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TOWARD A NEXTGEN LAW SCHOOL CURRICULUM

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Introduction

As the third-smallest law school in the nation,² Appalachian School of Law (“ASL”) is probably not the first law school to come to mind when thinking of cutting-edge, innovative curricular and pedagogical changes in legal education. Yet, ASL has long prided itself on its agility and ability to rapidly respond to outside forces. In February, 2022, when the American Bar Association (“ABA”) revised Standard 303(b) on development of a professional identity and Standard 303(c) on educating law students on bias, cross-cultural competency, and racism, ASL reacted quickly by developing and adopting its Implementation Plan before the beginning of the next term.^{3,4} An article on ASL’s approved Implementation Plan was the first entry published on the University of St. Thomas School of Law’s

² ASL had a full-time enrollment of 161 students according to U.S. News & World Report’s 2024 Best Law Schools rankings. Only the law schools at University of the District of Columbia (Clarke), with 125 full-time students, and Western Michigan University (Cooley), with 154 full-time students, are smaller. *See 2024 BEST LAW SCHOOLS, U.S. NEWS & WORLD REP.*, https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings?_sort=enrollment-asc (last visited Dec. 19, 2024).

³ *See Report to the House of Delegates, Resolution* (Feb. 2022), AMER. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, <https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf>.

⁴ *See Dawn Figueiras, One Law School’s Faculty-Approved Implementation Plan for Complying with the ABA’s Revised Standards 303(b) and 303(c)*, UNIV. ST. THOMAS: HOLLORAN CTR. PRO. IDENTITY IMPL. BLOG (August 22, 2022), <https://blogs.stthomas.edu/holloran-center/implementation-plan/>.

Holloran Center⁵ Professional Identity Implementation Blog on August 22, 2022.⁶

A year later, ASL reported on its progress in executing its Implementation Plan.⁷

So, when the National Conference of Bar Examiners (“NCBE”) Board of Trustees approved its Testing Task Force’s recommendation⁸ for the five-year implementation of a completely revised bar examination, ASL didn’t hesitate to roll up its sleeves and get to work on examining its entire curriculum and making necessary changes to prepare its students for the “NextGen Bar Exam.” To this author’s knowledge, although a few articles have addressed it, no other law school has published a NextGen Curriculum.⁹ This article aims to provide law school faculty and administrators with details on how ASL achieved its goal of putting into place a NextGen Curriculum for the entering Class of 2027.

Section A of this article will briefly review the development of the NextGen Bar Exam and its differences from the Uniform Bar Exam. Section B will discuss

⁵ The Holloran Center for Ethical Leadership at the University of St. Thomas School of Law has focused on curriculum development and the professional formation of law students since its founding in 2006. Its Professional Identity Formation Blog has become one of the nation’s major sources for discussion and reflection upon professional identity formation for law students. *See* [UNIV. ST. THOMAS: HOLLORAN CTR. FOR ETHICAL LEADERSHIP](https://law.stthomas.edu/about/centers-institutes/holloran-center/), <https://law.stthomas.edu/about/centers-institutes/holloran-center/> (last visited Dec. 19, 2024).

⁶ *See* Figueiras, *supra* note 4.

⁷ *See* Dawn Figueiras, *One Year Later: An Update on One Law School's Faculty-Approved Implementation Plan*, [UNIV. ST. THOMAS: HOLLORAN CTR. PRO. IDENTITY IMPL. BLOG](https://blogs.stthomas.edu/holloran-center/one-year-later-an-update-on-one-law-schools-faculty-approved-implementation-plan) (July 26, 2023), <https://blogs.stthomas.edu/holloran-center/one-year-later-an-update-on-one-law-schools-faculty-approved-implementation-plan>.

⁸ *See* [NCBE Board of Trustees Votes to Approve Testing Task Force Recommendations](https://www.ncbex.org/news-resources/ncbe-board-trustees-votes-approve-testing-task-force-recommendations), NAT'L CONF. OF BAR EXAM'RS (Jan. 28, 2021), <https://www.ncbex.org/news-resources/ncbe-board-trustees-votes-approve-testing-task-force-recommendations>.

⁹ *See* Melissa Shultz, *Professor, Please Help Me Pass the Bar Exam: #NEXTGENBAR2026*, 71 J. OF LEGAL EDUC. 141, 169 (Fall 2021), <https://jle.aals.org/home/vol71/iss1/13/> (confirming that law schools across the country will need to “grapple with the substantial changes ... and begin to critically assess how their curricula and assessments need to be modified in advance of the [NextGen Bar Exam]”).

ASL's self-assessment process for ascertaining its current curriculum's sufficiency for the NextGen Bar Exam. Section C will examine ASL's method in analyzing its self-assessment results to revise its curriculum to meet the new challenges, and will compare ASL's existing and newly-revised NextGen curricula. Section D looks forward to how ASL will continue to assess the results of the curricular changes and fine-tune the program of legal education.

A. Development of the NextGen Bar Exam

Development of the NextGen Bar Exam has slowly but steadily moved forward toward implementation since January, 2021.¹⁰ NCBE announced a Preliminary Content Scope Outline, providing some detail on the exam on March 24, 2022, with plans for the first administration of the new exam in July 2026.¹¹ The Preliminary Content Scope Outline was revised in May 2023.¹² The revised Content Scope Outline divided the expected test into two areas: Foundational Concepts and Principles (essentially the traditional doctrinal subject areas and sub-topics to be tested) and Foundational Skills.¹³ In July 2023, NCBE released the first samples of new question types.¹⁴ The following month, NCBE announced the

¹⁰ See NAT'L CONF. OF BAR EXAM'RS, *supra* note 8.

¹¹ See *NCBE Publishes Preliminary Content Scope Outlines for New Bar Exam*, NAT'L CONF. OF BAR EXAM'RS (Mar. 24, 2022), <https://www.ncbex.org/news-resources/ncbe-publishes-preliminary-content-scope-outlines-new-bar-exam>.

¹² See *NCBE Publishes Content Scope for NextGen Bar Exam*, NAT'L CONF. OF BAR EXAM'RS (May 25, 2023), <https://www.ncbex.org/news-resources/ncbe-publishes-content-scope-nextgen-bar-exam>.

¹³ See *id.*

¹⁴ See *NCBE Publishes First Samples of New Question Types for NextGen Bar Exam*, NAT'L CONF. OF BAR EXAM'RS (July 11, 2023), <https://www.ncbex.org/news-resources/ncbe-publishes-first-samples-new-question-types-nextgen-bar-exam>.

structure and duration of the new exam.¹⁵ October 2023 brought an announcement of the addition of Family Law to the exam’s scope beginning in July 2028.¹⁶ Jurisdictions began committing to use the NextGen Bar Exam in November, 2023, with the total number of jurisdictions sitting at twenty-nine as of December 19, 2024.¹⁷

1. What’s Changing?

The NextGen Bar Exam limits the scope of the subjects tested, focuses less on memorized doctrinal knowledge, and intends to test the basic skills necessary for a new attorney to demonstrate baseline competence to practice law.¹⁸

a. Overview of the Current UBE Subjects and Structure

The Uniform Bar Exam, currently used in 38 states plus D.C. and the Virgin Islands, is comprised of three separate sections: the Multistate Essay Exam (“MEE”), the Multistate Performance Test (“MPT”) and the Multistate Bar Exam

¹⁵ See *NCBE Announces NextGen Exam Structure, Sunset of Current Bar Exam*, NAT’L CONF. OF BAR EXAM’RS (Aug. 28, 2023).

<https://www.ncbex.org/news-resources/ncbe-announces-nextgen-exam-structure-sunset-current-bar-exam>.
¹⁶ See *NCBE Announces Update to NextGen Exam Content*, NAT’L CONF. OF BAR EXAM’RS (Oct. 25, 2023), <https://www.ncbex.org/news-resources/update-nextgen-exam-content-extends-availability>.

¹⁷ See *NextGen (July 2026)*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/nextgen> (last visited Dec. 19, 2024) (confirming start dates for the following jurisdictions: July 2026: Connecticut, Guam, Maryland, Missouri, Northern Mariana Islands, Oregon, and Washington; July 2027: Arizona, Iowa, Kentucky, Minnesota, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Tennessee, Vermont, West Virginia, and Wyoming; July 2028: Alaska, Colorado, Florida, Georgia, Indiana, Kansas, Utah and Virginia; Illinois’s first administration date has yet to be announced).

¹⁸ See *Content Scope*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/reports/content-scope> (last visited Dec. 19, 2024); *Dennis C. Prieto et al., From My Perspective: Essays on the NextGen Bar Exam and Legal Education (pt. 1)*, 92 THE BAR EXAM’R 24, 25-27 (2023), <https://thebarexaminer.ncbex.org/article/summer-2023/my-perspective-summer-2023/>.

(“MBE”).¹⁹ The MEE, weighted as 30% of the UBE score, consists of six 30-minute essay questions, covering thirteen subject areas.²⁰ The MPT, weighted as 20% of the UBE score, consists of two 90-minute sessions, testing the ability to apply lawyering skills based on materials provided to the examinee during the exam.²¹ Together, the MEE and MPT are tested on the first day of a two-day bar exam testing schedule, over a six-hour period.²² The second six-hour testing day is composed of the MBE, a 200-question multiple choice exam testing examinees’ knowledge of eight subject areas.²³ The MBE is weighted as 50% of the UBE score.²⁴ States using proprietary bar examinations, such as Virginia, often adopt the MBE and/or MPT for a portion of their exams.²⁵ Currently in Virginia, 60% of the examinee’s final score is based on the Virginia exam (consisting of nine essay

¹⁹ See *About the UBE*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/ube/about-ube> (last visited June 6, 2024).

²⁰ See *Multistate Essay Examination*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/mee/about-mee> (last visited Dec. 19, 2024) (highlighting the subject areas, being Business Associations, including Agency, Partnership, Corporations, and Limited Liability Companies, Civil Procedure; Conflict of Laws, Constitutional Law, Contracts, including UCC Article 2, Sales, Criminal Law and Procedure, Evidence, Family Law, Real Property, Torts, Trusts & Estates, and UCC Article 9).

²¹ See *About the MPT*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/mpt/about-mpt> (last visited Dec. 19, 2024).

²² See NAT’L CONF. OF BAR EXAM’RS, *supra* note 12 (stating that Business Associations, Conflict of Law, Family Law, Trusts & Estates, and Secured Transactions are not included as MBE subjects).

²³ See *Preparing for the MBE*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/mbe/preparing-mbe> (last visited June 6, 2024).

²⁴ See *Multistate Bar Examination*, NAT’L CONF. OF BAR EXAM’RS, <https://www.ncbex.org/exams/mbe> (last visited June 6, 2024).

