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When Your Plate is Already Full: Efficient and Meaningful Outcomes Assessment for Busy Law Schools

by Melissa N. Henke*

I. INTRODUCTION

The American Bar Association (ABA) accreditation standards involving outcome-based assessment are a game changer for legal education.¹ The standards reaffirm the importance of providing students with formative feedback throughout their course of study to assess and improve student learning. The standards also require law schools to evaluate their effectiveness, and to do so from the perspective of student performance within the institution's program of study. The relevant question is no longer what are law schools teaching their students, but instead, what are students learning from law schools in terms of the knowledge, skills, and values that are essential for those entering the legal profession. In other words, law schools must shift their assessment focus from one centered around inputs to one based on student outputs.

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1. *From the Editors*, J. LEGAL EDUC., Volume 67, No. 2, at 373 (Winter 2018) ("These new requirements are sparking some of the most significant, systemic changes to law school pedagogy that we have seen in many years.").

Compliance with the ABA's assessment mandate comes at a time when law school resources are spread thinner than ever. Indeed, faculty already work with plates that are full with students, scholarship, and service. Thus, while not all in the legal academy are on board with the ABA's approach to outcomes assessment or to outcomes assessment generally, as busy educators, we should all at least agree that the requisite response should be efficient, given that resources are limited, and meaningful, such that the work done can benefit our learners.² To do so, law schools should begin at their own tables set with full plates, so to speak, taking stock of what institutions and their faculty are already doing in terms of assessment. And it is important to think broadly here, as faculty may be surprised to learn how many of their colleagues are already doing relevant work.

While law schools may already be inclined to begin from within, this Article outlines concrete strategies they can use when working with existing faculty expertise and resources to respond to the ABA's assessment mandate in a meaningful way for students, and with the goal of maximizing efficiency and gaining broad buy in. While prior scholarship has outlined best practices for outcomes assessment and even shared examples of how to engage in the process in the law school setting, this Article is unique in its depth and breadth of coverage by setting out a detailed case study³ that illustrates the process of developing an authentic assessment tool and beginning the process for adapting that tool to respond to both the individual student assessment and law school assessment required by the ABA.

To be clear, this Article does not suggest that only those with existing expertise or resources should be the ones to actually engage in the outcomes assessment work now required by the ABA. The goal should not be to add to the plates of a few. Instead, to create a productive and meaningful culture of assessment, experts in the field proclaim that administrators and faculty must all be involved.⁴ The ABA agrees.⁵ In

2. Marie Summerlin Hamm, et al., *The Rubric Meets the Road in Law Schools: Program Assessment of Student Learning Outcomes as a Fundamental Way for Law Schools to Improve and Fulfill Their Respective Missions*, 95 UNIV. DETROIT MERCY L. REV. 343, 368–69 (2018) (explaining that the ABA's assessment mandate is an opportunity for real change but involves a lot of work).

3. The case study involves the legal research and writing faculty at the University of Kentucky J. David Rosenberg College of Law (UK Law) in their efforts to evaluate the effectiveness of changes made to the school's required first-year Legal Research and Writing Course (LRW Course) beginning in 2011.

4. Larry Cunningham, *Building a Culture of Assessment in Law Schools*, 69 CASE W. RES. L. REV. 395, 403–04, 412, 422 (2018) (positing that implementing a collaborative and faculty-driven process, not just relying on a small group of faculty or an individual,

addition to encouraging broad buy in, a more collaborative approach helps ensure that assessment work is equitably spread among faculty.

Part II reviews the ABA standards relevant to outcomes assessment, discussing the two types of outcomes assessment required by those standards—individual student assessment and law school assessment—and sharing the underlying theory behind both. Part III outlines the stages of outcomes assessment, with a specific focus on the measurement stage of the process, because it is arguably the most time-intensive stage of the process and the one in which existing resources can prove most valuable. Part IV focuses on one common direct assessment measure, the analytic rubric, detailing how UK Law’s legal writing faculty collaboratively designed a rubric for the LRW Course appellate brief assignment, and responding to concerns that have been raised about using rubrics for assessment. Finally, Part V provides specific suggestions on how to adapt and use existing assessment measures most efficiently when responding to the ABA’s assessment mandate at both the individual student and law school levels. In other words, assessment measures, like the rubric project described in Part IV, can be adapted and used more broadly than the purpose for which they were originally designed. While the LRW Course appellate brief assignment rubric serves as the primary example to illustrate these ideas, this Article will touch on other examples and share ideas about how a variety of existing resources can transfer to the current assessment landscape mandated by the ABA.

The message here is that law schools need not panic, as they are likely to find they have more relevant assessment knowledge and

can build a culture of assessment and thus foster wider improvement); *see also* LORI E. SHAW & VICTORIA L. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS* 48–49 (Carolina Academic Press 2015) (discussing the need for faculty involvement and cooperation). Professor Cunningham cautioned, however, that in his experience law school representative attendance at assessment conferences held around the time the new ABA standards were launched was “overwhelming[ly] female and drawn from legal writing and clinical contract ranks.” 69 *CASE W. RES. L. REV.* at 405 n.67. Thus, a more “full faculty” approach to assessment should also help avoid these gender and status disparities.

5. AM. BAR ASS’N, *Managing Director’s Guidance Memo, Standards 301, 302, 314 and 315*, at 3 [hereinafter ABA June 2015 Guidance Memo] (June 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf (“Different types of faculty— doctrinal, clinical, legal writing and others—play important roles in identifying and assessing learning.”); *see also* Victoria L. VanZandt, *The Assessment Mandates in the ABA Accreditation Standards and Their Impact on Individual Academic Freedom Rights*, 95 *U. DETROIT MERCY L. REV.* 253, 269–70 (2018) (noting that ABA Standard 404(a)(2) explicitly mentions “assessing student learning at the law school” when discussing full-time faculty member responsibilities).

materials to work from than first thought. If professors are willing to share their relevant experience and resources, work collaboratively to expand and adapt from that base as needed, and spread the related assessment responsibilities widely and fairly among the faculty, then the ABA's call for outcomes assessment can be answered with meaning and without forcing any one faculty member's plate to overflow.

II. THE ABA STANDARDS ON LEARNING OUTCOMES, FORMATIVE ASSESSMENT, AND INSTITUTIONAL ASSESSMENT

This Part offers general background on the ABA standards relating to learning outcomes and assessment. Section B then follows with a more in-depth look at the theory behind the types of assessment law schools must engage in under the described standards.

A. *The Relevant ABA Standards*

In 2008, the Council of the Section of Legal Education and Admissions to the Bar charged the Standards Review Committee to lead a comprehensive review of the accreditation standards governing legal education. Two important components of the review are the Special Committee on Output Measures and the Student Learning Outcomes Subcommittee (Output Measures Committee). The Output Measures Committee was charged with determining “whether and how output measures, other than bar passage and job placement, might be used in the accreditation process.”⁶ The focus historically had been on a law school's inputs, in terms of resources invested into the educational process, and on indirect output data regarding bar passage and job placement rates.⁷ The Output Measures Committee issued a seventy-one-page report analyzing how other accreditation bodies use outcomes measures (all ten of the other professional accrediting bodies reviewed used outcome measures in their standards) and noting that regional accreditation agencies have also been focused on student learning

6. ABA June 2015 Guidance Memo, *supra* note 5, at 3.

7. Jamie R. Abrams, *Experiential Learning and Assessment in the Era of Donald Trump*, 55 DUQ. L. REV. 75, 79 (2018) (citing Cara Cunningham Warren, *Achieving the ABA's Pedagogy Mandate*, 14 CONN. PUB. INT. L.J. 67 (2014)). Common inputs include faculty qualifications, nature of facilities, classes offered, readings and assignments given (versus student work product resulting from those assignments). SHAW & VANZANDT, *supra* note 4, at 10; *see also From the Editors*, 67 J. LEGAL EDUC. 373, 373 (noting input-based model “focus[es] on budget, facilities, academic metrics of incoming students and number of faculty”).

outcomes.⁸ The report concluded that current ABA accreditation standards should be reviewed and revised “to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.”⁹ The Standards Review Committee responded by studying the matter and making recommendations to the Council, which included input from the Student Learning Outcomes Subcommittee.

The Standards Review Committee recommendations resulted in new and revised standards adopted by the Council, which went into effect on August 12, 2014. The most relevant standards for this Article are Standards 301, 302, 314, and 315.¹⁰

As they relate to this Article, the Assessment Standards set out new requirements regarding learning outcomes and assessment. A key

8. ABA June 2015 Guidance Memo, *supra* note 5, at 3. The 2008 report relies on two well-known 2007 publications that also support the use of outcomes assessment: WILLIAM M. SULLIVAN, ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* [hereinafter *CARNEGIE REPORT*] (John Wiley & Sons, Inc. 2007), and ROY STUCKEY, ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* [hereinafter *BEST PRACTICES*] (2007). In addition, the 2008 report correctly notes that university-level accreditation bodies (regional accreditors) have been requiring outcomes assessment plans for the universities they accredit; as a result, some universities had already started requiring law schools to prepare assessment plans even before the ABA did. Cunningham, *supra* note 4, at 401; David Thomson, *When the ABA Comes Calling, Let's Speak the Same Language of Assessment*, 23 *PERSPECTIVES: TEACHING LEGAL RES. & WRITING* 68, 68 (2014); see also Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 *U.S.F. L. REV.* 245, 247 (2016); 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, 93 (2013).

9. ABA June 2015 Guidance Memo, *supra* note 5, at 3 (noting that “shifting towards outcomes measures is consistent with the latest and best thinking of both the higher education and legal education communities”).

10. Standards 301, 302, 314, and 315 are referred to collectively in this article as “the Assessment Standards.” Given the time involved in implementing the Assessment Standards, the ABA created a transition and implementation (or phase-in) plan for compliance. Under this plan, law schools were to begin applying the Assessment Standards in the 2016–17 academic year. AM. BAR ASS'N, *Transition to and Implementation of the New Standards and Rules of Procedure for Approval of Law Schools*, at 2 (Aug. 13, 2014), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf. In the initial stages of a law school's implementation of the Assessment Standards, the ABA will focus on “the seriousness of the school's efforts to establish and assess learning outcomes,” including the “ongoing process of gathering information” about students' progress toward achieving those outcomes, but not on achieving a certain level of achievement for any particular learning outcome. *Id.*

guiding principle in the implementation of the standards is that “[t]he focus on outcomes should shift the emphasis from what is being taught to what is being learned by the students.”¹¹ Generally speaking, the goal of “outcomes assessment is to understand how educational programs are working and to determine whether they are contributing to student growth and development.”¹² An example I used with my faculty colleagues considers when a parent tells her child to feed the dog each morning before leaving for school. Inputs assessment measures effectiveness simply by looking to what the parent said to the child about feeding the dog (morning reminders, a written note on the refrigerator). However, outcomes assessment shifts the focus to the results of those reminders by looking to whether there is actually food in the dog’s bowl each morning. It is not enough to just claim success by “teaching” the child to feed the dog if the results show that the child has not actually learned to complete the task and the dog is left hungry.

While outcomes assessment is new for law schools, it is unlikely to be a fleeting trend in legal education.¹³ Many view the change as a positive and long overdue one for legal education, and one that law schools can truly benefit from.¹⁴ According to proponents, outcomes assessment promotes active student learning, which can better prepare students to enter the legal profession, and to do so as more self-directed learners.¹⁵ They say it also promotes reflective teaching, which can result in important curricular changes where needed.¹⁶ But not everyone in the academy has been so quick to embrace the Assessment Standards and

11. ABA June 2015 Guidance Memo, *supra* note 5, at 3; *see also* SHAW & VANZANDT, *supra* note 4, at 11.

12. TRUDY W. BANTA & CATHERINE A. PALOMBA, ASSESSMENT ESSENTIALS: PLANNING, IMPLEMENTING, AND IMPROVING ASSESSMENT IN HIGHER EDUCATION 9–10 (2d ed. 2015).

13. *E.g.*, SHAW & VANZANDT, *supra* note 4, at 25, 29 (noting that “[o]utcomes assessment has been entrenched in K–12 and undergraduate education for the last decade and is not waning” and that “law schools are among the last of the professional schools to face mandated outcomes assessment”).

14. *E.g.*, Abrams, *supra* note 7, at 80 n.22 (citing several helpful articles for general background on this topic).

15. GREGORY S. MUNRO, INSTITUTE FOR LAW SCHOOL TEACHING, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 16–17 (2000) (explaining that assessment is not just about measuring student or institutional effectiveness after the fact, but is instead “an instrument of learning” because the purpose is to actually improve student learning while the course of study is ongoing).

16. SHAW & VANZANDT, *supra* note 4, at 32 (noting that outcomes assessment serves an institution “by providing concrete evidence to guide [its] budgeting, curriculum design, teaching, and strategic planning”); Warren, *supra* note 7, at 74–76 (positing that the mandate for outcomes assessment supports academic success, promotes graduate success, and encourages improved pedagogy).

related changes, especially given the time and resources involved.¹⁷ Regardless of one's view on their merit, the Assessment Standards have been described as "the most significant change in law school accreditation standards in decades."¹⁸ As one scholar put it, "[t]he new ABA accreditation standards reflect a 'fundamental shift' in the delivery of legal education and curricular design . . ."¹⁹ Others have used words like "revolutionary" and "sea change."²⁰

There are two key components to the ABA's assessment mandate. First, law schools must engage in formative assessment in addition to summative assessment, at least in some courses, to inform individual student learning. Second, each accredited law school must engage in a formal and ongoing evaluation of its effectiveness as an institution, and must do so from the perspective of its students' performance within the law school's program of study. In doing so, each law school will have to answer two crucial questions: What does the law school want its "students to know and be able to do when they graduate," and how will the law school *know* that its students have achieved such competencies?²¹

The next few subsections review the language of the Assessment Standards themselves.

17. *E.g.*, Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67 J. LEGAL EDUC. 376, 377 (2018) (stating the change to "outcome assessment has been highly controversial" where opponents believe the change will "divert resources from traditional doctrinal faculty, thereby diminishing their role"); Abrams, *supra* note 7, at 84–85 (noting concerns regarding need for training and support, all while law schools are forced to do more with fewer resources) (citing Warren, *supra* note 7, at 79); Niedwiecki, *supra* note 8, at 246 (noting legal educators' anxiety over time and resources involved in complying with the Assessment Standards); *see also* Molly Worthen, *The Misguided Drive to Measure 'Learning Outcomes'*, THE NEW YORK TIMES (Feb. 23, 2018), <https://www.nytimes.com/2018/02/23/opinion/sunday/colleges-measure-learning-outcomes.html> (arguing that the drive to measure learning outcomes in higher education has become misguided and "devour[s] a lot of money for meager results").

18. Bahls, *supra* note 17, at 376.

19. Abrams, *supra* note 7, at 79 (quoting Niedwiecki, *supra* note 8, at 247).

20. Bahls, *supra* note 17, at 376 (attributing these quotes to the former President of the American Law Schools ("revolutionary") and chair of the relevant ABA subcommittee ("sea change").

21. Niedwiecki, *supra* note 8, at 246 (emphasis added); *see also* SHAW & VANZANDT, *supra* note 4, at 29 ("Articulating outcomes is not sufficient to satisfy the accreditation standards—your school needs to measure student performance to determine if the outcomes are being achieved.")

