About the MPT*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mpt> [<https://perma.cc/8VSZ-3JQS>].

41. Compare *Preparing for the MPT*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mpt/preparing> [<https://perma.cc/3R22-2SZ9>] (listing the six skills tested on the MPT), with MACCRATE REPORT, *supra* note 31, at 138–40 (listing ten “fundamental lawyering skills”).

42. See William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Educating Lawyers: Preparation for the Profession of Law*, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [<https://perma.cc/66Q4-DXKV>] (providing a summary of the key takeaways from the *Carnegie Report*).

43. *Id.* at 7.

you're like me and you haven't been in a law school classroom in a few years this brings a lot of that Langdellian case dialogue method of teaching back into my memory.

One of . . . the Carnegie study's authors was [the] recently deceased and highly regarded University of North Carolina School of Law Dean and Professor Judith Welch Wegner.⁴⁴ She wrote an article in NCBE's quarterly magazine, *The Bar Examiner*, in 2011; and she cited many examples of curricular innovation, including instructional designs that focused on applying legal principles to complex social problems.⁴⁵ Eleven years later, here at the University of Minnesota Law School, there are over twenty-five legal clinics, and over fifty percent of the students here participate in one or more clinics that are focused on business and nonprofits, economic justice, family and community, human rights, and immigration and rights and liberties.⁴⁶ Dean Jenkins secured the largest gift in the law school's history to fund an integrated set of clinics focused on the rights of new Americans, immigrants.⁴⁷ The work that the students are doing here throughout their clinical experiences to advance justice are challenging, important, and transforming through the decades. We have seen a trend toward more skills instructions experiential learning formative assessment and recognizing the importance of . . . preparing for being a lawyer, not just thinking like a lawyer.

Now, you know, "thinking like a lawyer." Everybody talks about that. And, you know, there's a movie that . . . shaped what people thought law school was like. It was called *The Paper Chase*, and the great actor John Houseman plays a quite intimidating, I would say, Professor Kingsfield, who excelled in the use of the Socratic method in Langdell Hall.⁴⁸ He famously tells

44. *Id.* at 2.

45. Judith Welch Wegner, *The Carnegie Foundation's Educating Lawyers: Four Questions for Bar Examiners*, BAR EXAM'R, June 2011, at 11, 11–24, https://thebarexaminer.ncbex.org/wp-content/uploads/PDFs/800211_Wegner.pdf [<https://perma.cc/884J-ZRKB>].

46. *Minnesota Law Clinics*, UNIV. OF MINN. L. SCH., <https://law.umn.edu/academics/experiential-learning/minnesota-law-clinics> [<https://perma.cc/J9PG-5ZDY>].

47. *Law School Gets \$25 Million for James H. Binger Center for New Americans*, UNIV. OF MINN., <https://twin-cities.umn.edu/news-events/law-school-gets-25-million-james-h-binger-center-new-americans#:~:text=Today%2C%20the%20University%20of%20Minnesota,Americans%2C%20establish%20a%20James%20H> [<https://perma.cc/TU5F-KPGV>].

48. See *THE PAPER CHASE* (Twentieth Century Fox 1973).

his first day class of 1Ls: You come in here with a head full of mush, and you leave thinking like a lawyer.⁴⁹ Now I don't think that that part is true— . . . the part about, you know, the head of mush. But it is a famous line, and it underscores what that 1L experience has been like and what the *Carnegie Report* referred to: professors using the Socratic method along with case law pedagogy to teach new law students how to think like a lawyer. As I mentioned when I walked in this room, it brought back memories of only being slightly terrified for the entire first year waiting to be called on.

Is thinking like a lawyer enough, or should the focus be on *doing* or *being* a lawyer? This question was asked by then Dean Nancy Rappaport from the University of Houston Law Center in a law review article she wrote in 2002.⁵⁰ “No one,” she wrote, “expects a [newly licensed] doctor to ‘think’ like a doctor” rather than “*be* a doctor”—or, for that matter, air traffic controllers, scientists, mechanics, or engineers⁵¹ The explosion of participation in legal clinics, externships, and simulations over the past few decades is evidence of law school's commitment to skills teaching and being a lawyer; and, of course, the ABA standards and accreditation require that all law schools have at least six credits of experiential learning.⁵²

As I think many of you might know, clinicians play an important role in the development of the current bar exam and are also deeply involved in the NextGen Bar Exam development. One of these clinicians is Associate Professor and Director of the Veterans Legal Clinic at the University of Georgia School of Law, Alex Scherr,⁵³ told me what he means when he says “thinking like a lawyer.”