²⁵ See *Rules of the Virginia Board of Bar Examiners*, VA. BD. OF BAR EXAM’RS (July, 2024), <https://barexam.virginia.gov/misc/resources/rules.html>. See also *Frequently Asked Questions*, DELAWARE COURTS, JUDICIAL BRANCH, <https://courts.delaware.gov/bbe/faqs.aspx> (last visited Dec. 19, 2024) (explaining that Delaware uses four Delaware-specific essay questions, the MPT, and the MBE); *Exam Information, Test Specifications, Study Guide, and Virtual Tour*, FLA. BD OF BAR EXAM’RS, <https://www.floridabarexam.org/web/website.nsf/52286AE9AD5D845185257C07005C3FE1/125BA5AFD5EB7D2385257C0B0067E748> (last visited June 30, 2024) (describing Florida’s adoption of the MBE to complement one full day of Florida- and general-law testing).

and 10 multiple choice questions emphasizing Virginia law) and 40% on the MBE.²⁶

b. Overview of the NextGen Bar Exam Subjects and Structure²⁷

The NextGen Bar Exam originally limited the subject areas tested to Civil Procedure, Contracts, Evidence, Torts, Business Associations, Constitutional Law (including Criminal Procedure) Criminal Law, and Real Property.²⁸ Family Law was added to the scope and will begin being tested in July, 2028.²⁹ NCBE's Revised Content Scope Outline differentiates between sub-topics that will "require an examinee to rely solely on recalled knowledge and understanding" (referred to as "topics with a star symbol" in the Revised Content Scope or "starred topics") and those that may be tested "with or without provision of legal resources" but in a manner where "the examinee is expected to rely on recalled knowledge and understanding that will enable the examinee to demonstrate recognition that the topic is at issue in the fact scenario" (referred to as "topics without a star symbol" or "unstarred topics").³⁰ In other words, the UBE's heavy reliance on

²⁶ *See Rules of the Virginia Board of Bar Examiners, VA. BD. OF BAR EXAM'RS (July 2024)*, <https://barexam.virginia.gov/misc/resources/rules.html>.

²⁷ Although NCBE has announced the format and structure, the exam will continue to be "fine-tun[ed]" throughout the development and testing of the exam. *See* Andreas Oranje, *Quarterly Update: NextGen Development Forges Ahead with Prototype Exam on the Horizon*, 93 BAR EXAM'R 1, 68 (2024), <https://thebarexaminer.ncbex.org/article/spring-2024/quarterly-update-spring24/>.

²⁸ *See* NAT'L CONF. OF BAR EXAM'RS, *supra* Note 18.

²⁹ *See* NAT'L CONF. OF BAR EXAM'RS, *supra* Note 18.

³⁰ *Bar Exam Content Scope First Administration July 2026, NAT'L CONF. OF BAR EXAM'RS 1, 5 (2023)*, https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023/?auto_viewer=true#page=&zoom=page-fit&pagemode=none.

memorization of doctrinal principles will give way to the NextGen’s narrower scope of “starred” sub-topics that require retained knowledge of rules, tests, and elements. The NextGen Bar Exam will replace much of the testing of memorized principles with skills testing, especially testing of the ability to read, analyze, and apply legal principles to hypothetical fact patterns and to review, draft, and edit common legal documents.³¹

The NextGen Bar Exam will test 27 separate Foundational Skills, which are collected in four Foundational Skills Groups.^{32,33}

Not only will the NextGen Bar Exam narrow the subject matter scope and focus specifically on skills testing, but the duration of the test itself will be significantly shorter than the UBE. Instead of two full days, the NextGen Bar Exam will take 1.5 days (Day 1 will still require six hours of testing, while Day 2 is shortened to 3 hours), broken into three 3-hour segments.³⁴ No longer will examinees be tested using only one question type in each segment, but three broad categories of question types will be integrated throughout each three-hour

³¹ *See Overview of Recommendations for the Next Generation of the Bar Examination*, NAT'L CONF. OF BAR EXAM'RS 2, 4-5 (2021), <https://nextgenbarexam.ncbex.org/themencode-pdf-viewer/?file=https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Next-Gen-Bar-Exam-Recommendations.pdf#zoom=auto&pagemode=thumbs>.

³² *See Section B.3.a. of this article, “What Skills Will be Tested?”* for further discussion of the Foundational Skills. All 27 Foundational Skills are listed in [Appendix A](#) to this Article.

³³ *See NAT'L CONF. OF BAR EXAM'RS*, *supra* note 30, at 1-3.

³⁴ *See FAQs about Recommendations*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/faqs/> (last visited Dec. 19, 2024).

segment.³⁵ Each segment of testing will include two integrated question sets, one performance task, and about 40 multiple-choice questions.³⁶ This integration means that states will no longer be able to adopt distinct portions of the NCBE’s bar exam, such as the MBE. But with the reduction from 12 to 9 hours, states wanting to test their own law could develop a three-hour test component to add to the NextGen Bar Exam, as Virginia has announced that it intends to do.³⁷

Standalone multiple choice questions (similar to MBE questions) will still be utilized, but will comprise around 40% of the exam time (or, just over 3 and a half hours).³⁸ Significantly, the standard multiple choice question with four answer options and one “best answer” will be changed. Some multiple choice questions, known as “multiple-select” questions, will have six answer options and will require the examinee to choose two correct answers in order to receive credit for the question.³⁹

In addition to the standalone questions, multiple choice/multiple select questions will also be incorporated into the Integrated Question Sets and the

³⁵ See *NextGen Bar Exam Sample Questions*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/nextgen-sample-questions/> (last visited Sept. 19, 2024); see also NAT’L CONF. OF BAR EXAM’RS, *supra* note 34.

³⁶ See Marilyn J. Wellington, *Moving Forward with the NextGen Exam Structure and Testing Transition*, 92 THE BAR EXAM’R 32, 32-34 (2023), <https://thebarexaminer.ncbex.org/article/fall-2023/the-next-generation-of-the-bar-exam-quarterly-update-fall23/>.

³⁷ See *Virginia Board of Bar Examiners to Adopt NextGen Bar Exam Format in July 2028*, VA. STATE BAR (2024), <https://vsb.org/AN/Site/news/news-items/20241211-VBBE-nextgen-2028.aspx>.

³⁸ See Wellington, *supra* note 36.

³⁹ See Wellington, *supra* note 36. Sample standalone multiple-choice questions have been published by NCBE and more are expected. See *Sample NextGen Bar Exam Multiple-Choice Questions*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/multiple-choice-questions/> (last visited June 6, 2024).

Performance Tasks.⁴⁰ These Integrated Question Sets will be based on a common fact scenario and may also include specific legal resources such as a relevant Federal Rule and/or supplemental documents such as a police report or deposition transcript excerpt.⁴¹ Integrated Question Sets will also include questions requiring short constructed-response answers, comprising “[j]ust under a quarter of the exam time” (around two and one-quarter hours).⁴²

Sample Integrated Question Set 1 published by NCBE provides a factual scenario with snippets of a lease and relevant landlord-tenant statutes and asks examinees to answer two multiple choice and four short answer questions.⁴³

Sample Integrated Question Set 2 tasks the examinee with reviewing a Complaint for mistakes, and then describing and correcting the mistakes.⁴⁴ Sample Set 2 also provides the examinee with a transcript excerpt, an email, and the relevant Rule of Civil Procedure to utilize in completing the Set.⁴⁵

The remaining third of the exam time (about three hours) will consist of Performance Tasks, which will be very similar to the current MPT questions. Each Performance Task will take about one hour to complete and will be devoted to a

⁴⁰ See NAT'L CONF. OF BAR EXAM'RS, *supra* note 39; see also *Sample NextGen Bar Exam Performance Task*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/performance-task/> (last visited June 6, 2024).

⁴¹ See *NextGen Bar Sample Questions*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/nextgen-sample-questions/> (last visited Dec. 20, 2024).

⁴² *See id.*

⁴³ See *Sample NextGen Bar Exam Integrated Question Sets*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/integrated-question-sets/> (last visited Dec. 20, 2024).

⁴⁴ *See id.*

⁴⁵ *See id.*

single client matter.⁴⁶ Examinees will be provided with a “Client File” (explaining the client’s issue and factual information about the client) and a “Library” (containing the relevant cases, statutes, rules, etc. that may apply to the client’s issue).⁴⁷ The Performance Tasks are designed to test skills rather than “memorized substantive law.”⁴⁸ At least one of the Performance Tasks will require a longer written answer, while others may contain multiple-choice and short-answer questions as utilized in the Integrated Question Sets.⁴⁹

The NextGen Bar Exam will be a completely computer-based exam, leaving behind the UBE’s paper answer sheet format for multiple choice questions.⁵⁰ NCBE announced that its software platform partner for administering the NextGen Bar Exam will be Surpass Assessment.^{51, 52} In his announcement, Andreas Oranje, Managing Director of Assessment Programs for NCBE, said “[w]ith the addition of Surpass’s exam delivery and grading capabilities, NCBE gains an end-to-end assessment solution, providing [NCBE] with streamlined and frictionless interaction across the technology used to develop, administer, and grade the

⁴⁶ *See Sample NextGen Bar Exam Performance Task*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/performance-task/> (last visited Aug. 16, 2024).

⁴⁷ *See id.*

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *See Phase 3 Report of the Testing Task Force: Blueprint Development Committee and Test Design Committee Meetings*, NAT’L CONF. OF BAR EXAM’RS 1 (2020), <https://nextgenbarexam.ncbex.org/reports/phase-3-report/>.

⁵¹ *See Andreas Oranje, The Next Generation of the Bar Exam: Quarterly Update*, 92 THE BAR EXAM’R 28, 29 (2023-2024), <https://thebarexaminer.ncbex.org/article/winter-2023-2024/the-next-generation/>.

⁵² *See Surpass Assessment to Provide NextGen Bar Exam Delivery Platform*, NAT’L CONF. OF BAR EXAM’RS (Jan. 30, 2024), <https://www.ncbex.org/news-resources/surpass-assessment-provides-nextgen-platform>.

NextGen Bar Exam.”⁵³ Surpass Assessment noted that NCBE had “successfully used the Surpass item bank to create valid and reliable exam content since 2022.”⁵⁴

2. Early Testing and Reports

NCBE’s five-year plan for implementing the NextGen Bar Exam began with Pilot Testing, described as “[s]mall-scale administration of drafts of new question formats under semirealistic conditions to groups of law students and recently licensed practicing lawyers.”⁵⁵ Pilot Testing was conducted from August, 2022 through April, 2023, and NCBE issued its Research Brief on results on the pilot testing on May 28, 2024.⁵⁶ Pilot testing was limited to standalone multiple choice questions and Integrated Question Sets including multiple choice questions, short-response questions (1 sentence to 1 paragraph), and longer constructed-response questions.⁵⁷ Performance Tasks were included in the Field Test administered in January, 2024.⁵⁸

Pilot testing sought to answer ... [five] questions: 1. Is it feasible to administer and score the proposed new question types? 2. What is the effect of providing legal resources for the new question types? 3. How much time does it take participants to respond to the different question types? 4. What cognitive processes do study participants use in

⁵³ *Id.*

⁵⁴ *National Conference of Bar Examiners Chooses Surpass to Deliver Bar Exams Across the U.S., SURPASS ASSESSMENT* (Jan. 30, 2024), <https://surpass.com/wp-content/uploads/Surpass-and-NCBE-PR.pdf>.