1. Standards 301 & 302. Objectives of Programs of Legal Education & Learning Outcomes

First, new Standard 301(b) and revised Standard 302 call for law schools “to develop and publish learning outcomes that explicitly state what they want their students to be able to do and know upon completion of the law school curriculum.”²² In other words, law schools must establish outcomes that cover competencies related to the practice of law.²³ Under the revised Standard 301, law schools must “establish and publish learning outcomes” designed to achieve objectives that include preparing their graduates “for effective, ethical, and responsible participation as members of the legal profession.”²⁴ Standard 302 provides the following specific guidance about those institutional learning outcomes:

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; (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 in the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.²⁵

It is important to clarify what is meant by learning outcomes. They are not aspirational goals. Instead, they are “clear and concise statements of knowledge that students are expected to acquire, skills students are expected to develop, and values that they are expected to understand and integrate into their professional lives.”²⁶ For purposes

22. Niedwiecki, *supra* note 8, at 246–47.

23. ABA June 2015 Guidance Memo, *supra* note 5, at 4.

24. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, at 15 (2017–18) [hereinafter ABA STANDARDS], https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf.

25. ABA STANDARDS, *supra* note 24, at 15. Law schools can also add outcomes that reflect their unique mission. *Id.* Note that competency is not defined in the standards, and its meaning is likely to be an ongoing discussion among legal educators. See Judith Welch Wegner, *Contemplating Competence: Three Meditations*, 50 VAL. U. L. REV. 675, 676 (2016) (offering reflections on understanding competence and its significance, namely as its relates to implementation of the Assessment Standards).

26. ABA June 2015 Guidance Memo, *supra* note 5, at 4. The CARNEGIE REPORT and BEST PRACTICES also organize around the idea of knowledge, skills and values, emphasizing that skills and professional identity are as important as knowledge (and law

of law school assessment, the outcomes selected should be essential to a graduate.²⁷ And because law schools will be required to measure whether students are achieving the outcomes (discussed in more detail below), they should be written to “require a student to ‘do’ something that you can observe and measure.”²⁸ In other words, the outcomes should be written as actions students should be able to perform to demonstrate what they have learned.

2. Standard 314. Assessment of Student Learning

Second, the new Standard 314 requires law schools to “utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”²⁹ In other words, law schools must engage in individual student assessment, or “*meaningful assessment* of their progress in helping students achieve outcome goals.”³⁰ Thus, while both formative and summative assessment methods are not required in every course, the addition of Standard 314 makes clear that formative assessment must “be integrated into the law school’s program to . . . ‘provide meaningful feedback to improve student learning’ in the law school’s overall program.”³¹

schools should thus strive for more of a balance with all such competencies). CARNEGIE REPORT, *supra* note 8, at 12; BEST PRACTICES, *supra* note 8, at 94

27. SHAW & VANZANDT, *supra* note 4, at 58.

28. *Id.* at 66. For example, the UK Law’s learning outcome regarding communication calls for students to be able demonstrate that they can do the following:

[C]ommunicate clearly and effectively in oral and written form by: a. [p]resenting material in a clear, concise, well-organized and professional manner that is appropriate to the audience and the circumstances; and b. [s]electing and using the appropriate legal terminology to accomplish a desired legal effect (e.g., in contracts, wills, motions, jury instructions, discovery documents).

Learning Outcomes—ABA Standard 302, UNIVERSITY OF KENTUCKY COLLEGE OF LAW, <http://law.uky.edu/academics/learning-outcomes-aba-standard-302> (last visited May 24, 2018).

29. ABA STANDARDS, *supra* note 24, at 23.

30. ABA June 2015 Guidance Memo, *supra* note 5, at 5 (emphasis added).

31. *Id.* (quoting ABA STANDARDS, *supra* note 24, at 23). As noted above, the Outcome Measures Committee’s 2008 report relied on the CARNEGIE REPORT and BEST PRACTICES. Both publications criticized legal education for its overreliance on summative assessment, which does not support students in becoming metacognitive about learning, and proffered that the primary form of assessment in legal education should be formative assessment. CARNEGIE REPORT, *supra* note 8, at 173; BEST PRACTICES, *supra* note 8, at 255–56; *see also* SHAW & VANZANDT, *supra* note 4, at 27 (noting, “Legal education has been criticized over the years for its failure to provide sufficient feedback to students.”).

Section B of this Part provides more detail about individual student assessment in law school courses, including a discussion of formative and summative assessment methods, but for now, it is important to understand that both forms of assessment are contemplated in the Assessment Standards.

3. Standard 315. Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods

Third, the new Standard 315 responds to the Output Measures Committee's recommendation that the emphasis on outcomes, or student outputs, "reflects a shift in focus from what is being taught in law schools to what is being learned by students" when it comes to measuring the effectiveness of that school's program of legal education.³² Specifically, Standard 315 requires the following:

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.³³

Put another way, law school "assessment requires collective faculty engagement and critical thinking about our students' overall acquisition of the skills, knowledge, and qualities that ensure they graduate with the competencies necessary to begin life as professionals."³⁴ The ABA has neither defined nor set a threshold for "competency,"³⁵ which has apparently been left to individual law schools to consider.³⁶

32. ABA June 2015 Guidance Memo, *supra* note 5, at 5; *see also* Andrea A. Curcio, *A Simple Low-Cost Institutional Learning-Outcomes Assessment*, 67 J. LEGAL EDUC. 489, 491 (2018) ("Rather than look at achievement just in our own courses, institutional outcome-measures assessment requires collective faculty engagement and critical thinking about our students' overall acquisition of the skills, knowledge, and qualities that ensure they graduate with the competencies necessary to begin life as professionals.").

33. ABA STANDARDS, *supra* note 24, at 23.

34. Curcio, *supra* note 32, at 491. This Article refers to a law school's response to Standard 315 as law school assessment (to contrast it with the individual student learning assessment that is mandated by Standard 314), but note that some literature refers to Standard 315 as institutional assessment or institutional outcomes assessment, *e.g.*, Curcio, *supra* note 32, at 489, while others use programmatic assessment, *e.g.*, Cunningham, *supra* note 4, at 396 and Hamm, *supra* note 2, at 344.

35. ABA June 2015 Guidance Memo, *supra* note 5, at 5 ("It is not the goal of assessing the level of attainment, and probably not realistic to expect, that each student

In conclusion, “assessment involves ‘the systematic collection, review, and use of information about educational programs undertaken for the purpose of improving student learning and development.’”³⁷ The Assessment Standards call on law schools to do this in two main ways—at the individual student level (or course level) and at the law school level. Section B offers more detail on both.

B. Outcomes Assessment for Student Learners and Law Schools

As explained above, there are two types of outcomes assessment at issue in the Assessment Standards—individual student assessment and law school assessment.³⁸ This Section offers more detail about each in turn.

1. Individual Student Assessment

Law professors are familiar with the first type of assessment, individual student assessment. In other words, as educators, we consistently engage in classroom assessment, or assessment of student learning at the course level. We provide our students with critiques or grades that indicate a measure of their individual performance in a particular course.³⁹ Individual student assessment takes two forms, formative assessment methods and summative assessment methods, both of which are now expressly required by Standard 314.⁴⁰ This Article takes each in turn.

First, the ABA defines formative assessment methods as “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.”⁴¹ In other words,

will achieve the same level of mastery for every outcome. Some students will master some outcomes in a more proficient manner than others.”)

36. See SHAW & VANZANDT, *supra* note 4, at 126 (explaining that “a threshold of 100% may not always be realistic” and noting that “experts argue for an 80% standard for thresholds”); see also *supra* note 25.

37. Warren, *supra* note 7, at 71 (quoting Jones, *supra* note 8, at 87).

38. SHAW & VANZANDT, *supra* note 4, at 27. A third type of outcomes assessment is often referred to as program assessment, which focuses on assessing the effectiveness of a series of program-specific courses (such as intellectual property, alternative dispute resolution, international studies, law & economics, etc.). See MUNRO, *supra* note 15, at 100; see also Niedwiecki, *supra* note 8, at 247, 274–79 (discussing an assessment plan for a professional skills program at The John Marshall Law School). When referring to law school assessment, this Article means assessment of the law school’s entire program of study (not some sub-set or specialty set of courses) as envisioned by Standard 315.

39. SHAW & VANZANDT, *supra* note 4, at 6.

40. ABA STANDARDS, *supra* note 24, at 23.

41. ABA STANDARDS, *supra* note 24, at 23.

formative assessment methods are designed to provide students with feedback during the learning process,⁴² meaning during a particular law school course or over the span of the student's three years in law school, as a way to promote active learning.⁴³ Moreover, because the feedback often leaves professors with a sense of what their students do and do not know while the course is still in progress, they can respond by using additional or different teaching techniques where needed to increase learning.⁴⁴ Thus, formative assessment methods not only foster active learning, but also more active (or reflective) teaching.

The most meaningful “[f]ormative assessment helps a student see where in the learning process he made a wrong (or a correct) turn [on a particular assignment] and make any needed changes on his next assignment.”⁴⁵ In other words, the feedback should respond to the student work product being evaluated and the process employed to create it. This way students are armed with information on how to emulate (or not emulate, depending on the comment) that process in later assignments. For example, when reviewing the Discussion section of a formal office memorandum, one approach would be to indicate that the stated rule for the memo's legal issue is “a good one” and yet the rule explanation is “lacking.” However, the more meaningful approach would be to explain the stated rule is proficient because it is accurate, concrete, and adequately supported by mandatory authority (using synthesis if needed), while the rule explanation is still developing because the discussion of the prior case(s) to apply the rule could be more complete in terms of the court's reasoning or holding. The same

42. SHAW & VANZANDT, *supra* note 3, at 6–7; MUNRO, *supra* note 15, at 73.

43. 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, 177 (2012) (“Formative assessment identifies a gap in learning, provides feedback to the student about the gap and closing the gap, involves the student in the process, and advances the students' learning.”); see also MUNRO, *supra* note 15, at 73 (describing student involvement in the “assessment, discussion, and critique that follow their performance” after which the student should perform again “to integrate what they have just learned”).

44. See Olympia Duhart, *“It's Not For a Grade”: The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491, 498 (2015) (“In addition to helping students understand their learning strengths and deficiencies, formative assessment can also help professors learn what is working and not working about their teaching.”); CARNEGIE REPORT, *supra* note 8, at 171 (“[S]tudies of how expertise develops across a variety of domains are unanimous in emphasizing the importance of feedback as the key means by which teachers and learners can improve performance.”).

45. SHAW & VANZANDT, *supra* note 4, at 7. Given the goal, formative assessment methods may or may not factor into the student's final grade. See LINDA SUSKIE, *ASSESSING STUDENT LEARNING: A COMMON SENSE GUIDE* 11 (2d ed. 2010).

holds true, for example, in a Torts or Products Liability mid-term essay exam in which students are called on to apply the rule for negligence to a hypothetical set of facts. Instead of just noting that the student's application is "sparse" or "unsupported," the more meaningful approach would be to explain that the student should be more explicit in discussing which facts support the predicted outcome resulting from the rule's application and why (perhaps including an analogy to similar facts from a case discussed at length in class). In short, offering feedback that involves students in the process helps advance student learning.⁴⁶

Second, summative assessment methods are defined by the ABA as "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."⁴⁷ For this reason, summative assessment is referred to "as assessment after the fact."⁴⁸ The primary goal of summative assessment methods are to assign grades by indicating a student's level of achievement on a standardized scale or as compared to the student's peers, which is known as norm-referenced grading.⁴⁹ Given this goal, there is usually very little to no student feedback, as the student is not being given the chance to improve learning in a

46. Niedwiecki, *supra* note 43, at 177. Some would say this is not a realistic expectation for professors teaching in large casebook classes such as Torts. First, not every casebook class is sixty to one hundred-plus students. And second, there are ways to engage students in the learning process on a particular assignment even without engaging in the particularly time-intensive task of giving feedback to each individual student. See Heather M. Field, *A Tax Professor's Guide to Formative Assessment*, 22 FLA. TAX REV. 363, 394–95, 397–414, 430–31 (2019) (describing a variety of formative assessment options in this vein, including multiple choice questions or in-class exercises where explanations are then provided to the group for why an answer was right or wrong). By way of further example, a professor could provide feedback to the entire class through a model answer for a practice exam question or actual exam question (explaining the strengths and weaknesses of the answer), or a feedback memo that offers global strengths and weaknesses identified from a review of student exam answers. See Andrea A. Curcio, *Moving in the Direction of Best Practices and The Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159, 167 (2009) (discussing an annotated model answer). And other viable options include TA grading, self assessment, or peer grading using model answers and rubrics. Field, *supra*, at 438–39; Curcio, *supra*, at 171–72.

47. ABA STANDARDS, *supra* note 24, at 23.

48. SHAW & VANZANDT, *supra* note 4, at 7.

49. *Id.* at 93; see also Leslie Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 J. LEGAL WRITING INST. 123 (2011). Note, however, that not all summative assessment is norm-referenced. For example, the bar exam is a criterion-referenced exam.

future assignment.⁵⁰ Final course grades and the bar exam are common examples of summative assessment.

Much has been written about law schools' overreliance on one single, summative assessment method in most courses (namely, one end of the semester exam), which is primarily for purposes of assigning grades and ranking students. Gregory S. Munro is a legal educator who is well-known for his long-standing work on outcomes assessment. He explains that, because law schools are educating students to become practicing lawyers and professionals, "the focus of student assessment in law school should be on enhancing student performance, providing multiple evaluations of student performance, and giving appropriate feedback to students."⁵¹ The *Carnegie Report*⁵² also called for using formative assessment in training professionals, because the essential goal should "be to form practitioners who are aware of what it takes to become competent in their chosen domain" and arm "them with the reflective capacity and motivation to pursue genuine expertise."⁵³

2. Law School Assessment

In contrast to individual student assessment, law school assessment (or institutional assessment) is about the collective result. In other words, each law school must now also "use the collective performance of [its] students" to assess the law school's "*own performance as educators*."⁵⁴ In order to do so, faculty must decide "what it means to be 'effective' as a law school," as well as how and where the law school will

50. SHAW & VANZANDT, *supra* note 4, at 7; *see also* CARNEGIE REPORT, *supra* note 8, at 164–65 ("Reliance on summative evaluation provides no navigational assistance, as it were, until the voyage is over."); *id.* at 164–67 (focusing in particular on the challenges first-year law students face with this approach).

51. MUNRO, *supra* note 15, at 11; *see also* CARNEGIE REPORT, *supra* note 8, at 171 ("From our observations, we believe that assessments should be understood as a coordinated set of formative practices that, by providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers.").

52. CARNEGIE REPORT, *supra* note 8.

53. CARNEGIE REPORT, *supra* note 8, at 173 (noting law students "must become 'metacognitive' about their own learning").

54. SHAW & VANZANDT, *supra* note 4, at 6 (emphasis in original); *see also id.* at 10 (explaining that law schools have historically focused on the quality of their inputs when trying to measure their effectiveness, and while that analysis is still relevant, the ABA is "now asking law schools to shift their attention to the quality of their students' *outputs*") (emphasis in original). For purposes of this article, note that institutional assessment refers only to a law school's evaluation of its educational program under Standard 315, and not any larger university-wide assessment that may be required by the larger institution with which a law school is associated (including assessments required by regional accreditors).

measure such effectiveness.⁵⁵ Professors Shaw & VanZandt posit, “The effectiveness of any institution ultimately is measured by whether it is achieving its stated mission,” and learning outcomes can help round out a way to measure that mission.⁵⁶ For example, if a law school seeks to prepare graduates to be “responsible members and leaders of the legal profession,”⁵⁷ then the school will develop a list of learning outcomes—or the essential knowledge, skills, and values—that it seeks its students to achieve by graduation in light of this stated goal or mission.⁵⁸ Faculty must then decide what level of achievement they hope their students to reach collectively, and how they will measure that achievement.⁵⁹ Unlike individual student assessment, schools can use a representative student sample when conducting law school assessment to determine if their students are accomplishing the stated outcomes, and thus avoid engaging in the more time-intensive process of assessing each student individually.⁶⁰ Moreover, while individual student assessment can involve benchmarks that are norm-referenced or criterion-referenced, benchmarks used for law school assessment are typically criterion-referenced, meaning “competency is measured based on whether a student satisfies certain [of] the prerequisites set by the assessor,” and not by comparing a student’s performance to other students as is done with norm-referenced assessment.⁶¹

55. *Id.* at 7.

