

Professional Competence and Assessment

March 31, 2023

Changes in Lawyer Admission
Western States Bar Conference



Building a competent, ethical, and diverse legal profession.

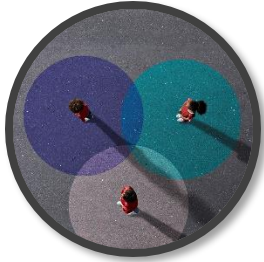


Danette Waller McKinley, PhD

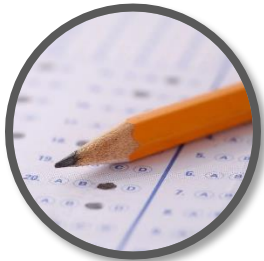
Director of Diversity, Fairness and Inclusion Research
National Conference of Bar Examiners



Overview



Professions and Competence

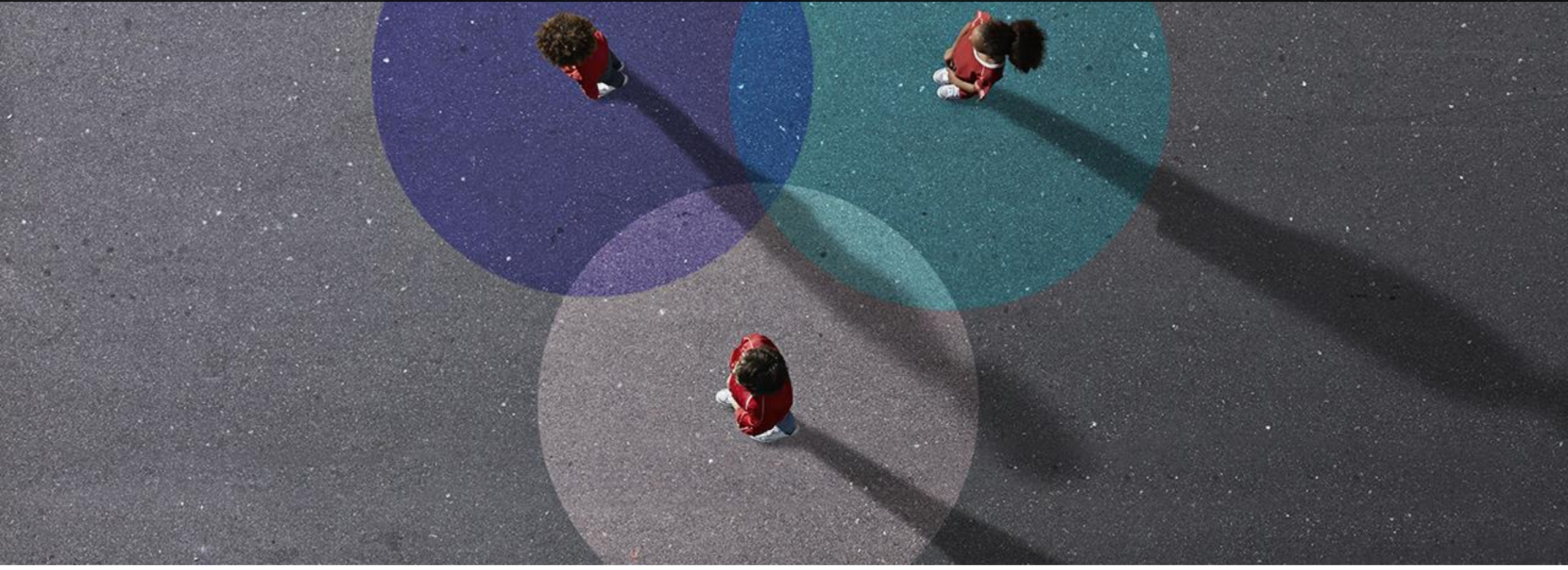


Competence and Assessment



Assessment Principles in Licensure

Professions and Competence



What Do Professions Have in Common?

- Large body of knowledge that must be mastered
- Knowledge is applied in practice
- Knowledge and skills required for entry to practice
- Professional role and identity
- Code of conduct

Defining Competence

What will newly licensed lawyers need to know and be able to do in order to best represent their clients?