⁵⁵ *NextGen Research Brief: Pilot Testing*, NAT’L CONF. OF BAR EXAM’RS 1, 2 (2024), <https://nextgenbarexam.ncbex.org/themencode-pdf-viewer/?file=https://nextgenbarexam.ncbex.org/wp-content/uploads/NextGen-Research-Brief-PRINT.pdf>.

⁵⁶ *See id.*

⁵⁷ *See id.*

⁵⁸ *See NextGen Research Brief: Field Test*, NAT’L CONF. OF BAR EXAM’RS (Oct. 11, 2024), <https://nextgenbarexam.ncbex.org/themencode-pdf-viewer/?file=https://nextgenbarexam.ncbex.org/wp-content/uploads/NextGen-Research-Brief-Field-Test-October-2024.pdf#zoom=auto&pagemode=thumbs>.

responding to the different question types? 5. Do the new question types reduce performance differences that do not reflect examinee competency?⁵⁹

NCBE believes the answer to the first question is “yes.”⁶⁰ At least two graders of the Field Test conducted in January, 2024, seem to agree, with one saying “in all my years of grading bar examinations, I have never been so impressed with the scope and detail of the provided grading materials and resources. Access to such extensive grading materials should ensure that grading a NextGen answer is both accurate and uniform from grader to grader.”⁶¹

NCBE found no statistically-significant differences between the Pilot Test groups given access to standard legal resources (such as the Federal Rules of Evidence) during the exam and the control groups without the materials.⁶² This led to the decision not to provide general access to such resources during the exam.⁶³

The different question types tested during Pilot Testing did not take longer than their counterparts on the UBE.⁶⁴ Response time for multiple choice questions was 1.1 minutes, 4 minutes for short-answer questions, and about 20 minutes for an Integrated Question Set.⁶⁵

⁵⁹ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 55, at 3-4.](#)

⁶⁰ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 55, at 3-4.](#)

⁶¹ [Geoffrey R. Bok & Carole Wesenberg, *Grading the NextGen Field Test: Two Graders' Thoughts on the NextGen Bar Examination*, 93 THE BAR EXAM'R 65, 65-67 \(2024\), <https://thebarexaminer.ncbex.org/article/spring-2024/grading-nextgen-field-test/>.](#)

⁶² [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 55, at 5.](#)

⁶³ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 55, at 5.](#)

⁶⁴ [See *Multistate Bar Examination*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/mbe> \(last visited July 24, 2024\).](#)

⁶⁵ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 55, at 6.](#)

As noted in Question 4 above, NCBE sought to determine what cognitive processes were used in the question types included in the Pilot Test.⁶⁶ Using 25 participants to verbalize their thought processes while completing questions and question sets, NCBE found that participants used legal reasoning and knowledge while completing question sets and noted that the knowledge acquired in experiential learning settings such as clinics, internships, and classrooms was especially useful.⁶⁷ While completing standalone multiple choice questions, participants also exercised legal reasoning and knowledge as well as utilizing test-taking strategies.⁶⁸ NCBE noted that “[c]ognitive processes used to respond to new question formats are aligned with the skills identified in the practice analysis.”⁶⁹

Finally, NCBE explains that “[t]he results from the group analysis suggest that the new question types yield similar results across different groups of participants, reducing performance gaps between them.”⁷⁰ Small differences were noted among a few groups, and NCBE plans to “continue to assess the interplay of question types and performance factors in subsequent research.”⁷¹

⁶⁶ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 55, at 6-7.

⁶⁷ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 55, at 6.

⁶⁸ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 55, at 6.

⁶⁹ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 55, at 6.

⁷⁰ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 55, at 7. Groups that were defined by NCBE included disability status, exam accommodation status, non-native English speakers, race/ethnicity, and gender.

⁷¹ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 55, at 7.

The Prototype Exam, a full-length test administered under bar exam-like conditions, was conducted in 36 test sites encompassing 32 jurisdictions on October 18-19 and 25-26, 2024.⁷² NCBE will issue another Research Brief examining and explaining results of the Prototype Exam.⁷³

B. Appalachian School of Law’s Self-Assessment Process

In order to assess how its curriculum stacked up against the expectations of the NextGen Bar, Appalachian School of Law (“ASL”) began by examining how well it met the School’s own program objectives.

In compliance with ABA Standards 301, 302, and 315 regarding learning outcomes and assessment, ASL adopted five new Program Learning Outcomes in 2021.⁷⁴ These are:

Learning Outcome #1—Demonstrate knowledge and understanding of substantive and procedural law.

Learning Outcome #2—Demonstrate legal analysis, legal reasoning, legal research, problem-solving, and communication skills.

Learning Outcome #3—Demonstrate proper professional and ethical responsibilities.

Learning Outcome #4—Demonstrate professional skills needed for competent and ethical participation as a member of the legal profession in the Appalachian region and beyond.

⁷² See *NextGen Prototype Exam: Help Shape the Future of the Legal Profession*, NAT’L CONF. OF BAR EXAM’RS, (July 10, 2024), <https://nextgenbarexam.ncbex.org/nextgen-prototype-exam-october-2024/>. See also Kara McWilliams, *Quarterly Update: The Evolution of the Bar Exam: An Update from NCBE’s New Chief Product Officer*, 93 THE BAR EXAM’R 3, 32 (Fall 2024), <https://thebarexaminer.ncbex.org/article/fall-2024/nextgen-quarterly-update/>.

⁷³ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 55, at 2.

⁷⁴ See *Curriculum: Learning Outcomes, Self-Assessment, and Curriculum Mapping*, APPALACHIAN SCH. OF L., <https://www.asl.edu/curriculum-mapping-and-self-assessment/> (last visited Dec. 20, 2024).

Learning Outcome #5—Demonstrate, develop, and embrace a sense of civic responsibility and leadership by working to address community needs and problems.

1. Curriculum Mapping

After two full academic years of using the new Program Learning Outcomes, ASL began its self-assessment process by developing a Curriculum Mapping survey to ascertain how well its curriculum was meeting the desired Outcomes.⁷⁵ ASL’s Curriculum Committee broke down each Learning Outcome into separate Criteria for assessment. For example, Learning Outcome #1 encompassed two Criteria. “Students will demonstrate achievement of Learning Outcome #1 by: Criterion #1: demonstrating through verbal and/or written expression, the ability to recall, articulate, and explain core concepts, doctrines, principles, and rules in the subject matter; and Criterion #2: Demonstrating, through verbal and/or written expression, the ability to solve fact-based problems

⁷⁵ ASL’s Curriculum Committee is indebted to the authors of several articles and publications of curriculum map summaries for guidance in applying the concept of curriculum mapping to legal education. Debra Moss Curtis & David M. Moss, *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education*, 34 NOVA L. REV. 473 (2015); Larry Cunningham, *Preparing for the NextGen Bar Exam: Questions to Consider*, L. SCH. ASSESSMENT (March 29, 2022); Larry Cunningham, *The Point of Curriculum Maps*, L. SCH. ASSESSMENT (February 28, 2019), <https://lawschoolassessment.org/2019/02/28/the-point-of-curriculum-maps/>; *Curriculum Map for the J.D. Program*, ST. THOMAS UNIV. BENJAMIN L. CRUMP COLL. OF L., <https://www.stu.edu/law/academics/mission-and-learning-outcomes/curriculum-map/>, (last visited June 11, 2024), with direct links to the Curriculum Map itself; *Curriculum Map (Basic)*, VILLANOVA L., [https://www1.villanova.edu/dam/villanova/law/documents/forms/academics/Curriculum%20Map%20\(basic\).pdf](https://www1.villanova.edu/dam/villanova/law/documents/forms/academics/Curriculum%20Map%20(basic).pdf) (last visited June 11, 2024).

and situations by application of knowledge of substantive procedural law.”⁷⁶ A total of 20 Criteria were developed across the five Learning Outcomes.⁷⁷

The survey asked instructors to answer questions about how the courses they taught during 2022-2023 met these Criteria.^{78,79} A faculty guidance document, entitled “Curriculum Mapping,” was provided to each instructor at a Faculty Retreat in May, 2023.⁸⁰ The Retreat provided an opportunity for all faculty in attendance to complete the survey individually, after group discussion.

Three response choices to each survey question were available for selection: “N/A,” if the course did not address that Criterion; “Introduced,” if the course introduced the Criterion but didn’t require a significant level of proficiency; and “Proficient,” if the course required students to demonstrate proficiency in that Criterion in order to pass the course.⁸¹ At the Faculty Retreat that kicked off the Curriculum Mapping project, there was significant discussion of how to define “Proficient” and “Introduced.” Ultimately, the precise definition of each was left to the instructor’s discretion although consensus was reached that “Proficient” did

⁷⁶ *Curriculum Mapping Faculty Survey Questionnaire*, APPALACHIAN SCH. OF L. (2023), <https://www.asl.edu/wp-content/uploads/2024/07/Curriculum-Mapping-Faculty-Questionnaire-final-Google-Forms.pdf>.

⁷⁷ *See id.*

⁷⁸ *See id.*

⁷⁹ In addition to the Learning Outcomes, the survey included questions about newly revised ABA Standards 303(b)(3) (professional identity formation) and 303(c) (cross-cultural competency), and about specific elements required for experiential learning courses and upper-level writing requirement courses. *See id.*

⁸⁰ *See Guidance Memo on Curriculum Mapping Survey*, APPALACHIAN SCH. OF L. (2023), <https://www.asl.edu/wp-content/uploads/2024/07/Curriculum-Mapping-Faculty-Guidance-Document.pdf>. The document was later provided to faculty members not in attendance at the Retreat, with a link to the Survey.

⁸¹ *See id.*

not mean “expert” or “outstanding,” but was more akin to “capable” or “competent.”

After the Survey was completed, the Curriculum Committee compiled and analyzed the results. The Committee calculated the number of Introduced or Proficient responses to each Criterion and to each Learning Outcome as a whole, in order to assess whether each Learning Outcome was being “Met” by any course. Because each Learning Outcome had a different number of associated Criteria, each one had a different formula for determining if it had been Met by the course.⁸² As noted above, Learning Outcome #1 had two Criteria. Therefore, for a course to be marked as having “Met” Learning Outcome #1, the Criteria results had to include two Proficient responses or one response of Introduced and one of Proficient for the course.

