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**Building Legal Competencies:
The Montessori Method as a Unifying Approach to
Outcomes-Based Assessment in Law Schools**

ABIGAIL LOFTUS DEBLASIS*

*The basis of the reform of education and society, which is a
necessity of our times, must be built upon . . . scientific study*¹

Dr. Maria Montessori

I. INTRODUCTION

As you walk into a Montessori “primary” classroom, which is dedicated to children ages three to six, you are surprised not only by the calm that exists in a group of twenty-five young children but also by the neatly arranged materials on shelves that are perfectly sized for easy access by the children.² You notice that the classroom is not arranged like a typical classroom with individual desks and chairs.³ In fact, this classroom does not even have a desk for the teacher.⁴ Instead, you see that the teacher is walking around the classroom in quiet observation or is sitting on the floor

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1. MARIA MONTESSORI, THE FORMATION OF MAN 9 (A. M. Joosten trans., The Montessori Series, Vol. 3 2007) (1955) [hereinafter MONTESSORI, THE FORMATION OF MAN].

2. See *Montessori Classroom Approach*, AM. MONTESSORI SOC’Y, https://amshq.org/Montessori-Education/Introduction-to-Montessori/Montessori-Classrooms_ (last visited Oct. 26, 2015); *Curriculum Information, PRIMARY MONTESSORI DAY SCH.*, <http://www.primarymontessori.com/curriculum2.html> (last visited Oct. 26, 2015).

3. See *Montessori Classroom Approach*, *supra* note 2.

4. See *id.*

next to a single student or a small group of students.⁵ This classroom has only a few wooden tables and chairs; its most prevalent feature is the child-sized wooden shelves that are full of neatly arranged materials, mostly made of wood.⁶ Around the room, you see children sitting on the floor, manipulating some physical object resting on a mat next to them.⁷ The object might be a string of golden beads, a set of the individual letters of the alphabet, or a set of pink blocks that the child is arranging into a tower.⁸

Dr. Maria Montessori's approach to the creation of the materials that appear on the shelves of a modern Montessori classroom was empirical.⁹ In fact, her approach to the creation of the classroom environment itself, including the child-sized shelving units, was empirical.¹⁰ She began by creating materials that she believed would interest the students.¹¹ She then observed the students using those materials and adjusted the materials and their intended use based upon her observations.¹² This empirical approach allowed Dr. Montessori to engage in continual curriculum reform and improvement.¹³

While Dr. Montessori's method of education is known for its influence in pre-school and early elementary education, her method and its empirical approach have application throughout all stages of education,¹⁴ including

5. *See id.*

6. *See id.*

7. *See id.*

8. *See Montessori Classroom Approach*, *supra* note 2.

9. *See Who was Maria Montessori?*, MONTESSORI N.W., <http://montessori-nw.org/maria-montessori-and-ami/> (last visited Nov. 13, 2015).

10. *See What is Montessori Education?*, MONTESSORI N.W., <http://montessori-nw.org/what-is-montessori-education/> (last visited Oct. 26, 2015); *see also infra* Part II.B.

11. *See* PAULA POLK LILLARD, *MONTESSORI TODAY: A COMPREHENSIVE APPROACH TO EDUCATION FROM BIRTH TO ADULTHOOD* 21-22 (1996) [hereinafter LILLARD, *MONTESSORI TODAY*].

12. *Id.*

13. *Id.*

14. *See generally* MARIA MONTESSORI, *FROM CHILDHOOD TO ADOLESCENCE* 129-30, 132-34, 137-38 (The Montessori Educ. Research Ctr., trans., Schocken Books 1973) (1948) [hereinafter MONTESSORI, *FROM CHILDHOOD TO ADOLESCENCE*] (discussing the application of Montessori principles to the university years). It is beyond the scope of this Article to analyze the differences between child learners and adult learners, but the approaches supported by legal scholars and highlighted in this Article were developed with the law school or other post-university students in mind, and can be reconciled with adult learning theory (the theory of andragogy) set forth by educational psychologist Malcom Knowles, which defines the following four characteristics of adult learners:

(1) '[A]dults see themselves as self-directing human beings, as opposed to child learners whose self-concept is one of depending on an instructor's will.'

(2) '[A]dults' greater reservoir of personal experience can be used as a basis for learning.'

(3) '[A]dults' readiness to learn is quite high if the subject of learning is related to their developmental tasks, i.e., the performance expected of them in their social role.'

law school.¹⁵ The American Bar Association has recently embraced an empirical approach to law school education by adopting new Standards and Rules of Procedure for Approval of Law Schools that will require not only the establishment, publication, and ongoing evaluation of a law school's learning outcomes, but will also require law schools to use such evaluation data to inform curricular reform.¹⁶ Many of Dr. Montessori's pedagogies are reflected in the pedagogical approaches advocated in the current legal scholarship that focuses on improving law school curriculum and building legal competencies in today's law students.¹⁷ Therefore, her approach to education could be a useful roadmap as law schools tackle new outcomes-based assessment.

Part II of this article highlights certain aspects of Dr. Montessori's curricular pedagogies that are applicable to legal education, particularly in light of the move to outcomes-based assessment.¹⁸ Part III begins by describing the revisions to ABA Standard 302 and new ABA Standard 315, and the implications of their adoption in the law school curriculum.¹⁹ Next, this Part addresses the concept of "competency" in the legal profession and provides various definitional approaches to the task of naming and measuring achievement of legal competencies.²⁰ Finally, Part IV illustrates the ways in which many of the approaches proposed by legal scholars to improve law school curriculum reflect the application of Dr. Montessori's pedagogies.²¹

This article is intended neither as a suggestion that all of Dr. Montessori's principles apply to adult law students nor as a critique of Dr. Montessori's method of education.²² Rather, the goals of this article are two-fold. First, while recognizing that law professors are adept scientists of the law, this article hopes to encourage and motivate law professors to be

(4) '[A]dult learners are much more inclined than child learners to acquire knowledge that is able to be immediately applied rather than acquiring knowledge that has some future benefits.'

Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240, 264 (2009) (quoting Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 47 (1995)).

15. See generally Emily Grant, *The Pink Tower Meets the Ivory Tower: Adapting Montessori Teaching Methods for Law School*, ARK. L. REV. 1 (forthcoming 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2483130 (last visited Oct. 26, 2015).

16. See *infra* Part III.A.

17. See *infra* Part IV.

18. See *infra* Part II.

19. See *infra* Part III.

20. See *infra* Part III.

21. See *infra* Part IV.

22. For an overview of such critiques, see Grant, *supra* note 15, at 49-53.

intentional scientists of their students and classroom approaches. Second, this article aims to explore certain educational themes that focus a teacher's attention on her student's learning rather than only on her own teaching.²³

II. THE MONTESSORI METHOD – A HISTORY AND PEDAGOGICAL HIGHLIGHTS

A. A Brief History

Maria Montessori, born in Italy in 1870, initially achieved recognition not as an educator but as the first woman in Italy's history to earn a medical degree.²⁴ After graduation from medical school, she acted as an assistant doctor at the Psychiatric Clinic in the University of Rome.²⁵ In that role, she visited institutions for the mentally ill and began to take an interest in “uneducable” children (*i.e.*, those who were mentally deficient and deaf)²⁶ who, at the time, lived in such institutions.²⁷ She disliked the manner in which others approached these children and began to believe that “mental deficiency was a pedagogical problem rather than a medical one.”²⁸ She eventually became the director of the State Orthophrenic School in Rome,²⁹ which gathered together uneducable children from across the city.³⁰ She oversaw the operations of this school for two years and simultaneously “gave herself up entirely” to teaching.³¹

Relying on the earlier work of two French physicians, Jean Itard and Edouard Séguin, whose methodologies focused on educating mentally deficient and deaf children, Dr. Montessori worked tirelessly for two years to teach, observe, and prepare new materials for the students at her school.³² When her students later passed a public exam and exhibited performance equal to that of their peers from the “normal” school system, Dr. Montessori began to wonder how the students in the “normal” school could perform so poorly that they “could be equaled in tests of intelligence by [her] unfortunate pupils.”³³ Thereafter, Dr. Montessori dedicated the majority of her professional life to the field of education rather than medicine.³⁴

23. *See infra* Part IV.

24. E. M. STANDING, *MARIA MONTESSORI: HER LIFE AND WORK* 27 (1957); LILLARD, *MONTESSORI TODAY*, *supra* note 11, at 4.

25. STANDING, *supra* note 24, at 28.

26. LILLARD, *MONTESSORI TODAY*, *supra* note 11, at 8.

27. STANDING, *supra* note 24, at 28.

28. *Id.*

29. *Id.* at 29; *see* LILLARD, *MONTESSORI TODAY*, *supra* note 11, at 8.

30. LILLARD, *MONTESSORI TODAY*, *supra* note 11, at 8.

31. STANDING, *supra* note 24, at 29.

32. LILLARD, *MONTESSORI TODAY*, *supra* note 11, at 8; *see* STANDING, *supra* note 24, at 29.

33. STANDING, *supra* note 24, at 30.

34. *See id.*

Her rise to prominence as an educator began in 1907 when she was invited to form a school for children who lived in the tenement in the San Lorenzo district of Rome.³⁵ The school, called Casa dei Bambini or “The Children’s House” and referred to by Dr. Montessori as her “pedagogical experiment,”³⁶ arose out of an effort by the Roman Association of Good Building to buy the tenements and restore a sense of order, cleanliness, and morality to them.³⁷ The Association sought out Dr. Montessori after reading about her work with the mentally deficient in a magazine article, and hoped to open a school for pre-school aged children so that the children would have a place to stay while their parents were working.³⁸

Dr. Montessori completely reimagined early childhood education by applying the methods she learned while working with the mentally deficient to the “normal” children of her Casa.³⁹ As news of Dr. Montessori’s “revolutionary methods of education” at the Casa dei Bambini spread,⁴⁰ visitors from all over the world arrived to study Dr. Montessori’s teaching methods and export them to their countries of origin.⁴¹ The first American Montessori school opened in the United States in New York in 1911, but interest in Montessori schools declined by the 1920s.⁴² An American revitalization of the Montessori method began again in the 1960s and, by 2010, there were nearly 1,200 American schools affiliated with official Montessori organizations, including 240 public Montessori programs in

35. MARIA MONTESSORI, *THE MONTESSORI METHOD* 43 (Anne E. George, trans., Schocken Books 1964) (1912) [hereinafter *MONTESSORI, THE MONTESSORI METHOD*]. Dr. Montessori described the Quarter of San Lorenzo as follows:

The Quarter of San Lorenzo is celebrated, for every newspaper in the city is filled with almost daily accounts of its wretched happenings. . . . It was never intended to build up here a tenement district for the people. And indeed San Lorenzo is not the *People’s* Quarter, it is the Quarter of the *poor*. It is the Quarter where lives the underpaid, often unemployed workingman, a common type in a city which has no factory industries. It is the home of him who undergoes the period of surveillance to which he is condemned after his prison sentence is ended. They are all here, mingled, huddled together.

