

# They're Back!

## The New Accreditation Standards Coming to a Law School Near You— A 2018 Update, Guide to Compliance, and Dean's Role in Implementing

Susan Hanley Duncan

### Introduction

In 2008, the American Bar Association's Council of the Section of Legal Education and Admission to the Bar began a comprehensive review of its accreditation standards. As part of that review, the Standards Review Committee sought comment on standards that would require law schools to develop programmatic student learning outcomes as well as methods to assess those outcomes.<sup>1</sup> After receiving substantial feedback, the council ultimately passed standards 301, 302, 314, and 315, outlined below. These new standards require law schools to engage in a process that identifies what students can expect to learn and do upon completing their law school education. All law schools must adopt specifically identified outcomes; however, the standards also allow each law school to develop and design additional outcomes specific to its own institution.

Many law schools faced with these new standards quickly became familiar with the literature on best practices in designing student learning outcomes and assessment opportunities, and using the results to modify and improve their programs.<sup>2</sup> Other disciplines have engaged in institutional assessment

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1. In 2010, I wrote an article summarizing early versions of the new ABA standards. See Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You—What You Need to Know About Learning Outcomes & Assessment*, 16 *LEGAL WRITING: J. LEGAL WRITING INST.* 605 (2010). This article provides an update of that earlier piece.
2. Trudy H. Bers, *The Role of Institutional Assessment in Assessing Student Learning Outcomes*, 141 *NEW*

cycles for decades;<sup>3</sup> however, not many law professors or administrators have firsthand experience or knowledge on how to develop these assessment regimes in their schools. This article provides suggestions and guidance on implementing the new ABA standards. Specifically, the article addresses each part of the assessment cycle individually, beginning the discussion with the relevant ABA standards. The article assists schools in drafting effective student learning outcomes and selecting appropriate methods of assessing those outcomes. In addition to reviewing best practices, the author offers practical step-by-step suggestions on how to educate law school faculties about the process, reach consensus, and implement the cycle while being mindful of time and financial constraints. In addition, it discusses the specific role of the Dean at each of the various stages of the cycle. With its real-life examples throughout, this article seeks to be a user-friendly resource for law schools and administrators as they embark on this new expedition of student learning outcomes and assessment.

### **STEP ONE: EDUCATE THE FACULTY ABOUT THE NEW STANDARDS**

- Plan a workshop to introduce learning outcomes and assessment to the faculty.
- Appoint a faculty member as point person to facilitate the process.
- Encourage faculty to form professional learning communities.

Because most faculty members know very little about the institutional assessment cycle, they need to be educated. Realistically, most faculty members intuitively already engage in an assessment cycle in their individual classes when they use their observations of what worked and did not work to improve their classes.<sup>4</sup> Creating and implementing a program assessment plan for the law school simply makes the process “more systematic, more focused, more effective, and more public.”<sup>5</sup> Faculty members become less skeptical and resistant to the process once they are exposed to the concepts, definitions,<sup>6</sup> and philosophies underlying student learning outcomes and assessments, and once they realize they already engage in the process on an informal level.

DIRECTIONS FOR HIGHER EDUC., 31-39 (2008) (identifying the assessment steps).

3. See T. DARY ERWIN, *ASSESSING STUDENT LEARNING AND DEVELOPMENT* 14-15, 20-24 (1991) (outlining the evolving assessment movement in education); see also Heidi M. Anderson et al., *Student Learning Outcomes Assessment: A Component of Program Assessment*, 69(2) AM. J. PHARMACEUTICAL EDUC. 256, 257 (2005).
4. MARY J. ALLEN, *ACCESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION* 1 (2004).
5. WESTERN WASHINGTON UNIV., *TOOLS & TECHNIQUES FOR PROGRAM IMPROVEMENT* 24 (2006) [hereinafter *TOOLS & TECHNIQUES*], [http://www.wvu.edu/depts/vpue/assessment/documents/prog\\_handbook.pdf](http://www.wvu.edu/depts/vpue/assessment/documents/prog_handbook.pdf).
6. ERWIN, *supra* note 3, at 15 (noting that assessment involves “the process of defining, selecting, designing, collecting, analyzing, interpreting, and using information to increase students’ learning and development.”).

To help educate faculty and develop a common vocabulary, schools should strongly consider planning a workshop with an expert well-versed in both assessment and legal education. At Brandeis School of Law, we hosted Dean Michael Schwartz for a workshop that proved very helpful in providing common language and a baseline for future discussions. Dean Schwartz addressed all his following stated objectives during the workshop:

- Be familiar with basic principles of institutional assessment.
- Begin a curriculum map by identifying the courses that introduce, require practice, or assess mastery of the selected competencies.
- Be able to identify the appropriate work product to determine whether students have mastered an identified competency.
- Understand the process for assessing success in achieving institutional outcomes.<sup>7</sup>

Having someone from outside the institution with Dean Schwartz's excellent reputation paved the way for the next steps in our process. To advance the project, however, someone at the institution needs to devote substantial time getting up to speed on exactly what the standards require, and to guide the faculty in the process.<sup>8</sup> At Brandeis, I appointed a tenured faculty member to be the point person. This faculty member chaired the Experiential Learning and Clinic Committee and supervised the majority of externships. Being the point person counted as the majority of her service in the annual work plan, because the work required a substantial investment of time and effort.

The point person needs specific training to be effective, unless he or she happens to already be an expert in this subject matter. Several excellent conferences provided opportunities for the point person and other members of the Experiential Learning Committee to learn more about the process and how to implement it in a law school environment. These conferences allowed our faculty members to meet others also tasked with implementing the standards and to begin to collect ideas and resources that would assist in our efforts. The point person kept the ball moving, updated me on what we needed to be doing, and answered questions as they arose in faculty meetings. The Dean will be well-served to fund one or more faculty members to attend a conference focusing on assessment.

### ***Dean's Role: Set the Tone and Allocate Resources***

#### *A. Set the Tone*

Administrators play key roles in explaining the rationale behind assessment. Deans must familiarize themselves with the reasons schools should engage in this activity beyond meeting the ABA standards. If deans understand the value of well-designed and -executed assessment programs, they can get more

7. Dean Michael Schwartz Handout, Curriculum Mapping in the Context of Institutional Assessment, (March 21, 2015) (on file with author).

8. Susan Hatfield, *Assessing Your Program-Level Assessment Plan*, 45 IDEA PAPER 1, 2 (2009), [http://ideaedu.org/wp-content/uploads/2014/11/IDEA\\_Paper\\_45.pdf](http://ideaedu.org/wp-content/uploads/2014/11/IDEA_Paper_45.pdf).

buy-in from their faculties.<sup>9</sup> Deans should educate themselves about the field of assessment and be the positive voice for them.<sup>10</sup> When deans acknowledge the value and legitimacy of the process, more skeptical faculty may accept the changes that must occur.<sup>11</sup> Deans need to be prepared to answer a myriad of questions about why law schools need to do this and specific inquiries about the mechanics.<sup>12</sup> Most importantly, the Dean needs to reassure faculty that assessment results will be used to improve programs, not to evaluate individual professors.<sup>13</sup>

Deans should also communicate an overall strategy that does not overwhelm the faculty. This will involve encouraging the faculty and any committees assigned to work on these new standards to keep things simple and to start small.<sup>14</sup> Focusing on the most important goals and using simple assessment methods that produce results will help build confidence and buy-in of the faculty.<sup>15</sup> Suskie's book *Assessing Student Learning* contains many ideas on how to implement an assessment effort within the realities of academic demands already on the faculty.