For some broader Learning Outcomes, it was necessary to evaluate some Criteria separately. For example, Learning Outcome #2 addresses legal analysis, reasoning, research, problem-solving, and communication skills. Accordingly, the Criteria associated with legal research skills and those involving oral presentations/advocacy were considered separately. A summary of ASL’s Survey

⁸² Due to ASL’s size, most doctrinal courses at ASL are taught in one section only. Therefore, tracking and analyzing results was simpler than it would have been in a law school with different professors teaching different sections of the same subject. In the few courses with multiple sections, such as courses focused on legal research and writing, responses from the separate instructors were compiled and an “average” response was determined for each Criterion. *See Curriculum Mapping--Learning Outcomes Evaluation/Results, APPALACHIAN SCH. OF L. (2023), <https://www.asl.edu/wp-content/uploads/2024/07/Learning-Outcome-Evaluation-Curriculum-Mapping-Final-Results-2023-08-31.pdf>.*

of Curriculum Mapping/Learning Outcomes Evaluation results for required courses is available on ASL's website.⁸³

Analysis of the Survey results identified a few gaps and inconsistencies in the required curriculum. One example of this problem related to one of the upper-level writing requirements.⁸⁴ The assessment showed that two courses considered as alternatives for meeting the upper-level writing requirement did not meet the same Learning Outcomes, precipitating a change in the curriculum.⁸⁵

Additionally, the Curriculum Committee concluded that Learning Outcome #3, regarding ethical and professional responsibilities, was not fully incorporated into many required doctrinal courses.⁸⁶ Faculty members were encouraged to consider including additional examples of addressing professional and ethical responsibilities in scenarios directly related to the subject matter of the doctrinal courses they teach. Another benefit of the Curriculum Mapping Survey project was that the legal writing faculty used the data comparison across sections to ensure greater consistency of required assignments and skill development.

Overall, the Curriculum Mapping Survey project introduced faculty members to this method of self-assessment and provided data to the Chief Academic Officer about compliance with required Standards. Perhaps most

⁸³ *See id.*

⁸⁴ *See id.*

⁸⁵ *See id.*

⁸⁶ *See id.*

importantly in the context of the NextGen Bar Exam, this project deepened the engagement of the faculty in discussion about curriculum assessment and revision.

2. NextGen Content Scope Assessment

When NCBE announced the Preliminary Content Scope in early 2022, ASL began to consider whether its required curriculum would provide the necessary doctrinal knowledge for its graduates to succeed on the NextGen Bar Exam. This process continued upon issuance of the Revised Bar Exam Content Scope in May, 2023⁸⁷ and the addition of Family Law in October 2023.⁸⁸ With the scope of the exam narrowing, ASL's Curriculum Committee assessed the current curriculum and found it largely in good shape for addressing the required doctrinal Concepts and Principles of the NextGen Bar Exam. However, the Committee felt that currently-elective courses in Business Associations and Family Law should become required courses.

In addition to this general examination of the curriculum, more detailed review of the required courses' content was begun. The Foundational Concepts & Principles for each subject area was reviewed individually by the faculty member teaching that subject, for internal assessment of the concepts and principles that

⁸⁷ *See Bar Exam Content Scope, NAT'L CONF. OF BAR EXAM'RS 1, 5 (2023)*, https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023/?auto_viewer=true#page=&zoom=page-fit&pagemode=none.

⁸⁸ *See NextGen Content Scope Outlines, NAT'L CONF. OF BAR EXAM'RS*, <https://nextgenbarexam.ncbex.org/reports/content-scope/> (last visited Dec. 20, 2024).

need to be included in the course. At ASL, faculty members have the responsibility for developing their own courses, which process is overseen by the Chief Academic Officer who reviews syllabi, assignments, and assessments for compliance with ASL’s expectations. It is expected that ASL faculty members will begin incorporating changes into their courses over the next two academic years to reflect the depth of coverage necessary for “starred topics” within that subject.

3. NextGen Foundational Skills Assessment

a. What Skills Will be Tested?

The NextGen Bar Exam represents “a significant shift towards prioritizing practical skills.”⁸⁹ To that end, NCBE announced the inclusion of 27 Foundational Skills and Associated Lawyering Tasks (the “Skills”), divided into four “Groups,” that will be assessed by the NextGen Bar Exam.⁹⁰ A complete listing of all 27 Skills is contained on the NextGen Bar Exam website and in Appendix A to this article.⁹¹

Group A Foundational Skills: Issue Spotting & Analysis and Investigation & Evaluation account for the first 7 Skills to be tested.⁹² As an example, Skill #1

⁸⁹ See Melanie Rauch, *How the NextGen Bar Exam Will Impact Law School Students*, FINDLAW LEGAL BLOGS (Mar. 20, 2024), <https://www.findlaw.com/legalblogs/practice-of-law/how-the-nextgen-bar-exam-will-impact-law-school-students/>.

⁹⁰ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 87, at 1-4.

⁹¹ See NAT’L CONF. OF BAR EXAM’RS, *supra* note 87, at 1-4.

⁹² See NAT’L CONF. OF BAR EXAM’RS, *supra* note 87, at 4.

requires examinees to: “identify which legal principles are likely to affect the outcome of the matter,” while Skill #2 requires them to: “identify the applicable standards of review and/or burdens of proof that will apply to legal issues in the matter.”⁹³

Group B Foundational Skills: Client Counseling & Advising, Negotiation & Dispute Resolution, and Client Relationship & Management incorporates seven Skills.⁹⁴ An example is Skill # 9: “in a matter requiring review of a provided transcript of an interview, deposition, or examination of a client or fact witness, identify gaps in information obtained, suggestions for improvement, and/or grounds for objection (if applicable).”⁹⁵ Several Model Rules of Professional Conduct will also be tested as part of Group B.⁹⁶ NCBE explains that though these Rules “will not be assessed in stand-alone questions, [they] may be assessed in the context of assessment of Group B Foundational Skills.”⁹⁷

Group C Foundational Skills: Legal Research includes eight Skills.⁹⁸ This Group includes Skill # 17: “identify efficient legal research strategies (including appropriate search terms) that are likely to uncover other legal sources to assist in the interpretation of a provided resource (such as a statute, contract, or judicial

⁹³ [NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 4.](#)

⁹⁴ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 4.](#)

⁹⁵ [NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 2.](#)

⁹⁶ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 2.](#)

⁹⁷ [NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 2.](#)

⁹⁸ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 3.](#)

opinion)” and Skill #20: “given a collection of legal sources, identify other sources, search terms, or research strategies that might be used to update sources or find additional sources.”⁹⁹

The final five Skills are contained in Foundational Skills Group D: Legal Writing and Drafting.¹⁰⁰ In this group, Skill #24 provides a specific example of what will be tested: “given draft sections of a complaint or an answer to a complaint in a matter, identify language that should be changed, and make suggestions for how that language should change, consistent with the facts, the relevant legal rules and standards, and the client’s objectives, interests, and constraints.”¹⁰¹

b. How Will These Skills be Tested?

Although the list of Skills will continue to be fine-tuned through further testing, NCBE plans to assess the Foundational Skills through all three types of questions included on the NextGen Bar Exam.¹⁰² These Skills questions will be integrated with questions on Foundational Concepts & Principles.¹⁰³ This represents a departure from the UBE’s compartmentalized testing and from the

⁹⁹ NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 3.

¹⁰⁰ [See NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 4.](#)

¹⁰¹ [NAT'L CONF. OF BAR EXAM'RS, *supra* note 87, at 4.](#)

¹⁰² [See Marilyn Wellington, *Pilot Testing, Field Testing & Prototype Testing: A Look at the Interconnected Research Phases for the New Bar Exam*, 91 THE BAR EXAM'R 28, 28-31 \(2022\), <https://thebarexaminer.ncbex.org/article/winter-2022-2023/the-next-generation-winter-22/>.](#)

¹⁰³ [See *NextGen Bar Exam Sample Questions*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/nextgen-sample-questions/> \(last visited Nov. 26, 2024\).](#)

traditional law school long-form essay exam. This means that law school professors should start mimicking the NextGen question types to give students as much practice as possible.¹⁰⁴

c. ASL’s Self-Assessment of Foundational Skills Included in its Existing Curriculum

ASL utilized the same faculty survey approach used in the Curriculum Mapping/Learning Outcome Evaluation process to ascertain which Skills were encompassed in the current curriculum. ASL’s Curriculum Committee created a survey of all 27 Skills, again utilizing the same “Introduced” and “Proficient” categories for responses but adding two new response options “No, not currently, but it could be incorporated into this course” (i.e., “No/Could”) and “No, not currently, and I doubt this could be incorporated into this course” (i.e., “No/No”).¹⁰⁵ Unlike ASL’s earlier Curriculum Mapping process, this NextGen Skills Survey was only completed for required courses. Although certainly many of the Foundational Skills are taught in elective courses, especially with ASL’s emphasis on experiential learning,¹⁰⁶ this Survey focused on tracking the Skills

¹⁰⁴ See e.g., [Wanda M. Temm, *Legal Education and Next Gen: Recommendations for Transitioning to a New Assessment Model*, 92 THE BAR EXAM’R 29, 29-31 \(2023\)](#). See also Section D.3.d *infra* for further discussion of recommended changes to testing techniques.

¹⁰⁵ See [NextGen Skills Survey Questionnaire](#), APPALACHIAN SCH. OF L. 2023), <https://www.asl.edu/wp-content/uploads/2024/07/NextGen-Skills-Survey-Questionnaire-required-courses.pdf>.

¹⁰⁶ ASL’s curriculum, prior to the NextGen changes, required 8 credit hours of Practicum courses as well as a required externship, all of which focus on experiential learning. See [2023-2024 Appalachian Sch. of L. Catalog & Student Handbook](#), APPALACHIAN SCH. OF L. 1-1, 4-1-4-2 (2023), <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>. A more thorough discussion of ASL’s pre-revision curriculum is included in Section C.1 *infra* Section C.1.

taught to all students, regardless of their choice of elective courses. A summary of the overall survey responses is available on ASL’s website.¹⁰⁷

After reviewing the survey responses and calculating the number of responses in each category for each Skill, the Curriculum Committee determined that 14 of the 27 Foundational Skills were already covered by ASL’s required curriculum.¹⁰⁸ Looking at the Skills by Group, the Committee found that one Group A Skill, 5 Group B Skills, 3 Group C Skills, and 4 Group D Skills needed to be further addressed in the required curriculum.¹⁰⁹

Of the Group B Skills, four Skills shared a common thread—dispute resolution.¹¹⁰ Although ASL has offered several electives related to dispute resolution, the Skills Survey convinced the Curriculum Committee that a required course teaching dispute resolution skills should be incorporated into the curriculum. Of the 3 Group C Skills not “Proficiently” covered, the Committee decided that one Skill was likely covered by the student’s choice of a Seminar

¹⁰⁷ *See Response Summary of NextGen Skills Survey*, APPALACHIAN SCH. OF L. (2023), <https://www.asl.edu/wp-content/uploads/2024/07/Next-Gen-Skills-Survey-Response-Summary.pdf>.