Thinking like a lawyer includes what a student learns in the law school classroom: finding, reading, and analyzing the law; thinking from multiple perspectives and applying legal rules to

49. *Id.* (“You teach yourselves the law, but I train your mind. You come in here with a skull full of mush, and you leave thinking like a lawyer.”).

50. Nancy B. Rapoport, *Is “Thinking Like a Lawyer” Really What We Want to Teach?*, 1 J. ASS'N LEGAL WRITING DIRS. 91, 94 (2002).

51. *Id.* at 92–93.

52. *2022–2023 Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. 18, Standard 303(a)(3) (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf [https://perma.cc/AY7Q-86FS].

53. See Alexander W. Scherr, UNIV. OF GA. SCH. OF L., <http://www.law.uga.edu/profile/alexander-w-scherr> [https://perma.cc/4YPS-M7HF].

given facts. But it includes much more than that: working with incomplete and uncertain information, understanding the history and human context of the client's concern, assessing social and interpersonal realities, and listening attentively to the client's goals and needs and values. Then the lawyer needs to integrate all of these realities into a plan of action that produces the best possible outcome given the limitations of time, money, and energy. Well that sure sounds like *being* . . . a lawyer—not just *thinking like* a lawyer. And it incorporates the important skill of listening, understanding the whole client, and finally—but importantly—taking into account real world constraints. When I thanked him for responding to my . . . query about what thinking like a lawyer means, he said: “Oh it’s why I love my job so much.” And I’m guessing that there are so many law teachers in this room today who feel the same and inculcate these same values perspectives and guidance to law students every day.

In 2014, The Institute for the Advancement of the American Legal System published a study called *Foundations for Practice*.⁵⁴ In this study, researchers asked lawyers to indicate whether 147 different characteristics, professional competencies, and legal skills were necessary immediately out of law school, could be acquired over time, were advantageous but not necessary, or were not relevant.⁵⁵ The results of this study indicated that new lawyers are most successful when they come to the job possessing seventy-six formations that were then categorized into five broader categories: communicator, practitioner, professional problem solver, and self-starter.⁵⁶

Now, while the bar exam cannot fairly or objectively test for some of these attributes or values, that does not diminish their importance to the newly licensed lawyer. It is these professional and personal values that law schools impart to students as they progress from law students to graduates. So for decades, then, we’ve all realized that lawyering skills are important; and the values that we share as lawyers are, in part, important. You know, going back to Professor Wegner:⁵⁷ certainly she [has been] asked by our examiners throughout the years . . . : “How does the

54. See *Foundations: Educate and Hire the Best Lawyers*, INST. FOR THE ADVANCEMENT OF THE LEGAL SYS. 5, https://iaals.du.edu/sites/default/files/documents/publications/foundations_project_summary.pdf [<https://perma.cc/3RCM-X2QX>].

55. See *id.*

56. *Id.* at 6.

57. See Wegner, *supra* note 45.

bar exam know what it should be testing? Are you testing the right things?" And we've been asked that, of course, by many others.

I want to talk a little bit about the principles that we follow in identifying the competencies tested on the bar exam and in developing and scoring the bar exam. These . . . principles are set forth in the standards for educational and psychological testing; . . . this is an open source test, so you can . . . refer to it; it's published by the National Council on Measurement . . . in Education, the American Educational Research Association, and the American Psychological Association.⁵⁸ Tests—especially high-stakes tests like licensure tests, like the bar exam—have to be fair, valid, and reliable.⁵⁹ These fundamental qualities of any licensure scheme are detailed in the standards, and they guide the work of a category of test measurement [by] specialists known as psychometricians. And while the content of the bar exam, the questions themselves, are written by legal experts, psychometricians are the experts in the standards which help guide our exam development and scoring and ensure a fair, valid, . . . reliable, and ultimately defensible exam. NCBE has a team of psychometricians; and in fact, one of our psychometricians, Dr. Danette Waller McKinley, is here today. And she'll be on the . . . last panel of the afternoon.