What knowledge and skills can be acquired in the first three years of practice?

“The level of an individual's competence in some area of practice can be defined in terms of the extent to which the individual can handle the various situations that arise in that area of practice.”

MT Kane, *The Assessment of Professional Competence*, 15 EVALUATION & HEALTH PROFESSIONS 163 (1992).

Competence (and Competencies)

An understanding of:

- Legal processes and sources of law
- Threshold concepts in many subjects

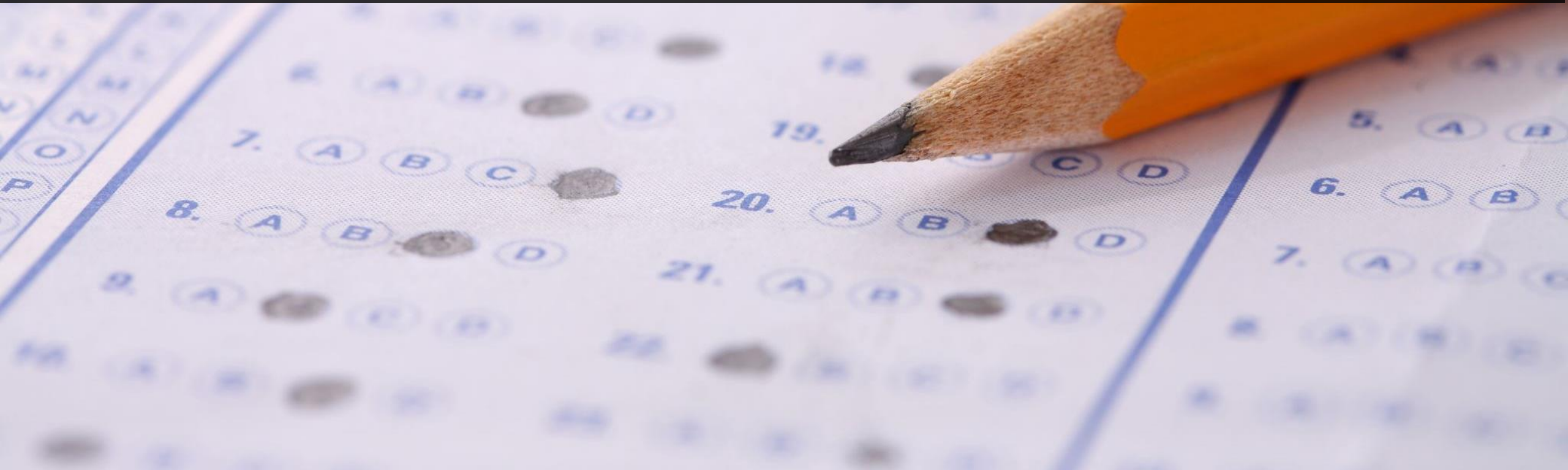
The ability to:

- Act professionally and in accordance with the rules of professional conduct
- Interpret legal materials
- Interact effectively with clients
- Identify legal issues
- Conduct research
- Communicate as a lawyer
- See the “big picture” of client matters
- *Manage a law-related workload responsibly*
- *Cope with the stresses of legal practice*
- *Pursue self-directed learning*