Id. at 49 (emphasis in original).

36. *Id.* at 45.

37. *Id.* at 56-57.

38. *Id.* at 43; see *STANDING*, *supra* note 24, at 36-37.

39. *MONTESSORI, THE MONTESSORI METHOD*, *supra* note 35, at 44.

40. See, e.g., Josephine Tozier, *The Montessori Schools in Rome: The Revolutionary Educational Work of Maria Montessori as Carried Out in Her Own Schools*, 38 *MCCLURE’S MAG.* 123, 123 (1911).

41. *STANDING*, *supra* note 24, at 55.

42. Dr. Keith Whitescarver, *Montessori in America: The First 100 Years*, *MONTESSORI INT’L*, July – Sept. 2010, at 18-19, available at http://www.montessoriconsulting.org/publications/montessori_international_part_1.pdf.

thirty-two states.⁴³ Today, the American Montessori Society estimates that there are approximately 4,000 Montessori schools across America.⁴⁴

B. Pedagogical Highlights

Although commonly referred to as a “method” of education, Dr. Montessori herself fought the classification of her approach as a method of education.⁴⁵ Rather, Dr. Montessori sought to reimagine or “replace the piecemeal ways of conceiving education”⁴⁶ with an approach that involved “[h]elp given in order that the human personality may achieve its independence.”⁴⁷ Instead of focusing education around particular, discrete subjects, she aimed to educate the entire human being.⁴⁸ Near the end of her life, Dr. Montessori gave an overview of her approach, from which one author extrapolated the following three main theses:

that human development does not occur in a steady, linear ascent but in a series of formative planes[;] that the complete development of human beings is made possible by their tendencies to certain universal actions in relation to their environment[;] that this interaction with the environment is most productive in terms of the individual’s development when it is self-chosen and founded upon individual interest.⁴⁹

Three of Montessori’s principles, each of which exists within one of the above-named broader theses, apply to improving a law school curriculum and assisting a law school in its move to outcomes-based assessment: the teacher’s role as observer, the student’s freedom to choose activities of interest within a learning environment that provides for student-directed learning, and the teacher’s focus in fostering a student’s intrinsic motivation to learn.⁵⁰ Each of these principles will be discussed in the following sections—first from a theoretical perspective and then from a practical

43. *Id.* at 18-19.

44. *Introduction to Montessori*, AM. MONTESSORI SOC’Y, <http://amshq.org/Montessori-Education/Introduction-to-Montessori/Montessori-Schools> (last visited Oct. 26, 2015).

45. MONTESSORI, *THE FORMATION OF MAN*, *supra* note 1, at 6 (“If we were to eliminate not only the name ‘Method’ but also its common conception, things would become much clearer. We must consider the human personality and not a method of education.”).

46. *Id.* at 6-7.

47. *Id.* at 6.

48. *Id.*

49. LILLARD, *MONTESSORI TODAY*, *supra* note 11, at 4-5.

50. For additional suggestions on modifications of Montessori teaching methods for law schools, see Grant, *supra* note 15.

perspective as one might see them in application in today's Montessori classrooms.

1. *The Teacher's Role as Observer*

Theoretical Approach. "Our first teacher, therefore, will be the child himself" ⁵¹ As a student of scientific study, Dr. Montessori believed that the teacher must first study the students and, only after having done so, could the teacher appropriately guide the student's learning. ⁵² In her system of education, she explained that the teacher should carry herself in the following manner:

In our system, she must become a passive, much more than an active, influence, and her passivity shall be composed of anxious scientific curiosity, and of absolute *respect* for the phenomenon which she wishes to observe. The teacher must understand and *feel* her position of *observer*: the *activity* must lie in the *phenomenon*. ⁵³

As a teacher and creator of her pedagogy, Dr. Montessori's insights stem from her careful observation of the students from the original Casa dei Bambini. ⁵⁴ As is typical of Dr. Montessori's lectures or publications, she illustrated her approach through experiences at the Casa:

One day, the children had gathered themselves, laughing and talking, into a circle about a basin of water

51. MONTESSORI, THE FORMATION OF MAN, *supra* note 1, at 16.

52. MONTESSORI, THE MONTESSORI METHOD, *supra* note 35, at 87.

53. *Id.* (emphasis in original).

54. See STANDING, *supra* note 24, at 40. Dr. Montessori once observed a three-year-old child using graded wooden cylinders who showed:

[A] concentration so profound that it seemed to have isolated her mentally from the rest of her environment. To test the intensity of this concentration—which seemed so unusual in a child of three—Montessori asked the teacher to make the other children sing aloud and promenade round her. But the child did not even seem conscious of this disturbance; she went on just as before, mysteriously repeating this same exercise Then Montessori gently picked up the armchair on which the child was sitting, with her in it, and placed her on a table. The child, who had clung on to her precious cylinders during this interruption at once continued her task as if nothing had happened. . . . Montessori counted the number of times the child repeated the exercise; it was forty-two. Then quite suddenly she stopped 'as though coming out of a dream.' . . . [Thus the] germ of what was later to become one of the fundamental principles of the Montessori method . . . the reliance . . . on the *spontaneous* interest of children as the mainspring of their work.

Id. (emphasis in original).

containing some floating toys. We had in the school a little boy barely two and a half years old. He had been left outside the circle, alone, and it was easy to see that he was filled with intense curiosity. I watched him from a distance with great interest; he first drew near to the other children and tried to force his way among them, but he was not strong enough to do this, and he then stood looking about him. The expression of thought on his little face was intensely interesting. . . . His eyes lighted upon a little chair, and evidently he made up his mind to place it behind the group of children and then to climb up on it. He began to move toward the chair, his face illuminated with hope, but at that moment the teacher seized him brutally (or, perhaps, she would have said, gently) in her arms, and lifting him up above the heads of the other children showed him the basin of water

Undoubtedly the child, seeing the floating toys, did not experience the joy that he was about to feel through conquering the obstacle with his own force. . . . The teacher *hindered* the child, in this case, from educating himself⁵⁵

Practical Approach. Dr. Montessori's theory of teacher-as-observer manifests in a number of ways in modern Montessori classrooms. First, in most modern Montessori classrooms, the teacher is generally referred to as a guide, thereby giving deference to Dr. Montessori's desire that the student learn from the pedagogical material itself and that the teacher help only in directing the children in the use of the material.⁵⁶ Second, since modern Montessori early childhood education generally takes place at the individual teacher/student level, the teacher must observe and gain awareness of each specific child's capabilities on each "work" that is available to the student on the wooden shelves of a Montessori classroom.⁵⁷ Since a student is required to achieve mastery of a particular work before that student is invited to begin to engage in work that is more sophisticated in a particular

55. MONTESSORI, THE MONTESSORI METHOD, *supra* note 35, at 91-92 (emphasis in original).

56. *Id.* at 173 (discussing the important role of teacher as observer, Montessori said, "Indeed, with my methods, the teacher teaches *little* and observes *much* For this reason I have changed the name of teacher into that of directress").

57. See LILLARD, MONTESSORI TODAY, *supra* note 11, at 36; ANGELINE STOLL LILLARD, MONTESSORI: THE SCIENCE BEHIND THE GENIUS 21 (2005) [hereinafter LILLARD, THE SCIENCE BEHIND THE GENIUS] (In a Montessori classroom, the activities that the students engage in are referred to as "work").

sequence of pedagogical materials, the teacher must carefully observe the student's achievement and be ready to instruct that student on the subsequent lessons.⁵⁸

For example, anticipating a three-year-old child's introduction to simple addition, her teacher would first give her an individual lesson on the "Golden Beads."⁵⁹ The Golden Beads are small golden beads that represent place value when presented to the children and teach children the four basic mathematical operations.⁶⁰ A single golden bead represents a single unit.⁶¹ Ten of those single golden beads connected with a metal bar represent a "ten bar," which the students can hold in their hands as a single object.⁶² When ten "ten bars" are connected, which is represented to the students as a wooden block with an image of ten "ten bars" on it, the result is a "hundred square."⁶³ When ten "hundred squares" are combined, the students have a "thousand cube," which takes the form of a single wooden cube with the image of ten "hundred squares" on it.⁶⁴ The teacher gives the student an initial lesson and, thereafter, her involvement is merely to observe the child and determine when the student has mastered the intended skill or cognitive ability so as to progress, at the child's own pace, to the next series of tasks within the sequence.⁶⁵ Once a three-year-old child has "mastered" her understanding of each of the physical representations of place value, she can move on to counting, addition, and additional mathematical operations involving the Golden Beads.⁶⁶

Dr. Montessori believed that an effective teacher must be a student of the children in her classroom.⁶⁷ As applied in today's Montessori classrooms, the "guides" provide individualized lessons to each child and, thereafter, only observe the child until the child has exhibited sufficient understanding to move to a more sophisticated learning task.⁶⁸

58. *Id.* at 21.

59. *Id.* at 64 (noting also that the Golden Beads represent another instance of Dr. Montessori adjusting her materials in response to the students' use of them: "Dr. Montessori initially intended the glass bead material only for Elementary children, but she noticed 4-year-olds watching with great interest when older children used it. She presented the material to young children, and seeing that it effectively presented mathematical concepts to younger children and that younger children were interested, she placed the bead material in the Primary classroom as well.").

60. *See id.* at 215.

61. *Id.* at 64.

62. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 64.

63. *Id.*

64. *Id.*

65. *See id.* at 21.

66. *See id.* at 64, 216.

67. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 179.

68. *Id.* at 21, 179.