56. *Id.* at 7–8 (citing ABA Standard 204, which states that law schools must submit a mission statement as part of the accreditation process).

57. *About Us*, UNIVERSITY OF KENTUCKY COLLEGE OF LAW <http://law.uky.edu/about-us> (last visited July 1, 2019).

58. SHAW & VANZANDT, *supra* note 4, at 8–9. For example, UK Law’s curriculum learning outcomes are listed on its website at <http://law.uky.edu/academics/learning-outcomes-aba-standard-302> (last visited on July 1, 2019). Learning outcomes are discussed in more detail in Part III below.

59. Susan Hanley Duncan, *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*, 67 J. LEGAL EDUC. 462, 482 (2018). While the ABA has identified examples of assessment methods that may be used in this measurement process, schools are not required to use any particular method. ABA STANDARDS, *supra* note 24, at 24 (contemplating that “[t]he methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school”). The stages of outcomes assessment, including the measurement stage, are discussed further in Part IV below.

60. Curcio, *supra* note 32, at 502 (citing SHAW & VANZANDT, *supra* note 4, at 114–15 and ANDREA SUSNIR FUNK, *THE ART OF ASSESSMENT: MAKING OUTCOMES ASSESSMENT ACCESSIBLE, SUSTAINABLE, AND MEANINGFUL*, at 37 (Carolina Academic Press 2017) for resources with more detail on using sufficient sample sizes).

61. SHAW & VANZANDT, *supra* note 4, at 93 (emphasis omitted). Given the difference, norm-referenced assessments are not necessarily reflective of a “competent graduate.” *Id.*

Law school assessment also envisions using the aggregate data of student performance collected to make changes to the law school's program of legal education as needed. In other words, it is not enough for a law school simply to grade itself. The ABA expects schools to use the assessment data collected to make improvements to their educational program where needed.⁶²

With a better understanding of the "what" and "why" of outcomes assessment as mandated by the ABA, this Article will now turn to outline the "how" of that process.

III. THE STAGES OF OUTCOMES-BASED ASSESSMENT

There are four common stages to the outcomes assessment process, regardless of whether the assessment plan being created is for individual student assessment or law school assessment. The four stages are as follows: (1) the learning outcomes stage; (2) the measurement stage; (3) the analysis stage; and (4) the response stage.⁶³ First, in the learning outcomes stage, the assessor develops student learning outcomes that describe the fundamental knowledge, skills, and values of successful new lawyers.⁶⁴ Second, in the measurement stage, the assessor designs or implements existing measures that will determine whether students have actually achieved each of the identified learning outcomes.⁶⁵ Next, in the analysis stage, the assessor analyzes the data obtained from the measurement stage.⁶⁶ Finally, in the response stage, the data collected is used to improve student learning where needed, which is often referred to as closing the loop.⁶⁷ Put another way, the stages of outcomes assessment can be broken down into the phases of development (the learning outcomes stage), implementation (the measurement stage), and evaluation (the analysis and response stages).⁶⁸

62. SHAW & VANZANDT, *supra* note 4, at 7; *see also id.* at 32 ("A fundamental principle underlying outcomes assessment is that teachers and institutions can get better at what they do, but doing so requires self-reflections and a willingness to try something new."); CARNEGIE REPORT, *supra* note 8, at 182 (discussing the importance and benefits of institutional intentionality in the context of assessment).

63. SHAW & VANZANDT, *supra* note 4, at 11–13.

64. *Id.* at 57–58; *see also* Curcio, *supra* note 32, at 491 (describing law school learning outcomes as "the core knowledge, skills, behaviors, and attributes of successful new lawyers").

65. SHAW & VANZANDT, *supra* note 4, at 11–13.

66. *Id.*

67. *Id.*

68. *Id.* at 54; *see also* Warren, *supra* note 7, at 71; Jones, *supra* note 8, at 88.

A great deal has already been written about the outcomes assessment process generally and in the law school setting.⁶⁹ There are several helpful resources that specifically address the first stage of the process, drafting learning outcomes.⁷⁰ As noted above, the ABA has identified some learning outcomes that all new lawyers should possess, and thus that all law schools should include in their list of learning outcomes for law school assessment.⁷¹ Those outcomes include: “Knowledge and understanding” of law; “Legal analysis and reasoning, legal research, and problem-solving;” communication in the context of law; professionalism; and “Other professional skills.”⁷² The Assessment Standards give law schools freedom to add to this list to include outcomes that may reflect a particular school’s mission or culture.⁷³ Moreover, a professor’s identification of student learning outcomes for a particular course (or for individual student assessment) can be more or less inclusive, depending on the course. In other words, the professor should identify the big picture goal of the course in terms of the knowledge, skills, and values the students should be able to accomplish

69. *E.g.*, SUSKIE, *supra* note 45 (addressing outcomes assessment in higher education); MUNRO, *supra* note 15 (focusing specifically on outcomes assessment for law schools); SHAW & VANZANDT, *supra* note 4.

70. Two excellent resources for developing learning outcomes and related performance criteria (the first stage of outcomes assessment) are SUSKIE, *supra*, note 45, at 115–34 (individual student assessment) and SHAW & VANZANDT, *supra* note 4, at 57–82 (law school assessment). And because the balance of this Article focuses on the measurement stage of the outcomes assessment process, a detailed discussion of the analysis and response stages (the third and fourth stages of outcomes assessment) is outside its scope. Professors Shaw & VanZant discuss these stages in great detail. *Id.* at 135–82.

71. ABA STANDARDS, *supra* note 24, at 15.

72. *Id.*

73. *Id.* at 16. Once the law school’s learning outcomes are identified, the school can create a curriculum map, or “a grid of the courses [in a law school’s] curriculum that identifies which learning outcomes and [related] performance criteria are addressed and assessed in each course.” SHAW & VANZANDT, *supra* note 4, at 79. The map can indicate where in the curriculum the outcome is introduced, where it is practiced, and at what point students are expected “to have attained the desired level of competence.” Hamm, *supra* note 2, at 372; *see also* FUNK, *supra* note 60, at 120 (explaining that curriculum maps can be used to identify the level of depth in which a course addresses a certain learning outcome, which include: being introduced to the knowledge, skill, or value; being required to demonstrate competency in it; or receiving advanced instruction or additional practice); SHAW & VANZANDT, *supra* note 4, at 210 (discussing the same three categories, but labeling them introduced, competency, and proficiency). Sample curriculum mapping documents are fairly easy to come by, and thus schools need not reinvent the wheel when creating a format. *E.g.*, *id.* at Appendix E (sample curriculum map) and Appendix F (curriculum mapping survey sample form); FUNK, *supra* n. 60 at Appendix D (includes curriculum mapping survey and sample curriculum map).

by completion of the course.⁷⁴ Thus, the course learning outcomes may touch on knowledge, skills, or values that the law school has identified for all of its graduates more broadly (such as legal analysis and reasoning or professionalism), and it may also include an outcome that is not specifically referenced at the law school level (for example, knowledge of a specific subject matter, like international law or securities law).⁷⁵

This Article focuses on the second stage, or the resource-intensive measurement stage. In particular, the Article seeks to lay out one possible way the stage can be implemented for both individual student assessment and law school assessment once the relevant learning outcomes have been identified. The measurement stage involves (A) identifying or designing the assessment measures to be used and (B) determining the sources (or outputs) that will be measured.⁷⁶ While some principles underlying this two-part process apply to both types of assessment, instances where the process differs for individual student learning or law school assessment are noted below.

A. The Measurement Stage: Assessment Measures Generally

As an initial matter, there are two main types of assessment measurement—direct and indirect measures. A direct measure requires students to demonstrate their achievement in a tangible, visible way, such as taking an exam or completing a writing assignment.⁷⁷ In other words, students must actually create work product in some form (written or oral) so the assessor can directly examine or observe the student work product to measure whether and what student learning is taking place. In contrast, an indirect measure requires the assessor to infer whether learning has occurred through the student's opinion or another observer's opinion (without directly reviewing student work product).⁷⁸ Common examples include surveys, interviews, focus groups, and reflection papers.⁷⁹ When it comes to direct measures, there is no need for guesswork or inference because there is student work product to review. For this reason, direct assessment measures are “viewed with

74. FUNK, *supra* note 60, at 43–44.

75. Refer to FUNK, *supra* note 60, at Appendix D for examples of course learning outcomes.

76. ABA 2015 Guidance Memo, *supra* note 5, at 5–6.

77. MARY J. ALLEN, ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION 6–7 (Anker Publg. 2004); *see also* SHAW & VANZANDT, *supra* note 4, at 105–06.

78. SHAW & VANZANDT, *supra* note 4, at 104, 106–09; *see also* ALLEN, *supra* note 77, at Chapter 6.

79. SHAW & VANZANDT, *supra* note 4, at 104.

great favor” by assessment experts.⁸⁰ That said, indirect measures are still valuable for assessment purposes because they can assess what students and employers perceive students have learned.⁸¹ Thus, both types of measures are worth using in an assessment plan, especially for purposes of law school assessment. In fact, assessment experts recommend using multiple, varied assessment measures to evaluate student learning for purposes of outcomes assessment.⁸²

Moreover, when creating an assessment measure, be it direct or indirect, the three core principles of validity, reliability, and fairness should be considered to ensure the measure is a worthwhile one.⁸³ First, validity looks to how well a method actually measures what it is supposed to be assessing.⁸⁴ For individual student assessment, validity requires the assessment method to measure whether one or more course goals has been achieved.⁸⁵ The question for law school assessment is whether the method measures if the law school is meeting the institutional outcome(s) at issue.⁸⁶ Second, reliability confirms whether the assessment method produces the same results during repeat attempts.⁸⁷ This principle involves both “representative content sampling” and “scoring consistency.”⁸⁸ In terms of sampling, for individual student assessment, the assessment method must sample enough of the course content so that the student’s performance (or

80. *Id.* at 105; *see also* Niedwicki, *supra* note 8, at 255 (noting that indirect measures alone “do not fully capture what particular skills the students have mastered or the exact knowledge they gained in law school”).

81. For example, an externship supervisor can offer perceptions on how a student extern has performed without sharing work product that may be subject to the attorney–client privilege.

82. BEST PRACTICES, *supra* note 8, at 253 (discussing best practices for assessing student learning); SHAW & VANZANDT, *supra* note 4, at 112 (discussing the use of “methodological triangulation,” which involves using three different assessment tools, using both direct and indirect measures, when conducting institutional assessment).

83. BEST PRACTICES, *supra* note 8, at 239.

84. MUNRO, *supra* note 15, at 106. For example, if the outcome being measured relates to effective written communication, a multiple-choice exam would not be a valid method for measuring the outcome because the method must measure what has actually been learned by the student with respect to the student’s written communication (not likely through the student’s selection of multiple choice answer options drafted by a professor). *Id.*

85. *Id.* at 107 (explaining that there “must be a reasonable connection between that which is being taught in the course and that which is being assessed”). There must also be clear instructions and adequate time to complete the assignment. SHAW & VANZANDT, *supra* note 4, at 110–11; BEST PRACTICES, *supra* note 8, at 241.

86. MUNRO, *supra* note 15, at 107.

87. *Id.*; SHAW & VANZANDT, *supra* note 4, at 111.

88. MUNRO, *supra* note 15, at 107–08; SHAW & VANZANDT, *supra* note 4, at 111.

output) can reflect the extent to which the student met the course goals.⁸⁹ For law school assessment, however, the question is whether the sampling of student outputs being measured is sufficiently representative of the student body.⁹⁰ In terms of consistency, the inquiry for individual student assessment is usually whether the results are consistent across assessment methods in the same course in a given year (usually all scored by the same professor), while the inquiry for law school assessment is whether there is consistency across scorers.⁹¹ Third, fairness contemplates equity in terms of the assessment method used and in the results of that method.⁹² Moreover, an assessment method that fails for validity or reliability would also fail for fairness.⁹³

B. The Measurement Stage: Assessment Sources To Be Measured

Once the assessment method has been identified, the second aspect of the measurement stage is to identify the sources to be measured for purposes of assessment. In other words, the goal is to discern what student work product or other outputs exist, or could be created, for purposes of assessing achievement of a particular learning outcome (at the course or law school level). Again, the first stage of the outcomes assessment process involves identifying what the learning outcomes are for a particular course (when it comes to individual student learning) or for the institution overall (for purposes of law school assessment). The second stage, which is at issue in this Section, gets at measuring specific sources to determine whether the identified outcomes are being achieved.

As an initial matter, the goal should be to identify and use assessment sources that already exist. In other words, try to identify student outputs that are already being created by students because

89. MUNRO, *supra* note 15, at 107.

90. *Id.*; SHAW & VANZANDT, *supra* note 4, at 111; *see also id.* at 114–15 (discussing in more detail important questions and considerations regarding reliable representative samples).

91. SHAW & VANZANDT, *supra* note 4, at 111, 188 (defining reliability and scorer reliability); MUNRO, *supra* note 15, at 108; *see also* SHAW & VANZANDT, *supra* note 4, at 145 (discussing the need for inter-rater reliability when multiple scorers are involved); Hamm, *supra* note 2, at 383 (discussing training for evaluators).

92. MUNRO, *supra* note 15, at 109. For example, “[e]xercises which assume familiarity with dominant culture may present problems of fairness for those of minority cultures.” *Id.*

93. *Id.* at 110.

they are assigned as part of a course.⁹⁴ Referred to as embedded assessments (versus add-on assessments), existing assessment sources support validity because they are likely to be closely aligned with faculty expectations in terms of student learning in a given course (namely, there is likely to be a tie between what is being taught in the course and what is being assessed in the source), and students are motivated to perform well because they are part of the assigned work (and could also be tied to the course grade).⁹⁵ Embedded assessments are also more efficient than add-on assessments because they call upon existing resources rather than require time be spent to create or complete new tests or assignments that would yield student outputs.⁹⁶

How to locate existing assessment sources turns on the type of assessment at issue. For individual student assessment, the professor for the course in question is intimately familiar with the tests or assignments created for the course, and thus also what student work product or other outputs are generated in response. When it comes to law school assessment, the curriculum map created for the first stage of outcomes assessment can be very useful in discerning which courses have outputs that could be collected for the learning outcome at issue.⁹⁷

The depth and breadth of outputs needed also depends on the type of assessment at issue. When it comes to individual student assessment, the professor usually reviews the outputs from all students in the course, as the goal is to discern what student learning has been

94. Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning by Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 470 (2011) (citing Allen, *supra* note 77, at 13–14).