Faculty buy-in will occur faster when deans characterize the process of assessment as integral to improving student learning and not to meet ABA requirements.<sup>16</sup> Part of the Dean's role will be to change faculty members' perceptions of their jobs. Faculty need to switch from deliverers of information to "facilitators of learning."<sup>17</sup> When viewed in this context, faculty members should use assessment to give students ongoing feedback, and not primarily to assign grades.<sup>18</sup>

Although the administrators should set the tone, they need to avoid making this a top-down initiative.<sup>19</sup> Helping develop or encourage professional

9. Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning by Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 468 (2011).

10. ERWIN, *supra* note 3, at 26.

11. Hatfield, *supra* note 8, at 2; see also Cara Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate: Empowerment in the Midst of a "Perfect Storm,"* 14 CONN. PUB. INT. L.J. 67, 78 (2014) (listing some of the barriers to implementing standards including professor objections); Steven I. Friedland, *Outcomes and the Ownership Conception of Law School Courses*, 38 WM. MITCHELL L. REV. 947(2012) (specifically countering the academic freedom objections to the standards).

12. ERWIN, *supra* note 3, at 27.

13. Roberts, *supra* note 9, at 468-69.

14. LINDA SUSKIE, *ASSESSING STUDENT LEARNING: A COMMON SENSE GUIDE* 87 (2009).

15. *Id.*

16. TOOLS & TECHNIQUES, *supra* note 5, at 14; Roberts, *supra* note 9, at 458.

17. TOOLS & TECHNIQUES, *supra* note 5, at 11.

18. *Id.*

19. Sharon K. Sandeen, *Professional Learning Communities and Collaborative Teams: Tools to Jump-Start the Learning Outcomes Assessment Process*, 6 NE. U. L.J. 189, 210 (2013).

learning communities among professors teaching the same courses or among professors in related courses helps create an atmosphere that will facilitate the changes more readily than an administrator-only initiative.<sup>20</sup> These professional learning communities can be defined as:

Educators committed to working collaboratively in ongoing processes of collective inquiry and action research to achieve better results for the students they serve. Professional learning communities operate under the assumption that the key to improved learning for students is continuous, job-embedded learning for educators.<sup>21</sup>

These collaborative groups can help develop common student learning outcomes and formative assessments, using them to make collective improvement.<sup>22</sup> The interactive sharing among the group's members helps student learning by standardizing certain outcomes and measures as well as providing opportunities to reinforce what students are learning in other classes.

#### *B. Allocate Resources*

Allocating resources to fund this endeavor is as important as educating the faculty. Because these accreditation standards are only recently implemented, the true cost associated with them remains unknown. Without a doubt these standards will affect law schools' bottom line both in financial costs and personnel time and effort. Dollars will be needed to fund:

- New professors if capacity does not exist within the present faculty to teach or supervise certain courses needed for identified student learning outcomes. Some of these courses may be taught by adjuncts, while others will be so important to the mission that permanent hires will be more desirable for quality control and consistency.
- Existing professors need training if they are to adapt their courses to fit the ABA requirements of skills offerings.
- Professors serving as the evaluators will need training on how to perform programmatic reviews and report the data to the rest of the law school community.<sup>23</sup>
- Teaching assistants may be necessary for professors to have the resources they need to do more skills training in their classes.<sup>24</sup>

20. *Id.* at 191.

21. *Id.* at 213 (quoting RICHARD DUFOUR ET AL., REVISITING PROFESSIONAL LEARNING COMMUNITIES 14 (2008)).

22. *Id.* at 215-18.

23. Jo K. Galle & Jeffery Galle, *Building an Integrated Student Learning Outcomes Assessment for General Education: Three Case Studies*, 121 NEW DIRECTIONS FOR TEACHING & LEARNING 79, 85 (2010) (describing three case studies of schools implementing student learning outcomes and assessments).

24. Roberts, *supra* note 9, at 470-71.

- Consultants or staff must be dedicated to implementing the assessment program (if resources allow).<sup>25</sup>

In addition to money, these standards will involve an outlay of time and effort. The initial stages will require even more time and effort because of the unfamiliarity faculty, staff, and administrators have with the process. For example:

- Faculty may request course releases to develop or redevelop classes to meet the new ABA requirements.
- Faculty assigned to developing the student learning outcomes and assessments will need their service reduced in other areas.
- Faculty responsible for developing a process and conducting annual programmatic reviews will need their service reduced in other areas.
- Staff, administrators, and faculty will be required to submit and collect data to draft reports shared internally and externally with prospective students, university departments, and accrediting bodies.
- Field supervisors' roles will be heightened.

## STEP TWO: IDENTIFY LEARNING OUTCOMES

- Conduct an inventory on what skills are currently taught.
- Decide which skills will be added to satisfy Standard 302(d).
- Draft specific, measurable, and realistic student learning outcomes.
- Identify through curriculum mapping in what course or experience each skill is introduced and practiced, and in which competency is reached.

ABA relevant standards:

### **Standard 301. Objectives of Program of Legal Education**<sup>26</sup>

- (a) A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.
- (b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

### **Standard 302. Learning Outcomes**<sup>27</sup>

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;

25. Sandeen, *supra* note 19, at 209.

26. AM. BAR ASS'N, *Standard 301: Objectives of Program of Legal Education*, in STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017 15 (2016) [hereinafter ABA STANDARDS], [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_aba\\_standards\\_and\\_rules\\_of\\_procedure.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf).

27. AM. BAR ASS'N, *Standard 302: Learning Outcomes*, in ABA STANDARDS, *supra* note 26, at 15.

- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Identifying learning outcomes is the first step in a circular process of instructional design method known as “backwards design.” This first step requires identifying what law schools want the students to learn and then working backward to develop activities to assist them in their learning. The ABA identified some of the learning outcomes for the law schools in Standard 302(a-c). Section (d), however, allows law schools to identify additional outcomes for their students. All law graduates need basic knowledge in substantive and procedural law, training in written and oral communication skills, and exposure to the values of ethics of the profession. Additional outcomes will differ school by school, depending on their unique missions. Schools can differentiate themselves by selecting outcomes they can best deliver to their students.

Identifying student learning outcomes for individual courses and programs helps students. Students who know explicitly what they need to learn can better structure their learning, intentionally focusing on those identified outcomes. This focus helps motivate students and increases self-esteem.<sup>28</sup> Practicing lawyers need to be self-directed learners, since the law constantly changes and each client brings unique facts and needs. This method of instructional design focuses more on developing student learning as compared with the mere delivery of information, which fails to truly ascertain if the receiver learns it or not.<sup>29</sup>

This shift in the standards requires law schools to provide evidence that their graduates achieve competency with the learning outcomes, and not just that they receive doctrinal instruction and skills opportunities. To show the difference between the two approaches, one can compare Cornell Law School’s student learning outcomes with the University of New Mexico’s student learning outcomes.<sup>30</sup>

Cornell Law School’s student learning outcomes focus more on inputs (the teaching) rather than outcomes (evidence of student learning).