One thing I want to ask people about is: Do you think that the purpose of the bar exam or any licensure test is to gauge successful performance in practice? It is not. First of all, it would be very hard to measure successful performance. Is that by the number of satisfied clients? By a lack of dissatisfied clients? . . . [I]s it evidenced by a lack of . . . disciplinary complaints for incompetence rather than ethical violations? And how much might a lack of disciplinary complaints depend on which jurisdiction an attorney is practicing in and the consistency of its disciplinary practice, or the sophistication of . . . the clients?

Licensure examinations in any profession cannot and do not evaluate all the attributes needed for effective practice over a

58. Am. Educ. Rsch. Ass'n, Am. Psych. Ass'n & Nat'l Council on Measurement in Educ., *Standards for Educational and Psychological Testing*, TESTING STANDARDS (2014), https://www.testingstandards.net/uploads/716/6/4/76643089/standards_2014edition.pdf [<https://perma.cc/3ZEX-SJ56>].

59. *See id.* at 11–70 (providing a Part on the “Foundations” of testing which consists of a chapter on validity, a chapter on reliability, and a chapter on fairness).

career, or even in the first few years of a career. Traits like honesty, conscientiousness, and diligence are clearly essential for a candidate to practice effectively. Although these attributes are not tested on the bar exam, they're examined during the character and fitness process. Again, these two prongs of the admissions inquiry . . . are complementary but distinct.⁶⁰

Now, of course, adhering to measurement standards of fairness, validity, and reliability isn't enough. NCBE works closely with outside content experts, including some of the professors and practitioners attending this Symposium, who develop the exam content.⁶¹ These dedicated volunteer drafters hail from all over the country; over thirty-five law schools are represented; and when external reviewers—which all of our items our students are reviewed externally— . . . are added to the mix, most law schools in the country have had one or more people involved in bar exam development and vetting.⁶² The drafters who write the current exam and those who are working on the NextGen [Bar] Exam set a good example for how practitioners and judges can work closely with faculty members to create high quality assessment tools that reflect the knowledge, skills, and abilities needed for success in today's changing legal profession. But our outreach and involvement with legal Educators extends well beyond drafting the current bar exam.

60. Michael T. Kane, *What the Bar Examination Must Achieve: Three Perspectives*, BAR EXAM'R, Sept. 2012, at 6, 7, https://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2012/810312beAbridged.pdf [<https://perma.cc/V8WP-JCDD>] (“Note that licensure examinations do not evaluate all of the attributes needed for effective practice over a career, or even in the first few years of a career. Traits like honesty, conscientiousness, and diligence are clearly essential for a candidate to practice effectively, as are adequate levels of social skills, physical health, and mental health. In assessing candidates for the bar, some of these non-cognitive traits are evaluated in character and fitness evaluations, where the emphasis also is on identifying individuals with serious limitations rather than rank-ordering candidates or identifying the best candidates.”).

61. See *Announcing NCBE's Content Scope Committee*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/announcing-ncbes-content-scope-committee> [<https://perma.cc/Z86Y-82QN>] (sharing the names and positions held by the twenty-one members of NCBE's Content Scope Committee and highlighting statistics on applicants to sit on the committee); *The What and Why of Test Content Specifications*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/the-what-and-why-of-test-content-specifications> [<https://perma.cc/5HAC-5PCX>] (explaining the purpose and some of the responsibilities of the Content Scope Committee).

62. See sources cited *supra* note 61 and accompanying text.

So when . . . Chief Justice Berch tasked our board and our staff with reimagining the bar exam, we started by listening, and I hope we listened like lawyers to all of our stakeholders. As an example: NCBE had multiple listening sessions during the Association of American Law Schools January 2019 conference.⁶³ And . . . over the course of the next year, we listened to over [400] stakeholders—courts, admissions offices, bar examiners, legal educators, bar associations, affinity bar associations—to hear what they liked about the current bar exam; what they didn't like; and if they were reimagining the bar exam, what they would want⁶⁴— . . . blue sky thinking.

The second phase of our NextGen test development was a[n analysis of] nationwide practices that consisted of surveying newly licensed lawyers and those who supervise newly licensed lawyers together—empirical data on the knowledge and skills required of our newest colleagues for this practice analysis.⁶⁵ . . . [W]e [received] substantive, thoughtful input from about 14,000 attorneys from every state in the country and all different kinds of practices—solo practitioners, in-house, public interest, government, private firms.⁶⁶ If you have followed practice analyses in other professions—like dentistry, nursing, or accounting—or California's 2018⁶⁷ or Florida's 2022⁶⁸ legal practice analyses,

63. See *Testing Task Force Phase One Report: Your Voice: Stakeholder Thoughts About the Bar Exam*, NAT'L CONF. OF BAR EXAM'RS 2, <https://nextgenbarexam.ncbex.org/wp-content/uploads/FINAL-Listening-Session-Executive-Summary-with-Appendices-2.pdf> [<https://perma.cc/WFL4-PCR3>] (listing the events and locations where NCBE held listening sessions).