95. SHAW & VANZANDT, *supra* note 4, at 100; *see also* Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 LEGAL WRITING 313, 341 (2010) (explaining that embedded assessment means that “faculty [can] examine learning where it occurs, students are motivated to demonstrate their learning, and assessment planning contributes to an aligned curriculum”). While the assessment source can also be tied to a course grade, the grade itself is not a viable assessment source. That is because a grade usually says something about the students’ performance vis-à-vis the class (through the grade distribution), “[b]ut it does not usually convey direct information about which of the course’s goals and objectives for learning have been met or how well they have been met by the student.” BANTA & PALOMBA, *supra* note 12, at 53; *see also* SHAW & VANZANDT, *supra* note 4, at 13 (“When you think about a grade, it is essentially an artificial construct designed to compare the performance of one student to another and rank them accordingly.”). Instead, it is the underlying tests or assignments on which grades are based that can be a source for meaningful assessment. *Id.*

96. ANDREA LESKES & BARBARA D. WRIGHT, *THE ART & SCIENCE OF ASSESSING GENERAL EDUCATION OUTCOMES: A PRACTICAL GUIDE* 36 (2005) (explaining that “[e]mbedd[ed] assessment is an efficient way to collect high-quality, direct evidence of learning with minimal disruption and maximum utility”).

97. SHAW & VANZANDT, *supra* note 4, at 77–78, 103; *see also supra* note 73.

accomplished by each student in the course in a given semester (and the professor may also be grading the assignment). However, when conducting law school assessment, the “data is typically culled across courses, professors, and dates using a variety of tools.”⁹⁸ Using multiple assessment sources and methods for each learning outcome can increase the validity and reliability of the results for law school assessment.⁹⁹ Referred to as triangulation, using three different assessment measures, including both direct and indirect measures, allows for a more comprehensive view of assessment sources and, thus, student performance and attitudes.¹⁰⁰ Doing so also makes assessment more “accessible to different learning styles and strengths” and “bring[s] in a wider range of evaluators.”¹⁰¹

Finally, while there are general principles and best practices to consider in designing assessment methods, which have been discussed in this Part, the ABA acknowledges that there is no uniform method to conduct assessment, and no specific measures are required by the Assessment Standards. Rather, this aspect of outcomes assessment should be school-specific.¹⁰² Part IV will explore rubrics in more detail as one possible direct assessment measure law schools can consider using, especially given that many faculty already design or use this tool in their classrooms.

IV. RUBRICS AS AN ASSESSMENT METHOD

Rubrics are the most common direct assessment method that can be used for both individual student assessment and institutional assessment.¹⁰³ Rubrics are also tools that many professors are already familiar with creating and using in all types of law school courses, which is particularly important when it comes to the goal of working from existing resources when trying to comply with the Assessment

98. SHAW & VANZANDT, *supra* note 4, at 13, 111 (emphasizing that the sampling of outputs used must “represent the characteristics of the student body as a whole” in order to be reliable).

99. *Id.* at 112 (“Even if it is extremely well designed and well executed, no single tool/assessment activity can provide the comprehensive view needed to determine whether a criterion is being achieved.”); *see also* Jones, *supra* note 8, at 101.

100. SHAW & VANZANDT, *supra* note 4, at 112; *see also id.* at 13 (explaining that using multiple assessment measures yields a “more nuanced view of student achievement of the learning outcome” in question).

101. *Id.* at 112.

102. ABA June 2015 Guidance Memo, *supra* note 5 at 5.

103. Hamm, *supra* note 2, at 375.

Standards. This Part (A) first discusses rubrics generally,¹⁰⁴ and then (B) provides a detailed case study of how the UK Law legal writing faculty developed a rubric for its LRW Course.

A. Rubrics Generally

“A rubric is a set of detailed written criteria used to assess student performance.”¹⁰⁵ In other words, in the most general sense, an analytic rubric is a method of setting out the specific expectations for an assignment in a way that divides the assignment into its parts and conveys “a detailed description of what constitutes acceptable and unacceptable levels of performance for each of those parts.”¹⁰⁶ Rubrics can be used to determine a numerical score or letter grade for an assignment through application of the articulated criteria (or descriptions) to student work product.¹⁰⁷ Moreover, given the way rubrics can lay out levels of performance for knowledge, skills, and values, and indicate what competent performance looks like for each, they can also be used to measure student achievement of learning outcomes for purposes of course or law school assessment.¹⁰⁸ The assessment connection is discussed in this Part where needed to understand rubric theory and design, and then more fully in Part V

104. This Article focuses on the analytic rubric, which looks separately at the different relevant characteristics of a performance or product, and not the holistic rubric, which looks collectively at the performance or product with one single overall score or overall impression. Hamm, *supra* note 2, at 375 (citing Allen, *supra* note 77, at 138; BANTA & PALOMBA, *supra* note 12, at 100.) Both may be used by law school faculty.

105. Curcio, *supra* note 32, at 493 (quoting Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 7 (2004)).

106. DANIELLE D. STEVENS & ANTONIA J. LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNING 3 (2d ed. 2013). The level of detail provided in a rubric varies by professor. For example, some rubrics focus only on acceptable levels of performance and omit descriptions of unacceptable levels, some describe expectations with specific reference to law or facts at issue in an assignment while others are more general in nature, and some are written just for use by the professor when evaluating the assignment (and not also to be shared with a student). In other words, there is no such thing as a template for the “perfect” rubric. Thus, this Article focuses on general principles for designing a valid, reliable, and fair analytic rubric for use with outcomes assessment.

107. Jessica Clark & Christy DeSanctis, *Toward a Unified Grading Vocabulary: Using Rubrics in Legal Writing Courses*, 63 J. LEGAL EDUC. 3, 7–8 (2013).

108. Curcio, *supra* note 32, at 493. Indeed, many scholars have discussed the benefits of using rubrics as an assessment tool. *E.g.*, SUSKIE, *supra* note 45, at Chapter 9; BEST PRACTICES, *supra* note 8, at Chapter 7; BANTA & PALOMBA, *supra* note 12, at Chapter 12; Clark & DeSanctis, *supra* note 107, at 3–5.

when the connection to the Assessment Standards is explored in more detail.

Rubric design is a detailed process with several stages. First, the designer identifies the levels (or scales) of performance that will be used (e.g., mastery, progressing, and emerging or distinguished, proficient, intermediate, novice).¹⁰⁹ Next, the designer sets out the categories (or dimensions) to be evaluated in the assignment, which are usually tied to one or more learning outcomes for the course (individual student learning) or institution (law school assessment).¹¹⁰ This tie to a learning outcome(s) is important to ensuring the rubric's validity as an assessment measure because the rubric must actually evaluate, or assess, what is being taught.¹¹¹ Under each category, the designer must then draft narratives that explain what constitutes each level of performance.¹¹² This is referred to as criterion-referenced (versus norm-referenced) assessment, which means that competency is measured by looking at whether a student satisfies certain requirements for the dimension that are set by the assessor(s).¹¹³

109. STEVENS & LEVI, *supra* note 106, at 8–9; Curcio, *supra* note 32 at 496–497, 499.

110. STEVENS & LEVI, *supra* note 106, at 10; Clark & DeSanctis, *supra* note 107, at 9–10; Curcio, *supra* note 32, at 499–501.

111. See MUNRO, *supra* note 15, at 106; see also Curcio, *supra* note 32, at 499–501 (providing examples of rubric narratives that are tied to specific learning outcomes). It is also important to make sure the rubric is broken down into a sufficient number of categories so that there are not too many dimensions, or topics, covered in one category. Otherwise, the rubric may become too confusing or cumbersome to use when evaluating a student output that will demonstrate numerous competencies, such as an essay exam or legal document.

112. STEVENS & LEVI, *supra* note 106, at 10–14. In doing so, consider what knowledge, skills, and values students will need to have or develop to successfully complete the tasks associated with the assignment, and identify what types of evidence will show that students have accomplished those tasks (and related student learning outcomes). See *id.* at 29–38. One critique of rubrics as an assessment tool is that their use of categories or narratives are too rigid or standardized. Deborah L. Borman, *De-grading Assessment: Rejecting Rubrics in Favor of Authentic Analysis*, 41 SEATTLE L. REV. 713, 730–31 (2018) (arguing that rubrics cannot capture the “subjective component to grading [legal writing] assignments” like a more holistic evaluation can). However, as discussed in more detail below in Parts IV(B) and V(A), the key is structuring and dividing the rubric categories to allow for capturing variation and nuance in legal analysis where it arises, and drafting the corresponding performance level narratives so they clearly describe the legal reader's common expectations for analytical writing while using the professor's preferred language.

113. SHAW & VANZANDT, *supra* note 4, at 93. Some casebook professors may also use the term “rubric” when referring to the grading tool created for evaluating final exam essays. By definition, however, a rubric is a criterion-referenced assessment tool. Thus, if the grading tool is being used to assign grades in a norm-referenced framework, then it is not really a “rubric” as defined and used in this Article.

Narrative content and clarity are important for purposes of fairness, as the criteria for each performance level must be easily understood by the evaluator (and the student for individual student assessment), and reliability, given that the evaluator must be able to apply the criteria consistently across outputs and at different points in time.¹¹⁴ Consistent application of the assessment measure is particularly relevant for law school assessment, because there are likely to be multiple evaluators involved.¹¹⁵ Finally, if the assignment is also being scored or graded, the designer ends by assigning a narrow point range to each rubric category and each level within that category.¹¹⁶

In short, intentional and thoughtful rubric design can result in a valid, reliable, and fair assessment measure. Section B will flesh these ideas out, and respond to related critiques, using a specific example.

B. Specific Rubric Example

In 2012, UK Law's legal writing faculty set out to design a series of rubrics to use for all seven or eight (given the year) sections of the LRW Course, and did so with two goals in mind. First, the designing faculty wanted a way to reliably and fairly grade the students' major writing assignments, which are standard across all sections. Second, as the Director of the LRW program, I wanted to share whether students were achieving the student learning outcomes for the course as part of a report I was writing to evaluate the success of changes made to the LRW Course. In other words, the legal writing faculty had already engaged in the first stage of outcomes assessment, identifying student learning outcomes for the LRW Course, and we wanted to engage in the second stage by using a rubric as the direct assessment measure for discerning whether our students were accomplishing those learning outcomes.¹¹⁷ While it was a time-intensive endeavor on the front-end,

114. *Id.* at 111.

115. *Id.*; see also SUSKIE, *supra* note 45, at Chapter 15; CARNEGIE REPORT, *supra* note 8, at 170–71; BEST PRACTICES, *supra* note 8, at 243–45.

116. Clark & DeSanctis, *supra* note 107, at 8–11. Again, the Assessment Standards do not require that the underlying assessment source (output) be a graded assignment, much less that the assessment measure also be used for grading. ABA STANDARDS, *supra* note 24, at 3 (“Law schools are not required by Standard 314 to use any particular assessment method.”); *id.* at 24 (“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.”).

117. The learning outcomes we identified are common ones for a foundational legal research and writing course, including: reading, comprehending, and writing about legal authorities; working with the analytical paradigms customarily used by U.S. lawyers; identifying the expectations of the legal reading audience; effectively organizing the legal

and it has required tweaks along the way, the resulting rubrics are a valuable and successful tool that have been embraced by both the faculty and students who use them.¹¹⁸ The remainder of this Section details the collaborative and thoughtful process the designing faculty used when creating the rubrics, focusing on the rubric used for the final writing assignment of the LRW Course.¹¹⁹

As an initial matter, the designing faculty selected three existing writing assignments that would be the assessment sources for the rubric project. Specifically, we selected two predictive writing assignments that involved rewriting an informal and formal office memorandum in the fall, and one persuasive writing assignment that involved rewriting an appellate brief in the spring.¹²⁰ The appellate brief rewrite is also the final major writing assignment for the year-long course and the score is factored into the students' overall course grade, which means the students' work product would reflect many of the topics taught in the course and students would be motivated to do well on the assignment. This made the corresponding rubric prime for meaningful assessment of whether students had achieved many of the learning outcomes for the LRW Course. Professor VanZandt, who has written extensively on outcomes assessment, agrees that memos and briefs are "excellent," direct, embedded assessment methods that can be used for the dual purpose of grading and assessment.¹²¹ Thus, this

analysis at both the large and small scale levels; creating accurate citations; and using proper grammar and punctuation. See AM. BAR ASS'N SECTION OF THE LEGAL EDUCATION AND ADMISSIONS TO THE BAR, SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 5–12 (Eric B. Easton, et al. eds., 2d ed. 2006) (hereinafter ABA SOURCEBOOK). We added the learning outcomes to our course policies & procedures.

118. The legal research faculty who teach the legal research component of the LRW Course underwent a similar process to design a rubric for the major research assignments, with similar goals in mind. However, that process and resulting rubric exceed the scope of this Article.

119. Although the rubric project began before the Assessment Standards were enacted, and was not developed with those specific standards in mind, the designing faculty did rely on outcomes assessment literature and best practices for rubric design.

120. The rewrites occur after the students have received written feedback on the initial memos or brief and conference with the writing professor about that feedback. While the rewrite assignments are scored and factor into the final course grade, the initial assignments are worth little or no points, because the primary goal is for the students to focus on incorporating the formative feedback into the rewrite. In other words, the initial assignments are what Professor Duhart refers to as "low-stakes assignments" where "[t]he goal is to provide students an opportunity to practice—and even 'fail'—with very little risk." Duhart, *supra* note 44, at 493 (internal quotation omitted); see also Borman, *supra* note 112, at 716 (asserting that removing numbers as evaluation allows students to focus on the feedback rather than the score for purposes of improving analytical writing).

121. VanZandt, *supra* note 95, at 342.

Article will focus on the design process we used for the appellate brief rewrite rubric.¹²²

Next, the designing faculty dove into the large scale organization of the rubric, which is reflected in Figure 1. After some discussion, we settled on the four performance levels (or scales) to use across the top of the rubric—beginning, developing, proficient, and highly proficient.¹²³ With the levels set, it was time to identify the categories to be evaluated in the assignment, and thus included along the left-hand side of the rubric. We started by creating categories for each component or part of the appellate brief assignment. For example, we had categories for the shorter initial parts of the brief, such as the Statement Concerning Oral Argument and the Question Presented, along with longer and more substantive parts of the brief, like the Statement of Facts and the Argument.¹²⁴ Moreover, because the Argument is the most important and complex part of the brief, as it sets out the student's legal analysis (including efforts to incorporate techniques for subtle persuasion), we further broke that part of the brief down into several organizational and substantive categories for the rubric (specifically, deductive organization, advanced organization, rule statements, rule explanations or explanatory synthesis, and application of the rule to the client's facts using rule-based and analogical reasoning).¹²⁵ We ended this phase of

122. That said, we used a similar process for the memo rubrics, using the same four levels of performance and substantially similar narrative content for the organization, content, and mechanics of the legal analysis. This is why students (and faculty) could track progress over the duration of the entire course, which is called “developmental assessment.” VanZandt, *supra* note 95, at 340 (citing Allen, *supra* note 77, at 9); see also BEST PRACTICES, *supra* note 8, at 245–47 (noting development of expertise occurs over time, “and there are stages with discernable differences” that should be communicated to students). The benefits of development assessment are discussed in more detail in Part V.

123. We intentionally declined to use a term like master or mastery, because a first-year foundational course like legal research and writing is not about mastering knowledge, skills, or values. Instead, it is about introducing new, core skills and techniques for our novice legal writers to learn and practice. Later courses are needed to give students a chance for additional practice as they progress toward competency. See DEBORAH MARANVILLE, ET AL., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 123 (LexisNexis 2015) (“The best practice is for students to have at least one significant writing experience each semester of law school . . .”).