2. Freedom to Choose Activities of Interest Within a Learning Environment that Provides for Student-Directed Learning

Theoretical Approach. With the teacher as their guide, students in a Montessori classroom have the freedom to choose items of interest, which Dr. Montessori theorized would allow the children to achieve self-regulation through self-directed learning.⁶⁹ As with many of her insights, Dr. Montessori's emphasis on choice began through her observations:

One day the teacher came a bit late to school after having forgotten to lock the [materials] cupboard. She found that the children had opened its door. Many of them were standing about it, while others were removing objects and carrying them away. . . . I . . . interpreted the incident as a sign that the children now knew the objects so well that they could make their own choice, and this proved to be the case. . . . From this time on we made use of low cupboards so that the children could take from them the material that corresponded to their own inner needs. The principle of *free choice* was thus added⁷⁰

Since her educational philosophy taught that the student's freedom of choice led to interest in learning, Dr. Montessori knew she needed to create materials that the students found interesting.⁷¹ She discovered that interest was multi-faceted, arising out of personal choice, developmental needs, and a desire for connectedness.⁷² In order to address the students' personal choice, she would create materials, observe her students' reaction to them, and then rework the materials to make them more interesting if necessary.⁷³

69. *See id.* at 29 (articulating this particular Montessori principle as "learning and well-being are improved when people have a sense of control over their lives" and "that people learn better when they are interested in what they are learning."). Dr. Montessori also noted through her observations that when students were able to concentrate, they were kinder to their peers and tended to use materials in appropriate rather than distracting ways. *Id.* at 102-03.

70. MARIA MONTESSORI, *THE SECRET OF CHILDHOOD* 121 (M. Joseph Costelloe trans., Ballantine Books 1966) (1939).

71. MONTESSORI, *FROM CHILDHOOD TO ADOLESCENCE*, *supra* note 14, at 25 ("The role of education is to interest the child profoundly in an external activity to which he will give all his potential.").

72. LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 122, 130.

73. *Id.* at 114 (highlighting that interest researchers focus on two distinct types of interest: personal interests, which are subjective and include hobbies, and topic interest, which are shared by a broader audience). Lillard offers the following example of the ways in which a Montessori curriculum addresses both types of interests:

[A] child who is obsessed with frogs can obviously learn about biology through frogs. More generally, though, the child can also learn how to find information for – and write – a report, can practice penmanship, spelling, and punctuation, and

She also observed that children go through developmental periods she referred to as “sensitive periods” during which the child is “attracted to a feature of the environment that confers advantages to the [child] at that time in [his or her] development.”⁷⁴ She believed that the learner’s sensitivity to different materials would change from time to time.⁷⁵ As a result of her hypotheses about sensitive periods, she created materials that addressed these periods of development to be intrinsically interesting to the children at particular points in development.⁷⁶

In addition to a child’s instinctive interest during sensitive periods, Dr. Montessori determined that a student’s interest was aroused by that student’s ability to see the connections between concepts.⁷⁷ Therefore, she created the Montessori curriculum, particularly the elementary curriculum, with an intentional goal of showing the connections across disciplines, or what she called a “Cosmic Education.”⁷⁸ She posited:

To present detached notions is to bring confusion. We need to determine the bonds that exist between them. When the correlation among the details . . . has been established, the

can develop skill at realistic drawing. The child might also use frogs as a springboard to study sound (beginning with croaking) or adaptation (how different species of frogs have adapted to different biomes). One role of the teacher is to connect the child to various areas of the curriculum through the child’s personal interests. Thus the teacher ensures that the child’s education is broad despite personal interest being an important engine.

Id. at 115.

74. *Id.* at 122-23 (also noting that Montessori’s sensitive periods, which focus on “inner impulse,” differ from the modern use of sensitive periods in developmental psychology, which focuses on environmental input); see STANDING, *supra* note 24, at 118-19 (analogizing the sensitive periods of humans to those of a butterfly who, when very young and can only eat the youngest leaves on a tree, has a biological attraction to light that draws it out to the tips of the branches where it will find the tender leaves, but, once it grows larger, its attraction to light diminishes simultaneously with its ability to eat more mature leaves).

75. LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 123.

76. See *id.* at 124-25 (discussing Dr. Montessori’s belief that a child’s sensitive period for language began very early in life).

77. MONTESSORI, *FROM CHILDHOOD TO ADOLESCENCE*, *supra* note 14, at 90 (“Here is the essential principle of education: to teach details is to bring confusion; to establish the relationship between things is to bring knowledge.”); see LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 130.

78. LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 130 (quoting Montessori trainer Phyllis Pottish-Lewis’s description of Cosmic Education as follows:

Cosmic Education is a way to show the child how everything in the universe is interrelated and interdependent, no matter whether it is the tiniest molecule or the largest organism ever created. Every single thing has a part to play, a contribution to make to the maintenance of harmony in the whole. In understanding this network of relationships, the child finds that he or she also is a part of the whole, and has a part to play, a contribution to make).

details may be found to tie together among themselves. The mind, then, is satisfied and the desire to go on with research is born.⁷⁹

Moreover, she integrated the curriculum across classrooms in order to maximize a student's ability to access his or her prior knowledge of a topic to generate interest in further elaborations on that topic.⁸⁰ She stated that one must link "all new knowledge to the old, 'going from the known to the unknown,' because what is absolutely new can awake no interest."⁸¹

Finally, Dr. Montessori created materials that were self-correcting or, in Montessori terms, materials that had a "control of error."⁸² Agreeing that feedback was necessary for student learning, Dr. Montessori thought that the feedback should come in the form of self-corrected work rather than teacher-corrected work.⁸³

Practical Approach. Both the structure of the modern Montessori school day and the layout of the modern Montessori classroom environment exhibit Dr. Montessori's goal to give the students freedom of choice.⁸⁴ After students arrive in the morning, they are generally permitted to choose any "work" that they are interested in that day and for which they have previously received a lesson.⁸⁵ Montessori classrooms typically have a three-hour morning "work cycle," which represents a solid three-hour block of uninterrupted time.⁸⁶ The students are free to choose work, complete that work, and choose other work until the work cycle ends.⁸⁷ In other words,

79. MONTESSORI, FROM CHILDHOOD TO ADOLESCENCE, *supra* note 14, at 90.

80. MARIA MONTESSORI, SPONTANEOUS ACTIVITY IN EDUCATION 45 (Florence Simmonds trans., Schocken Books 1965) (1917) [hereinafter MONTESSORI, SPONTANEOUS ACTIVITY]; *see* LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 142-43.

81. MONTESSORI, SPONTANEOUS ACTIVITY, *supra* note 80, at 45.

82. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 58.

83. *Id.* at 174-75. Dr. Montessori said:

To make the process one of self-education, it is not enough that the stimulus should call forth the activity, it must also direct it. . . . All the physical or intrinsic qualities of the objects should be determined, not only by the immediate reaction of attention they provoke in the child, but also by their possession of this fundamental characteristic, the control of error, that is to say the power of evoking the effective collaboration of the highest activities (comparison, judgment).

MONTESSORI, SPONTANEOUS ACTIVITY, *supra* note 80, at 74-75.

84. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 80.

85. *Id.*

86. *See id.* at 109-10 (noting that Dr. Montessori said of her belief that children must complete their work uninterrupted: "There is a vital urge to completeness of action, and if the cycle of this urge is broken, it shows in deviations from normality and lack of purpose." (quoting MARIA MONTESSORI, TO EDUCATION HUMAN POTENTIAL 57 (1967)(1948))).

87. *Id.* at 108-09. Dr. Montessori provided an overview of the typical morning work cycle of a student who has been normalized into a Montessori classroom as follows:

the school day is not broken down into subject-matter specific time periods. Rather, during the three-hour work cycle, the student could choose to complete a language arts material followed by a math material or any other sequence of materials the child chooses.

This freedom of choice is, in large part, a result of the carefully prepared and ordered environment.⁸⁸ All materials are arranged on shelves that are within the children's reach and children are able to carry both the materials and the classroom furniture, which consists generally only of child-sized tables, chairs, and floor mats, when necessary to complete their work.⁸⁹

However, the student's freedom of choice in a Montessori classroom is not without limitation.⁹⁰ A student may only choose materials that are available (*i.e.*, not in use by another student) and materials the student has received a lesson on. Moreover, the teachers ensure that the students make constructive choices and use the materials in the way the students have been taught to use them.⁹¹ Furthermore, beyond the preschool ages, Montessori students maintain work journals to record their work for a particular week.⁹² The teacher and student meet to discuss the student's work journal.⁹³ If the student has not chosen an appropriately diverse amount of work or if the teacher believes the student needs to focus on a particular task or cognitive skill, the teacher creates a plan to address such deficiencies and thereby limits, to some extent, the student's freedom of choice.⁹⁴

The child keeps still for a while, and then chooses some task he finds easy, such as arranging the colors in gradation; he continues working at this for a time, but not for very long; he passes on to some more complicated task, such as that of composing words with the movable letters, and perseveres with this for a long time (about half an hour). At this stage he ceases working, walks about the room, and appears less calm; to a superficial observer he would seem to show signs of fatigue. But after a few minutes he undertakes some much more difficult work, and becomes so deeply absorbed in this, that he shows us he has reached the acme of his activity (additions and writing down the results). When this work is finished, his activity comes to an end in all serenity; he contemplates his handiwork for a long time, then approaches the teacher, and begins to confide in her.

MONTESSORI, SPONTANEOUS ACTIVITY, *supra* note 80, at 97.

88. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 92.

89. *Id.*

90. *See id.* at 96.

91. *See id.* at 97. Dr. Montessori said, "The liberty of the child should have as its *limit* the collective interest; as its *form*, what we universally consider good [behavior]. We must, therefore, check in the child whatever offends or annoys others, or whatever tends towards rough or ill-bred acts."

MONTESSORI, THE MONTESSORI METHOD, *supra* note 35, at 87.

92. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 101.

93. *Id.*

94. *Id.*

The Montessori curriculum's focus on a "Cosmic Education" also encourages students to work on topics of interest.⁹⁵ For example, a single teacher (perhaps with an assistant teacher) teaches the elementary students in a single classroom; the students do not move from classroom to classroom for each subject and they do not experience a different teacher for each subject.⁹⁶ As its jumping off point, the elementary curriculum uses the five "Great Lessons," which are offered to the students in the fall of each year and cover the following topics: the creation of the universe, the beginning of life, the coming of human beings, the development of language, and the development of numbers.⁹⁷ Each lesson is introduced by the teacher, in a story-telling fashion, and is "grand and impressionistic, designed to give children a framework for many of the lessons children will engage in over the year."⁹⁸ After the lesson, the children have more questions than answers about the topic of that day's Great Lesson and they are then free to research whichever such question most interests them.⁹⁹ It then becomes the job of the teacher to provide opportunities for the student to explore a topic of interest across various disciplines.¹⁰⁰

The approach of the Cosmic Education in a Montessori school also ensures that a student call upon her prior knowledge when moving to more advanced topics.¹⁰¹ In Montessori schools that have multiple classrooms (*i.e.*, a primary classroom with students ages two to six, a lower elementary classroom with students ages six to nine, etc.), certain identical materials are used across classrooms.¹⁰² These materials, while identical, could first be introduced to a two-year-old child in a primary classroom for a particular purpose but would then later appear in the lower elementary classroom for a different purpose.¹⁰³ For example, a binomial cube is presented to young children in a primary classroom essentially as a puzzle, requiring the children to fit its pieces together and allowing them to gain useful motor skills in the process.¹⁰⁴ In an elementary classroom, the children are reintroduced to the binomial cube for purposes of learning the binomial

95. *Id.* at 130.