¹⁰⁸ *See NextGen Skills Responses for Required Courses-Detailed Spreadsheet*, APPALACHIAN SCH. OF L. (2023), <https://www.asl.edu/wp-content/uploads/2024/07/Next-Gen-Skills-Responses-for-Required-Courses-Spreadsheet.pdf>.

¹⁰⁹ *See id.*

¹¹⁰ *See id.* at 2.

course,¹¹¹ one was related to statutory interpretation,¹¹² and one was covered in only one of the two electives offered to fulfill a second upper level writing requirement.¹¹³ The Curriculum Committee published these results to ASL’s faculty and then began to develop a revised required curriculum designed to address all the Foundational Skills and Foundational Concepts & Principles tested on the NextGen Bar Exam.

C. Curricular and Pedagogical Changes

1. Pre-Revision Curriculum

In order to understand the magnitude of ASL’s curriculum changes, it is first necessary to understand the baseline curriculum in use during ASL’s self-assessment processes. The first year curriculum at ASL looks very similar to many other law schools’ programs; “Civil Procedure,” “Contracts,” “Criminal Law,” “Property,” “Torts” (separated into “Intentional Torts” and “Negligence”), and

¹¹¹ *See id.* ASL requires each upper level student to complete a Seminar course, or Seminar alternative, which requires the student to complete an independent argumentative or expository research paper of at least 20 pages (excluding footnotes). Approximately 6-8 Seminar electives are offered in any academic year. *See 2023-2024 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 1-1, 4-1-4-2 (2023)*, <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>.

¹¹² *See NextGen Skills Responses for Required Courses-Detailed Spreadsheet, APPALACHIAN SCH. OF L. (2023)*, <https://www.asl.edu/wp-content/uploads/2024/07/Next-Gen-Skills-Responses-for-Required-Courses-Spreadsheet.pdf>. Indeed, Skills 7, 16, and 17 could be addressed in a statutory/regulation interpretation course, but Skills 7 and 16 were already considered to be adequately addressed.

¹¹³ *See id.* ASL required students to complete either a course in Appellate Advocacy (with several options for subject matter such as Criminal, Natural Resources Law, or Civil) or a year-long course called Legal Writing with a Purpose. *See 2023-2024 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 1-1, 4-1-4-2 (2023)*, <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>. The Appellate Advocacy course would meet this Skill, while Legal Writing with a Purpose would not. Similar results were found during the Curriculum Mapping survey, with Appellate Advocacy meeting Learning Outcomes that Legal Writing with a Purpose did not meet. *See Curriculum Mapping--Learning Outcomes Evaluation/Results, APPALACHIAN SCH. OF L. (2023)*, <https://www.asl.edu/wp-content/uploads/2024/07/Learning-Outcome-Evaluation-Curriculum-Mapping-Final-Results-2023-08-31.pdf>.

“Legal Research and Writing” (called “Legal Process” at ASL) are required courses.¹¹⁴ Additionally, ASL requires an academic support/study techniques course called “Introduction to ASL Legal Studies” for first-semester students.¹¹⁵

Where ASL’s curriculum differs from many schools is in its emphasis on community service and experiential learning.¹¹⁶ Before the ABA revised Standard 303, ASL required two courses during the first year: “Introduction to Community Service” in the first semester and “Introduction to Externship” in the second semester.¹¹⁷ ASL designed these courses to prepare students for completing the 25-hour per semester community service requirement throughout the J.D. program and for preparing to complete the required Externship placement during the summer after the first year.¹¹⁸ Responding to ABA Standard 303 revisions, ASL revised these courses into a year-long course called “Building a Professional Identity” (or “BPI”).¹¹⁹ This course retained the exposure to community service opportunities and the preparation for the Externship placement, but added a

¹¹⁴ See *2023-2024 Appalachian Sch. of L. Catalog & Student Handbook*, APPALACHIAN SCH. OF L. 1-1, 4-1-4-2 (2023), <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>. See also Catherine L. Carpenter, *Recent Trends in Law School Curricula: Findings from the 2010 ABA Curriculum Survey*, 81 THE BAR EXAM’R 6, 8-10 (2012), https://thebarexaminer.ncbex.org/wp-content/uploads/PDFs/810212_be_Carpenter.pdf.

¹¹⁵ See *2023-2024 Appalachian Sch. of L. Catalog & Student Handbook*, APPALACHIAN SCH. OF L. 1-1, 4-1-4-2 (2023), <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>.

¹¹⁶ See *id.*

¹¹⁷ See *2022-2023 Appalachian Sch. of L. Catalog & Student Handbook*, APPALACHIAN SCH. OF L. 1-1, 4-15 (2022), <https://www.asl.edu/wp-content/uploads/2023/08/2022-2023-Academic-Catalog-and-Student-Handbook-2022-08-19.pdf>.

¹¹⁸ See *id.*

¹¹⁹ See *2023-2024 Appalachian Sch. of L. Catalog & Student Handbook*, APPALACHIAN SCH. OF L. 1-1, 4-14 (2023), <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>.

significant component designed to have students begin considering the development of their identity as a lawyer.¹²⁰ Further, BPI now includes significant cross-cultural experiences and discussions prior to the students' Externship placement, in fulfillment of revised ABA Standard 303(c).¹²¹

The traditional second-year required curriculum at ASL included "Constitutional Law," "Criminal Procedure," "Evidence," and "Professional Responsibility."¹²² The third-year required curriculum included several bar preparation courses: "Bar Subject Review,"¹²³ "MBE Strategies and Skills,"¹²⁴ and a choice of "Bar Essays: Strategies and Skills" or "Virginia Civil Procedure and Practice" for Virginia bar examinees.¹²⁵ The upper-level curriculum required at least 8 credit hours of experiential learning ("Practicum") courses, two hours of which had to contain significant writing requirements.¹²⁶ Other upper-level writing requirements included a choice between "Appellate Advocacy" and "Legal Writing with a Purpose,"¹²⁷ as well as a choice of Seminar courses.¹²⁸ In total, 92 credit

¹²⁰ *See id.*

¹²¹ *See id.*

¹²² *See id.* at 4-1-4-2.

¹²³ Bar Subject Review is a survey course taught by multiple doctrinal faculty members, which was instituted in 2019 in conjunction with the change of several courses from required to elective. The subjects introduced in Bar Subject Review included important sub-topics from Business Associations, Conflicts, Family Law, Secured Transactions, and Wills & Estates. *See id.* at 4-13-4-14.

¹²⁴ *See id.* at 4-26.

¹²⁵ *See id.* at 4-13, 4-31.

¹²⁶ *See id.* at 4-1-4-2.

¹²⁷ *See id.* at 4-1-4-2, 4-12-4-13, 4-24; *See also supra* note 108.

¹²⁸ *See 2023-2024 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 1-1, 4-1 (2023), <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>.* The Seminar course is an intensive research and writing course, typically imposed on the background of an introductory

hours were required for the J.D. program.¹²⁹ A Graduation Checklist for the Class of 2026 helps visualize the program at a glance.¹³⁰

2. How To Teach the Foundational Skills?

Now that NCBE has set the basic parameters of the NextGen Bar Exam, announced the assessment methods, published sample questions, and begun Field Testing, the question that ASL's Curriculum Committee considered was how best to go about teaching those Foundational Skills. Numerous people involved in legal education understand that curricular, pedagogical, and assessment changes will be needed to prepare students for these changes to the bar exam.¹³¹

a. Experiential Learning Courses

ASL has historically focused on preparing practice-ready graduates. The use of Practicum courses (experiential learning/simulation courses) has been extensive, with every graduate required to complete eight hours of Practicum credit, in addition to an Externship placement.¹³² Although a relative newcomer to the field of legal education, ASL came of age in an era when legal scholars and educators

survey course in a specific area of the law, which requires the student to produce an independent expository or argumentative paper of at least 20 pages, excluding footnotes.

¹²⁹ [See id. at 4-1.](#)

¹³⁰ [See id. at app. H-3.](#)

¹³¹ See e.g., [Wanda M. Temm, *Legal Education and NextGen: Recommendations for Transitioning to a New Assessment Model*, 92 THE BAR EXAM'R 2, 24 \(2023\), <https://thebarexaminer.ncbex.org/article/summer-2023/my-perspective-summer-2023/>; *Susan Landrum, NextGen Offers Opportunities for Teaching and Curricular Innovations*, 92 THE BAR EXAM'R 2, 24 \(2023\), <https://thebarexaminer.ncbex.org/article/summer-2023/my-perspective-summer-2023/>; *Shultz, supra note 9.*](#)

¹³² [See 2023-2024 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 1-1, 4-1-4-2 \(2023\), <https://www.asl.edu/wp-content/uploads/2024/04/2023-2024-Student-Catalog-and-Handbook-041824.pdf>.](#)

were searching for ways to re-design legal education to better prepare students for the actual practice of law and to re-ignite the passion that drove many students to law school in the first place.¹³³

Nearly all of ASL's full-time and adjunct Faculty have extensive law practice experience. Among those teaching the first-year doctrinal courses, no Faculty member spent less than 10 years as a practicing attorney before joining ASL.¹³⁴ These faculty members can draw upon their own practice experience in developing fact patterns, exercises, and formative and summative assessment methods for teaching the Foundational Skills. The NextGen Bar's assessment methods of the Foundational Skills are geared toward assignments that a new attorney would undertake, and a faculty steeped in actual law practice is knowledgeable about what those assignments entail.

b. Post-Graduate Bar Preparation

Even so, commercial bar preparation has long been recommended by ASL. Beginning in 2021, ASL partnered with BarBri for a discounted post-graduate bar preparation program for its graduates. The cost of the BarBri program has been

¹³³ See e.g., Deborah A. Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. OF LEGAL EDUC. 51 (2001) (arguing that experiential learning must be integrated into the traditional law school curriculum); Russell Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps We Should Seek to Narrow*, CLINICAL L. REV. Vol. 8, p. 109 (2002-2002), <https://ssrn.com/abstract=835584> (discussing the impact of the MacCrate Report on legal education and the accompanying scholarly debate).

¹³⁴ [Faculty & Staff, Appalachian Sch. of L.](https://www.asl.edu/departments/faculty/), <https://www.asl.edu/departments/faculty/> (last visited December 5, 2024).

folded into ASL's tuition and fees, making the cost less of a shock right on the heels of graduation. It is expected that bar preparation companies will be revising their programs to focus on Foundational Skills testing in order to remain competitive in the bar-prep market. In an "Above the Law" website article, BarBri promises to "'Revolutionize' Bar Prep for the NextGen Bar Exam."¹³⁵

c. Revising Doctrinal Courses to Incorporate Foundational Skills

Most doctrinal courses intrinsically require students to exercise several of the Foundational Skills from Group A, which includes issue spotting and analysis. Students probably don't realize they are mastering Skills # 1, 2, and 3 when they read a case and discuss it in class.¹³⁶

The major players in the commercial bar preparation arena are also offering their academic partners assistance in teaching the Foundational Skills throughout the J.D. program. BarBri plans to utilize its recently-acquired asset, West Academic and Foundation Press, to "offer a robust collection of classroom content and teaching resources designed to introduce students to the lawyering skills they'll need to better prepare for the NextGen Exam and for practice."¹³⁷

¹³⁵ Joe Patrice, *BarBri Pledges to 'Revolutionize' Bar Prep for NextGen Bar Exam*, ABOVE THE L. (June 24, 2024, 11:47 AM), <https://abovethelaw.com/2024/06/barbri-revolutionize-nextgen-bar-prep/>.