124. For the memo rubrics, we included the common initial parts of an office memorandum (Issue, Brief Answer, and Statement of the Facts).

125. For the memo rubrics, we did the same thing with the Discussion section of the office memorandum. Again, breaking the rubric categories down into discrete topics, or even sub-topics, ensures that the evaluator is not left trying to assess too many different ideas or techniques within one category, which makes the feedback (and any resulting score) more focused and fair, and thus more likely valid.

rubric design by identifying categories that would apply to the entire brief such as legal citation and formatting. Finally, because the rubric would be used for individual student assessment, we confirmed that each rubric category tied back to one or more of the course learning outcomes.¹²⁶ Doing so ensures the validity of the rubric as an assessment method because there is a direct tie between what is being taught in the course, and what should be reflected in the writing assignment to be assessed by the rubric.¹²⁷

Figure 1: Large Scale Organization of UK Law Appellate Brief Rewrite Rubric

Categories	Beginning	Developing	Proficient	Highly Proficient
Cover				
Introduction				
Statement Concerning Oral Argument				
Statement of Points & Authorities				
Question Presented				
Statement of the Case (Facts)				
Organization of the Argument (CREAC)				
Advanced Organization of the Argument				
Argument Content (Persuasive Headings)				
Argument Content				

126. For example, one of the course learning outcomes states that students should be able “to design the organization of legal analysis using effective, reasoned choices that anticipate the expectations of the legal reading audience and are easy to follow from the perspective of flow and logic.” LRW Course Policies & Procedures (on file with the author). This outcome aligns with the rubric’s two organization categories: deductive organization (following a paradigm such as IRAC or CREAC); and advanced organization (further explored in Figure 2). Another outcome calls for students to be able to “provide accurate citations where needed by employing the conventions of the Bluebook and local citation rules.” *Id.* This outcome aligns with the rubric’s citation category.

127. See Sparrow, *supra* note 105, at 18 (“We may have already identified our learning goals to students in our syllabus and other materials . . . [h]owever, breaking these goals into more specific components that describe *what the students have learned* and *how we know if they have demonstrated that learning forces us to think at a deeper level.*”) (emphasis added); see also, *supra* note 85.

(Applicable Standard of Review and Rule Statements)				
Argument Content (Rule Explanations/ Explanatory Synthesis)				
Argument Content (Rule Applications/ Rule-Based Reasoning and Analogical Reasoning)				
Conclusion				
Clarity & Conciseness				
Mechanics (Grammar & Punctuation)				
Mechanics (Polish)				
Mechanics (Citation)				
Formatting for Brief				

With the rubric categories identified and aligned with the student learning outcomes for the LRW Course, the designing faculty turned to fill in the content of the rubric, which, for us, was the most time-intensive yet affirming aspect of rubric design. In other words, we had to draft the narrative that describes each level of performance for each rubric category. An example can be found in Figure 2. Collaboration was crucial here, because the rubric would be used by all of the legal writing faculty, and thus each needed to understand and agree with the narratives as written in order to ensure consistent, and thus reliable, application of the rubric to the briefs written by their students.¹²⁸ We started by setting out our collective expectations for student work that reflects application of the skill(s) or technique(s) at issue for each rubric category at the beginning, developing, proficient, and highly proficient levels. In other words, we drafted narratives to reflect common heuristic strategies we teach our students for

128. See STEVENS & LEVI, *supra* note 106, at 178 (“Using rubrics created by those with a stake in the program being assessed also begins a much-needed process in changing how assessment is carried out, presented, and acted on.”); see also BANTA & PALOMBA, *supra* note 12, at 32, 102–03 (discussing importance of having high level of consistency among different rubric raters, and noting lack of sufficient local input when discussing potential rubric issues such as inter-rater reliability).

organizing and writing their legal analysis.¹²⁹ This involved anticipating common errors or problems that first-year students often demonstrate on the way to proficiency (for the beginning and developing levels), reaching agreement on what performance evidences proficiency, and deciding what performance would demonstrate the highly proficient level (that is, the ultimate goal for legal writers).¹³⁰ For example, we agreed on what performance would demonstrate high proficiency in using the advanced organizational techniques covered in the course. Next, we agreed on what a paper would look like that demonstrated proficiency in the techniques. Then we talked through how a paper would differ if still in the developing and beginning stages for the same techniques.¹³¹ Figure 2 reflects the narratives for the “Advanced Organization of the Argument” category.

129. As Professor Beazley explains, legal writing faculty teach students “heuristic strategies,” which she “describe[s] as a principle of providing course content that gives students ‘generally effective’ techniques for accomplishing certain common tasks.” Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 LEGAL WRITING 23, 46 (2004). The strategies do not dictate the content, and thus do not give the answer or “wreck the curve,” but instead offer “a set of questions [for the writer] to answer in particular rhetorical situations.” *Id.* at 46, 64–65. As such, our narratives do not “give the answer away” to the students, nor do they necessarily “decrease[] students’ ability to practice critical thinking skills,” which are both critiques cited for rubrics. Borman, *supra* note 110, at 741. Instead, they call on both the students and professors who use them to think more deeply about how certain aspects of the writing assignment compare to the well-stated expectations set out in a relevant rubric category. *See* Curcio, *supra* note 32, at 497 (explaining that “rubrics allow assessment via descriptors of higher-order thinking rather than via correct versus incorrect answers”).

130. *See* BANTA & PALOMBA, *supra* note 104, at 100 (“Well-designed rubrics contain specific descriptive language about what the presence or absence of a quality looks like.”); STEVENS & LEVI, *supra* note 106, at 11 (preferring rubrics that contain “a description of the most common ways in which students fail to meet the highest level of expectations”); Clark & DeSanctis, *supra* note 107, at 8–9 (explaining that “narrative descriptions mirrored the material professors taught in classes leading up to completion of the particular writing assignment”).

131. When creating a rubric for law school assessment, Professors Shaw & VanZandt suggest waiting to draft the narratives until after having read a few student outputs. SHAW & VANZANDT, *supra* note 4, at 142 (discussing how to make a rubric “hot,” or complete, during the implementation stage of outcomes assessment). We effectively did this during the design stage, because when drafting the narratives, we considered what we had seen in appellate brief rewrites submitted by students in past years. *See id.* (discussing the value of experienced teachers with specialized expertise when drafting rubrics for assessment).

Figure 2: Excerpt from UK Law Appellate Brief Rewrite Rubric

Category	Beginning	Developing	Proficient	Highly Proficient
Advanced Organ. of the Argument	<p>Arguments are not ordered logically or with strategy.</p> <p>Roadmap paragraphs are likely missing where needed.</p> <p>Paragraphs likely could be better executed.</p> <p>Topic (thesis) sentences are usually missing or fail to introduce the topic of the paragraph.</p>	<p>Some arguments could be better organized logically or with strategy.</p> <p>Roadmap paragraphs may be missing where needed or could usually be used more effectively.</p> <p>Paragraphing and/or use of strong topic (thesis) sentences could often be improved.</p>	<p>Arguments are ordered logically, but may not always be ordered strategically where possible.</p> <p>Roadmap paragraphs are usually used effectively where needed.</p> <p>A few paragraphs may have been better executed (in terms of length and unity).</p> <p>There likely could be improved use of strong topic (thesis) sentences or evident transitions in a few instances.</p>	<p>Arguments are ordered logically and <i>strategically</i>, such as strongest arguments first, unless there is a threshold matter or logic dictates otherwise.</p> <p>Roadmap paragraphs (umbrella passages) are used effectively where needed.</p> <p>Paragraphing is effective in terms of length and unity. The paragraphs within each CREAC are organized around main ideas, such as the rule or parts of the rule, not the cases.</p> <p>Transitions are used where needed. Topic (thesis) sentences are strong in that they convey main ideas.</p>

One of the most rewarding aspects of this stage of the design process was that the designing faculty realized it was easier to reach agreement

on narrative content than initially anticipated. This gave the group confidence that while we may approach and teach the foundational skills and techniques relevant to a first-year legal writing course in different ways (giving thought both to our student learners and our teaching styles), we not only agreed on the course goals and related learning outcomes, but also on how our students could demonstrate achievement of the outcomes in their written work product. In fact, we regularly reached consensus on the expectations for each performance level for each rubric category.¹³² This is not altogether surprising, given that the heuristic strategies we teach our students are fairly common from professor to professor, and they are tied to the idea that effective legal writing anticipates the expectations of the legal reader.¹³³ Where further discussion did ensue, it was often over precise language to use rather than broad ideas to include. For example, for the advanced organization of the Argument category, some faculty preferred the term topic sentence while others preferred thesis sentence (often based on the term used in a professor's chosen text and classroom terminology). This was an easy fix, however, by drafting a narrative that encompasses both terms, thus satisfying all involved faculty and ensuring all could consistently, and thus reliably, apply the rubric. Refer to Figure 2 above. Thus, rubrics can be designed to avoid the

132. We are not alone in finding more commonality than first expected. See STEVENS & LEVI, *supra* note 12, at 69 (explaining that when several professors who taught the same course (but using different approaches, assignments and texts) sat down to design a rubric, “they differed far less than expected,” and with some discussion and assistance from an outside consultant, were able to produce a rubric acceptable to all); see also *id.* at 24 (describing the reaction of faculty who worked together on a single rubric for a shared assignment as “surprised and reassured to discover that their standards and expectations were not wildly out of line with those of their colleagues”).

133. See Beazley, *supra* note 129, at 53 (explaining that legal writing must consider the reader's needs and expectations when it comes to form, structure and content); Mary Beth Beazley, *Finishing the Job of Legal Education Reform*, 51 WAKE FOREST L. REV. 275, 303, 310 (2016) (discussing legal writing scholarship on the substance of legal writing, which says that students must consider the needs of their readers); see also Beazley, *supra*, note 129 (discussing legal writing professors' common use of heuristic strategies). For example, we all teach a similar heuristic strategy for finding the information that a reader expects from past cases used to support legal analysis (for past case descriptions or case discussions). There are similar expectations across professors for what type of information is necessary to include in the case discussions that make up a rule explanation—namely, the court's holding and the court's reasoning with related trigger facts—even though the actual content to be drafted by the student writer will vary depending on the case, the legal issue being explained, and the legal problem being resolved. Beazley, *supra* note 129, at 46, 68 (explaining the relevance of case descriptions to legal analysis). The narratives we drafted to embody the particular expectations described here are set out in Figure 5.

concerns some have raised about rubrics being too rigid to use for meaningful assessment.¹³⁴ Appropriate and inclusive narrative language also results in a more fair assessment method because the tool must speak the language that students are familiar with and understand.¹³⁵

Finally, because the rubric would also be used to score the appellate brief rewrite assignment, we assigned each rubric category a total number of points possible, as reflected in the rubric excerpt in Figure 3.¹³⁶ The points assigned to a particular category reflect the focus or priority given to the skills and techniques.¹³⁷ In doing so, we considered the relevant importance of the category vis-à-vis the assignment and the related student learning outcomes, the amount of time spent on that topic throughout the course, and the number of opportunities students had to practice the relevant skills/techniques leading up to the final writing assignment.¹³⁸ For example, the Cover Page and Conclusion are both worth one possible point each, and the Question Presented is worth three possible points. In contrast, the content of the Argument is worth twenty-one possible points (divided into five possible points for rule statements, eight possible points for rule explanations,

134. See Borman, *supra* note 112, at 730–31, 740 (asserting that rubrics are too standardized and cannot capture the “subjective component to grading [legal writing] assignments” like a more holistic evaluation can). The point is that the narratives we drafted do not use words like “effective” or “good” in the abstract, but instead more fully convey the legal reader’s expectations for successful use of the skill or technique in question. See Beazley, *supra* note 129, at 66 (discussing the “rules” of analytical writing).

135. See MUNRO, *supra* note 92. Some faculty engage students in designing a rubric, including categories and narrative content, where the professor gets the last word say on what to include or omit in the rubric’s final version. This approach could help with rubric fairness, as students are more likely to understand the narratives they help draft.

136. As noted above, students already received written feedback on an earlier version of their appellate brief, which had little impact on their course grade. Moreover, in addition to the score, students also receive formative feedback, which is discussed more in Part V.

137. One noted concern is that students will focus only on the categories with high point totals, but this has not been my experience in practice. Some professors may even be okay with a student who takes this approach, given that the high point total categories effectively reflect the primary goals of the assignment. And again, if the rubric is only being used for outcomes assessment (not also for grading), the points are omitted.

138. See Clark & DeSanctis, *supra* note 107, at 8 (explaining their goal in designing a rubric for use by multiple faculty teaching different sections of the same first-year LRW course “was to come to a uniform conclusion for each assignment about the value of each [rubric] component related to the time spent teaching it”); see also STEVENS & LEVI, *supra* note 106, at 22 (explaining that assigning points or percentages according to the importance of the rubric category can still message value for substantive and technical aspects of the writing).

and eight possible points for rule applications). We then spread the available points for a category over the four progress levels. We used small ranges in the first three stages (beginning, developing, and proficient) to give professors some flexibility to account for variation or nuance even within papers that fall within the same progress level.¹³⁹ We declined to use a range for the highest progress level—if a paper reflects high proficiency for the category, there is no need to make further gradations.

Figure 3: Excerpt from UK College of Law Appellate Brief Rewrite Rubric

Category	Beginning	Developing	Proficient	Highly Proficient
Advanced Organ. of the Argument	Arguments are not ordered logically or with strategy.	Some arguments could be better organized logically or with strategy.	Arguments are ordered logically, but may not always be ordered with strategy where possible.	Arguments are ordered logically and <i>strategically</i> , such as strongest arguments first, unless there is a threshold matter or logic dictates otherwise.
Five Points Possible	Roadmap paragraphs are likely missing where needed. Paragraphs likely could be better executed. Topic (thesis) sentences are usually	Roadmap paragraphs may be missing where needed or could usually be used more effectively. Paragraphing and/or use of strong topic (thesis)	Roadmap paragraphs are usually used effectively where needed. A few	Roadmap paragraphs (umbrella passages) are used effectively where needed. Paragraphing is

139. See Clark & DeSanctis, *supra* note 107, at 9 (explaining that using a range of points gave professors flexibility to distinguish between two or three papers that all met the narrative criteria for a rubric subcategory, but yet were still “distinguishable from each other as more or less successful given those criteria”). We kept the point range small and contemplated that a professor could award quarter and half points if needed for flexibility. In my experience, students do not try to nit-pick about the individual score for a category or the overall score on the rubric, not even in terms of trying to gain a quarter or half point more. This is likely because the basis for the score is clearly supported by the feedback provided in the completed rubric or supporting written feedback embedded in the related writing assignment, which is discussed in more detail in Part V(A) below.

	<p>missing or fail to introduce the topic of the paragraph.</p> <p>Zero Points</p>	<p>sentences could often be improved.</p> <p>One to two Points</p>	<p>paragraphs may have been better executed organization ally (in terms of length and unity).</p> <p>There likely could be improved use of strong topic (thesis) sentences or evident transitions in a few instances.</p> <p>Three to four Points</p>	<p>effective in terms of length and unity. The paragraphs within each CREAC are organized around main ideas, such as the rule or parts of the rule, not the cases.</p> <p>Transitions are used where needed. Topic (thesis) sentences are strong in that they convey main ideas.</p> <p>Five Points</p>
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It is important to note that while rubrics are a common assessment method used in legal research and writing courses, we are not alone here. Professors routinely design and use rubrics to assess student work in a variety of law school courses.¹⁴⁰ While the number of progress categories and components may vary depending on what learning outcomes are being measured and what type of assessment source (output) is being evaluated, the underlying design process is the same. The content and level of detail will also turn on the designing faculty member and the purpose of the rubric, be it one to distribute to students while the assignment is ongoing, one that is used only by the professor for grading, or one that is designed specifically to assess student learning outcomes.¹⁴¹ For example, Professor Duhart has shared a rubric she designed to evaluate a required practice essay in her Constitutional Law course, which is divided into categories for

140. Curcio, *supra* note 32, at 498 (explaining that rubrics “allow for nuanced assessment of skills acquisition over a wide range of courses as well as a wide range of learning outcomes”).