96. *See id.* (contrasting Montessori and traditional classrooms).

97. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 130.

98. *Id.* at 131.

99. *Id.* at 131, 134 (describing an extension to one of the Great Lessons called How Geometry Got Its Name, which integrates curriculum involving math, history, and geography by telling the story of the Egyptian Rope Stretchers and Pythagoras's observation of their work and resulting creation of his theorem).

100. *Id.* at 132.

101. *See id.* at 143.

102. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 143-44.

103. *Id.*

104. *Id.* at 68-69.

formula.¹⁰⁵ This use across classrooms allows the student to link new knowledge with old knowledge.¹⁰⁶ Dr. Montessori argued that such cross-classroom use would spark interest in the student because she had some familiarity with the material from her earlier years of learning.¹⁰⁷

Finally, the control of error for a student's work appears in many forms in a Montessori classroom, from an answer key against which an elementary student may compare her completed math problems to the proper formation of the Pink Tower by a three-year-old student.¹⁰⁸ The Pink Tower, as it is called in Montessori circles, is one of Dr. Montessori's most recognizable materials.¹⁰⁹ The Pink Tower consists of ten pink blocks, which range in size from one centimeter cubed to ten centimeters cubed.¹¹⁰ If, in attempting to build the Pink Tower, the student does not stack the blocks in the proper sequence and is left, for example, with the largest block to set atop the tower, she will be able to spot an error and then make choices in how to correct that error.¹¹¹ As a result, the material itself—and not the teacher—provides the correction. Dr. Montessori believed this would foster independence in the child.¹¹²

Dr. Montessori aimed to create a learning environment that captured her students' interest. She did so in a number of ways: by allowing a student to freely choose topics that interest him, by providing materials that speak to his instinctive developmental needs throughout time, by showing him the connections between disciplines, and by allowing him to engage in self-regulated learning at very young ages.

3. *Fostering A Student's Intrinsic Motivation to Learn*¹¹³

Theoretical Approach. “The jockey offers a piece of sugar to his horse before jumping into the saddle, the coachman beats his horse that he may respond to the signs given by the reins; and, yet, neither of these runs so superbly as the free horse of the plains.”¹¹⁴

105. *Id.* at 69.

106. *Id.* at 144.

107. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 144.

108. *Id.* at 175-77. Montessori children do not receive grades like children in a traditional school do. Therefore, the students have no incentive to cheat by using the answer keys prior to completion of their individual work. *See id.* at 176.

109. Grant, *supra* note 15, at 2.

110. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 57.

111. *See id.* at 175.

112. *See id.* at 174-75.

113. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 29 (under this particular Montessori principle, “tying extrinsic rewards to an activity, like money for reading or high grades for tests, negatively impacts motivation to engage in that activity when the reward is withdrawn”).

114. MONTESSORI, THE MONTESSORI METHOD, *supra* note 35, at 21.

Dr. Montessori saw the perils of rewarding students for academic achievement.¹¹⁵ She noted, “[t]he desire to work as little as possible, to pass the exams at all costs, and to obtain the diploma that will serve each person’s individual interests has become the essential motive common to the students.”¹¹⁶ Nonetheless, she was “not initially against extrinsic rewards.”¹¹⁷ She later learned through her observations that, when faced with the choice between a reward of more challenging work or a more typical childhood reward (*i.e.*, toys, candy, etc.), her students would choose the reward of additional challenging work.¹¹⁸

Like others I had believed that it was necessary to encourage a child by means of some exterior reward that would flatter his baser sentiments . . . in order to foster in him a spirit of work and of peace. And I was astonished when I learned that a child who is permitted to educate himself really gives up these lower instincts.¹¹⁹

Practical Approach. As a result, students in Montessori classrooms do not receive grades or other rewards for their performance or behavior.¹²⁰ Rather, students engage in self-education through the use of materials with built-in control of error.¹²¹ The teacher allows the student to learn from the material, but does maintain oversight over the children through her individualized instruction and awareness of the student’s particular strengths and weaknesses.¹²²

In addition, since Montessori classrooms are multi-age classrooms, students receive feedback in the form of peer evaluation.¹²³ Dr. Montessori said, “[t]here is nothing which makes you learn more than teaching someone else, especially when you don’t know the subject very well. The struggles of the other act like a control of error for yourself and urge you to acquire more knowledge in order to give him what he needs.”¹²⁴

115. *See id.*

116. MONTESSORI, FROM CHILDHOOD TO ADOLESCENCE, *supra* note 14, at 131.

117. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 172.

118. *Id.* at 173 (citing four anecdotes, including a situation where Dr. Montessori herself offered candy as a reward to students who were quiet during the Silence Game. When she quietly called those forward who had earned the reward, the students refused the candy: “It was almost as if they were saying, ‘Do not spoil this beautiful experience. Our minds are still elated. Do not distract us.’” (quoting MONTESSORI, FROM CHILDHOOD TO ADOLESCENCE, *supra* note 14, at 124)).

119. *Id.* at 172 (quoting MARIA MONTESSORI, THE DISCOVERY OF THE CHILD 59 (1967)).

120. *Id.* at 174.

121. *See id.* at 175.

122. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 180.

123. *Id.* at 181.

124. *Id.* (citing MARIA MONTESSORI, THE CHILD, SOCIETY, AND THE WORLD: UNPUBLISHED SPEECHES AND WRITINGS 69 (The Montessori Series, Vol. 7, 1989)).

Therefore, in order to avoid robbing students of their natural, intrinsic desire to learn, neither Dr. Montessori nor the programs established under her name provide feedback in the form of letter grades or other rewards or punishments.

III. OUTCOMES-BASED ASSESSMENT AND DEFINING LAWYERLY COMPETENCIES

A. The Path to Outcomes-Based Assessment

Since 2007, the American Bar Association has considered and studied a move from input-focused assessment¹²⁵ to outcomes-based assessment.¹²⁶ The sea change to law school accreditation practices has been motivated partly by the move of some higher education accrediting organizations to outcomes-based assessment and partly by the call to expand legal education beyond the conveyance of legal knowledge to include skills development and the formation of professional identity.¹²⁷ On August 12, 2014, the ABA made its initial move toward an outcomes-based approach to law school accreditation when the ABA House of Delegates concurred in revising

125. See AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2013-2014, 21-22 (Standard 302), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_final_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_body.authcheckdam.pdf [hereinafter ABA STANDARDS: 2013-2014]. Prior to the adoption of the revised Standards in August 2014, Standard 302(a) (titled "Curriculum") read as follows:

(a) A law school shall require that each student receive substantial instruction in:

- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
- (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
- (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

Id. (emphasis added).

126. CATHERINE L. CARPENTER ET AL., REPORT OF THE OUTCOME MEASURES COMMITTEE 1-2 (2008), available at http://www.albanylaw.edu/media/user/celt/outcome_measures_final_report.pdf.

127. *Id.*; see generally WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNegie REPORT]; ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES].

certain Standards and Rules of Procedure for Approval of Law Schools promulgated by the Council of the American Bar Association's Section of Legal Education and Admission to the Bar.¹²⁸

One such revision applied to Standard 302, which was titled "Curriculum" prior to the adoption of its revised version.¹²⁹ The prior version of this Standard focused on two separate input-based requirements.¹³⁰ First, clause (a) stated that a "law school shall require that each student *receive substantial instruction in*" substantive legal principles, legal analysis, writing and research, professional skills, and the history and responsibilities of members of the legal profession.¹³¹ Clause (b) required a law school to "*offer substantial opportunities for*" live-client interactions, participation in pro bono activities, and small group work environments.¹³² Each of these requirements considered the extent to which a law school made resources in the form of instruction or opportunities available to students but did not consider or evaluate the extent to which those resources translated into student learning.¹³³ The focus of Standard 302 was on the teaching rather than the learning.¹³⁴ Presumably, if the law school made the

128. See AM. BAR ASS'N, TRANSITION TO AND IMPLEMENTATION OF THE NEW STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS I (2014), *available at* http://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 [hereinafter TRANSITION REPORT]; AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2014-2015 v (2014), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.authcheckdam.pdf [hereinafter ABA STANDARDS: 2014-2015]; see also AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2015-2016 (2015), *available at* http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.authcheckdam.pdf [hereinafter ABA STANDARDS: 2015-2016].

129. See ABA STANDARDS: 2013-2014, *supra* note 125, at 21 (Standard 302).

130. *Id.* at 21-22.

131. *Id.* at 21 (emphasis added).

132. *Id.* at 22. Prior to the adoption of the revised Standards in August 2014, Standard 302(b) read as follows:

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

Id. (emphasis added).

133. See ABA STANDARDS: 2013-2014, *supra* note 125, at 21-22 (Standard 302).

134. *Id.* at 21.

necessary “instruction” and “opportunities” available, it would create the proper learning environment and learning would result.¹³⁵

In the 2016-2017 academic year,¹³⁶ new Standard 302 will be implemented and will replace the input-based approach.¹³⁷ This new Standard 302, whose title alone (“Learning Outcomes”) evidences a shift from the prior standard’s input-focus on curriculum, provides:

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 and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.¹³⁸

The ABA issued two Interpretations of Standard 302 that (1) describe “other professional skills” that a law school might include under clause (d),¹³⁹ and

135. *See id.* at 21-22.

136. TRANSITION REPORT, *supra* note 128, at 2 (noting that in the initial phase of implementation of new Standard 302, which begins during the 2016-2017 academic year, compliance with new Standard 302 will be evaluated based upon:

[T]he seriousness of the school’s efforts to establish and assess student learning outcomes, not upon attainment of a particular level of achievement for each learning outcome. Among factors to consider . . . are whether the school has demonstrated faculty engagement in the identification of student learning outcomes . . . ; whether the school is working effectively to identify how the school’s curriculum encompasses the identified outcomes, and to integrate teaching and assessment of those outcomes into its curriculum; and whether the school has identified when and how students receive feedback on their development of the identified outcomes).