¹³⁶ See *Bar Exam Content Scope: First Administration July 2026*, NAT'L CONF. OF BAR EXAM'RS, (2023) https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023/?auto_viewer=true#page=&zoom=page-fit&pagemode=none.

¹³⁷ BARBRI, <https://pages.barbri.com/Barbri-NextGen.html> (last visited June 28, 2024).

AccessLex, provider of the Helix Bar Review Program, developed a “Building Bar Skills Initiative.”¹³⁸ This Initiative is designed “to bridge the gap between standard methods of legal education and future approaches to legal training.”¹³⁹ The Initiative already published and made available to its partners six “Building Bar Skills Modules” in Civil Procedure, Contracts, Criminal Law, Professional Responsibility and Torts (Intentional Tort and Negligence issues).¹⁴⁰ These Modules are ready to be incorporated, in whole or in part, in doctrinal courses in order to incorporate “performance tasks” and/or “integrated questions.”¹⁴¹ Any doctrinal professor can utilize the Modules in order to teach the Foundational Skills to be assessed on the NextGen Bar Exam along with the traditional doctrine.

(i) Integrating Foundational Skills into Doctrinal Courses:

One Example

Federal Civil Procedure is an integral part of the first-year law school curriculum. It’s also one of the toughest for students to conceptualize.¹⁴² However, it is one of the most heavily-tested subjects on the Uniform Bar Exam¹⁴³ and the

¹³⁸ ACCESSLEX INSTITUTE, <https://www.accesslex.org/building-bar-skills-initiative> (last visited June 28, 2024).

¹³⁹ *See id.*

¹⁴⁰ *See id.*

¹⁴¹ *See id.*

¹⁴² *See* David B. Oppenheimer, *Using a Simulated Case File to Teach Civil Procedure: The Ninety-Percent Solution*, 65 J. LEGAL EDUC. 817, 817 (2016) (explaining student “frustration” with Civil Procedure is a result of “their inability to view the course materials in a context that makes them seem real”).

¹⁴³ *See Uniform Bar Exam Frequency Chart*, JD ADVISING, <https://jdadvising.com/which-subjects-tested-uniform-bar-exam/> (last visited Dec. 23, 2024) (reflecting the frequency of UBE-tested subjects from the July 2011 exam through the February 2024 exam).

NextGen Bar Exam doesn't appear to intend to deviate from that.¹⁴⁴ Civil Procedure professors need to teach both doctrine and Skills. As a Civil Procedure professor, I've sought ways to incorporate Foundational Skills into the course. Here is one example of how I use Civil Procedure for helping students master Foundational Skill # 24.¹⁴⁵

Near the beginning of the course, when studying Federal Rule of Civil Procedure 8, the students work in small groups to draft a simple Complaint for a car accident case.¹⁴⁶ Later, after tackling the *Twiqbal*¹⁴⁷ standard of pleading, the students review their original Complaint to determine whether it is in compliance with Rule 8(a). After studying subject matter jurisdiction and personal jurisdiction, the students once again review their Complaints and revise them to fully comply with Rule 8(a)(1)'s requirement for a short and plain statement of the grounds for the court's jurisdiction. Peer review of the revised Complaints can be utilized to provide additional reinforcement of practical application of these concepts. Frequently, my midterm or final exam will include a draft Complaint with a few questions about what is missing or the best way to revise the draft.

d. New Methods of Assessment

¹⁴⁴ [See NCBE Publishes Content Scope for NextGen Bar Exam, NAT'L CONF. OF BAR EXAM'RS. \(May 25, 2023\), https://www.ncbex.org/news-resources/ncbe-publishes-content-scope-nextgen-bar-exam.](https://www.ncbex.org/news-resources/ncbe-publishes-content-scope-nextgen-bar-exam)

¹⁴⁵ [See NAT'L CONF. OF BAR EXAM'RS, supra notes 97, 98, at Section B.3.a.](#)

¹⁴⁶ [See Angela Upchurch et al., Click and Learn: Civil Procedure, Carolina Academic Press, https://clickandlearnguide.com/ \(last visited on Sept. 12, 2024\).](https://clickandlearnguide.com/) Many thanks to Professors Upchurch, Gilles, and Ho for their incredible interactive tool for teaching and reinforcing civil procedure concepts in a practical way.

¹⁴⁷ [See Bell Atlantic Corp. v. Twombly, 550 U.S. 544 \(2007\); see also Ashcroft v. Iqbal, 556 U.S. 662 \(2009\).](#)

As mentioned in Section 3.b. “How Will These Skills be Tested?,” *infra*, the assessment methods used on the NextGen Bar Exam differ somewhat from those utilized on the UBE and on most proprietary state bars. This will necessitate changes in the methods by which doctrinal law professors assess their students.

Traditionally, most law school exams follow one of a few basic formats, or some combination thereof.¹⁴⁸ A favorite tool of law professors is the “issue spotter” exam. This involves one or more long essay questions following a long fact pattern requiring the student to spot the legal issues and address them.¹⁴⁹ Many professors incorporate multiple choice questions with a unique fact pattern (the “standalone” multiple choice) using the typical “select the one best answer from these four answer choices” format.¹⁵⁰ One reason for the popularity of these formats was that they matched well with the UBE format and prepared students for what they would eventually face on the bar exam.

Law professors’ assessment methods will need to change to more closely mirror the NextGen Bar Exam. As discussed in Section 3.b. *infra*, the long form essay will not constitute a large portion of the NextGen Bar. In fact, NCBE says

¹⁴⁸ See Stephanie Baldwin, *The Types of Law School Exams You May Encounter During Finals*, BARBRI, (last updated Aug. 28, 2024), <https://www.barbri.com/blog/usstudent/the-types-of-law-school-exams-you-may-encounter-during-finals/>; see also Melissa Castro Wyatt, *How to Succeed at Law School Exams: Professors, Student Affairs Offer Hints for Successful Finals Season*, UNIV. OF VA. SCH. OF L., (Nov. 16, 2023), <https://www.law.virginia.edu/news/202311/how-succeed-law-school-exams>; see also J. D. Advising, *What are law school final exams like?*, <https://jdadvising.com/what-are-law-school-finals-like/> (last visited Sept. 12, 2024).

¹⁴⁹ See Baldwin, *supra* note 148.

¹⁵⁰ See *id.*

there will be “at least one” long essay.¹⁵¹ So, while there is still a valid place for essays in the law professors’ testing repertoire, instructors reliant upon essay-heavy exams should begin transitioning to tests with shorter answer questions of up to a paragraph. Similarly, professors should begin utilizing “multiple select” questions with the students selecting two correct responses out of six answer choices to their multiple choice tests.

Because of the integrated nature of the NextGen Bar Exam, professors should also begin incorporating multiple question types within a single longer fact pattern. Instead of a two-page fact pattern with the student being asked to write two or three essays about different issues arising in the fact pattern (or the student-feared kitchen sink issue-spotting format of “tell me all the legal problems you see in this fact pattern”), professors should consider having the students answer a mixture of multiple choice, multiple select, and short answer questions based on a single fact pattern. This will more closely approximate how 25% of the NextGen Bar Exam will be assessed.¹⁵²

The reduction in longer essay questions doesn’t mean that professors should stop including longer writing assignments. But the NextGen Bar’s shift to a focus on Skills should be replicated in the classroom with some assessments focusing on

¹⁵¹ [See NAT’L CONF. OF BAR EXAM’RS, *Sample NextGen Bar Exam Performance Task*, https://nextgenbarexam.ncbex.org/performance-task/.](https://nextgenbarexam.ncbex.org/performance-task/)

¹⁵² [See NAT’L CONF. OF BAR EXAM’RS, *NextGen Bar Exam Sample Questions*, https://nextgenbarexam.ncbex.org/nextgen-sample-questions/.](https://nextgenbarexam.ncbex.org/nextgen-sample-questions/)

actual drafting, review, and/or revision of legal documents rather than the traditional essay. Reviewing the Sample Questions released by the NCBE is a good starting point for professors seeking a model for new assessment methods that will prepare students for the NextGen Bar Exam.¹⁵³

3. A Revised Curriculum

After consideration of the results of ASL’s self-assessment surveys and curriculum mapping, along with the new Foundational Concepts & Principles and Foundational Skills to be tested on the NextGen Bar Exam, ASL’s Curriculum Committee recommended the following revisions to its Faculty. ASL’s Faculty examined the proposed curriculum revisions at its December, 2023 and May, 2024 Faculty Retreats, and adopted the Committee’s proposals with a few well-considered revisions. The resulting NextGen Curriculum is discussed next.

a. Overview of NextGen Curriculum Changes

ASL will still require 92 credit hours for the J.D. program and will maintain the required summer Externship course at the conclusion of the first year of law school.¹⁵⁴ Third-year Bar Prep courses will be revised to reflect the new structure of the NextGen Bar. The course “Multiple Choice Skills & Strategies” (formerly “MBE Strategies & Skills”) will add the multiple-select format to its coverage; the

¹⁵³ *See id.*

¹⁵⁴ *See 2024-2025 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 1, 22-23 (2024)* <https://www.asl.edu/current-students/student-resources/student-catalog-handbook/>.

course “Strategies for Essays & Practical Skills” (formerly “Bar Essays: Strategies & Skills”) will incorporate additional performance testing along with strategies on addressing integrated questions.¹⁵⁵

Also, ASL is making changes to the upper-level writing requirements. During ASL’s Curriculum Mapping process, the “Legal Writing with a Purpose” course was ascertained not to meet the same Program Learning Outcomes as the “Appellate Advocacy” course for which it was an alternative.¹⁵⁶ As a result, “Appellate Advocacy” will become a required course; “Legal Writing with a Purpose” will no longer be offered as an alternative.¹⁵⁷ ASL retains the Seminar writing requirement.