141. STEVENS & LEVI, *supra* note 104.

format, legal issue, statement of the rule, application of the rule to hypothetical facts, conclusion, and writing style.¹⁴² The narratives focus just on what the professor is looking for in a response (that is, what is expected) in terms of student performance, and they are specific to the law and legal authorities relevant to the question regarding the commerce clause.¹⁴³

In short, the message here is that there could be a number of faculty members with experience designing or using potentially relevant rubrics in their classroom. Thus, law schools should look broadly across the faculty for information that could prove useful to responding to the Assessment Standards. Some specific ideas for how a law school might use existing expertise and resources like that mentioned here will be addressed in more detail in Part V below.

V. RESPONDING TO THE ABA ASSESSMENT STANDARDS

This final Part shares ideas on how a rubric like the examples described in Part IV can also be used when responding to the Assessment Standards, even though originally created for another purpose. Doing so can save precious time in a busy law school while also resulting in meaningful assessment. Beginning from within, so to speak, could also help with buy-in from faculty, which is important when trying to build a culture of assessment in a law school.¹⁴⁴

It is worth reemphasizing that the primary example used in Part IV is not meant to suggest by any means that all assessment work should fall to the legal research and writing faculty at a law school, faculty who often are already asked to take on more than their fair share of institutional work and while being paid less and having less security or status. Rather, to create a productive and meaningful culture of assessment, assessment experts—and the ABA—counsel that all faculty should be involved.¹⁴⁵ And as explored more in this final Part, a variety of law school faculty could have knowledge and experience that can contribute to the outcomes assessment endeavor.¹⁴⁶

142. Duhart, *supra* note 44, at 513–14 and Appendix E.

143. Duhart, *supra* note 44, at Appendix E.

144. Cunningham, *supra* note 4, at 424 (“One way to combat faculty perceptions that assessment is externally driven is to use data from locally developed and course embedded assessments rather than tests that are developed from the outside.”).

145. SHAW & VANZANDT, *supra* note 4, at 47–48; ABA June 2015 Guidance Memo, *supra* note 5, at 3.

146. Professor Funk reiterated the call to avoid reinventing the wheel in her recent text, saying “[t]he goal is not to spend an inordinate amount of time and energy creating something to be used for the sole purpose of assessment, but rather to harness what

Moreover, while rubrics are by no means a magic bullet for outcomes assessment (or grading, for that matter), and they may not be appropriate for evaluating every assignment or for assessing every learning outcome, they can play an important role in responding to the ABA's assessment mandate. With that in mind, this Part begins in section (A) with a discussion of how a rubric like the examples discussed in Part IV can be used in responding to Standard 314's call for individual student assessment that involves formative assessment, and then turns in section (B) to suggest how those rubrics could also be adapted for use in conducting law school assessment as required by Standard 315. While the goals of individual student assessment and law school assessment differ, there is some relationship between the two, and this Article seeks to show how each can serve the other. This is particularly helpful in busy law schools with limited resources. Information gained from law school assessment can "trickle down to benefit students at the individual level" because the faculty may opt to make changes to curriculum or teaching methods in light of that information.¹⁴⁷ Moreover, "the outputs gathered as a result of individual student assessment can be repurposed to assist in [law school] assessment[.]" and most student outputs (writing assignments, exams, etc.) will already be embedded in courses.¹⁴⁸

In addition, the rubric project described in Part IV serves as just one specific example of how a law school can benefit from the existing work and experience of its own, and even share that work with other schools who are faced with the same requirements, challenges, and opportunities afforded by the Assessment Standards. It is not meant to be a blue print that will work for every law school, but instead, to add to "the much-needed dialogue of shared experiences and methodologies of assessing student learning outcomes and to show how simple, efficient, and valuable the process can be."¹⁴⁹

A. Individual Student Assessment—Standard 314

As discussed above, Standard 314 calls for law schools to engage in individual student assessment that includes formative assessment.¹⁵⁰ That is because the ABA guiding principle for outcomes assessment calls for schools to "shift the emphasis from what is being taught to

[professors] are already doing in the classroom to provide the [assessment] information you need." FUNK, SUPRA note 60, at 63–64.

147. SHAW & VANZANDT, *supra* note 4, at 16.

148. *Id.*

149. Roberts, *supra* note 94, at 459.

150. ABA STANDARDS, *supra* note 24, at 23.

what is being learned[.]”¹⁵¹ Rubrics like the ones described in Part IV can be a meaningful way to respond to Standard 314. In addition to (or even lieu of) using rubrics to grade, “[r]ubrics . . . are also valuable pedagogical tools because they make us more aware of our individual teaching styles and methods, allow us to impart more clearly our intentions and expectations, and provide timely, informative feedback to our students.”¹⁵²

As an initial matter, providing a rubric to students before the assignment is due gives them clear notice of the professor’s expectations regarding performance, and can form the basis of formative feedback.¹⁵³ This also responds directly to the fairness principle of assessment method design, because the content of a rubric can help level the playing field for all students by translating what teachers are talking about in the classroom, regardless of background and experience, and while there is time to ask questions about the rubric’s content before the assignment is due.¹⁵⁴ For example, UK Law students receive the appellate brief rewrite rubric well before the writing assignment is due so that they can get a sense of professor expectations for the assignment, specifically using the narratives in the highly proficient progress level of each rubric category as a “roadmap” of what to strive for in writing and rewriting the brief.¹⁵⁵ We also use class time to discuss the narratives in the highly proficient progress levels and their connection to legal writing techniques or heuristic strategies students are trying to use when writing the assignment. This way students can more clearly see the connection between what they are learning and what they will be evaluated on.¹⁵⁶ One colleague gives her class an anonymous excerpt of the Argument section from a former student’s

151. ABA June 2015 Guidance Memo, *supra* note 5, at 3.

152. STEVENS & LEVI, *supra* note 106, at 15.

153. Clark & DeSanctis, *supra* note 107, at 8, 16. As discussed above, when rubrics convey heuristic strategies that students should try to apply, versus just the content sought in an assignment or exam answer, there is no risk that they will somehow give students “the answer” if provided in advance. *Supra* note 129.

154. See STEVENS & LEVI, *supra* note 106, at 26.

155. See STEVENS & LEVI, *supra* note 106, at 19; see also Sparrow, *supra* note 105, at 9, 23, 35 (noting that this approach works for a writing assignment or a final exam in all types of courses). Thus, contrary to the critique that providing a rubric to students before the assignment provides information that will “compromise[] the quality of teaching and standardize[] learning[.]” Borman, *supra* note 112, at 741, providing the information in advance can actually encourage active learning when students use the rubric to identify and raise questions with the professor.

156. STEVENS & LEVI, *supra* note 106, at 19 (“[B]ecause we discuss the rubric and thereby the grading criteria in class, the student has a much better idea of what these details mean.”).

appellate brief, and then has the students complete the relevant rubric category for the sample as part of an in-class exercise to evaluate the way the writer used techniques for proving the rule statement using past cases to apply it (that is, to identify what progress level the students would assign to the paper for the rule explanation category of the rubric).¹⁵⁷ The exercise often raises questions students have about their own working draft, which are addressed globally in class or individually during office hours (and either way, before the assignment is due). This kind of exercise responds directly to the goal of using formative feedback as a way for students to “become ‘metacognitive’ about their own learning[.]”¹⁵⁸

Second, a completed rubric that is returned to the student after the assignment is submitted responds directly to Standard 314’s call for formative assessment, because it provides individual feedback about that student’s performance on a specific assignment and while the course is ongoing.¹⁵⁹ Take the appellate brief rewrite from Part IV as an example. The completed rubric conveys the progress level achieved for each category of the rubric, and thus for each underlying skill or technique discussed in the narrative for that category.¹⁶⁰ And each rubric category is tied to one or more student learning outcomes for the LRW Course.¹⁶¹ When completing the rubric, the professor can engage with the narrative text to make sure the student learns why the paper reflects a particular progress level, which is the most meaningful kind of formative assessment.¹⁶² Figure 4 shares an example of one way to provide that meaningful feedback in an excerpt of a completed rubric (specifically, for a student’s use of advanced organization in the Argument). Thus, contrary to concerns raised by Professor Borman in

157. Figure 5 depicts the rubric excerpt that the students use for this exercise.

158. CARNEGIE REPORT, *supra* note 8, at 173; *see also* ABA June 2015 Guidance Memo, *supra* note 5, at 3 (discussing ABA reliance on the CARNEGIE REPORT).

159. STEVENS & LEVI, *supra* note 106, at 17–18, 78–84; *see also* Clark & DeSanctis, *supra* note 107, at 13–14 (citing Sparrow, *supra* note 105, at 8).

160. STEVENS & LEVI, *supra* note 106, at 19 (“The highest level descriptions of the [rubric categories] are, in fact, the highest level of achievement possible, whereas the remaining levels, circled or checked off, are typed versions of the notes we regularly write on student work explaining how and where they failed to meet that highest level.”). And as discussed above, each rubric category is tied to one or more student learning outcomes for the course.

161. *Supra* note 117.

162. STEVENS & LEVI, *supra* note 106, at 19 (“The student [] receives all the necessary details about how and where the assignment did or did not achieve its goal, and even suggestions (in the form of the higher levels of [performance]) as to how it might have been done better.”); *see also supra* Part II(B)(1) (discussing most meaningful formative assessment).

her article critiquing rubrics as an assessment tool,¹⁶³ the example shows how the existing narrative text is helpful to the professor and student, and how the professor can add to it as needed to account for individuality and respond to nuances in the student's work product.¹⁶⁴

Figure 4: Sample Excerpt of a Completed Appellate Brief Rewrite Rubric

Category	Beginning	Developing	Proficient	Highly Proficient
Advanced Organ. of the Argument	Arguments are not ordered logically or strategically.	Some arguments could usually be better organized logically or strategically.	Arguments are ordered logically, but may not always be ordered with strategy where possible.	Arguments are ordered logically and with strategy, such as strongest arguments first, unless there is a threshold matter or logic dictates otherwise.
Five Points Possible	Roadmap paragraphs are likely missing where needed.	[Refer to my related margin comment in your paper.]	Roadmap paragraphs are usually used effectively where needed.	Roadmap paragraphs (umbrella passages) are used effectively where needed.
Two Points Earned	Paragraphs likely could be better executed.	Roadmap paragraphs may also be missing where needed or could usually be used more effectively.		
	Topic (thesis) sentences are usually missing or fail to introduce the topic of the paragraph.			
	Zero Points			

163. Borman, *supra* note 112, at 740.

164. The relevant part(s) of the narrative is underlined, and additional text is added in blue, bracketed text. And again, the completed rubric is just one aspect of the formative assessment we provide to students. We also engage directly with the student's text using margin comments, which is usually tied to the rubric categories (and related narratives). See STEVENS & LEVI, *supra* note 106, at 18 ("The use of [a] rubric does not, of course, preclude notes specific to the student that can be placed on the rubric, the paper itself, or elsewhere."). Thus, we never feel constrained by the rubric when offering feedback on the nuances of the law or facts for a particular writing assignment, or about the student's legal analysis, which can be noted on the rubric or the student's paper.

		<p>[You include a roadmap, but it is missing helpful visual cues when stating the overall rule of law.]</p> <p>Paragraphing and/or use of strong topic (thesis) sentences could often be improved.</p> <p>[Your paragraphs are organized around ideas and each only takes on one main idea, however, you are usually missing a topic sentence for your rule explanation (“E”) paragraphs and sometimes also for your rule application (“A”) paragraphs.]</p> <p>One to two Points</p>	<p>A few paragraphs may have been better executed organizationally (in terms of length and unity).</p> <p>There likely could be improved use of strong topic (thesis) sentences or evident transitions in a few instances.</p> <p>Three to four Points</p>	<p>Paragraphing is effective in terms of length and unity. The paragraphs within each CREAC are organized around main ideas, such as the rule or parts of the rule, not the cases.</p> <p>Transitions are used where needed. Topic (thesis) sentences are strong in that they convey main ideas.</p> <p>Five Points</p>
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In addition, the structure of the appellate brief rubric allows the professor to account for variation within an individual paper, and the content ensures the student appreciates the complexity of legal analysis. First, the rubric is designed so that the professor can signal where the student's paper demonstrates one progress level in some aspects of a rubric category and a different progress level for others.¹⁶⁵ Figure 5 provides an example of this fairly common situation. Here, the student demonstrated proficiency in discussing the relevant information in most of the case illustrations included in the rule explanations.¹⁶⁶ However, the choice of cases used in supporting the legal arguments was still developing, because there were more helpful binding cases in some instances and helpful persuasive authority could have been used to supplement binding authority in others. The example also shows that a professor can complete the rubric in a way that uses the existing narrative as a start, and can then add to that language as needed to clarify the particular student's performance (including reference to related comments the professor embedded in the margins of the student's paper to engage directly with the text). The substance of the example also shows that, notwithstanding Professor Borman's stated concern with rubrics, not all rubrics boil down to "[a] checklist [that] "encourages one-dimensional, black-and-white thinking" or a document that makes the legal writing process look "neat" or overly simple.¹⁶⁷ Thus, the process of completing the rubric, along with how it was structured when first designed, work together to allow for meaningful formative assessment.

165. See *supra* note 139. Thus, a rubric with this structure can react to variation in a student's paper even when one rubric category captures more than one idea or technique, directly responding to a concern Professor Borman has raised when it comes to using rubrics for assessment. Borman, *supra* note 112 at 740. And if the rubric is also used for scoring, then the point range will also afford flexibility here. See *supra* note 139.

166. The reader's expectation regarding the content of a rule explanation, and heuristic strategies that legal writing professors teach to help students in discerning and writing about this information can be found above in notes 127 and 131.