137. *Id.*

138. ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302); *see id.* at 15 (Standard 301(b)) (requiring a law school to “establish and publish learning outcomes designed to achieve” a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession); *see also* ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standards 301(b) and 302).

139. ABA STANDARDS: 2014-2015, *supra* note 128, at 16 (Interpretation 302-1) (“For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice,

(2) permit a law school to identify additional learning outcomes specific to such law school's program.¹⁴⁰ While focused on outcomes rather than inputs, new Standard 302 alone does little more than require a law school to establish learning outcomes, a requirement that does not ensure that students will achieve such outcomes.¹⁴¹

Although not requiring a level of achievement per se, the ABA did adopt new Standard 315 ("Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods") to ensure that a law school's established learning outcomes are implemented, studied, and used to reform the law school's curriculum.¹⁴² Standard 315 requires the law school's administration and faculty to "conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods" and to "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."¹⁴³ Interpretation 315-1 lists methods by which a law school may assess whether its students have achieved "competency" in the school's stated learning outcomes, including evaluation of student learning portfolios, performance in capstone courses, and bar passage rates, but acknowledges that methods will vary among law schools.¹⁴⁴

document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competence, and self-evaluation."); see ABA STANDARDS: 2015-2016, *supra* note 128, at 16 (Interpretation 302-1).

140. ABA STANDARDS: 2014-2015, *supra* note 128, at 16 (Interpretation 302-2) ("A law school may also identify any additional learning outcomes pertinent to its program of legal education."); see ABA STANDARDS: 2015-16, *supra* note 128, at 16 (Interpretation 302-2).

141. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15-16 (Standards 301-302); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standards 301-302).

142. ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Standard 315); see ABA STANDARDS: 2015-2016, *supra* note 128, at 23 (Standard 315).

143. ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Standard 315); see ABA STANDARDS: 2015-2016, *supra* note 128, at 23 (Standard 315).

144. ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Interpretation 315-1). Interpretation 315-1 states:

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

Id.; see ABA STANDARDS: 2015-2016, *supra* note 128, at 24 (Interpretation 315-1).

Like revised Standard 302, Standard 315 will be implemented in the 2016-2017 academic year.¹⁴⁵ However, the ABA clarified that a law school's compliance with Standard 315 will initially be assessed "based on the seriousness of the law school's efforts" to gather information about its students' achievement of learning outcomes and "whether it is using the information gathered to regularly review, assess and adapt its academic program."¹⁴⁶

B. From Theory to Practice: Defining and Testing for Achievement of Legal Competencies

Like it¹⁴⁷ or not,¹⁴⁸ the move to outcomes-based assessment in ABA-accredited law schools has begun.¹⁴⁹ Law schools will be required to establish and test learning outcomes and, in doing so, will be required to define what the terms "competence" and "competencies" mean in the context of the new Standards.¹⁵⁰ When is competency achieved and what specific knowledge or skills constitute a competency that must be achieved?

The ABA's use of the term "competency" in the Standards focuses on the degree to which one has achieved the ability to perform a task, or what this article will refer to as the "measurement-meaning of competency" (*e.g.*, The bar exam ensures a lawyer has achieved at least minimum competency

145. TRANSITION REPORT, *supra* note 128, at 2.

146. *Id.*

147. *See, e.g.*, Letter from Mary Garvey Algero, President, Ass'n of Legal Writing Directors, to Hulett H. (Bucky) Askew, Consultant, Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar (Sept. 30, 2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/outcome_measurements/comment_outcome_measures_alwd_september_2010.authcheckdam.pdf; Memorandum from the Clinical Legal Educ. Ass'n on Outcome Measures to the Standards Review Committee of the ABA Council of Legal Education (Oct. 1, 2009), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/comments_of_clea_on_september_2009_outcome_measures_subcommittee_document_october_2_2009.authcheckdam.pdf; Letter from Deborah Waire Post, Co-President, Soc'y of Am. Law Teachers, to Donald Polden, Dean, Santa Clara Law Sch. (July 7, 2009), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/salt_july_2009.authcheckdam.pdf (supporting the move to outcomes assessment but also "proposing an interim standard that will encourage experimentation and give schools the experience necessary to develop more specific outcome measures that can serve as models for additional accreditation standards in the future.").

148. *See, e.g.*, Letter from William Wesley Patton, Whittier Law Sch., to Standards Review Committee (Jan. 17, 2010), *available at* http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/comment_outcome_assessment_patton_january_2010.doc (finding it "very premature for the ABA to promulgate assessment standards," suggesting that the ABA engage in three-year pilot projects to develop and evaluate assessment instruments, and delay implementation of outcomes assessment until "the ABA and law schools have developed statistically reliable and valid data to intelligently design and evaluate assessment instruments.").

149. *See* TRANSITION REPORT, *supra* note 128, at 1.

150. *See* ABA STANDARDS: 2014-2015, *supra* note 128, at 15-16 (Standards 301-302); *see also* ABA STANDARDS: 2015-2016, *supra* note 128, at 15-16 (Standards 301-302).

to practice law).¹⁵¹ For example, in revised Standard 302 (“Learning Outcomes”), the ABA focuses on the measurement-meaning of competency by requiring law schools to establish learning outcomes that “at a minimum, include competency in” substantive law, legal analysis, ethics, and other professional skills needed for the “competent” practice of law.¹⁵² Similarly, Standard 315 (“Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods”) uses the measurement-meaning of competency in its requirement that law schools use the results of their self-evaluations to ascertain whether students have attained “competency in the learning outcomes.”¹⁵³ At times, earlier drafts of the revised Standards used the word “proficiency,”¹⁵⁴ but those references were replaced with the term “competency” when appropriate.¹⁵⁵ Not only does this change indicate that the ABA intended the word “competency” to mean a level of achievement, but it also highlights a required achievement level that is somewhere below “proficiency.”¹⁵⁶

On the other hand, the term “competency” could also describe a set of skills and knowledge required to perform particular discipline-specific

151. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302) (requiring a law school to establish learning outcomes that “include *competency*” in certain listed requirements); *id.* at 24 (Standard 315) (requiring ongoing evaluation of achievement of learning outcomes to determine the “degree of student attainment of competency in the learning outcomes”); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15, 23 (Standards 302 and 315).

152. ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302); see ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standard 302).

153. ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Standard 315); see ABA STANDARDS: 2015-2016, *supra* note 128, at 23 (Standard 315).

154. Compare AM. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR STANDARDS REVIEW, STUDENT LEARNING OUTCOMES DRAFT FOR OCTOBER 9-10, 2009 MEETING, at 3 (2009), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/student_learning_outcomes_draft_for_october_2009.doc (the draft of revised Standard 302(a) at the time required the following: “The learning outcomes shall include these outcomes: . . . (2) entry-level *proficiency* in professional skills including: (i) legal analysis and reasoning”) (emphasis added), with AM. BAR ASS’N COMM. ON SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR STANDARDS REVIEW, STUDENT LEARNING OUTCOMES DRAFT FOR APRIL 17, 2010 MEETING, at 1 (2010), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/student_learning_outcomes_april_17_2010.doc (six months later, the draft of revised Standard 302(a) required the following: “The learning outcomes shall include *competency* as an entry-level practitioner in the following areas: . . . (2) *competency* in the following skills: (i) legal analysis and reasoning”) (emphasis added).

155. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standard 302).

156. See E-mail from Lori E. Shaw, former Assistant Dean for Student Affairs and Professor of Lawyering Skills, Univ. of Dayton Law Sch., to Steven Bahls, President, Augustana Coll. (Jan. 27, 2010, 13:24 EST), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/outcome_measurements/comment_outcome_measures_shaw_january_2010.doc (pointing out to the Standard Review Committee that the term “proficiency” is a term of art in the field of assessment and questioning whether the Committee had “made a conscious decision to require something more than competency or if its intention [was] that proficiency and competency are to be viewed as synonymous.”).

tasks, or what this article will refer to as the “skills-meaning of competency” (e.g., A lawyer must have this particular set of competencies in order to practice law).¹⁵⁷ The ABA Task Force on the Future of Legal Education used the skills-meaning of competency when it stated: “The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward *developing the competencies* required by people who will deliver services to clients.”¹⁵⁸ Moreover, by requiring law schools to establish learning outcomes in certain specified areas, the ABA is essentially requiring that a law school, at a minimum, establish and test learning outcomes related to the following Standard 302 “competencies:” knowledge and understanding of substantive and procedural law, legal analysis and reasoning, legal research, problem solving, written and oral communication, proper professional and ethical responsibilities, and “other professional skills.”¹⁵⁹

Nonetheless, beyond these categories of competencies named in revised Standard 302, the Standards do not establish a rubric for defining, determining, or testing competency and, in fact, allow a law school to choose what “other professional skills” or competencies it wants to establish learning outcomes for.¹⁶⁰ The ABA’s Task Force on the Future of Legal Education recommended that each individual law school determine “[w]hat particular set of competencies” the school aims to achieve while also noting:

[A] law school’s judgment in this regard should be shaped in reference to: (a) the fact that most students attend law school desiring to practice law; (b) available studies of competencies sought by employers or considered broadly valuable for long-term professional success; and (c) the mission and strengths of the particular school.¹⁶¹

Therefore, the decision of what constitutes “competence” to a particular law school and what constitutes a “competency” that law school wants to

157. See generally Susan Swaim Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795 (2012).

158. AM. BAR ASS’N, REPORT AND RECOMMENDATIONS AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION 3 (2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_ab_a_task_force.authcheckdam.pdf [hereinafter FUTURE RECOMMENDATIONS] (emphasis added).

159. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standard 302).

160. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standard 302).

161. FUTURE RECOMMENDATIONS, *supra* note 158, at 26.

convey to its students will be left up to that particular law school when deciding what “other professional skills” it wants its students to achieve.¹⁶²

Efforts to define required legal competencies in the sense of skills and knowledge required for effective law practice have been under way for years and should be informative to law schools as they determine what “other professional skills” necessitate established learning outcomes.¹⁶³ Nearly twenty-five years ago, the MacCrate Report recognized the need to “develop . . . a compendium of the skills and values that are desirable for practitioners to have[.]”¹⁶⁴ and it established a list of ten “Fundamental Lawyering Skills” necessary for effective law practice.¹⁶⁵ The subsequent work of Professors Marjorie Shultz and Sheldon Zedeck enumerated twenty-six factors of lawyer effectiveness that include, among others, creativity and innovation, problem solving, practical judgment, influencing and advocating, writing, speaking, listening, organizing and managing one’s own work, ability to see the world through the eyes of others, passion and engagement, integrity/honesty, stress management, and self-development.¹⁶⁶

162. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15-16 (Standards 301-302); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15-16 (Standards 301-302); TRANSITION REPORT, *supra* note 128, at 1-2.