28. Ian Clark, *Formative Assessment and Motivation: Theories and Themes*, 1(2) PRIME RES. ON EDUC. 27, 30 (2011).

29. Richard Frye, *Assessment, Accountability, and Student Outcomes*, 2 DIALOGUE 1 (1999).

30. Ruth Jones, *Assessment and Legal Education: What Is Assessment, and What the \*# Does It Have to Do with the Challenges Facing Legal Education?*, 45 MCGEORGE L. REV. 85, 89 (2013).



***Learning Outcomes***<sup>31</sup>

- (a) A law school shall require that each student receive substantial instruction in:
1. the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
  2. legal analysis and reasoning, legal research, problem-solving, and oral communication;
  3. writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
  4. other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
  5. the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.
- (b) A law school shall offer substantial opportunities for:
1. live-client or other real-life practice experience, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;
  2. student participation in pro bono activities; and
  3. small-group work through seminars, directed research, small classes, or collaborative work.

Compare those student learning outcomes with the University of New Mexico's student learning outcomes, which focus on what students know and will be able to do upon graduating;<sup>32</sup>

***Student Learning Outcomes****Knowledge and Understanding of Substantive and Procedural Law*

Identify and understand legal concepts in core areas of law.

*Legal Analysis and Reasoning*

Identify and articulate the legal issues presented in a fact situation, identify and apply the relevant rules of law, and reach appropriate legal conclusions.

*Legal Research*

Have foundational knowledge of the legal system and legal information sources and be able to critically evaluate information, design efficient research strategies, apply information effectively to resolve specific legal issues, and distinguish between ethical and unethical uses of information.

31. *Mission Statement and Learning Outcomes*, CORNELL L. SCH., [http://www.lawschool.cornell.edu/registrar/aba\\_standards.cfm](http://www.lawschool.cornell.edu/registrar/aba_standards.cfm) (last visited Nov. 8, 2017).
32. *Student Learning Outcomes*, UNIV. OF N. M. SCH. OF L., *Student Learning Outcomes*, <http://lawschool.unm.edu/academics/learning-outcomes.php> (last visited Nov. 8, 2017).



*Problem-Solving*

Analyze problems and develop and evaluate potential solutions and strategies for resolving them.

*Professional Skills Needed for Competent Participation as a Member of the Legal Profession*

Have professional skills needed for competent participation as a member of the legal profession, including the ability to collaborate effectively; the ability to manage time, effort, available resources, and competing priorities; the ability to navigate cultural considerations; and the ability to engage in reflective practice.

*Professionalism and Ethics*

Understand the values of the profession, including the importance of honesty and integrity, of community involvement and pro bono service, and of the responsibility to promote justice; conduct themselves professionally; and comply with all relevant legal rules.

*Written and Oral Communication in the Legal Context*

Speak and write clearly, logically, and effectively, in a manner appropriate to the audience and purpose.

The University of New Mexico student learning outcomes come much closer to what the ABA envisions than Cornell's outcomes do, because they reflect a switch from the teacher-centered approach to the student-learner approach.

Law schools need to decide how many student learning outcomes to identify. Schools should resist identifying too many outcomes. The ideal amount is usually in the six-to-eight range.<sup>33</sup> Since the ABA already identified several required outcomes, the law schools should start small and identify only a couple more outcomes for Standard 302(d).

Conducting an inventory of existing courses helps begin the process of identifying other skills to meet Standard 302(d). We asked all faculty members to answer a detailed questionnaire for each course they taught. We had mixed results with getting faculty members to return the survey. Perhaps committee members could interview individual faculty members to get more reliable data or complete the survey at a faculty meeting so questions could be addressed as people fill out the questionnaires. The questionnaire listed various skills in fairly specific detail. We created the list of potential skills from recent task force studies and reports that identified multiple skills law schools should consider teaching their students. The MacCrate Report,<sup>34</sup> the Clinicians' Best

33. Hatfield, *supra* note 8, at 2; Heidi M. Anderson, Deborah L. Moore, Guadalupe Anaya & Eleanora Bird, *Student Learning Outcomes Assessment: A Component of Program Assessment*, 69(2) AM. J. PHARMACEUTICAL EDUC. 256, 258 (2005) (suggesting between three and five, because large numbers may be too burdensome to assess).

34. A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 234-35 (1992) (the "MacCrate Report" named for Robert MacCrate, Esq., chairman of the task force).

Practices document,<sup>35</sup> and the most recent Carnegie Report<sup>36</sup> all mention skills and values appropriate for legal education. In addition, other national studies conducted by individual law schools shed light on potential skills. In her recent article, Professor Barbara Glesner Fines suggests using three criteria for selecting skills:

- Centrality to the practice of law;
- Consequences of poor development of that skill;
- Place of the particular skill in national conversations about legal education.<sup>37</sup>

Graduates and legal employers could also be surveyed to help a school brainstorm about the skills necessary for its students to learn. The ABA leaves it to the individual schools to decide which additional skills a student will need.

Using an inventory does two things. First, it identifies areas of existing strength. Seeing what skills collectively are taught and in what courses they are taught helps highlight when faculty introduce various skills, if opportunities for practice of these skills exist, and where in the curriculum the student will reach competency. Certain skills may surface from the inventory that would be logical ones to select as the additional skills contemplated by the ABA standards. Second, holes may become apparent, which the law school may want to fill with additional courses and/or revisions of existing courses. The results may surprise faculty who think a certain skill is taught, only to realize nobody claims responsibility for teaching it. Finally, a holistic review of the data will establish whether all students receive opportunities to satisfy the learning outcomes “regardless of what semester they took the course and who [is] teaching it.”<sup>38</sup> For example, if negotiation is offered only in an elective class, then many students may not achieve that learning outcome and the negotiation skill is really an “orphan outcome.”<sup>39</sup>

After identifying the skills, the next step is to actually draft the learning outcomes. I established an ad hoc committee to assist with tabulating and reviewing the results of the inventory and to develop student learning outcomes for additional skills with the input from the faculty. Experts in the assessment field frequently point to Bloom’s Taxonomy as a tool to help draft student

35. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007).

36. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (commonly referred to simply as the “Carnegie Report”, this is one of a series of reports on professional education issued by The Carnegie Foundation for the Advancement of Teaching).

37. Barbara Glesner Fines, *Out of the Shadows: What Legal Research Instruction Reveals About Incorporating Skills Throughout the Curriculum*, 2013 J. DISP. RESOL. 159, 162-67.