ASL’s pre-revision curriculum required 8 hours of Practicum (experiential learning courses) credit. With the adoption of a required first-year experiential learning course in Dispute Resolution Skills,¹⁵⁸ this requirement was reduced to six credit hours that are designated as Practicum or Clinic courses.¹⁵⁹

(i) Requiring More Doctrinal Courses

¹⁵⁵ [See id. Virginia Civil Procedure and Practice remains an alternative for those students planning to take Virginia’s proprietary bar exam.](#)

¹⁵⁶ [See Curriculum Mapping—Learning Outcomes Evaluation/Results, APPALACHIAN SCH. OF L. \(2023\), https://www.asl.edu/wp-content/uploads/2024/07/Learning-Outcome-Evaluation-Curriculum-Mapping-Final-Results-2023-08-31.pdf.](https://www.asl.edu/wp-content/uploads/2024/07/Learning-Outcome-Evaluation-Curriculum-Mapping-Final-Results-2023-08-31.pdf)

¹⁵⁷ [See 2024-2025 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 1, 21 \(2024\) https://www.asl.edu/current-students/student-resources/student-catalog-handbook/.](https://www.asl.edu/current-students/student-resources/student-catalog-handbook/)

¹⁵⁸ [See id.](#) at 22; discussion *infra* at Section C.3.a.ii.

¹⁵⁹ [See 2024-2025 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 1, 22 \(2024\) https://www.asl.edu/current-students/student-resources/student-catalog-handbook/.](https://www.asl.edu/current-students/student-resources/student-catalog-handbook/)

ASL also added courses in Business Associations and Family Law to the required curriculum.¹⁶⁰ With the narrowed scope of “starred topics” in each course, a reduction of one credit hour each was made from the format used when those courses were electives. This helps preserve credit hours for elective courses of interest to students while still covering the “starred” topics within NCBE’s Revised Content Scope. Two of the first-year doctrinal courses were also scaled back in response to the narrower Content Scope. Both “Negligence” (essentially, “Torts II”) and “Property II” were reduced to two credit hours each.¹⁶¹ This reduction in required credit hours during the first year made room for the elective in Dispute Resolution Skills to be included, thereby exposing students to experiential learning earlier in the program.¹⁶²

(ii) A Mandatory Dispute Resolution Skills Elective

As noted in Section B.3.c. *supra*, several of the Skills not covered in the pre-revision required curriculum were Skills related to dispute resolution.¹⁶³ So, ASL incorporated into the first-year required curriculum an experiential learning course on Dispute Resolution Skills. Students will have a choice among several alternatives to fulfill this requirement. One commonality of these courses is their practice-based format and emphasis on simulated client experiences.

¹⁶⁰ [See id.](#)

¹⁶¹ [See id.](#) at 45-46.

¹⁶² [See id.](#) at 22.

¹⁶³ [See APPALACHIAN SCH. OF L., *supra* note 108.](#)

In order to ensure that all Dispute Resolution Skills courses will meet the required Foundational Skills, ASL’s Curriculum Committee developed a set of Learning Outcomes that must be included in each Dispute Resolution Skills course,¹⁶⁴ as well as a Designation Form for the professor’s use in asking the Chief Academic Officer to approve the designation as a Dispute Resolution Skills course.¹⁶⁵ To date, three courses have been designated as fulfilling the Dispute Resolution Skills requirement: “Dispute Resolution,” “Negotiations in the Criminal Justice System,” and “Negotiation Techniques & Arbitration.”¹⁶⁶ Additional courses are under development, including a “Mediation Techniques” course being developed by a recently-retired judge.¹⁶⁷

(iii) A Mandatory Statutory/Regulatory Interpretation Elective

A few other Foundational Skills identified in ASL’s self-assessment as requiring augmentation were related to reading, analyzing, and applying statutes.¹⁶⁸

¹⁶⁴ See *Dispute Resolution Skills Course Designation Form*, APPALACHIAN SCH. OF L. (2024), <https://www.asl.edu/wp-content/uploads/2024/07/Dispute-Resolution-Course-Designation-Form.pdf>. The four required Learning Outcomes are based on four of the Group B Foundational Skills from the NextGen Revised Content Scope. See *Nat’l Conf. of Bar Exam’r*, BAR EXAM CONTENT SCOPE (2023), https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023/?auto_viewer=true#page=&zoom=page-fit&pagemode=none.

¹⁶⁵ See *Dispute Resolution Skills Course Designation Form*, APPALACHIAN SCH. OF L. (2024), <https://www.asl.edu/wp-content/uploads/2024/07/Dispute-Resolution-Course-Designation-Form.pdf>.

¹⁶⁶ See *Appalachian Sch. of L. 2024-2025 Catalog & Student Handbook*, 2024 APPALACHIAN SCH. OF L. 36, 45 (2024) <https://www.asl.edu/current-students/student-resources/student-catalog-handbook/>.

¹⁶⁷ Hon. Booker T. Stephens retired in 2019 after 34 years of service as a Circuit Court Judge for the Eighth Judicial Circuit of West Virginia. See Greg Jordan, *Thirty-four Years of Service: Retiring Judge Booker Stephens Fondly Remembers Time Serving McDowell*, BLUEFIELD DAILY TEL. (Mar. 17, 2019), https://www.bdtonline.com/news/34-years-of-service-retiring-judge-booker-stephens-fondly-remembers-time-serving-mcdowell/article_f69b6528-484d-11e9-988f-07103d285659.html.

¹⁶⁸ See *NextGen Skills Responses for Required Courses-Detailed Spreadsheet*, APPALACHIAN SCH. OF L. (2023), <http://www.asl.edu/wp-content/uploads/2024/07/Next-Gen-Skills-Responses-for-Required-Courses-Spreadsheet.pdf>.

Although ASL offered several electives in the pre-revision curriculum that incorporated these Skills, ASL determined it was necessary to include a requirement that students successfully complete at least one course that is designated as fulfilling a new Statutory/Regulatory Interpretation requirement.¹⁶⁹ Again, the Curriculum Committee developed a set of Learning Outcomes for these courses and a Designation Form.¹⁷⁰ So far, “Administrative Law,” “Employment Discrimination Law,” “Environmental Law,” “Natural Resources Law,” “Secured Transactions,” and “Sustainable Energy Law & Practice” have been designated as fulfilling the Statutory/Regulatory Interpretation requirement.¹⁷¹ The Committee expects additional Faculty members will request this designation for their courses, so that students will have several options for meeting this requirement.

(iv) ASL’s New “Lawyering Skills” Course

ASL is developing a year-long course for third-year students that will focus on teaching Foundational Skills might not be sufficiently addressed in ASL’s existing required curriculum. This “Lawyering Skills” course is in the early

¹⁶⁹ [See 2024-2025 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 22 \(2024\)](https://www.asl.edu/current-students/student-resources/student-catalog-handbook/) <https://www.asl.edu/current-students/student-resources/student-catalog-handbook/>

¹⁷⁰ [See Statutory/Regulatory Interpretation Course Designation Form, APPALACHIAN SCH. OF L. \(2024\)](https://www.asl.edu/wp-content/uploads/2024/07/Stat-Reg-Course-Designation-Form.pdf) <https://www.asl.edu/wp-content/uploads/2024/07/Stat-Reg-Course-Designation-Form.pdf> (noting that three of the four required Learning Outcomes drafted by the Committee are variations on Foundational Skills # 7, 16, and 17. The fourth is “[t]he student will learn and become proficient in the use of multiple canons of statutory interpretation.”).

¹⁷¹ [See 2024-2025 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 31, 35-37, 44-45, 47, and 48, \(2024\)](https://www.asl.edu/current-students/student-resources/student-catalog-handbook/) <https://www.asl.edu/current-students/student-resources/student-catalog-handbook/>.

planning stages, and will likely change as ASL continues its self-assessment surveys over the next few years.¹⁷²

For now, those Foundational Skills that were not considered to be Proficiently covered in the existing curriculum and were not addressed by the imposition of a required Dispute Resolution Skills or Statutory/Regulatory Interpretation course, would be the focus of the Lawyering Skills course.

For example, Lawyering Skills could utilize a client-file approach to teach Foundational Skills #5 and 9, which both relate to factual development in a case. In one exercise, students could review and critique a client interview, spotting gaps in facts and identifying techniques for researching and verifying those facts. Later, students could review a recorded deposition of that same client and identify information missed by the deposing counsel. Students could suggest additional questions that may have resulted in obtaining more complete testimony of the party. Additionally, students could treat the deponent as their own client and observe the deposition for purposes of identifying proper objections.

b. ASL's NextGen Curriculum: A Plan of Study

The following is a sample plan of study for ASL's revised NextGen Curriculum.

¹⁷² See *infra* § D.1; See *Appalachian Sch. of L. Catalog & Student Handbook*, APPALACHIAN SCH. OF L. 22 (2024), <https://www.asl.edu/current-students/student-resources/student-catalog-handbook/>.

Semester/Course	Credit Hours	Semester/Course	Credit Hours
<i>1st Semester (Fall, 1L)</i>	<i>15.5</i>	<i>2nd Semester (Spring, 1L)</i>	<i>14.5</i>
Building a Professional Identity I	0.5	Building a Professional Identity II	0.5
Civil Procedure	4	Criminal Law	3
Contracts & Sales I	3	Contracts & Sales II	2
Intentional Torts	2	Negligence	2
Property I	2	Property II	2
Legal Process I	3	Legal Process II	3
Introduction to ASL Legal Studies	1	Choice of Dispute Resolution Skills course	2
<i>1st Summer</i>	<i>2</i>	<i>2nd Summer</i>	<i>0</i>
Externship	2	[Electives may be chosen]	
<i>3rd Semester (Fall, 2L)</i>	<i>15</i>	<i>4th Semester (Spring, 2L)</i>	<i>12-17</i>
Choice of Appellate Advocacy (Criminal, Civil, or Natural Resources Law)	3	Business Associations	3
Family Law	2	Professional Responsibility	4
Evidence	4	Constitutional Law II	3
Constitutional Law I	3	Choice of Statutory/Regulatory Interpretation course	2-3
Criminal Procedure	3	Choice of General Electives, Seminar, Practicum, or Clinic	2-5
<i>5th Semester (Fall, 3L)</i>	<i>12-17</i>	<i>6th Semester (Spring, 3L)</i>	<i>12-17</i>
Multiple Choice Skills & Strategies	2	Strategies for Essays & Practical Skills OR Virginia Civil Procedure & Practice ¹⁷³	2-4
Lawyering Skills I	1	Lawyering Skills II	1
Choice of General Electives, Seminar, Practicum, or Clinic	9-14	Choice of General Electives, Seminar, Practicum, or Clinic	7-14

¹⁷³ [See infra § D.2.](#)

Note that there is some flexibility built into the curriculum in terms of sequence of courses. The above represents a sample plan of study for students who begin the J.D. program in Fall Semester. Students beginning in the Spring Semester will have a few variations on this sample plan.¹⁷⁴

D. Looking Forward

Although ASL has begun the self-assessment and curricular change processes, progress in both areas must continue.

1. Continuing Self-Assessment Plans

ASL intends to continue its self-assessment surveys on Foundational Skills taught in required courses on an annual basis, at least until after the first few administrations of the NextGen Bar Exam. As more faculty members become attuned to the Skills assessed on the Exam and techniques for teaching and assessing those Skills, it is anticipated that more Foundational Skills will be taught in required courses.