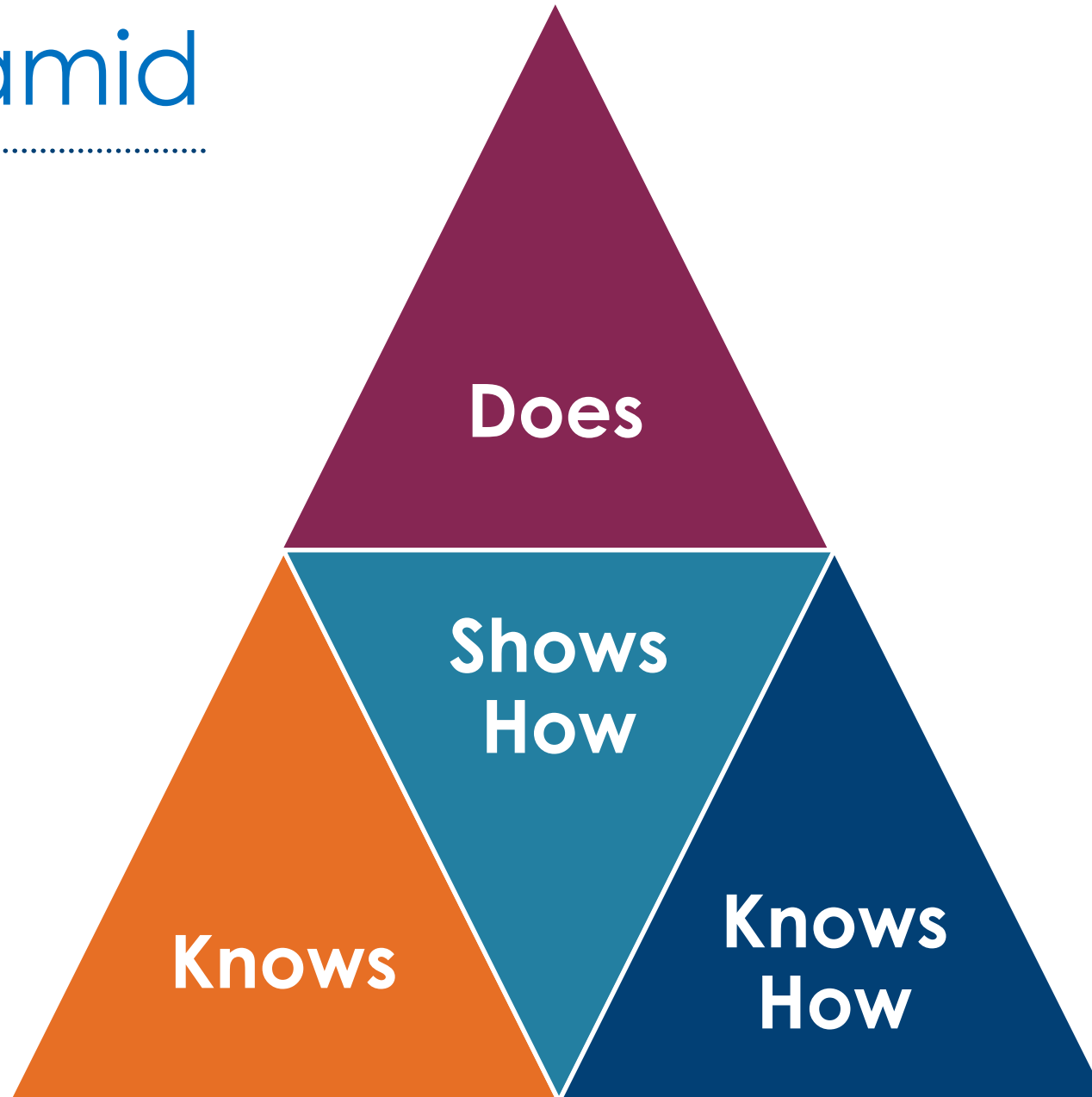
Competencies: Knowledge and Skills



Competence and Assessment

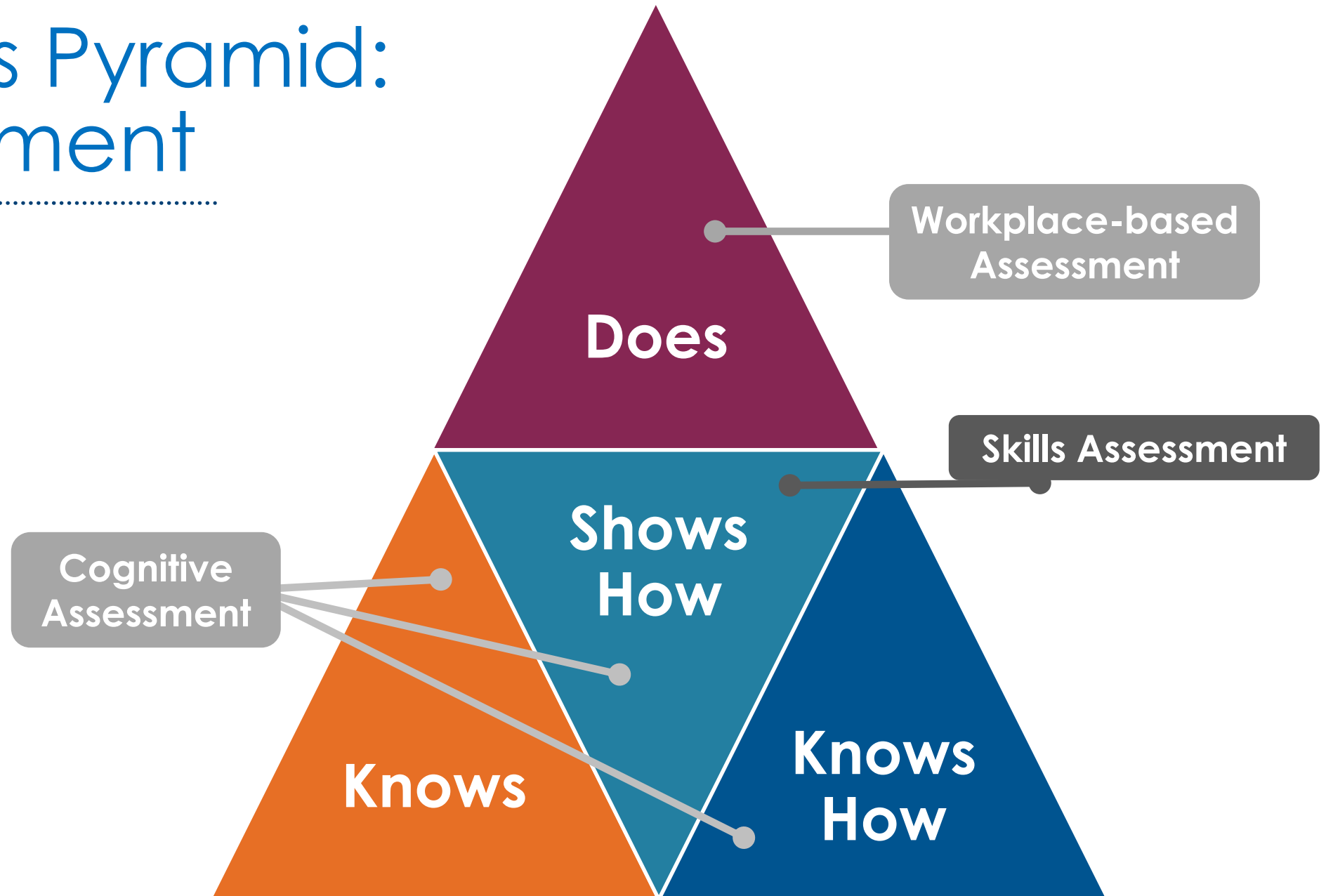


Miller's Pyramid

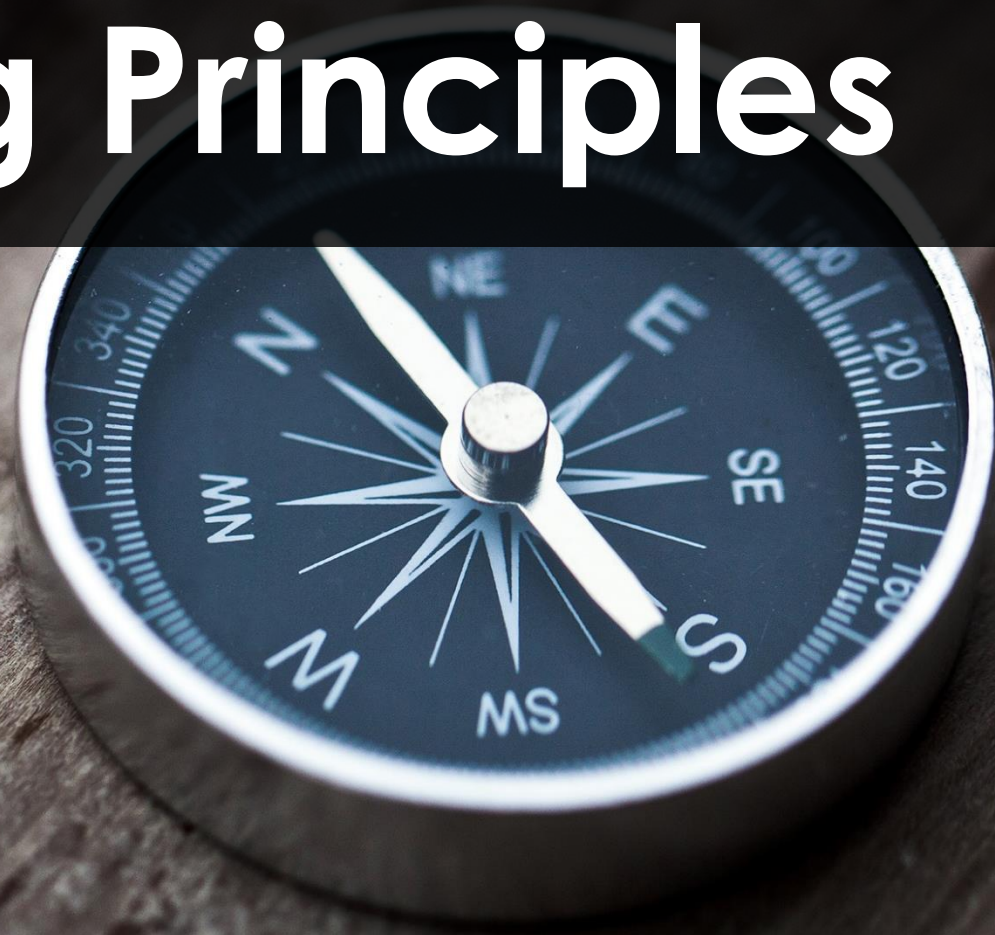


GE Miller,
*The Assessment of Clinical
Skills/Competence/
Performance*, 65 ACAD.
MED. 63 (1990).

Miller's Pyramid: Assessment



Guiding Principles



Reliability and Decision Consistency

Ensuring sufficient number and variety of observations

Supervisor leniency

Potential bias

Similar challenges for all candidates

“The validity of an assessment of professional competence depends on the evidence supporting inferences from an examinee's score, which is based on fallible evaluations of limited samples of performance, to conclusions about the examinee's expected performance over the domain of encounters defining the area of practice.”

Kane at 165.



Interpretations (Validity)



Scoring

Evaluation:
judgement of the
response's correctness



Generalization

Using the performance