38. Hatfield, *supra* note 8, at 3 (emphasis in the original).

39. *Id.* at 4.

learning outcomes.<sup>40</sup> In 1956 Dr. Benjamin Bloom devised a classification of three learning domains: cognitive, affective, and psychomotor.<sup>41</sup> Each domain consists of hierarchical levels of tasks.<sup>42</sup> For example, the cognitive domain consists of learning objectives organized among six levels building from lower- to higher-order thinking skills: knowledge, comprehension, application, analysis, synthesis, and evaluation.<sup>43</sup> Examples of concrete action verbs to use when drafting student learning outcomes for each level of cognitive development include:<sup>44</sup>

**Knowledge:** arrange, define, duplicate, label, list, memorize, name, order, recall, recognize, relate, repeat, reproduce, state.

**Comprehension:** classify, describe, discuss, explain, express, identify, indicate, locate, recognize, report, restate, review, select, translate.

**Application:** apply, choose, demonstrate, dramatize, employ, illustrate, interpret, operate, practice, schedule, sketch, solve, use, write.

**Analysis:** analyze, appraise, calculate, categorize, compare, contrast, criticize, differentiate, discriminate, distinguish, examine, experiment, question, test.

**Synthesis:** arrange, assemble, collect, compose, construct, create, design, develop, formulate, manage, organize, plan, prepare, propose, set up, write.

**Evaluation:** appraise, argue, assess, attach, choose, compare, defend, estimate, evaluate, judge, predict, rate, score, select, support, value.

In designing the student learning outcomes, deans need to instruct the committee to make the student learning outcomes specific using the concrete verbs outlined above. Too often professors and administrators write broad or ambiguous student learning outcomes. Poor student learning outcomes might include words such as “appreciate,” “become aware,” and “know.”<sup>45</sup> For example, this student learning outcome needs to be redrafted to be more specific: “Understand ethical responsibilities as representatives of clients, officers of the court, and public citizens responsible for the quality and availability of justice.”<sup>46</sup>

40. A TAXONOMY FOR LEARNING: TEACHING AND ASSESSING: A REVISION OF BLOOM’S TAXONOMY OF EDUCATIONAL OBJECTIVES (Lorin W. Anderson & David R. Krathwohl eds., 2001).

41. TOOLS & TECHNIQUES, *supra* note 5, at 15.

42. *Id.*

43. TAXONOMY OF EDUCATIONAL OBJECTIVES, BOOK I: THE COGNITIVE DOMAIN (Benjamin S. Bloom ed., 1956).

44. *Bloom’s Taxonomy*, U. OF LOUISVILLE OFF. OF ACAD. PLANNING AND ACCOUNTABILITY, <http://louisville.edu/oapa/institutional-effectiveness-1/instruments/BloomsTaxonomy.pdf> (last visited Nov. 13, 2017).

45. TOOLS & TECHNIQUES, *supra* note 5, at 15.

46. *Student Learning Outcomes*, U. OF HAWAII’S WILLIAM S. RICHARDSON SCH. OF L., <https://www.law.hawaii.edu/content/jd-program-student-learning-outcomes> (last visited Nov. 13, 2017).

This lack of specificity with use of the verb “understand” makes it difficult for students to identify exactly what they need to learn and difficult for faculty to measure whether students actually achieved the outcome of “understanding” ethical responsibilities. Using concrete action verbs to draft the student learning outcomes helps make them easy to understand and measure. For example, compare the learning outcome above to a similar one at University of Arkansas Little Rock William H. Bowen School of Law:

***Every graduate should have knowledge and understanding of the following at a level sufficient to practice ethically as a lawyer and to pass the bar examination in any United States jurisdiction:***

1. The nature, sources, and content of ethical standards applicable to lawyers and the practice of law in the United States; . . . .<sup>47</sup>

Including specifics concerning the “nature, sources, and content of ethical standards” lets students know exactly what they need to learn and enables faculty to design assessment instruments to determine whether students possess this knowledge. Including the competency level the graduate must reach—“*at a level sufficient to practice ethically as a lawyer and to pass the bar examination in any United States jurisdiction*”—also makes this learning outcome better than many because it identifies the performance level the graduate must obtain. Even this learning outcome, however, could be improved by substituting a more concrete verb for “have knowledge and understanding.”

McGeorge Law School’s student learning objectives use these more concrete words to describe what students will know and be able to do upon graduation.<sup>48</sup>

***Each student will***

1. Demonstrate the ability to identify and understand key concepts in substantive law, legal theory, and procedure in domestic and international law contexts;
  2. Apply knowledge and critical thinking skills to perform competent legal analysis, reasoning, and problem-solving;
  3. Demonstrate the ability to conduct domestic and international legal research;
  4. Demonstrate communication skills, including effective listening and critical reading, writing in objective and persuasive styles, and oral advocacy and other oral communications;
  5. Collaborate effectively with others in a variety of legal settings and contexts;
47. Dean Michael Schwartz Handout, Curriculum Mapping in the Context of Institutional Assessment, (March 21, 2015) (on file with author).
48. *Learning Outcomes*, U. OF THE PACIFIC - MCGEORGE SCH. OF L., [http://www.mcgeorge.edu/Students/Academics/JD\\_Degree/Learning\\_Outcomes.htm](http://www.mcgeorge.edu/Students/Academics/JD_Degree/Learning_Outcomes.htm) (last visited Nov. 13, 2017).

6. Apply knowledge of professional ethics to representation of clients, performance of duties as an officer of the courts, and to the resolution of ethical issues;
7. Demonstrate professional judgment and professionalism through conduct consistent with the legal profession's values and standards.

In addition to drafting specific learning objectives, law faculties need to develop performance criteria for meeting these learning objectives. For example, the University of Dayton does an excellent job of articulating the performance criteria that will satisfy their learning outcomes. For its learning outcome on recognizing and resolving ethical and other professional dilemmas, the graduates demonstrate achievement by:<sup>49</sup>

- Criterion 1: Listing the sources of the law governing lawyers.
- Criterion 2: Identifying and explaining the applicable law governing lawyers.
- Criterion 3: Using the law governing lawyers to recognize ethical and other professional dilemmas.
- Criterion 4: Applying the law governing lawyers to help resolve ethical and other professional dilemmas.
- Criterion 5: Exercising professional judgment to help resolve ethical and other professional dilemmas.

After the faculty drafts the student learning outcomes, they must assure that students are exposed to learning opportunities that allow them to fulfill the student learning outcome.<sup>50</sup> Constructive alignment needs to exist among the objectives, teaching methods, and the assessment.<sup>51</sup> Curriculum mapping becomes an important tool to determine where in the curriculum a student will first be introduced to the skill, practice the skill, and reach competency. The inventory described above, when aggregated, should identify where in the curriculum students can meet these various milestones for various skills. The inventory may also uncover that the skill is only introduced but no opportunities exist in the current curriculum for practice or to show competency. In addition, new skills not currently taught anywhere in the curriculum will need to be incorporated into existing courses or new offerings. The ABA has issued directives for skills courses, and professors need to make sure they follow these requirements when designing skills courses. Our resident expert developed an excellent worksheet that posed a series of guided questions for professors to use to make sure their courses met the ABA criteria. We found some existing courses did not meet the criteria but could be fine-tuned without too much effort to satisfy the requirements. Keeping

49. *Learning Objectives and Performance Criteria*, U. OF DAYTON SCH. OF L. , [http://www-staging.udayton.edu/law/\\_resources/documents/academics/learning-outcomes-and-performance-criteria.pdf](http://www-staging.udayton.edu/law/_resources/documents/academics/learning-outcomes-and-performance-criteria.pdf) (last visited Nov. 13, 2017).