64. See *id.* at 3 (summarizing structure and method of the listening sections, including some of the questions asked).

65. See *Testing Task Force Phase Two Report: 2019 Practice Analysis*, NAT'L CONF. OF BAR EXAM'RS (Mar. 2020), https://nextgenbarexam.ncbex.org/wp-content/uploads/TestingTaskForce_Phase_2_Report_031020.pdf [<https://perma.cc/6U68-MMGU>].

66. *Id.* at 3 (“[T]he total effective sample size was 14,846 respondents. The respondents consisted of 3,153 NLLs [newly licensed lawyers] (21%) and 11,693 non-NLLs (79%).”); *id.* at 3–4 (sharing other demographic statistics of survey respondents).

67. See California Attorney Practice Analysis Working Group, *The Practice of Law in California: Findings from the California Attorney Practice Analysis and Implications for the California Bar Exam*, ST. BAR OF CAL., <https://www.calbar.ca.gov/Portals/0/documents/reports/2020/California-Attorney-Practice-Analysis-Working-Group-Report.pdf> [<https://perma.cc/SLX8-NV7K>].

68. See *Practice Analysis Study Report*, FL. BD. OF BAR EXAM'RS (June 2022), https://www.floridabarexam.org/static/FBBE_Practice_Analysis_Study_Report.pdf [<https://perma.cc/5Q24-CHSV>].

you're aware that an empirically-based practice analysis ensures that exam content is aligned with entry-level practice, and this data-driven practice analysis approach is set forth in the standards that I mentioned before. California and Florida had similar practice analysis results as the NCBE practice [analysis, and] now . . . all these . . . practice analyses are available online if you want to take a look at them.⁶⁹

So following the listening sessions and the practice analysis, what did we do we? [We] convened test design and test blueprint committees, comprised and composed in part by Deans, academic support staff, and faculty members—again, some in this room—to review the practice analysis.⁷⁰ The focus group [provided] feedback and then recommend[ed] to us what to test on the exam and how and when to test it, and in the past year, more dedicated and talented volunteers [also provided input].⁷¹ Again, I sound like a broken record, but people in this room, including members of the legal academy have helped us define and refine the proposed content scope to be covered on the NextGen Bar Exam.⁷²

So what did the practice analysis and listening sessions tell the NCBE and the Blueprint Design and Content Scope Committee members? Well, no surprise here: that we should test more skills than are assessed currently on the MBE, MEE, and MPT; that the exam should focus on the most important doctrinal areas, reducing the number of testable subject areas; that being a competent lawyer means having enough foundational knowledge to be able to ask the right questions to understand what else has to be known, to ask the right questions and to properly assess the situation, and to engage in effective research and then synthesize all of the above to effectively counsel a client or to respond to a matter; and, of course, that being an ethical lawyer and having cultural competency are critically important.⁷³ In many cases, the doctrine and skills to be tested transcend specific practice areas and subject matters and cross

69. *See supra* notes 65–68.

70. *See supra* note 61 and accompanying text.

71. *See supra* note 23.

72. *See Announcing NCBE's Content Scope Committee, supra* note 61 (naming the members of the Content Scope Committee, two of whom—Professor Deborah Jones Merritt and Professor Jon Lee—were present in the room during this Keynote).

73. *See Final Report of the Testing Task Force, supra* note 23, at 20 (describing the recommendations of the Testing Task Force).

over between litigation and transactional practice. I encourage you to visit our website NextGenBarExam.ncbex.org⁷⁴ to read the report on how the content was developed using empirical data, qualitative input from outside experts, and a focus on fairly testing the skills and knowledge that stakeholders and the data showed us were most important.⁷⁵

So the NextGen Bar Exam will test content and skills in an integrated exam format on computers, which permits the use of scenarios that are representative of real world types of legal problems that newly licensed lawyers encounter in practice.⁷⁶ The seven fundamental lawyering skills to be assessed on the NextGen Bar Exam are legal research and writing, client relationship and management, investigation and analysis, client counseling and advising, negotiation and dispute resolution, legal writing and drafting, and issue spotting and analysis.⁷⁷ These skills will be tested in the context of a more focused set of subject areas: the seven MBE topics—which are federal civil procedure, contracts, criminal law and procedure, constitutional law, evidence, real property, and torts—and business associations, was added to the topics to be covered.⁷⁸ And again, this was a result of the information that we learned from the practice analysis and from the focus groups.