163. See, e.g., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT –AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 123-24 (Am. Bar Ass’n. Section of Legal Educ. and Admissions to the Bar eds., 1992).

164. *Id.* at 123.

165. *Id.* at 138-40 (the fundamental lawyering skills listed in the MacCrate Report are problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute-resolution procedures, organization and management of legal work, and recognizing and resolving legal dilemmas).

166. Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOC. INQUIRY 620, 629-30 (2011). Professor Susan Swaim Daicoff synthesized the factors developed by Shultz & Zedeck together with traits drawn from five other empirical studies to develop a list of forty-three “empirically-derived lawyer effectiveness traits.” See Daicoff, *supra* note 157, at 825-30. The traits include the following:

[I]ntrapersonal skills[,] practical judgment[,] maturity[,] passion and engagement[,] motivation[,] diligence[,] drive for achievement and success and a need to compete and win[,] intense detailed focus and concentration[,] self-confidence[,] strong sense of self and self-knowledge[,] integrity, honesty and ethics[,] reliability[,] independence[,] adaptability[,] creativity/innovation (in a practical sense)[,] . . . organizing and managing one’s own work[,] self-development[,] continued professional development[,] stress management[,] general mood[,] . . . understanding human behavior[,] an intuitive sense of others by which one can “read” what is implicit or understand subtle body language and gestures[,] ability to see the world through the eyes of others[,] tolerance and patience[,] ability to read others and their emotions[,] . . . dealing effectively with others[,] questioning and interviewing[,] influencing and advocating[,] instilling others’ confidence in you[,] speaking[,] listening[,] providing advice & counsel to clients[,] obtaining, building relationships with, and keeping clients[,] developing business[,] working cooperatively with others as part of a team[,] organizing and managing others (staff/colleagues)[,] evaluation, development, and mentoring[,] negotiation skills[,] mediation[,] developing relationships within the legal

Furthermore, efforts have also been made to define competency in the measurement-sense of the term.¹⁶⁷ At least one author suggests the use of the following scale for determining competency: “[E]xcellence, competence, emerging competence, and lack of competence . . .[.]” but also emphasizes that each school’s “faculty must define what level of student performance would demonstrate” satisfaction of each such category for each particular learning goal.¹⁶⁸

profession (networking)[,] community involvement and service[,], problem solving[,], strategic planning[.]

Id. at 825-28 (footnotes omitted).

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

168. *Id.* at 470, 475, 480-81. Professor Roberts offers the following scale as an example of defining each level of competence in the context of oral advocacy skills:

Excellence: A student who demonstrates “excellence” in answering questions is one who clearly understands the relevance of the questions and directly responds to each. This student does not evade the court’s concerns and is candid in every instance. . . . Competence: A student who demonstrates “competence” in answering questions may directly respond to questions from the court most of the time, but may not be candid with the court, thus requiring the court to follow up until it obtains the information sought. . . . Emerging Competence: A student who demonstrates “emerging competence” in answering questions is one who does not directly answer questions and persistently evades the concerns of the court. This student may not understand the relevance of the questions asked and does not use legal authority to support her answers. . . . Not Competent: A student who is “not competent” in answering questions is one who either consistently does not understand the questions asked or is otherwise unable to respond to the questions. This student is evasive and makes no attempt to use the questions to her advantage. This student is awkward in transitioning between answering questions and her argument.

Id. at 480-81. The *Best Practices* report also suggests that, as a best practice, teachers use assessments to inform students of their level of professional development along the following scale applicable to legal analysis:

Limited proficiency: overly simplistic, incomplete analysis that misses key issues and fails to use relevant legal rules, facts and policy;

Basic competence: formalistic analysis that recognizes many issues, distinguishes relevant and irrelevant principles, and makes substantial but incomplete use of relevant rules, facts and policy;

Intermediate competence: integrated analysis that addresses nearly all issues, focusing on and developing relevant rules, facts and policy in a meaningful way that reflects conceptual understanding rather than a formulaic approach, and spots but does not work extensively or effectively with issues involving substantial uncertainty or novelty;

Advanced proficiency: demonstrates characteristics of intermediate proficiency, but also considers implications of analysis more fully, brings to bear sound and

In the upcoming academic years, law schools will be required to establish and test for their students' achievement of stated student learning outcomes.¹⁶⁹ To do so, law schools must choose lawyerly competencies in light of their own missions and test achievement of those learning outcomes against a scale of competency established by the law school that particularly defines what level of student performance will constitute competency for each learning outcome.¹⁷⁰ Part IV of this article demonstrates how legal scholars' recommendations for conveyance and achievement of legal competencies are consistent with the pedagogical principles of Dr. Montessori discussed in Part II.¹⁷¹

IV. A UNIFYING APPROACH

The advent of outcomes-based assessment for American law schools presents an opportunity for law school administration and faculty to thoughtfully and holistically consider the law school curriculum and critically question whether that curriculum is designed to convey to its graduates the competencies necessary to practice law in light of that particular school's mission. Legal scholars have proposed methods for achieving lawyerly competencies and both legal and non-legal scholars have proposed approaches to address outcomes-based assessment. A number of those approaches are consistent with the principles of the Montessori method discussed in Part II, and this Article will continue by identifying those approaches, drawing connections between them and Dr. Montessori's pedagogical principles, and, in most instances, identifying the lawyerly competencies that may be achieved by implementing such approaches.

A. *The Teacher's Role as Observer*

"Simply put, we cannot assume that if we teach something, students will learn it. The focus, rather, should be on what students are learning, not on what we are teaching."¹⁷² This Section will address the concept of teacher-as-observer by highlighting the new empirical approach to law school assessment, discussing the formation of an outcomes-based class and

creative approaches, works extensively and effectively with issues involving substantial uncertainty or novelty.

BEST PRACTICES, *supra* note 127, at 245-46.

169. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15-16 (Standards 301-302); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15-16 (Standards 301-302).

170. See ABA STANDARDS: 2014-2015, *supra* note 128, at 15-16 (Standards 301-302); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 15-16 (Standards 301-302).

171. See *infra* Part IV; *supra* Part II.

172. Deborah Maranville et al., *Lessons for Legal Education from the Engineering Profession's Experience with Outcomes-Based Accreditation*, 38 WM. MITCHELL L. REV. 1017, 1019 (2012).

how the process of creating an outcomes-based class can be broadened for use by a law school assessment committee in establishing and testing school-level outcomes, and analyzing the teacher-as-observer model in a legal writing classroom.

Perhaps the most concrete comparison between Dr. Montessori's pedagogical approaches to education and the ABA's move to outcomes-based assessment is the parallel that exists between Dr. Montessori's scientific and empirical approach to learning and the ABA's new approach, which requires law schools to "conduct ongoing evaluation" of learning outcomes and assessment methods.¹⁷³ Just as Dr. Montessori carefully created and refined didactic materials based on her observation of the students' interest in and use of those materials,¹⁷⁴ law school administration and faculty will be called upon to observe law students' attainment of stated learning outcomes and, to the extent those learning outcomes are not achieved, to diagnose the causes of those shortcomings and refine curriculum or teaching approaches accordingly.¹⁷⁵

Moreover, although the ABA will require outcomes-based assessment, it has not required a law school to use any particular type of assessment for testing the degree of student achievement of learning outcomes nor has it required such assessment to occur at any particular level.¹⁷⁶ For example, if the law school has a stated learning outcome that the student will achieve competency in legal writing, the law school could choose to assess achievement of that learning outcome either across the curriculum in all writing products of a particular student through a particular point in the student's education, through a capstone course, or even within the confines of a single legal writing class.¹⁷⁷ Since a law school could assess some

173. See ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Standard 315); ABA STANDARDS: 2015-2016, *supra* note 128, at 23 (Standard 315); MONTESSORI, THE MONTESSORI METHOD, *supra* note 35, at 371.

174. See LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 114-15, 122.

175. See ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Standard 315); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 23 (Standard 315).

176. See ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Interpretation 315-1); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 24 (Interpretation 315-1).

177. See Andrea Susnir Funk & Kelley M. Mauerma, *Starting from the Top: Using a Capstone Course to Begin Program Assessment in Legal Education*, 37 OKLA. CITY U. L. REV. 477, 477-78, 487 (2012). As Funk and Mauerma described:

Learning goals are stated at various levels of generality. The most broad level is the mission statement, a holistic vision of the values and philosophy of the institution. Related to the mission are a set of goals, statements about general expectations for students Learning outcomes . . . make the goals explicit, and they describe, in concrete terms, observable behaviors that allow faculty to know if students have mastered the goals. Student learning outcomes 'describe the knowledge, skills, and values that students should [show] when they complete the [course or] program.'

learning outcomes through a single class, one helpful model—a model that represents a clear application of the teacher-as-observer approach—is designing a course with the end in mind or what is referred to as an outcomes-based class.¹⁷⁸ Building a course with the end in mind could assist both in achieving class-specific learning outcomes and, if implemented successfully in a particular law school course, could provide a model for the law school’s broader or more holistic adoption of outcomes-based assessments.

The process of creating an outcomes-based class begins with an outcomes identification phase, which requires the professor to identify measurable learning goals for the particular course.¹⁷⁹ Next, in the assessment phase, the professor must define what evidence will be required for a student to prove his proficiency or competency in a particular outcome.¹⁸⁰ Third, in the delivery phase, the professor “develops teaching methods and materials that are designed to help students achieve the identified outcomes in a way that the [professor] can assess.”¹⁸¹ Finally, at the conclusion of the course, in the evaluation phase, the professor considers whether the design of the course, materials, and teaching resulted in “measurable evidence” that the students achieved the outcomes.¹⁸²

A law school’s assessment committee, or other body charged with implementing Standard 315, could mimic this process on a broader scale as it works to name the law school’s learning outcomes and establish its assessment methodologies.¹⁸³ Professors Shaw and VanZandt suggest a three-stage process for a law school’s implementation of outcomes-based institutional assessment: the development phase, the implementation phase, and the evaluation phase.¹⁸⁴ In the development phase, the assessment committee must brainstorm to create a list of the knowledge, skills, and values it wants its law school’s graduates to have, which must include at a minimum those outcomes required by Standard 302.¹⁸⁵ Once these broader learning outcomes are established, the committee must then define “performance criteria” (*i.e.*, “the more specific characteristics students must

Id. at 487 (footnotes omitted) (quoting MARY J. ALLEN, ASSESSING GENERAL EDUCATION PROGRAMS 35 (2006)); *see also* Terry, *supra* note 14, at 468-69 (stating that “[s]ound assessment typically involves evaluation at three levels: institutional, program, and course-level”).