50. TOOLS & TECHNIQUES, *supra* note 5, at 32.

51. Chris Rust, *The Impact of Assessment on Student Learning*, 3(2) ACTIVE LEARNING IN HIGHER EDUC. 145, 148 (2002).

these worksheets will be evidence we can use during our next site visit to show compliance with the standards.

In addition, I charged the curriculum committee to develop a handbook outlining policies and guidelines for the category of courses that will be used to meet ABA standards 302, 303, 304, 305, 310, and 314. Faculty can refer to this manual for a blueprint in developing their syllabi and lesson plans to make sure the school stays in compliance. For example, perspective courses must now contain a cultural competency student learning outcome and assessment. Seminars and upper-level writing courses must engage in certain formative assessment activities. This manual can also be fine-tuned to make a student version outlining the requirements and providing notice to students about what they can expect in each type of course.

### ***Dean's Role: Involve Many People***

Deans' offices cannot draft the student learning outcomes and assessment methods without faculty buy-in. Assessment plans will be most effective and successful when they involve many people in the process, especially when developing the student learning outcomes and assessment methods.<sup>52</sup> Faculty need to be the primary authors, but other constituencies such as students, employers, and community leaders should be consulted.<sup>53</sup> Deans can assist in this process by appointing committees that incorporate a variety of different faculty viewpoints (especially the curmudgeons) and also make sure faculty members solicit views from members not on the faculty. Also, involving more faculty helps reduce their resistance and skepticism.<sup>54</sup>

In addition, deans can encourage the use of academic success offices to be part of the process.<sup>55</sup> These offices can collaborate with doctrinal faculty and help develop and score assessments, often without the professors needing to sacrifice class time.<sup>56</sup> Legal writing professors and clinicians will also be ideal candidates for deans to call on to help incorporate these changes at an institutional level.<sup>57</sup> This shift from a teaching-driven method of instruction

52. Alexander W. Astin et al., *9 Principles of Good Practice for Assessing Student Learning*, AM. ASSOC. FOR HIGHER EDUC. (AAHE), [https://www.researchgate.net/publication/268399482\\_American\\_Association\\_for\\_Higher\\_Education\\_AAHE\\_Principles\\_of\\_Good\\_Practice\\_for\\_Assessing\\_Student\\_Learning\\_9\\_Principles\\_of\\_Good\\_Practice\\_for\\_Assessing\\_Student\\_Learning](https://www.researchgate.net/publication/268399482_American_Association_for_Higher_Education_AAHE_Principles_of_Good_Practice_for_Assessing_Student_Learning_9_Principles_of_Good_Practice_for_Assessing_Student_Learning) (last visited Nov. 13, 2017).

53. ERWIN, *supra* note 3, at 24-25.

54. *Id.* at 28.

55. Larry O. Natt Gantt, II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 CREIGHTON L. REV. 699 (2012) (outlining several studies of Academic Success Programs).

56. Louis N. Schulze, Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 31 (2012).

57. Legal writing professors have written most of the current articles on the subject of the ABA standards on student learning outcomes and assessment.

to a learning-based method will be something very familiar to most skills professors.<sup>58</sup> Many legal writing professors and clinicians already articulate learning objectives, gather information about how well students are meeting these objectives, and use the information to improve teaching. They can help educate doctrinal faculty and connect committees to excellent resources in this area.

For law schools situated on university campuses, the office of institutional research can be a very helpful resource. Assessment is not a new concept to these offices, which have many researchers well-versed in assessment techniques and practices.<sup>59</sup> In addition, research offices may already store data about law students that could be used in an assessment plan.<sup>60</sup> The researchers may be helpful in identifying and selecting sound assessment instruments.<sup>61</sup> They also can help interpret results.<sup>62</sup>

The teaching and learning centers on many college campuses also can assist law schools in this endeavor. Faculty development departments can provide readings and trainings on a host of issues associated with student learning outcomes and assessment. These researchers stay current on best practices and can save law schools immeasurable time. As a law school progresses through each part of the process, these centers should be consulted frequently. If a school cannot bring in an outside expert for training, most likely someone in the teaching center could educate faculty on how to draft and assess student learning outcomes. In addition, other units on campus already experienced in program assessment may provide guidance and templates that could be helpful.<sup>63</sup>

### STEP THREE: DEVELOP APPROPRIATE ASSESSMENTS

- Select assessment tools for individual courses and the program.

ABA Relevant Standards:

#### **Standard 314. Assessment of Student Learning**<sup>64</sup>

58. Lisa T. McElroy, Christine N. Coughlin & Deborah S. Gordon, *The Carnegie Report and Legal Writing: Does the Report Go Far Enough?*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 279, 280-81 (2011).
59. Bers, *supra* note 2, at 33 (identifying the assessment steps).
60. *Id.*
61. *Id.*
62. *Id.*
63. Deborah Maranville, Kate O'Neill & Carolyn Plumb, *Lessons for Legal Education from the Engineering Profession's Experience with Outcomes-Based Accreditation*, 38 WM. MITCHELL L. REV. 207 (2012).
64. AM. BAR ASS'N, *Standard 314: Assessment of Student Learning*, in ABA STANDARDS, *supra* note 26, at 23.



A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.

*Interpretation 314-1*

Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning.

*Interpretation 314-2*

A law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular assessment method.

The second step requires schools to gather evidence to determine whether the learning objectives have been met. The faculty must know the answer to the question "how will we know if our students are successful?" As a result, learning outcomes need to be measured or they have no value. Assessment takes place at multiple levels, including individual courses and the entire program.<sup>65</sup> Thus, law faculty need to determine the right tool to use for assessing each level and identifying competency levels expected at each level.

***How many assessments are needed?***

The assessment literature suggests using multiple methods to assess student learning outcomes.<sup>66</sup> Dr. Walvoord suggests using one direct method of assessment and one indirect method for each learning outcome.<sup>67</sup> An additional direct method could be the bar exam.<sup>68</sup> Using more than one method leads to better results because:

- Multiple measures can assess different components of a complex task.
- No complicated all-purpose method must be designed.
- Greater accuracy and authority are achieved when several methods of assessment produce similar findings.

65. Bers, *supra* note 2, at 32.

66. See Janet W. Fischer, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. U. L.J. 225, 236 (2011) (suggesting using at least two measures to assess every learning outcome).

67. BARBARA E. WALVOORD, ASSESSMENT CLEAR AND SIMPLE 59 (2010).

68. *Id.* at 60.