Now, considering the breadth and depth of the knowledge to be tested on the new exam, the committees evaluated six key factors: frequency, universality, risk, complexity, context, and stability.⁷⁹ In the NextGen Bar Exam, . . . if you look at the proposed content scope outlines because they're not finalized yet, you will see that there are different levels of knowledge that will be required.⁸⁰ There's level one, where you need to know enough to spot the issues and to work with resources that will be provided. An example of this, let's say, in civil procedure, might be: you need to know that supplemental jurisdiction is a thing. Do you need to know how to deal with it without looking at the rule? No. Level two knowledge is where you have to know the doctrine.

74. See *About the NextGen Bar Exam*, *supra* note 22.

75. See *Final Report of the Testing Task Force*, *supra* note 23.

76. *About the Next Gen Bar Exam*, *supra* note 22.

77. *Id.*

78. See *id.*

79. *Next Generation of the Bar Exam Content Scope Outlines*, NAT'L CONF. OF BAR EXAM'RS 1–3, <https://nextgenbarexam.ncbex.org/wp-content/uploads/NextGen-Content-Scope-Outlines-Report.pdf> [<https://perma.cc/5GY5-TZNV>].

80. *Id.* at 7–38.

So in an example, again using civil procedure: you have to know what diversity jurisdiction is. So that's how the judgment of these committees went through and looked at all of the topic areas, and within the topic areas how these . . . subtopics should be treated.

I should also tell you that if you look at the current outline scope, some of the topics . . . that remained on the exam. So, let's say, within . . . civil procedure some of the topics to be tested have been recommended for elimination.⁸¹ Again, you can look at all of this . . . on our website for anyone taking . . . the exam. . . . [S]o while some of those topics were added to . . . what will be on this exam, other topics were eliminated: trust and future interests, family law, Article IX, secured transactions, and conflict of laws.⁸² Those . . . topics will no longer be tested on the NextGen Bar Exam, again because the data in the practice analysis showed that they weren't performed consistently by enough of the newly licensed lawyers.⁸³

So to give you a quick update on what are we doing now: . . . we continue to refine and define the content we publish, the proposed content scope outlines. Back in . . . March, . . . we gave people three or four weeks to comment on that; and most of the comments were from—this won't surprise you—legal educators; and we got [394] comments opining on what we proposed for the new content scope outline.⁸⁴ . . . [W]e're working through those comments, and we're trying to refine the content to make sure that it's crystal clear for people who are taking this exam that they

81. *Compare id.* at 10–12 (listing civil procedure subjects to be tested on the NextGen Bar Exam), *with MBE Subject Matter Outline*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F226> [<https://perma.cc/6WFY-873C>] (listing civil procedure subjects tested on the MBE).

82. *FAQs About Recommendations*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/faqs> [<https://perma.cc/N4PD-6QCY>] (“What subjects tested in the current exam will no longer be tested in the NextGen bar exam? The subjects of Family Law, Trusts and Estates, Conflict of Laws, and Secured Transactions are not included in the Foundational Concepts & Principles (FC&P) that will be assessed on the NextGen exam.”).

83. *See Testing Task Force Phase Two Report: 2019 Practice Analysis*, *supra* note 65.

84. *Content Scope Outlines for Public Comment*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/csopc-register> [<https://perma.cc/6YP3-3V39>].

know . . . what they need to study. We are in the thick of developing items and item sets.⁸⁵ Working on the skills item set development is something that just happened, I think, a week or two ago.