178. *See generally* Carolyn Grose, *Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*, 62 J. LEGAL EDUC. 336, 340 (2012).

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *See* LORI E. SHAW & VICTORIA L. VANZANDT, STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS 22 (2015).

184. *Id.* at 17-18.

185. *Id.* at 57-59.

demonstrate to establish a particular outcome has been satisfied”) for each learning outcome.¹⁸⁶ The performance criteria are the specific, concrete, and measureable ways a student can achieve the particular learning outcome.¹⁸⁷ For example, if the broader learning outcome is that “graduates will demonstrate competency in analytical and problem-solving skills,” a concrete, measureable performance criterion might state that fulfillment of this learning outcome will be evidenced by graduates “meticulously applying the identified rules to the facts, including evaluating potential counterarguments, to determine the likely outcome of the case.”¹⁸⁸

Once the committee has established the learning outcomes and performance criteria, the task turns to ensuring the chosen learning outcomes are essential and achievable—a task that requires engagement of the faculty and likely a curriculum map.¹⁸⁹ A curriculum map requires a polling of the faculty to determine whether and to what degree their particular courses address the stated learning outcomes and performance criteria, thereby providing transparency about the relationship between the curriculum and the learning outcomes.¹⁹⁰ The implementation stage requires the committee and faculty members to determine the assessment methods or tools that will be used to collect the data, to establish performance thresholds or minimum expectation levels, and to collect the data.¹⁹¹ Finally, in the evaluation stage, the committee evaluates and analyzes the data collected and then establishes an action plan to implement any changes that the committee determines are necessary in light of its data analysis.¹⁹² In each of these stages, law school faculty members are studying the students’ learning without necessarily focusing on a teacher’s teaching.

Practically and more simply, the concept of teacher-as-observer, as applied in a legal writing classroom, could take the form of a group-writing lab. If the teacher is able to walk around the classroom to watch and hear the students as they encounter issues or problem areas in their writing, the teacher can assess, in real-time, any curricular changes that need to be implemented to address those problems up front in subsequent classes or academic years. Opportunities abound for meaningful and thoughtful observation of law students without intervention—a professor need only look for and seize those opportunities.

186. *Id.* at 62.

187. *Id.* at 62-63.

188. SHAW & VANZANDT, *supra* note 183, at 63.

189. *Id.* at 77-79.

190. *Id.* at 77-78.

191. *Id.* at 94.

192. *Id.* at 135-36.

B. Freedom to Choose Activities of Interest Within a Learning Environment that Provides for Student-Directed Learning

Dr. Montessori's principle of providing freedom of choice, discussed in Part II above, encompasses a number of concepts that will each be applied to law school curriculum in this Section, including a student's freedom to choose items of interest to the student, the belief that interest is developmentally driven during certain "sensitive periods," the desire to show connections across disciplines in a "Cosmic Education," and the ability of students to self-regulate through self-directed learning materials that incorporate a control of error.¹⁹³

1. Freedom of Choice and Interest

Does freedom of choice exist in law school? Those who support the Montessori curriculum believe that the freedom given to children to choose work that interests them allows the student to get engaged in that work and to achieve a level of concentration that is necessary for self-regulation at a young age.¹⁹⁴ If provided for in law school, the freedom of choice could provide students with the ability to achieve those competencies deemed necessary to successful law practice including: motivation, independence, passion, judgment, diligence, focus and concentration, and self-development.¹⁹⁵ Opportunities for choice exist for students, both in choosing a class and even within a particular class. Three such opportunities will be examined below including student participation in experiential learning opportunities, student choice in certain skills courses, and student choice within a legal writing classroom.

First, since many practice-based or experiential learning courses are electives in a law school's curriculum, students are free to choose areas that interest them when choosing their experiential learning environments. Recognizing the importance of practical and experiential courses, the ABA now requires law schools to offer a curriculum that mandates satisfactory student completion of at least one experiential course equal to at least six

193. See *supra* Part II.

194. LILLARD, THE SCIENCE BEHIND THE GENIUS, *supra* note 57, at 106-08.

195. See Susan E. Thrower, *Teaching Legal Writing through Subject-Matter Specialties: A Reconciliation of Writing across the Curriculum*, 13 J. LEGAL WRITING INST. 3, 19-20 (2007) (describing the constructivist theory of learning and its application in law school through writing across the curriculum). Professor Thrower examines scholarly articles related to cooperative and collaborative learning and explains that Professor Elizabeth Inglehart and her colleagues identified the following benefits from the incorporation of these learning techniques: "increased judgment, learning, analysis, class participation, and interest; decreased fear and anxiety; and creation of 'genuine, life-long, subject matter interest.'" *Id.* at 20 (citing Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEG. WRITING 185, 189 (2003)).

credit hours.¹⁹⁶ Furthermore, a law school is required to provide “substantial opportunities” for students to participate in “law clinics or field placements.”¹⁹⁷ While this increase in experiential opportunities has been primarily focused on allowing students the opportunity to develop practice-related competencies and skills, the Montessori-minded individual sees how the participation in clinics, field placements, or externships could offer a deeper learning opportunity because the student chooses them. The student’s choice in a placement presumably reflects some level of underlying student interest, which can be harnessed to increase motivation and the student’s desire to learn in the placement. Since student choice exists in all upper-level electives, an interesting area of research would look at student motivation and competency achievement in these elective, *chosen* courses as compared to required courses.

Another opportunity for choice exists in allowing first-year students to choose the substantive area covered by their first-year legal writing course.¹⁹⁸ Instead of offering the standard first-year “generalized” legal writing course that incorporates assignments from a variety of practice areas, a law school could offer multiple legal writing courses, each of which is tied to a different doctrinal course offered during the same semester.¹⁹⁹ Such “specialized” legal writing courses would group individuals with similar interests together and would use “authentic tasks [within a particular substantive area of law] to promote learning.”²⁰⁰ At least one such exercise

196. ABA STANDARDS: 2014-2015, *supra* note 128, at 16 (Standard 303) (requiring “one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must: (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation.”); *see* ABA STANDARDS: 2015-2016, *supra* note 128, at 16 (Standard 303). Previously, Standard 302, which set forth curriculum requirements, did not include any specific credit hour requirements for any particular course or area. *See* ABA STANDARDS: 2013-2014, *supra* note 125, at 21 (Standard 302).

197. ABA STANDARDS: 2014-2015, *supra* note 128, at 16 (Standard 303); *see* ABA STANDARDS: 2015-2016, *supra* note 128, at 16 (Standard 303).

198. *See generally* Thrower, *supra* note 195.

199. *See generally id.* (describing DePaul University College of Law’s creation of specialized legal writing courses in the areas of intellectual property, family law, health law, and public interest law, the participation in which is elected by the students and arguing that “the constructivist theory of learning supports” specialized legal writing courses).

200. *Id.* at 22. Professor Thrower suggests that “[e]xporting doctrine into the legal writing classroom” can achieve “writing-across-the-curriculum efforts” and is congruent with

current learning theory. That body of work focuses on using social interaction to encourage students’ modification of their ideas; using authentic learning tasks to increase students’ sense of realism; and using topics in which students have a high [level of] interest in order to produce their best writing. Assigning subject matter specific work to students who have an interest in those subjects creates micro-

has led the writing faculty to see “quicker learning and better work product.”²⁰¹

Finally, opportunities for choice exist even within a single, required course. A professor must first appreciate the impact that student choice and interest can have on a student’s desire to learn, and must then actively look for opportunities to provide such choice. Take, for example, research assignments in a legal writing class. Instead of providing an identical research assignment for all students, the professor could set forth only general parameters governing the assignment.²⁰² Those parameters would require the student to identify certain items within generalized categories, without leading each student down an identical research path. The student, then, would choose what topic to research. Moreover, in lieu of requiring the professor to recreate the research path of each student in order to grade the assignment, the students could grade each other’s assignments—enabling additional learning through both peer review and repetition. Law schools and law professors should look for opportunities within the curriculum or even within individual classes that will allow their students to become more deeply engaged through the exercise of choice.

2. Sensitive Periods

Dr. Montessori believed that children experienced certain developmental periods during which they felt an “attract[ion] to a feature of the environment” that would confer advantages upon the student at a particular point in his or her development.²⁰³ In 2007, the *Carnegie Report* named three apprenticeships at the core of legal education, including the apprenticeship of identity and purpose.²⁰⁴ The authors of the *Carnegie Report* stated:

Although some people believe that law school cannot affect students’ values or ethical perspectives, in our view law school cannot *help* but affect them. For better or worse, the law school years constitute a powerful moral apprenticeship, whether or not this is intentional. Law

social discourse communities within the legal writing classroom; this dynamic increases both students’ engagement in their work and their learning.

Id. at 4-5.

201. *Id.* at 27.

202. See generally Sonia Bychkov Green, *A Montessori Journey: Lessons for the Legal Writing Classroom*, 13 PERSP.: TEACHING LEGAL RES. & WRITING 82, 83 (2005).

203. See LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 122-25; STANDING, *supra* note 24, at 28.

204. CARNEGIE REPORT, *supra* note 127, at 28.

schools play an important role in shaping students' values, habits of mind, perceptions, and interpretations of the legal world, as well as their understanding of their roles and responsibilities as lawyers and the criteria by which they define and evaluate professional success.²⁰⁵

Therefore, at least as articulated by the authors of the *Carnegie Report*, law school could represent a “sensitive period” for the development of a law student’s professional identity.²⁰⁶ One empirical study in support of this view finds that “third-year law students have a hunger for applying what they have learned in law school to client problem-solving. . . . They seem to have a definite agenda that links career goals to serving clients and working on real-world problems.”²⁰⁷ Accordingly, curricular approaches that lead students down the path to professional identity will not only aid in that student’s attainment of a professional identity but could also achieve certain competencies shown to be necessary for effective law practice, including maturity, practical judgment, passion, and engagement.²⁰⁸ Two curricular approaches for the development of professional identity discussed below include experiential learning opportunities and shadow programs.