- It provides the opportunity to pursue further inquiry when methods contradict one another.<sup>69</sup>

### *Should assessments be formative or summative?*

Many tools exist for assessing student learning outcomes, including summative and formative assessments, but the ongoing nature of formative assessments makes them better-suited to assisting student learning. Assessment expert Paul Black provides a good way to remember the difference between the two: “When the cook tastes the soup, that’s formative assessment. When the customer tastes the soup, that’s summative assessment.”<sup>70</sup> Traditionally law professors use summative assessments in the form of an exam at the end of the semester, so Standard 314 requiring the use of formative assessments will be a major change for some legal educators. Many students do not perform well with this “all or nothing approach” because it can cause anxiety and stress.<sup>71</sup> This approach robs them of the chance to reflect and learn from their errors and to try again utilizing the feedback they have received. Students master material better if they engage in multiple opportunities to practice what they are learning.<sup>72</sup> Most students need several attempts when learning new skills before they can master the skill or even reach proficiency.<sup>73</sup> Using only summative assessment inhibits adult learning, as students have no opportunity to use feedback to improve their work.<sup>74</sup>

As Interpretation 314-1 indicates, formative assessments are distinct from summative assessments in that they occur during and not after instruction. Formative assessment helps both the instructor and the students. Assessments throughout the semester allow students multiple opportunities to practice their new knowledge or skills. In addition, these assessments help faculty identify topics that students have mastered, as well as topics that still confuse students.

Formative assessments range in complexity and effort. Some common formative assessment methods include:<sup>75</sup>

- Sharing success criteria with learners

69. TOOLS & TECHNIQUES, *supra* note 5, at 62.

70. Great Schools Partnership, *Summative Assessment*, THE GLOSSARY OF EDUC. REFORM, <http://edglossary.org/summative-assessment/> (last visited Nov. 13, 2017).

71. Rust, *supra* note 51, at 149.

72. Vicenç Feliú & Helen Frazer, *Outcomes Assessment and Legal Research Pedagogy*, 31(2) LEGAL REFERENCE SERV. Q. 184, 188 (2012).

73. MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 137, 155 (2009).

74. *See* Rust, *supra* note 51, at 153 (offering a list of important components of good feedback and suggests professors should design feedback exercises to ensure students actively engage with feedback).

75. Paul Black & Dylan Wiliam, *Developing the Theory of Formative Assessment*, 21(1) EDUC. ASSESSMENT, EVALUATION & ACCOUNTABILITY 5, 7 (2009).

- Classroom questioning
- Comment-only marking
- Peer and self-assessment<sup>76</sup>
- Formative use of summative tests

However devised, formative assessments should include five key strategies:<sup>77</sup>

1. Clarifying and sharing learning intentions and criteria for success;
2. Engineering effective classroom discussions and learning tasks that elicit evidence of student understanding;
3. Providing feedback that moves learners forward;
4. Activating students as instructional resources for one another; and
5. Activating students as the owners of their own learning.

Experts on assessments recommend not grading formative assessments to keep students from viewing these as final efforts instead of steps along the way of a continuum of learning.<sup>78</sup> But not grading does not equate to having no criteria for evaluating student work.<sup>79</sup> Detailed rubrics or samples should be utilized to assist students in comparing their own work to the desired product. Many resources exist to help law faculties develop rubrics for the first time or improve existing ones.<sup>80</sup> Using these rubrics helps make the assignments more criteria-based and not norm-referenced, which would lead students only to compare one another instead of allowing them to gauge progress on specific learning outcomes.<sup>81</sup> For example, if a faculty wanted to adopt a cultural competency student learning outcome, the Association of American

76. Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L.J. 667 (2011); see Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149 (2012) (describing self-assessments); Cassandra L. Hill, *The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn*, 56 HOW. L.J. 447 (2013) (advocating for surveys to solicit information about students' responsibility for their learning and their level of preparation).
77. Black & Wiliam, *supra* note 75, at 8.
78. JUDITH DODGE, 25 QUICK FORMATIVE ASSESSMENTS FOR A DIFFERENTIATED CLASSROOM (2009), <http://greatschoolspartnership.org/wp-content/uploads/2016/11/25QuickFormativeAssessments.pdf>.
79. WALVOORD, *supra* note 67, at 17-18.
80. Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 8 (2004); see also DANIELLE D. STEVENS & ANTONIA LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNING (2005); Beverly Petersen Jennison, *Saving the LRW Professor: Using Rubrics in the Teaching of Legal Writing to Assist Grading Writing Assignments by Section and Provide More Effective Assessment in Less Time*, 80 UMKC L. REV. 353 (2011); RONALD S. CARRIVEAU, CONNECTING THE DOTS: DEVELOPING STUDENT LEARNING OUTCOMES AND OUTCOME-BASED ASSESSMENT (2007) (Chapter 6 on writing and using scoring rubrics for written responses is a very helpful resource).
81. Samantha A. Moppett, *Control-Alt-Incomplete? Using Technology to Assess 'Digital Natives'*, 12 CHI-KENT J. INTELL. PROP. 77, 91 (2013).

Colleges and Universities already has developed an intercultural knowledge and competence VALUE rubric. The faculty could utilize this rubric to assess an essay question or a skills exercise to determine the competency level of the students for this student learning outcome.

The assessments described above work well for assessing individual students in individual courses, but the ABA requires the program as a whole to also be assessed. This assessment process focuses not on an individual's progress but on the collective progress of the entire group.<sup>82</sup> The ABA interpretation of Standard 315 outlines some ways to assess the program:

**Standard 315. Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods<sup>83</sup>**

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.

*Interpretation 315-1*

Examples of methods that may be used to measure the degree to which students have attained competency in the school's student learning outcomes include review of the records the law school maintains to measure individual student achievement pursuant to Standard 314; evaluation of student learning portfolios; student evaluation of the sufficiency of their education; student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge; bar exam passage rates; placement rates; surveys of attorneys, judges, and alumni; and assessment of student performance by judges, attorneys, or law professors from other schools. The methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school and law schools are not required by this standard to use any particular methods.

Interpretation 315-1 contemplates assessing the program effectiveness by assessing whether graduates achieve the student learning outcomes, not whether they did well in a particular course.<sup>84</sup> The standard allows for the use of both indirect and direct forms of assessment and may involve collecting assessments already in existence at the course level as well as developing new assessment methods.<sup>85</sup>

82. Sandeen, *supra* note 19, at 206.

83. AM. BAR ASS'N, *Standard 315: Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods*, in ABA STANDARDS, *supra* note 26, at 23.

84. Sandeen, *supra* note 19, at 206.

85. *Id.* at 207.

### *Indirect vs. direct forms of assessment*

Indirect forms of assessment measure students' opinions on their learning; direct forms measure performance.<sup>86</sup> Indirect evidence often involves self-reports through surveys or interviews seeking input from graduates, supervisors, and employers. The National Association for Law Placement conducts a survey of graduates that law schools may want to consider using. The survey asks graduates to rank how well-prepared they were at certain skills they use in practice. For example, the survey asks about legal skills, ethical and professionalism skills, and soft skills (e.g., business skills, law practice management skills, client relationship skills). One idea is for schools to design their own surveys or work with organizations such as NALP to develop surveys specific to their identified learning outcomes. Schools could also hold focus groups to ascertain similar information from their graduates and their employers.