167. Borman, *supra* note 112, at 735, 741.

Figure 5: Sample Excerpt of a Completed Appellate Brief Rubric (In Between Progress Categories)

Category	Beginning	Developing	Proficient	Highly Proficient
<p>Content of the Argument (Rule Explanations)</p> <p>Eight Points Possible</p> <p>4.75 Points Earned</p>	<p>Binding authority and persuasive authority could both be used more effectively.</p> <p>Additional research is needed.</p> <p>An explanation of the rule is completely missing in one or more instances, and where one is included, it likely could be more accurate or complete.</p> <p>Zero to one Point</p>	<p>Binding authority is only sometimes used effectively where available, and persuasive authority could also be more effectively used to supplement binding authority where gaps exist.</p> <p>Additional research is most likely needed.</p> <p>[I offered specific thoughts on this in margin comments, especially in part I(A) of the Argument.]</p>	<p>Binding authority is usually used effectively where available, and persuasive authority is often used effectively to supplement binding authority where gaps exist.</p> <p>The statement of the rule is explained in each section and sub-section (where applicable), but the explanation could be more complete or effective in a few instances.</p> <p>That said, most explanations include accurate, sufficient information about the</p>	<p>Binding authority is used effectively where available, and persuasive authority is used effectively to supplement binding authority where gaps exist.</p> <p>For each section and sub-section (where applicable) of the Argument, the statement of the rule is explained in a sophisticated manner through well-reasoned and well-written explanatory synthesis that includes an accurate discussion of the relevant</p>

		<p>The statement of the rule in a section or sub-section (where applicable) could usually be better explained. In other words, only some case discussions include accurate, sufficient information about the authorities.</p> <p>Two to four Points</p>	<p>authorities used (for prior cases, this means including the relevant facts/trigger facts, reasoning, and holding).</p> <p>[See margin comments for examples of where you have been complete and a few instances where you could be more complete.]</p> <p>Five to seven Points</p>	<p>information from the authorities (for prior cases, this means including the relevant facts/trigger facts, reasoning, and holding).</p> <p>Eight Points</p>
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Moreover, the UK Law rubric project uses the favored approach of providing multiple formative assessments in the same course.¹⁶⁸ As noted in Part III(B), the designing faculty use a similar rubric at three different points in the LRW Course: the rewrite of each of the two major assignments in the fall and the appellate brief rewrite in the spring.¹⁶⁹

168. See *supra* Part II(B)(1). Use of multiple formative assessments methods that help students understand and then correct issues with legal analysis and legal writing is nothing new to legal research and writing courses like UK Law's LRW Course (the same goes for other applied or experiential courses). See MUNRO, *supra* note 15, at 16 (noting that formative assessment has long been a part of clinical and legal writing programs in American law schools); see also Hamm, *supra* note 2, at 377 (stating that "skills professors have long been committed to the use of formative assessment"); 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 605, 621, 622 n.66 (2010) ("Traditionally, legal writing classes are designed applying many of the concepts found in the assessment literature and are excellent models to imitate.") (citing other relevant articles in note 68).

169. First-year legal research and writing courses usually give student a series of writing assignments (often of increasing complexity) over the duration of the course, and

The rubrics use the same four progress levels, and they include similar categories and corresponding narratives for the organization, content, and mechanics of the legal analysis.¹⁷⁰ This way students can use the completed rubrics for the fall assignments to improve their learning while the course is still ongoing in the fall and spring, which is known as developmental assessment.¹⁷¹ Each completed rubric shows a student which rubric categories are marked as beginning or developing, which tells the student where to focus on further practicing the skills and techniques outlined in the relevant categories (and ideally also seek professor assistance along the way) when completing future writing assignments in the course.¹⁷² For example, a student's completed rubric for the formal office memo rewrite may indicate that the student's attempt to explain the rule of law is still developing because the discussions of past cases to apply the rule could usually be more accurate or complete. The student can prioritize this important aspect of legal analysis when writing the appellate brief in the spring. The student can seek feedback on this topic in the initial version of the appellate brief, and then has the chance to incorporate that feedback in the rewrite. The excerpt of the completed rubric for the appellate brief rewrite, shown in Figure 5 above, confirms that the extra focus and practice paid off by indicating that the student's rewrite demonstrates proficiency in this technique because most case discussions were complete and accurate.

Perhaps just as important, however, is that students can use the completed rubrics to self-discover their effective use of skills and techniques where a professor has marked the progress level for a

the professor critiques each assignment (in writing or orally during a student conference) with an eye toward how the students can incorporate the feedback into a rewrite of that assignment or transfer the feedback to the next writing assignment in the course. Thus, the feedback provided encourages the students to grow and learn from their own writing strengths and weaknesses while the course is ongoing. See ABA SOURCEBOOK, *supra* note 117 at 24; see also Beazley, *supra* note 129 at 47–49 (discussing the use of writing process theory in legal writing courses, where the professors “intervene in their students’ writing before the final draft, so they can give students feedback on their research, writing and thinking”).

170. The key difference is that the fall rubrics also include categories for the other parts of the memo, while the spring rubric omits those categories and adds in categories for the parts of the appellate brief (and enhances some narratives to reflect the transition to rhetorical writing techniques where relevant). Refer also to the discussion about the fall assignment rubrics, *supra* note 125.

171. *Supra* note 122.

172. See STEVENS & LEVI, *supra* note 106, at 20 (explaining that students can use the rubrics from completed assignments to draw their own conclusions about weaknesses in their work and identify plans for improvement, which “is a form of intrinsic motivation”).

certain category as proficient or even highly proficient (especially where that marks progress from an earlier assignment in the course). This information can bolster the student's confidence when using the relevant techniques in future assignments. For example, when it comes to the completed rubrics for the fall assignments in the LRW Course, students have confidence to apply their "proficient" techniques to the appellate brief assignment in the spring, and they may also transfer that confidence into the energy needed to push themselves to move to the next progress level on other skills and techniques that are still developing or perhaps even beginning.¹⁷³ And when it comes to the completed appellate brief rewrite rubric, where categories are marked as proficient or even highly proficient, students are more likely to enter their summer jobs and later law school courses with confidence they can successfully apply the skills and techniques related to those categories.

It is important to stop and note that not all formative feedback need be this detailed or individualized in order to be meaningful, and doing so may not be possible given the nature or size of a course. Indeed, a variety of law school courses can include formative assessment methods, and some casebook professors are already using such methods in their classes. For example, Professor Curcio has assigned a complaint drafting exercise in her Civil Procedure classes, which calls on students "to understand and apply the procedural law of complaints as well as tort law concepts of negligence, negligent hiring and retention, and respondeat superior."¹⁷⁴ She has done the exercise as both graded and ungraded, and in both instances, students receive detailed rubrics.¹⁷⁵

173. Thus, to respond to concerns raised by Professor Borman in her recent critique of rubrics, when properly designed and implemented by faculty, this assessment tool can be used by students to encourage critical thinking and aid in the "transfer of learning" through self-reflection, and thus rubrics can respond to one of her seven principles for good feedback. See Borman, *supra* note 112, at 733, 744–45; see also STEVENS & LEVI, *supra* note 112, at 21 ("Because of the rubric format, students may notice for themselves the patterns of recurring problems or ongoing improvement in their work, and this self-discovery is one of the happiest outcomes of using rubrics."); Sparrow, *supra* note 105, at 23 (explaining that "rubrics encourage students to become metacognitive, or reflective, independent learners.").

174. Curcio, *supra* note 46, at 163–64 (explaining that the assignment also "served as a learning tool for other procedural concepts we covered during the semester").

175. Curcio, *supra* note 46, at 163–64, 174. Other ways professors may already incorporate formative feedback in their course include by assigning an in-class quiz (multiple choice or short answer), a client advisory letter, a take-home essay question, or a mid-term exam, and then providing feedback on the students' performance through such methods as an annotated model answer, group discussion regarding strengths and weaknesses of answers, or individual feedback in rubric or narrative form. *E.g.*, Curcio, *supra* note 46; Field, *supra* note 46. Other professors may assign third party quizzes or exercises to be completed online outside of class, such as TWEN quizzing or CALI lessons,

Moreover, even if individual feedback is provided using a rubric, it need not be as detailed as the appellate brief rubric. For example, in addition to the final exam in an insurance law class, students could also draft a client advice letter during the course and receive written feedback on the assignment.¹⁷⁶ A rubric for this type of assignment would not require nearly as many categories as an appellate brief involving specific formatting requirements and multiple legal issues, and could even be further limited only to feedback on the substance of the analysis (given the likely student learning outcomes for the course).¹⁷⁷ And these are just examples. Law schools should survey their faculty to discern what types of formative assessment methods are already being used, by whom, and for what courses, and thus what existing resources and expertise may be useful for compliance with Standard 314. The key is that students receive meaningful feedback while the course is in progress, and thus while there is still time to improve student learning before the final exam (which is more likely to be summative and norm-referenced).¹⁷⁸

Third, depending on how a rubric is designed and used, a completed rubric can serve as formative assessment even when it evaluates a final assignment in a course. The ABA defines formative assessment methods to include those that provide meaningful feedback at different points in the student's course of study (in addition to different points in the same course).¹⁷⁹ In other words, some summative assessments may even offer the type of feedback that promotes student learning.¹⁸⁰ When

which can also provide feedback to students. Field, *supra* note 46 at 431–32 & n.200 (mentioning CALI QuizWright).

176. MUNRO, *supra* note 15, at 16.

177. By way of further example, the rubric example shared by Professor Duhart (discussed above in Part III) is only a page and a half in length, focusing on identifying where the student's work product satisfies her expectations for the Constitutional Law practice essay (and not also where the assignment is beginning or developing). Duhart, *supra* note 142, at Appendix E.

178. ABA STANDARDS, *supra* note 24.

179. ABA STANDARDS, *supra* note 24, at 23 (defining formative assessment methods as “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”) (emphasis added).

180. Duhart, *supra* note 44, at 497 (noting that “the terms ‘formative’ and ‘summative’ apply not to the actual assessments but rather the functions they serve”); see also Carnegie Mellon University Eberly Center for Teaching Excellence & Educational Innovation, *What is the difference between formative and summative assessment?*, <https://www.cmu.edu/teaching/assessment/basics/formative-summative.html> (lasted visited June 15, 2019) (“Information from summative assessment can be used formatively when students or faculty use it to guide their efforts and activities in subsequent courses.”).

it comes to the appellate brief rewrite rubric, students can use their completed rubric for the final assignment in the LRW Course to identify where their skills are not yet proficient, and then use this information when prioritizing where they should seek additional practice afforded by future legal writing assignments given in other law school courses and summer jobs. For example, a completed rubric for the appellate brief rewrite may indicate that the student's paper demonstrates proficiency in stating and explaining legal rules, but the student's use of analogical reasoning to support the application of the rule to the client's facts may still be developing. This gives the student a specific priority to focus on and continue to practice while the student's course of study is still ongoing (even though the present course has come to an end).¹⁸¹ And that student can even refer back to the rubric for a reminder of how to demonstrate rule application that is highly proficient.¹⁸²

Furthermore, the designing faculty have discovered other benefits in using the rubrics both before and after the students complete the relevant writing assignment in their LRW Course. I will offer a few examples. When commenting on an earlier version of one of the three relevant assignments, we often use narrative language from the rubric that will be used to evaluate the assignment rewrite. This helps ensure that what we are using the initial assignment to teach, in terms of legal writing skills or techniques, is what we intend to evaluate in the rewrite. Doing so confirms the validity of the rubric.¹⁸³ The designing faculty have also commented that the rubric aids in consistently evaluating all of their students' assignments, which is relevant to the

181. It is true that most casebook faculty do not complete, much less share with their students, an analytic rubric like this one when grading final exams, because they use norm-referenced assessment. It exceeds the scope of this article to argue that all faculty should use criterion-referenced benchmarks or incorporate formative assessment into their courses. Doing so is neither required by the ABA nor realistic. This Part of the article instead focuses on where faculty may already be engaging in assessment practices that could translate to, or be adapted for, the type of formative assessment contemplated by Standard 314. I offered some examples above where casebook faculty may already be engaging in formative feedback (or could be) while the course is ongoing. My goal here is simply to get faculty thinking about the fact that even feedback offered at the end of a course (instead of just a score or grade) can still prove meaningful for other points in time in the student's course of study, and some of us may already be trying to do this.

182. See STEVENS & LEVI, *supra* note 106, at 19 ("The demand for an explanation of the highest level of achievement possible . . . is fulfilled in the rubric itself."). Moreover, if the same or a substantially similar rubric was used in advanced legal writing courses to evaluate and assess a student's performance (and thus ongoing student learning) in applying the relevant skills or techniques, then the rubric itself continues to offer additional formative feedback.

183. See sources cited *supra* notes 82–83.

assessment method's reliability.¹⁸⁴ And as discussed above in Part III, a valid and reliable assessment method is also more likely to be a fair one.¹⁸⁵ Moreover, many of the designing faculty use the rubric to jumpstart or enhance deeper conversations with students about their legal analysis,¹⁸⁶ which is yet another illustration of how a rubric can encourage critical thinking.¹⁸⁷

Finally, the completed rubrics have offered the designing faculty a reliable way to assess whether and where student learning has occurred—for each assignment and upon completion of the LRW Course.¹⁸⁸ Doing so responds directly to Standard 314's call to engage in individual student assessment.¹⁸⁹ As an initial matter, a professor can compare the student's first completed rubric in the fall to the second completed rubric in that same semester to determine if (and where) the student is making progress during the course. For example, if the completed rubric for the first memo assignment indicates that a student is beginning or developing when it comes to synthesizing and stating a complete rule statement, the professor can compare to the progress level earned on the rule statement category on the rubric completed for the second memo assignment to see if there was improvement (to developing or proficient). If further progress is needed, there is still time to engage with the student while the course continues in the

184. See sources cited *supra* notes 84–88.

185. See sources cited *supra* note 90.

186. For example, I review the completed rubric in advance of and during an individual student conference about the assignment. The review gives me a quick reminder of the particular student's strengths and areas for further progress (given that papers can run together depending on the number of students I have in a given year). I can also engage with the completed rubric itself during the conference, which can be particularly helpful for the student who says something like, "I don't have any questions about your feedback," or "I am disappointed in my score," when it is clear the student has not dug deeper into the specific feedback provided to generate questions or to try to understand the basis for the score. Focusing on the written feedback helps move the student beyond the score and to the skills and techniques underlying that score that matter when it comes to understanding what the student has learned and still needs to learn. See Sparrow, *supra* note 103, at 30–31 (explaining how rubrics can enhance conversations between students and professors about performance and grades).

187. STEVENS & LEVI, *supra* note 106, at 21 ("Used in conjunction with good academic advising, rubrics can play a major role in contributing to students' development of a more scholarly form of critical thinking—that is, the ability to think, reason, and make judgments . . .").

188. See STEVENS & LEVI, *supra* note 106, at 20 ("Using rubrics for overall assessment as well as immediate grading meets the demand . . . for determining whether a student's work is actually improving over time.").

189. ABA STANDARDS, *supra* note 24, at 23.

spring.¹⁹⁰ Moreover, the professor can use the completed appellate brief rewrite rubric to determine whether the student achieved the learning outcomes for the LRW Course. Again, each rubric category is tied to one or more learning outcomes for the course, so the professor would look to see if the student achieved the proficient progress level (or higher) for each category (and thus related student learning outcome).¹⁹¹ In contrast, the overall score that the student earned on the assignment (the sum of the points earned for each rubric category) only tells a professor if the student's overall performance on the final assignment in the course was below average, average, or above average overall. In other words, the score only says how the student compares to his/her peers, which is norm-referenced assessment, while the progress levels provide the criterion-referenced assessment that is more relevant for outcomes assessment.¹⁹²

In sum, rubrics can serve as a valuable formative assessment tool when responding to the ABA's call for individual student assessment. And there are a variety of ways that rubrics can be used to make individual student assessment meaningful. Before law schools think they must start from scratch or reinvent the assessment wheel in its entirety, they should take the time to discern where existing knowledge and resources can at least serve as a starting point when responding to Standard 314, even if those resources were not specifically created with the Assessment Standards in mind.