The incorporation of additional Foundational Skills into doctrinal courses may have implications for the new third-year “Lawyering Skills” course, which is designed to focus on Foundational Skills not already being adequately covered

¹⁷⁴ Another unique aspect to ASL’s J.D. program is the option for students to begin law school in January. These “Spring Start” students usually have a fairly small cohort of students and will take the same required courses in a different sequence from their Fall Start colleagues. *See 2024-2025 Appalachian Sch. of L. Catalog & Student Handbook, APPALACHIAN SCH. OF L. 21-22 (2024), <https://www.asl.edu/current-students/student-resources/student-catalog-handbook/>.*

elsewhere in the curriculum.¹⁷⁵ The course may be lengthened or shortened as necessary, with the addition of new Skills that future self-assessment surveys reveal necessary, or the elimination of Skills revealed as adequately addressed.

ASL will also maintain its Curriculum Mapping Surveys, to continue to assess the Program Learning Outcomes, as an integral part of meeting ABA Standard 315 on self-evaluation of its success in meeting those Outcomes.¹⁷⁶

2. Reflecting on Bar Passage Rates for the NextGen Bar Exam

ASL will need to continue its self-assessment by measuring the success of its NextGen Curriculum through the NextGen Bar passage rates as well as the bar passage rates for its students taking bar exams in jurisdictions that do not adopt the NextGen Bar Exam.

Unsurprisingly for a Virginia law school, Virginia accounts for the single largest jurisdiction for bar examination among ASL's graduates.¹⁷⁷ Virginia currently uses a proprietary bar examination format, comprising nine essay questions and ten multiple choice questions (one full day of examination) on Virginia law after a full day of the Multistate Bar Exam.¹⁷⁸

¹⁷⁵ See *2024-2025 Appalachian Sch. of L. Catalog & Student Handbook*, APPALACHIAN SCH. OF L. 22 (2024), <https://www.asl.edu/current-students/student-resources/student-catalog-handbook/>.

¹⁷⁶ See *Standard 315*, AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCH. 2023-2024, 28-29 (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-revised-standards-and-rules-since-aug-2023.pdf.

¹⁷⁷ See *Bar Passage Outcomes Report 2024*, APPALACHIAN SCH. OF L., <https://www.asl.edu/admissions/consumer-information/>.

¹⁷⁸ See *Rules of the Virginia Board of Bar Examiners*, VA. BD. OF BAR EXAM'RS (July 2024), <https://barexam.virginia.gov/misc/resources/rules.html>.

On December 11, 2024, Virginia announced its adoption of the NextGen Bar Exam.¹⁷⁹ However, Virginia will continue to require a Virginia-specific bar component.¹⁸⁰ This component will be three hours or less and is expected to be added to the afternoon of day two of the NextGen Bar format.¹⁸¹ The format of the Virginia component is still being developed.¹⁸² When decisions on format are reached, it will undoubtedly affect ASL’s continuing assessment of its required curriculum.

E. Conclusion

The NextGen Bar Exam represents a sea change in how candidates will be admitted to the state bars of at least 29 jurisdictions. It necessarily requires changes in how those candidates prepare for the bar exam. Moreover, it requires far-reaching changes in legal education, which has never been very receptive to change.¹⁸³

But before curricular and pedagogical change occurs, law schools must engage in the process of self-assessment to understand how well their existing education is preparing students for this next generation of bar exams, and indeed

¹⁷⁹ [See Virginia Board of Bar Examiners to Adopt NextGen Bar Exam Format in July 2028, VA. STATE BAR \(2024\), https://vsb.org/AN/Site/news/news-items/20241211-VBBE-nextgen-2028.aspx.](https://vsb.org/AN/Site/news/news-items/20241211-VBBE-nextgen-2028.aspx)

¹⁸⁰ [See Virginia Board of Bar Examiners to Adopt NextGen Bar Exam Format Beginning July 2028, VA. BD. OF BAR EXAM'RS \(2024\), https://barexam.virginia.gov/notices.html](https://barexam.virginia.gov/notices.html) (last visited Dec. 19, 2024).

¹⁸¹ [See id.](#)

¹⁸² [See id.](#)

¹⁸³ See Beth H. Wilensky, *Dethroning Langdell*, 107 MINN. L. REV. 2701, 2701 (2023) (discussing the Socratic method’s “remarkable staying power” since its introduction by Dean Langdell at Harvard Law School).

the next generation of practicing law. While Appalachian School of Law began its self-assessment process with surveying faculty members, another approach such as surveying students could also be utilized. The drawback to student surveys at this point is that students have not yet taken the NextGen Bar Exam and are thus far unable to accurately assess how well the NextGen Curriculum prepared them for the test. However, once the NextGen Bar Exam is utilized, graduates' input will be vital.

The most visible form of assessment will be the NextGen Bar Exam passage rate of a law school. While this general rate undoubtedly will be useful, overall bar pass results will not shed light on which aspects of legal education contributed to those results. Law schools will have to dig deeper to assess the areas of the NextGen Bar Exam in which its students are successful and the areas where students are less so.

The primary lesson that Appalachian School of Law has drawn from this process is that self-assessment—regardless of the method used—must continue. and that the curriculum, as well as pedagogical and assessment methods, must continue to be refined. The National Conference of Bar Examiners has announced that it will continue to fine-tune the NextGen Bar Exam, and law schools should

prepare to do the same with their legal education.¹⁸⁴ The author hopes that other law schools may benefit from ASL's experiences.

¹⁸⁴ *See About the NextGen Bar Exam*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/nextgen/about-nextgen> (last visited Dec. 19, 2024).

Appendix A

Group A Foundational Skills: Issue Spotting & Analysis and Investigation

& Evaluation.¹⁸⁵ Students will be required to:

1. Identify which legal principles are likely to affect the outcome of the matter.
2. Identify which facts are likely to be relevant to or dispositive of a legal issue in a matter.
3. Identify the applicable standards of review and/or burdens of proof that will apply to legal issues in the matter.
4. Identify the strengths and weaknesses of a client's position or an opposing party's position based on the relevant legal rules and standards.
5. In a matter that requires additional factual development, identify which facts need to be investigated, or the best strategy for investigating or eliciting those facts, in order to be able to evaluate the strengths and weaknesses of the client's position or an opposing party's position based on the relevant legal rules and standards.
6. Assess the probable outcome of a claim, motion, discovery matter, or objection based on the relevant legal rules and standards.
7. Identify the applicable or dispositive language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion).¹⁸⁶

Group B Foundational Skills: Client Counseling & Advising, Negotiation &

Dispute Resolution, and Client Relationship & Management.¹⁸⁷ Students will be

required to:

8. Identify which claims to recommend bringing, which remedies to recommend seeking, which evidence to present, which arguments or defenses to raise, or how to respond to arguments or defenses, based

¹⁸⁵ *See Bar Exam Content Scope: First Administration July 2026, NAT'L CONF. OF BAR EXAM'RS, (2023)*
https://nextgenbarexam.ncbex.org/pdfviewer/ncbe-nextgen-content-scope-may-24-2023/?auto_viewer=true#page=&zoom=page-fit&pagemode=none.

¹⁸⁶ *See id. at 1.*

¹⁸⁷ *See id. at 2.*

- on the relevant legal rules and standards and consistent with a client's objectives.
9. In a matter requiring review of a provided transcript of an interview, deposition, or examination of a client or fact witness, identify gaps in information obtained, suggestions for improvement, and/or grounds for objection (if applicable).
 10. Identify two factors that favor a client's position or two factors that favor an opposing party's position in a matter.
 11. Identify two benefits or two drawbacks of a proposed resolution of a dispute, consistent with the client's objectives, interests, and constraints.
 12. Identify potential terms of an agreement that could lead to a negotiated resolution of a dispute.
 13. In a matter in which a client has multiple stated objectives, explain why a legal rule or principle, as applied to the client's situation, may make one of those stated objectives unattainable.
 14. Determine the best strategy for identifying a client's needs and interests underlying the client's stated objectives, in order to aid the client in setting goals in a matter.¹⁸⁸

Several Model Rules of Professional Conduct will also be tested as part of Group B.¹⁸⁹ These Rules include MRPC 1.1 (Competence), 1.2(a) & (d) (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.3 (Diligence), 1.4 (Communications), 1.6(a) & (c) (Confidentiality of Information), 1.7 (Conflict of Interest: Current Clients), 3.1 (Meritorious Claims and Contentions), 3.3(a)(1)-(2) (Candor Toward the Tribunal), 4.1 (Truthfulness in Statements to Others), 4.2 (Communication with Person Represented by Counsel), and 4.3 (Dealing with Unrepresented Persons).¹⁹⁰

¹⁸⁸ [See id.](#)

¹⁸⁹ [See id. at 2-3.](#)

¹⁹⁰ [See id.](#)

Group C Foundational Skills: Legal Research.¹⁹¹ Students will be required

to:

15. In a matter that requires legal research, identify the research questions that need to be answered.
16. Identify ambiguities in the language, standards, elements, or factors of a provided resource (such as a statute, contract, or judicial opinion).
17. Identify efficient legal research strategies (including appropriate search terms) that are likely to uncover other legal sources to assist in the interpretation of a provided resource (such as a statute, contract, or judicial opinion).
18. Given a collection of legal sources, identify the roles and characteristics of the sources, including their authoritative weight.
19. Given one or more judicial opinions, identify the facts in a matter that are analogous to and/or distinct from the dispositive facts in the opinions.
20. Given a collection of legal sources, identify other sources, search terms, or research strategies that might be used to update sources or find additional sources.
21. Given a collection of legal sources, identify which sources are relevant to or dispositive of a legal issue in the matter.
22. Given a collection of legal sources, identify whether the sources are sufficient to complete an assigned research or other lawyering task.¹⁹²

Foundational Skills Group D: Legal Writing and Drafting.¹⁹³ Here, students

will:

23. Draft or edit correspondence 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.
24. Given draft sections of a complaint or an answer to a complaint in a matter, identify language that should be changed, and make suggestions for how that language should change, consistent with the

¹⁹¹ [See id. at 3.](#)

¹⁹² [Id.](#)

¹⁹³ [See id. at 4.](#)

facts, the relevant legal rules and standards, and the client's objectives, interests, and constraints.

25. Given draft sections of affidavits that must be submitted to a court or other tribunal in a matter, identify the best affiant and best language to support each element to be proved, consistent with the facts, the relevant legal rules and standards, and the client's objectives, interests, and constraints.
26. Given draft provisions of a contract, identify language that should be changed, and make suggestions for how that language should change, consistent with the facts, the relevant legal rules and standards, and the client's objectives, interests, and constraints.
27. Given a collection of legal sources, draft specified section(s) of a document, demonstrating skill at formulating an original legal analysis. This take may include an objective memo, a persuasive brief or letter, or another common document, such as a mediation brief, an opinion letter, or a draft proposal for a contract.¹⁹⁴

¹⁹⁴ *Id.*