Although surveys and interviews may yield valuable anecdotal information, this feedback should be combined with some sort of direct assessment of the degree of mastery of learning outcomes. These indirect measures measure satisfaction but not necessarily student learning.<sup>87</sup> Faculty must, therefore, engage in a systematic review of projects, papers, performances, or other concrete indicia that evidence competency in the identified skills and knowledge.<sup>88</sup> Learning exercises that mimic real-world experiences remain the most preferable for assessment purposes.<sup>89</sup>

Final course grades and bar passage rates may indicate to some degree successful progress with student learning outcomes; however, these alone will not be enough to satisfy the accreditation standards or necessarily be good indicators of student learning, as they do not provide specific information linking outcomes to performance of discrete learning outcomes.<sup>90</sup> For example, knowing the average grade on a capstone project does not illuminate any specific diagnostic information that would be helpful to the faculty for improving their courses.<sup>91</sup> Additional evidence needs to be developed, which may come from:

- Observations (field externships, clinics, public service placements)

86. TOOLS & TECHNIQUES, *supra* note 5, at 63.

87. Hatfield, *supra* note 8, at 4.

88. Jennifer A. Lindholm, *Guidelines for Developing and Assessing Student Learning Outcomes for Undergraduate Majors*, UCLA (2010), <http://www.learningoutcomes.ucla.edu/docs/UCLAGuidelines2015UpdateNotations.pdf>.

89. Carolyn Grose, *Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*, 62 J. LEGAL EDUC. 336, 351 (2012); Rust, *supra* note 51, at 150.

90. Roberts, *supra* note 9, at 461; Nagy N. Bengiamin & Christina Leimer, *SLO-Based Grading Makes Assessment an Integral Part of Teaching*, 24(5) ASSESSMENT UPDATE 1 (2012); see also TOOLS & TECHNIQUES, *supra* note 5, at 9.

91. WALVOORD, *supra* note 67, at 6.

- Achievement tests (embedded questions on exams)
- Student academic work (capstone course products, portfolios)<sup>92</sup>

Just as with assessment of individual progress toward a learning outcome, rubrics can be developed to give some structure to the review of multiple students. To assist the evaluators in reviewing a certain skill, specific factors or characteristics of that skill should be identified. Some researchers suggest identifying three traits for each student learning outcome reviewed.<sup>93</sup> For example, if a school wanted to ascertain whether a student reached competency in mediation skills, reviewers might look to the following three traits:

- Mediator asks questions to identify needs.
- Mediator is an active listener (parroting, paraphrasing, and reflective listening).
- Mediator remains neutral.

In addition to the traits, an evaluator would need to rank the level of performance or achievement of the student.<sup>94</sup> Most rubrics rank students in categories (e.g., approaching, proficient, exemplary,<sup>95</sup> or beginner, developing, accomplished, or advanced).

Besides developing the rubrics themselves, law schools need to explicitly consider what level of achievement they hope to reach collectively with the assessments. For example, is the goal that one hundred percent of the graduates complete a specific assessment, obtain a certain score or performance level on a rubric, or achieve some other measurable criteria? These levels of proficiency and how they are to be met need to be defined in advance for the evaluators. Faculty may need to revise what meets a level of competency after trial and error, since no foolproof method exists for establishing various levels of achievement.<sup>96</sup>

These assessment measures do not necessarily need to involve an incredible amount of extra work, and in some cases they may already exist. For example, embedding assessments in existing exams or projects can serve the dual purpose of contributing toward a student's grade while allowing the assessments to be pulled out for comparison with those from a group of students.<sup>97</sup> In a legal writing class a rubric could be developed for an office memorandum assignment. Part of the rubric could involve citation method. If all students needed to be competent in citation, that part of the rubric could

92. TOOLS & TECHNIQUES, *supra* note 5, at 80.

93. Bengiamin & Leimer, *supra* note 90, at 15.

94. Hatfield, *supra* note 8, at 6.

95. Dean Michael Schwartz Handout, Curriculum Mapping in the Context of Institutional Assessment, (March 21, 2015) (on file with author).

96. ERWIN, *supra* note 3, at 114.

97. Roberts, *supra* note 9, at 470.

be pulled out for a number of students to ascertain the competency of the students as a whole with this skill.<sup>98</sup>

In her book *Assessment Clear and Simple*, Barbara Walvoord offers two options for aggregating student work.<sup>99</sup> The first involves the process described in the paragraph above in which individual professors “piggyback” on the grading process and submit summaries of their students’ strengths and weaknesses or rubric scores. These reports are collected from multiple classes.<sup>100</sup> The other approach involves someone other than the professors or a committee reviewing the assignment and analyzing the assignments with a common rubric.<sup>101</sup>

Before moving on to how to use the data, a word needs to be said about the methodology employed in designing assessments. Sound assessments need to satisfy several criteria. They must use varied assessments that are both valid and reliable.<sup>102</sup> Entire books and articles have been written defining these terms and helping guide educators on how to satisfy these criteria, so this article does not attempt to replicate those materials other than to briefly define the terms. Validity “describes a condition where an assessment method . . . assesses what it claims to assess and thus produces results that can lead to valid inferences usable in decision making.”<sup>103</sup> A prerequisite for validity is reliability “the capacity of an assessment method to perform in a consistent, stable fashion during successive uses.”<sup>104</sup> A reliability error often occurs when utilizing only one assessment instrument instead of several instruments for an outcome.<sup>105</sup> Research shows using a number of instruments increases reliability.<sup>106</sup> Schools may want to seek assistance from a measurement specialist or an expert in rating scales.

In addition to testing for reliability and validity, schools need to make sure their outcomes and assessments are achievable, realistic, and timely. The assessments need to be manageable in scope and number to reflect available resources and energy level.<sup>107</sup> Too many assessments with too many outcomes being assessed will result in frustration and no valuable information. Dr. Walvoord’s suggestion of two assessments per outcome helps guard against this. Some tips on keeping the assessments manageable include deciding on:

98. Roberts, *supra* note 9, at 477-79.

99. WALVOORD, *supra* note 67, at 20-21.

100. *Id.*

101. *Id.* at 21.

102. *Assessment and Evaluation for Continuing and Higher Learning*, PROJECT MANAGER TRAINING, <https://www.projectmanagertraining.com/resources/assessment-and-evaluation-for-learning/> (last visited Nov. 13, 2017).

103. *Id.*

104. *Id.*

105. ERWIN, *supra* note 3, at 60.

106. *Id.* at 59-60.

107. TOOLS & TECHNIQUES, *supra* note 5, at 64.



- The sampling size—schools can choose to review assessments of all students or utilize random sampling or a sampling of various ability levels (high, medium, and low).
- Which learning outcomes need to be reviewed—not all learning outcomes can be reviewed annually; instead, a schedule should be developed to ensure systematic review occurs of all outcomes before a site evaluation. The data should not be collected immediately before a site visit.<sup>108</sup>

In its Handbook for Program Review and Assessment of Student Learning, Western Washington University offers helpful advice for deciding what type of assessment might work best.<sup>109</sup> The authors suggest developing an assessment method selection criteria matrix to systematically evaluate the different methods available for assessment. One axis represents the different measures and the other axis lists criteria of value to the department. The handbook includes the following sample matrix:

Criteria of Value to Dep't	Measures				
	Standardized Tests	Performances	Portfolios	Surveys	Class Assignments
Curriculum match					
Low data-gathering costs					
Reasonable planning time					
Reasonable analysis time/costs					
Values to student learning					

A similar matrix can be developed with the learning outcomes on one axis and the measures on the other matrix. This matrix helps committees and the faculty review at a glance how each learning outcome will be measured and whether the measure is an indirect or a direct measure.<sup>110</sup>

108. Hatfield, *supra* note 8, at 6.

109. TOOLS & TECHNIQUES, *supra* note 5, at 77.

110. *Id.* at 79.