190. The collective rubric information can also facilitate reflection and action by the professor. For example, I begin the second semester of my LRW Course with a collective view of the students' completed rubrics from the fall. I can identify if a majority of students are still in the developing level of a rubric category, especially on a technique I expected to see more progress on given the focus in the fall, such as, deductive organization using IRAC or CREAC as a guide, or synthesizing and stating legal rules. See STEVENS & LEVI, *supra* note 106, at 25–26 (“[C]ollected rubrics provide a record of the specific details of how students performed on any given task, allowing us to quickly notice and correct any across-the-class blind spots or omissions.”); see also Sparrow, *supra* note 105, at 27–28 (discussing ways rubrics provide helpful data about teaching). If so, I still have time to alter teaching plans to provide further global guidance and practice on the relevant topic(s) before moving on to the more advanced topics to be covered in the spring.

191. For purposes of individual student or course assessment, the designing faculty reached consensus on the relevant assessment benchmark for the LRW Course. See SHAW & VANZANDT, *supra* note 4, at 93, 125 (explaining that a benchmark in this context is “based on whether a student satisfies certain prerequisites set by the assessor[.]” and thus in theory, every student should be able to reach the benchmark (or every student could fail to meet it)). Because the LRW Course is an introductory one, we concluded that the goal for our students would be to achieve proficiency in the rubric categories. *Supra* note 123.

192. See *supra* notes 49 and 61.

B. Law School Assessment—Standard 315

Rubrics can serve dual assessment purposes by also responding to Standard 315, which requires law schools to “conduct ongoing evaluation[s] of the law school’s program of legal education, learning outcomes, and assessment methods[.]”¹⁹³ This Part will also use the UK Law’s rubric project as the primary example for illustrating how an existing rubric can prove helpful here, but as noted above, it is not meant to be a blue print for every law school.

First, an existing rubric could be used as an embedded assessment measure for law school assessment that involves collecting and reviewing a sampling of outputs from several related courses. As noted above, Standard 302 specifically mandates law schools include “[l]egal analysis and reasoning,” as well as “written . . . communication in the legal context” in the law school learning outcomes they establish.¹⁹⁴ Thus, the UK Law rubric described in Part IV, which measures achievement of course learning outcomes related to legal analysis and reasoning, as well as written communication, can also be used as part of the law school’s required evaluation of “the degree of student attainment of competency in the [corresponding law school] learning outcomes[.]”¹⁹⁵ In other words, in addition to using the appellate brief rewrite rubric to conduct individual student assessment for the LRW Course, it could also be used as the common rubric for assessing a sampling of outputs (student writing assignments) embedded in another course or a series of courses¹⁹⁶ that align with the two above-identified law school learning outcomes required by Standard 302.¹⁹⁷ Courses likely to have relevant assessment sources include advanced legal writing courses and other upper-level courses that build on the legal analysis and persuasive legal writing techniques that are first introduced in the LRW Course.¹⁹⁸ To be clear, the rubric would not have

193. ABA STANDARDS, *supra* note 24, at 23.

194. ABA STANDARDS, *supra* note 24, at 15.

195. ABA STANDARDS, *supra* note 24, at 23. This would be just one viable component of a more robust institutional assessment plan, as it is best practice to use multiple assessment measures of different types. *E.g.*, SHAW & VANZANDT, *supra* note 4, at 112 (discussing triangulation); *see also* FUNK, *supra* note, 60 at 32–33, 69 n.7, and 75 n.3.

196. The selection of assessment sources and use of sampling in law school assessment is discussed in Part III above.

197. *See* Curcio, *supra* note 32, at 497–98 (“[R]ubrics acknowledge that learning develops across multiple courses, over time, and the learning process varies from student to student.”).

198. Relevant courses include advanced legal writing, seminars, advanced appellate advocacy, and other “writing experience[s] after the first year” as required by ABA Standard 303(a)(2), which is where techniques and skills first introduced in a first-year

to be used to grade the assignments embedded in these courses. Instead, the focus here is on how the rubric could serve as one possible assessment measure for purposes of conducting law school assessment of the relevant learning outcomes.¹⁹⁹

Moreover, even where an existing rubric requires adaptation before serving as a common rubric for law school assessment, it can still provide a solid foundation to work from so that faculty are not starting from scratch.²⁰⁰ As part of this adaptation process, it will be important to bring in other relevant faculty to work along with the one(s) who designed the existing rubric.²⁰¹ In other words, the law school should involve faculty who teach the courses with identified student outputs to be used in assessing achievement of a particular law school learning outcome and those who will use the rubric when conducting the related assessment.²⁰² That is because there must be a common understanding of, and agreement on, student performance expectations in terms of what is competent and not competent, as well as the related rubric narratives that will measure such performance.²⁰³ However structured, this larger collaboration, just like the collaboration among the UK Law legal writing faculty that is described in Part IV(B), will help ensure that the adapted common rubric is valid and fair, and that the results

legal research and writing courses are likely to be covered and practiced in more depth. ABA STANDARDS, *supra* note 24 at 16; *see supra* note 73.

199. Curcio, *supra* note 32, at 503 (emphasizing that professors do not change what they test or how they grade students, and explaining that the approach is for professors “[i]n courses designated for outcomes measurement” to add an additional step after grading to “complete an institutional faculty-designed rubric[,]” which may be applied to “a random student sample”).

200. While Professors Shaw & VanZandt appear to view course rubrics as different from rubrics used for law school assessment, *supra* note 4, at 118–19 and 141–46, Professor Curcio posits that common rubrics used for law school assessment could be adapted from a faculty member’s existing rubric, *supra* note 32, at 501.

201. STEVENS & LEVI, *supra* note 106, at 68–69, 177–78; BANTA & PALOMBA, *supra* note 12, at 100; Curcio, *supra* note 32, at 498.

202. SHAW & VANZANDT, *supra* note 4, at 142. The group may work within a larger assessment committee, or they may be a designated working group that reports to an assessment committee. For example, at Georgia State University College of Law (GSU COL), a team of faculty who taught the relevant skills designed each common rubric, and then the entire assessment committee vetted those rubrics. Curcio, *supra* note 32, at 498 (noting this sometimes resulted in redrafting). That said, there are a variety of ways to structure faculty involvement in the creation of an assessment plan, including in particular the measurement (implementation) stage. SHAW & VANZANDT, *supra* note 4, at 40–45, 126–29.

203. SHAW & VANZANDT, *supra* note 4, at 142.

from using the rubric are reliable.²⁰⁴ Using UK Law's appellate brief rewrite rubric as an example of a rubric that could be adapted to serve as a common rubric, the adaptation process would likely involve compressing the rubric by removing the rubric categories that address specific parts of a legal document that may not be taught in other courses with relevant assessment sources (that is, if the assessment sources are not appellate briefs but instead include other types of legal documents), and considering whether any other categories should be omitted or added in light of the particular law school learning outcome at issue. In addition, the narratives for the categories that remain (namely, organization, content of legal analysis, use of persuasive writing techniques where applicable, citation, and other aspects of mechanics) must include language that all involved in the adaptation process can understand and agree upon. This matters both for rubric design (validity and fairness) because the measurement language must be consistent with what is being taught, and rubric use because the evaluators must understand the narrative language to consistently apply it (reliability). Finally, the designers will need to consider whether the existing rubric progress levels are clear enough, or whether proficient should become competent given Standard 315's focus on competence.²⁰⁵

Once again, the appellate brief rewrite rubric is offered as just one example, as rubrics "allow for nuanced assessment . . . over a wide range of courses as well as a wide range of outcomes," and thus, existing rubrics could also be used to measure other mandated law school learning outcomes, including both knowledge and value outcomes.²⁰⁶ For example, Professor Curcio's recent article provides examples of common rubrics she and her faculty designed to measure law school learning outcomes relating to "legal knowledge and analysis" and "effective and professional engagement," among others.²⁰⁷ Existing

204. Curcio, *supra* note 32, at 509 (explaining that involving "faculty members who teach and assess the outcome the rubric assesses" is important so that the rubric "dimensions and descriptors," which are comparable to this article's use of categories and narratives, "capture students' achievement of that outcome"); Hamm, *supra* note 2, at 375 (stating that faculty should be given a chance to offer feedback if a smaller group creates a draft); *see also supra* notes 128 and 135.

205. ABA STANDARDS, *supra* note 24, at 24; *see also Hamm, supra* note 2, 380–82 (explaining that earlier versions of the standards used proficiency rather than competency, and noting that practicing attorneys could be helpful in describing competence as contemplated in Standard 315).

206. *See Curcio, supra* note 32, at 498.

207. *See Curcio, supra* note 32, at 498. The article describes the approach taken at GSU COL, where faculty designed eight new rubrics, corresponding to the law school's eight institutional learning outcomes, for purposes of law school assessment. *See Curcio,*

rubrics could likewise serve as the starting point for such design.²⁰⁸ And an article published in 2013 suggested that “uniform rubrics can be employed in courses across the curriculum so that the process of providing feedback to students can also be used to collect valuable information about the learning process.”²⁰⁹ It is important to acknowledge that not just any grading “rubric” used by a casebook faculty could serve as the foundation for a common rubric contemplated here. As this Article clarifies above in Part IV, the focus here is on analytic rubrics, which are criterion-referenced, and not tools that faculty may use for norm-referenced assessment.²¹⁰ Given the need for a criterion-referenced tool, the most likely existing resources may be rubrics used for formative assessment, such as the one Professor Duhart uses for a required practice essay in her Constitutional Law class.²¹¹

Second, anonymous rubric data from individual student or course assessment can be collected and reviewed by faculty when implementing a law school assessment plan. For example, the completed appellate brief rewrite rubrics described above could be

supra note 32, at 498. (describing approach as “backward design” and relying on rubrics from the Association of American Colleges and Universities and medical educators). In addition, The Holloran Center, which is associated with St. Thomas School of Law, has developed rubrics for law school assessment of learning outcomes involving professionalism, cultural competency, self-directedness, and teamwork/collaboration. Holloran Center, *Holloran Competency Milestones*, www.stthomas.edu/hollorancenter/resourcesforlegaleducators (last visited May 11, 2019).

208. For example, perhaps a professor who teaches Professional Responsibility has developed a rubric for grading exams that could also serve as the basis of a common rubric used to measure achievement of learning outcomes relating to professionalism.

209. Jones, *supra* note 8, at 101 (noting that “a cost-effective system could at least partly embed collection of information into existing systems”); *see also* Niedwicki, *supra* note 8, at 263–64, 267 (describing the use of a common rubric for assessing a professional skills program (programmatic assessment) like writing and trial practice, and noting that rubrics can also be an effective tool for institutional assessment).

210. BARBARA WALVOORD, *ASSESSMENT CLEAR AND SIMPLE: A PRACTICAL GUIDE FOR INSTITUTIONS, DEPARTMENTS, AND GENERAL EDUCATION* (2d ed. 2010).

211. Duhart, *supra* note 44, at 513–14 and Appendix E; *see also* related discussion in Part IV. Moreover, given that “effective writing instruction means teaching students how to perform rigorous analysis[.]” some aspects of the appellate brief rubric that get at the substance of a student’s legal analysis could even be useful if faculty are drafting narratives for a common rubric that is assessing the “legal analysis and reasoning” learning outcome in assessment sources (outputs) other than from legal writing courses such as essay exams. Beazley, *supra* note 129, at 43. *See also* Beazley, *supra* note 129, at 43 (explaining that “there is increasing recognition that a Legal Writing course is a particularly good place for students to learn the process of analytical thought at the heart of ‘thinking like a lawyer’”). Again, a law school’s curriculum map would be a useful place to pinpoint courses with relevant outputs. *See supra* note 73.

collected, the student names omitted, and then the anonymous rubric data aggregated across sections of the LRW Course. This data would identify how many students achieved at least proficiency in each of the rubric categories that are tied to the relevant law school learning outcomes required by Standard 302. Indeed, Interpretation 315-1 of the Assessment Standards expressly states that while assessment methods are likely to differ among law schools, possible methods “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.”²¹² This is the second of two approaches for aggregating student work for law school assessment that Dean Susan Duncan offers; specifically, she explains that “individual professors ‘piggyback’ on the grading process and submit summaries of their students’ strengths and weaknesses or rubric scores[,]” which “are collected from multiple classes.”²¹³ The multiple classes could include both 1L and upper level courses, and need not be limited to writing courses.²¹⁴ The advantage of this approach is that faculty avoid having to allocate time for additional reading or “scoring” of the assignments that were first part of course assessment that has already been aggregated by rubric category (tied to a learning outcome) and performance level. In a time where resources are already spread thin, this approach could save time

212. ABA STANDARDS, *supra* note 24, at 24 (referencing other methods, including “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; [and] surveys of attorneys, judges, and alumni”).

213. Duncan, *supra* note 59, at 483 (citing WALVOORD, *supra* note 146, at 20–21); FUNK, *supra* note 60, at 64 n.3 (“In many instances, if done properly, course assessment may support program and institutional assessment.”); *see also* Banta & Palomba, *supra* note 12, at 103–05 (discussing use of faculty grading to provide program-level information without requiring a second scoring of artifacts); Andrea Susnir Funk & Kelley M. Maureman, *Starting From the Top: Using a Capstone Course to Begin Program Assessment in Legal Education*, 37 Okla. City U. L. Rev. 477, 492–93, 497–98 (2012) (discussing legal writing program assessment where professor grades first and then later collects sampling for assessment where identifying information is removed).

214. Curcio, *supra* note 32, at 501–02 n.51 (explaining decision to assess both 1L and upper level students). Again, rubrics (and resulting data) are criterion-referenced. If that information is not available because the professor uses norm-referenced assessment, then the faculty could still follow Professor Duncan’s idea of having professors in relevant courses provide a summary of the students’ strengths and weaknesses, which would be focused on whether the student outputs (likely exams) demonstrated competency in criteria tied to one or more law school learning outcomes. This may prove particularly useful for knowledge learning outcomes, because casebook faculty are less likely to use rubrics or otherwise engage in criterion-referenced assessment when grading final exams. *See supra* note 49 (discussing summative and norm-referenced assessment).

and yet still provide meaningful law school assessment data, because the underlying individual student assessment method—a rubric—would already be tested for validity, reliability, and fairness.²¹⁵

In short, an important lesson learned by the UK Law rubric project discussed in this Article is that law schools should explore where an existing embedded assessment measure for individual student assessment could also respond to the law school assessment mandate, especially where the student learning outcome(s) measured at the course level overlap with the law school learning outcomes to be measured. The rubric may look different than the one described in this Article—it may be used for a different law school course and thus measure entirely different law school outcomes. And the existing rubric, wherever it comes from, will likely need adaptation. But the key is that law schools should explore where existing resources and faculty expertise can be used as the starting point when the entire faculty gets to work responding to the ABA Assessment Standards.

VI. CONCLUSION

Outcomes assessment is a fundamental change in legal education because it refocuses the assessment inquiry on whether law students are actually learning the knowledge, skills, and values necessary for those entering the legal profession. The endeavor has benefits for students and law schools alike, but it takes time and resources. Thus, busy law schools need to implement the Assessment Standards in a meaningful and efficient way. Using a rubric project from UK Law's LRW Course as the primary example, this Article sought to show how law schools can take advantage of what some law faculty are already doing with rubrics, even when designed for a different reason, when responding to the ABA's Assessment Standards. Evaluating what knowledge and resources already exist at a law school can save time and encourage greater buy in when the full faculty takes on the ABA's assessment mandate, which is important when so many in legal education are already working with a very full plate. While there is no blueprint for assessment that can be applied across all law schools, the hope is that the ideas shared here add to the growing dialogue about how law schools can successfully respond to the ABA's assessment mandate.

215. See BANTA & PALOMBA, *supra* note 12, at 104–05 (discussing in the context of general education assessment and noting technological advances make collection and aggregation of information in this way easier than ever).