to draw conclusions
about the competence
to perform in similar
encounters



Extrapolation

Performance is used
to extrapolate to
actual practice

Interpretations: Cognitive



Scoring

- Advantage: well-defined problem
- Disadvantage: optimal solution may not be clear



Generalization

- Advantage: possible to sample very broadly, increasing score consistency



Extrapolation

- Disadvantage: may not reflect actual practice

Interpretations: Simulation



Scoring

- Advantage: objective grading
- Disadvantage: correct options and plausible distractors require expert endorsement



Generalization

- Advantage: possible to sample more broadly
- Disadvantage: large number of simulations needed



Extrapolation

- Advantage: may achieve fidelity
- Disadvantage: may not reflect actual practice

Interpretations: Direct Observation



Scoring

- Advantage: realistic situation
- Disadvantage: complexity can make criteria difficult to identify



Generalization

- Disadvantage: samples of performance may be limited



Extrapolation

- Advantage: viewing actual practice
- Disadvantage: observation could affect performance

Assessment of Competence

Cognitive

- + Objective grading
- + Broad sample of encounters
- May not reflect performance in practice

Simulation

- + Well defined problem
- + Broad sample of encounters
- + Can closely resemble practice
- Large number needed
- May not reflect practice

Observation

- + Realistic situations
- + Viewing actual practice
- Limited sampling
- Complexity can make scoring difficult



Future Directions: Legal Education & Licensure

- Program of assessment
- Greater emphasis on assessment **for** learning during law school
- Greater emphasis on competencies/outcomes
 - Standardized clinical experiences



Summary

- Professions defined by knowledge and expertise
- Competence and attributes
- Limits in assessment of competence
- Balancing limits through a program of assessment

Thank you.



Building a competent, ethical, and diverse legal profession.