In addition, law schools should design assessments in relation to the students' capabilities. Thought needs to go into the appropriateness of the outcomes and the assessments in relation to the abilities of the students as they progress through law school. A continuum of assessments may be appropriate for each stage of the students' development. For example, assessments could be given after the students' introduction, after opportunities for practice, and eventually to measure competency. To make the most out of assessment, schools should avoid the "after-only" approach, which assesses students only at the end of their legal education.<sup>111</sup> More formative assessment should be done at different stages of law students' education to enable law schools to respond to any inadequacies they discover.<sup>112</sup> Savannah Law School designed its student learning outcomes by class to show the progression of learning. These guiding competencies are connected to Savannah Law School's first-, second-, and third-year learning outcomes.<sup>113</sup>

First-year students will be able to:

- Identify and analyze legal issues.
- Categorize, evaluate, and distinguish sources of legal authority.
- Apply legal rules to specific factual situations and predict possible outcomes.
- Use predictive and persuasive written and oral advocacy skills in a simulated setting.
- Debate, justify, and defend legal issues and positions with respect and civility.
- Prioritize tasks and assess time requirements to produce work product within defined parameters.

Second-year students will be able to:

- Connect legal concepts across curriculum.
- Exercise critical thinking skills for analysis and problem-solving.
- Engage in legal drafting.
- Balance coursework and extracurricular endeavors.
- Comprehend and demonstrate the necessity of civil discourse and collaboration in a legal and social environment.

Third- and fourth-year students will be able to:

- Apply professional ethics as it relates to client representation, performance as an officer of the court, and resolution of ethical dilemmas.
- Demonstrate professional judgment.
- Solve and analyze real-world legal issues and problems.
- Internalize and demonstrate the professionalism required to fulfill societal expectations for the profession.

111. ERWIN, *supra* note 3, at 124.

112. See Astin et al., *supra* note 52.

113. *Core Competencies & Outcomes*, SAVANNAH L. SCH., <http://www.savannahlawschool.org/future-students/academics/core-competencies-and-outcomes/> (last visited Nov. 13, 2017).

- Integrate learning doctrine and theory across disciplines and prepare to shift lessons learned to practice.

### ***Dean's Role:***

The Dean's role is minimal at this step. The faculty need to be the primary drivers of what assessment instruments they will use and define the performance criteria. The Dean's role is most important in the beginning stages of selecting committee members and supplying opportunities for the faculty to learn about the assessment process. The Dean also will play a major role in making sure conditions exist for acting on the findings of the assessment report, discussed in the next section of the article.

## **STEP FOUR: ACT ON ASSESSMENT**

It would be a mistake for law schools to adopt assessment plans just to satisfy the ABA's accreditation standards. One of the most important steps in the institutional assessment cycle involves using the findings of strengths and weaknesses from the assessments to continually improve the program. Assessment exercises show evidence of what the students know and can do. This final step in the circle looks to what the professors are learning from these assessment findings and whether or not they are using that knowledge to inform their actions. The accreditors want evidence that programs continue to be refined and revised based on an analysis of the assessment results. Not all results will be positive, which is acceptable as long as the law school personnel reflect on the reasons for this and make changes in response. In addition, part of the evaluation should address whether the assessments themselves worked well and whether they need to be altered.

Barbara Walvoord cautions institutions not to make the process too complicated.<sup>114</sup> Student learning will improve even if faculties participate in annual meetings and just discuss strengths and weaknesses of student performance on an identified student learning outcome. Using a compilation of the weaknesses, faculty can identify a particular one to focus on improving and discuss methods for doing that. Of course, the discussions can be more structured if faculties develop detailed rubrics to judge performance of students instead of just coming to the meeting with global impressions of strengths and weaknesses. The pivotal point is to engage in annual discussions about concrete ways to improve student learning based on some direct and indirect assessment of student performance, no matter how structured that assessment is.<sup>115</sup>

Assessment committees should draft reports to share with the faculty, the university, and accreditors. Resources exist that outline the structure of the reports. For example, in its handbook, Western Washington University suggests formatting the report around the answers to the following questions:

1. What did you do?

114. WALVOORD, *supra* note 67, at 5.

115. *Id.* at 61-66.

2. Why did you do it?
3. What did you find?
4. How will you use it?
5. What is your evaluation of the assessment plan itself?

These reports need to be broadly disseminated and acted upon. Barbara Walvoord suggests scheduling a two-hour faculty meeting annually to discuss the results and next steps.<sup>116</sup> Data can be used for a variety of purposes, including curricula reforms or changes in the content or delivery of courses.<sup>117</sup> Some additional courses will evolve from the curriculum mapping exercise, but the assessment may also inform changes as well. For example, if the assessments show particular courses or externships or other skills classes lead to very positive results with learning outcomes, additional courses or experiences may be similarly developed.<sup>118</sup> The same concept can be applied to course content. Assessments may be very revealing on what needs more or less coverage in a course to help improve student learning.<sup>119</sup>

### *Dean's Role is to Monitor and Distribute Data*

Deans or associate deans must make sure they or members of an assigned committee review data for reliability and usefulness.<sup>120</sup> Besides monitoring the data, deans can schedule the annual meeting to discuss the findings and action plans and what resources will be needed. Deans will be central players in closing the loop, because they draft charges to committees that can incorporate the findings and action steps from the assessment report. In addition, deans allocate resources in the budget that will be needed for changes identified by the report. The Dean can ensure data get distributed for use in accreditation reports, self-studies, and program reviews, and to the internal constituencies for use in improving courses and programs. These data might also contain positive news deans will want to share with alumni and employers. Finally, deans should remember not to use data for faculty evaluation but to make improvements to the program.<sup>121</sup>

### **Conclusion**

The ABA should be commended for altering its accreditation requirements to include an institutional design method that will improve student learning and be more in line with training in medicine, engineering, architecture, and dentistry. With the cost of legal education continuing to rise, prospective students as well as public and private funders have a right to expect that law schools will explicitly articulate what a law student will be able to know and

116. WALVOORD, *supra* note 67, at 60.

117. ERWIN, *supra* note 3, at 32-34.

118. *Id.* at 32.

119. *Id.* at 33.

120. *Id.* at 25.

121. *Id.*

do at the end of law school. In addition, these constituencies should know whether the law school delivers on these promises at least for the collective student body. Law schools must begin immediately to institutionalize these standards, as they will take considerable time, money, and effort to implement. Our system of shared governance requires that the faculty actively participate in identifying the school's learning outcomes and deciding how they will be assessed. Deans should identify someone on the faculty to become the expert on what the standards require and how schools can comply with the standards. As with any new system, there will be growing pains at first, but the result will dramatically improve legal education.