And we have these subject matter experts—outside people—writing these exams, these questions.⁸⁶ We have these retreats, and we’ve had a few of them, and we plan to have a few more. We’re engaging in a lot of outreach to the legal academy and to our other stakeholders and the jurisdiction boards and courts. So . . . far, I mean starting from June and I think going through about January, we will have had about twenty-one appointments with state boards of bar examiners and/or courts, and sometimes law schools appear at those sessions as well. So we’re engaging in a lot of outreach and have had a lot of interest and enthusiasm for the NextGen Bar Exam, and we’re also engaging in pilot testing, which I’m going to talk a little bit more about in a minute. And then, of course, there’s a lot of under-the-hood work that we’re doing at the [NCBE]. A lot of systems-work. Finding technology partners and just planning out over the course of the next not quite four years what all needs to be done to make sure that the exam can debut in July of 2026.⁸⁷

So as we move to the vetting and refining part of the test development, I want you to know that we reaffirm our commitment to building and delivering an exam for the future that is accessible to all. As people of good faith can disagree about the use of equated tests . . . with score stability across administrations, in admissions to college, law school, and for admission to the bar, I think it important that you know that NCBE . . . is doing all that we can do to promote opportunity for all would-be lawyers to enter the profession and serve. Our mission is to promote fairness, integrity, and best practices in admission to the legal profession; and as part of our vision for a competent, ethical, and diverse profession, we take very seriously the need to

85. See *Implementing the Next Generation of the Bar Exam, 2022–2026*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/about/implementation-timeline> [<https://perma.cc/SU7U-UYSR>] (naming “[c]onduct pilot testing and draft items and item types” as the task occurring from quarter three of 2022 to quarter three of 2023).

86. See *supra* note 61 and accompanying text.

87. See *Implementing the Next Generation of the Bar Exam, 2022–2026*, *supra* note 85 (anticipating that the first administration of the new exam will occur in quarter three of 2026).

work toward greater equity in all that we do as a testing organization—and we actively work to eliminate any aspects of our exams that could contribute to differences in performance among groups.⁸⁸ We maintain high standards in developing our test questions through the work of our diverse group of drafters and external reviewers who are supported and trained by experienced lawyer-test editors and measurement professionals; and as we work to implement the next generation of the bar exam, we are committed to producing an exam that fairly assesses all candidates. And as we proceed with test development in the NextGen Bar Exam, we're using authentic lawyer-client interactions to role model good effective lawyering. It means honoring the client's story, their lived experiences, and the ways in which we need to be not only client focused but client-centered. It sounds pretty similar to what Professor Scherr said about what it means to think and listen and be a lawyer.⁸⁹

So currently, . . . with . . . the NextGen exam, we're preparing to launch a series of essential pilot and field tests which serve to vet and refine the content, format, timing, and delivery of the new exam.⁹⁰ A large pool of diverse candidates from law schools throughout the country will sit for simulated exam sections designed to establish how the new question types will work, how long [they will] take to complete, what resources might examinees need, and giving examinees all the same resources.⁹¹ . . . [S]o that's the kind of open book that we're providing—rather than leaving it to each individual and how good a job do the questions really do in testing the skills and knowledge that we are tasked with assessing. We'll report back to the legal community as we learn more about the best ways to administer the new exam to ensure a fair and accessible exam. We've already conducted a pilot test, and our next pilot test is scheduled for early November.⁹²

88. *About NCBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/about> [<https://perma.cc/HN5K-UYMD>] (reciting NCBE's mission and vision).

89. See *supra* note 53 and accompanying text.

90. See *Implementing the Next Generation of the Bar Exam, 2022–2026*, *supra* note 85.

91. See Marilyn Wellington, *The Next Generation of the Bar Exam: Quarterly Update*, BAR EXAM'R, Winter 2022, at 28, 28–31, <https://thebarexaminer.ncbex.org/article/winter-2022-2023/the-next-generation-winter-22> [<https://perma.cc/92DS-ANTB>].

92. See *Pilot Testing, Field Testing, and Prototype Testing*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/pilot-field-prototype-testing> [<https://perma.cc/6JHU-KLT3>].

We pledge our efforts to continue to listen, learn, develop partnerships, and identify concrete ways that we can take action to promote greater diversity and inclusion in the legal profession and specifically in bar exam success and . . . bar admission. I hope that the NextGen exam can help align curriculum and licensure to prepare today's law students to . . . think and listen like—and to *be*—tomorrow's lawyers.

These are times of change in our country, legal education, and admissions. I salute the participants of this Symposium for their dedication to legal education and to the legal profession; and I hope that it remains—and as lawyers, we remain—the defenders and champions of the rule of law; and I hope that we remain impatient with injustice.

Thank you so much for this opportunity. I look forward to the rest of the conversation today.