Experiential Learning Opportunities. Some argue that clinical education and externships offer an ideal learning environment for conveying professional identity and professionalism.²⁰⁹ The argument is that “clinical courses, where students learn in role with real clients who have complex, real-world problems, present the indeterminate situations necessary for students to develop judgment; to incorporate professional knowledge, skills, and values; to internalize the attorney role; to comprehend client responsibility; and to learn how to learn from experience.”²¹⁰ The ABA has exhibited at least some agreement by requiring, through Standard 303(a)(3), that law students receive at least six credit hours of experiential courses,

205. *Id.* at 139.

206. See Jan L. Jacobowitz, *Cultivating Professional Identity & Creating Community: A Tale of Two Innovations*, 36 U. ARK. LITTLE ROCK L. REV. 319, 321 (2014) (defining professional identity as “a lawyer’s personal morality, values, decision-making process, and self-consciousness”); see also LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 122-25.

207. Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235, 259 (2001).

208. See Daicoff, *supra* note 157, at 825-30; Shultz & Zedeck, *supra* note 166, at 629-30.

209. See Melissa L. Breger et al., *Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges*, 55 S.C. L. REV. 303, 308-09 (2003) (“[C]linical legal education, with its convergence of theory and real-world practice, provides an ideal opportunity for teaching professionalism and ethics to students in meaningful ways.”); see also Terry, *supra* note 14, at 253-55 (suggesting that externships offer a signature pedagogy for achieving professional identity).

210. Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL’Y 11, 13-14 (2013) (urging law schools to require graduates to complete a minimum of twenty-one experiential course credits over three years).

which may consist of a simulation course, a law clinic, or a field placement.²¹¹ At least one law school believes so strongly in the opportunity for professional identity formation through experiential education that it created a new Experiential Advantage Curriculum—any student at the University of Denver Sturm College of Law may opt-into a full year of experiential learning that consists of clinics, externships, and legal simulation courses.²¹²

Shadow Programs. Another curricular approach suggested for achieving professionalism is a shadow program.²¹³ A shadow program, which exposes students to the day-to-day law practice experience in a variety of settings, “serves to bridge doctrinal instruction and skills instruction . . . solely through observation.”²¹⁴ Those who lead the shadow program recruit local attorneys, judges, and other members of the bar to provide shadowing opportunities, where students are then given the option to participate.²¹⁵ The shadow program reinforces substantive knowledge learned in the classroom and enhances those skills by allowing students to see both substance and skill in practice.²¹⁶ It also can “put into clearer focus” the adage that “professionalism is caught and not taught”²¹⁷ by allowing students to witness real-life examples of both professional and unprofessional behavior.²¹⁸

Law school begins the student’s formation of his or her professional identity—the process of defining what kind of lawyer he or she wants to be.²¹⁹ Just as Dr. Montessori’s materials were age-appropriate and directed at her students’ “sensitive periods” for movement, language, and math, innovative curricular approaches in law school that seek to enhance

211. See ABA STANDARDS: 2014-2015, *supra* note 128, at 16 (Standard 303); see also ABA STANDARDS: 2015-2016, *supra* note 128, at 16 (Standard 303).

212. Martin J. Katz, *Teaching Professional Identity in Law School*, 42 *Colo. Law.* 45, 46 (2013).

213. See Robert Hornstein, *The Role and Value of a Shadow Program in the Law School Curriculum*, 31 *MISS. C. L. REV.* 405, 411 (2013) (demonstrating how shadow programs support both the training and development of law students).

214. *Id.* at 411-12.

215. See *id.* at 416-17 (describing how Florida Coastal School of Law conducted its shadow program).

216. See *id.* at 421-22 (“[Shadow programs] can serve a valuable role in helping law students connect abstract concepts and classroom-acquired knowledge to real and concrete lawyering applications.”).

217. *Id.* at 425-26 (quoting Keith B. Norman, *Executive Director’s Report: Models of Professionalism*, 69 *ALA. L.* 167, 169 (2008)).

218. See Hornstein, *supra* note 213, at 426-27 (“Students can draw valuable identity-shaping lessons from observing good and bad . . . behaviors. [S]tudents attending a hearing at which a lawyer arrives late, or . . . is unprepared, teaches students far more about the importance of preparation and why arriving late is unprofessional than classroom instruction can accomplish.”).

219. Katz, *supra* note 212, at 45 (“Professional identity is the way a lawyer understands his or her role relative to all the stakeholders in the legal system . . .”).

professional development could present meaningful ways of allowing students to achieve lawyerly competencies related to professionalism.²²⁰

3. Cosmic Education

Believing that deep learning was achieved when students were encouraged to see the connections between concepts in what she called a “Cosmic Education,” Dr. Montessori’s curriculum allowed a student to choose a topic of interest and, thereafter, to explore that topic across disciplines.²²¹ The new outcomes-based assessment mandate will require increased connection across the law school curriculum.²²² Even the Outcomes Measures Committee of the ABA stated, “law schools need to engage in a cohesive and unified set of teaching goals, rather than rely on *ad hoc* goal setting by individual faculty members.”²²³ Four integration approaches that have been suggested by legal scholars will be discussed below: the “pouring” of skills training into doctrinal courses; the use of student learning portfolios; the implementation of capstone courses and capstone third year programs; and an integrated law school curriculum based on one professor’s experience with a veterinary school’s curricular approach.

Skills Training in Doctrinal Courses. First, many legal scholars advocate incorporating skills training into doctrinal courses, or what Professor Slomanson aptly refers to as “pouring skills content into doctrinal bottles.”²²⁴ Professor Slomanson’s approach, implemented in a small upper-level elective course, is a “student-driven alternative to the traditional doctrinal course [where] Socrates became a traffic cop.”²²⁵ In the class, students act as lawyers and the professor acts as the trial judge.²²⁶ Each class proceeds with four hearings based on casebook cases or problems

220. See *id.* at 46 (“The key [to enhancing professional development] is [to] creat[e] situations where students will be confronted with, and pushed to reflect on, questions of professional identity. . . . Experimental education is perfectly suited to this type of training.”); LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 124-26.

221. See LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 130.

222. See Funk & Mauerman, *supra* note 177, at 486 (“[G]rades focus on individual students, while assessment focuses on entire cohorts of students and how effectively everyone, not an individual faculty member, is helping them learn.” (quoting LINDA SUSKIE, *ASSESSING STUDENT LEARNING: A COMMON SENSE GUIDE* 10 (2d ed. 2009))); see also Mary Crossley & Lu-in Wang, *Learning by Doing: An Experience with Outcomes Assessment*, 41 U. TOL. L. REV. 269, 270 (2010) (discussing the difference between the assessment of individual student performance and the assessment of student learning outcomes).

223. CARPENTER, *supra* note 126, at 8.

224. William R. Slomanson, *Pouring Skills Content into Doctrinal Bottles*, 61 J. LEGAL EDUC. 683, 683 (2012).

225. *Id.* at 683-84.

226. *Id.*

from the notes.²²⁷ The students are required to stand at a lectern in front of the class and present the facts, issue statement, and argument.²²⁸ Not only has the professor observed “a far greater level of preparation” than in the prior Socratic-focused class, but he has also witnessed increases in “competency in reasoning, arguing, and appreciating the numerous practice intangibles.”²²⁹

Student Learning Portfolios. A second suggested approach, which comes directly from ABA Interpretation 315-1, calls for the use of student learning portfolios to ascertain the degree of competency achieved by students.²³⁰ A student learning portfolio can take a variety of forms,²³¹ from an electronically-available database of self-selected student work representing an entire educational program to a portfolio of written work created and annotated by a student for a single law school class.²³² The use of student portfolios could achieve two distinct goals. First, a learning portfolio that represents student work throughout an educational program could be used by faculty as a tool to assess the student population’s achievement of specific learning outcomes for purposes of complying with the outcomes-based assessment mandate. This goal benefits the administration and faculty in giving a holistic view of the degree to which an educational curriculum conveys specific competencies to students.²³³ Second, a student’s process of choosing work for the portfolio and articulating how that work achieved the learning outcome could allow the student to engage in the self-reflection required of successful self-regulated learners.²³⁴

Legal scholars have advocated for the use of student portfolios as well.²³⁵ As one author describes:

227. *Id.* at 685.

228. *Id.*

229. Slomanson, *supra* note 224, at 685-86.

230. See ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Interpretation 315-1); ABA STANDARDS: 2015-2016, *supra* note 128, at 24 (Interpretation 315-1); see also BEST PRACTICES, *supra* note 127, at 262 (“Portfolios can be particularly helpful for students . . . as they proceed through law school.”).

231. See BEST PRACTICES, *supra* note 127, at 261-62 (“[Educational portfolios] can take many forms, but essentially they are compilations of materials that document a student’s academic achievement and personal development.”).

232. See Steven J. Johansen, “What Were You Thinking?”: *Using Annotated Portfolios to Improve Student Assessment*, 4 LEGAL WRITING: J. LEGAL WRITING INST. 123, 135 (1998) (discussing two different kinds of portfolios: the “best work” portfolio and the “work in progress” portfolio).

233. See BEST PRACTICES, *supra* note 127, at 262 (“[Portfolios] focus both teachers’ and learners’ attention on learning”) (quoting Judith Wegner, *Thinking Like a Lawyer About Law School Assessment*, 72-73 (2003) (unpublished manuscript) (on file with Roy Stuckey)).

234. See Johansen, *supra* note 232, at 139-40 (“Portfolios provide an essential step in the assessment process by sparking student reflection.”).

235. See Debra Moss Curtis, *Beg, Borrow, or Steal: Ten Lessons Law Schools Can Learn from Other Educational Programs in Evaluating Their Curriculums*, 48 U.S.F. L. REV. 349, 383 (2014)

A portfolio is more than just a logbook, as it includes not just evidence of work but also annotations of a student's descriptive, analytical, and evaluative reflection on learning. . . . [It] reflect[s] academic progress and potentially indicate[s] professional development. Accordingly, the tool becomes useful to assess not only past performance but also professionalism.²³⁶

Another author advocates the use of annotated student portfolios in assessing legal writing skills, arguing that the student's process of self-evaluation in annotating the work included in his or her portfolio puts the responsibility for learning back into the hands of the student.²³⁷

Capstone Courses and Third-Year Programs. Third, the use of a capstone course or a capstone third-year has been suggested as a method of measuring, achieving, or enhancing a student's ability to achieve legal competencies.²³⁸ Washington & Lee's curriculum requires third-year students: to engage in at least forty hours of law-related service; to take a two-week skills immersion course at the beginning of each semester of the third year (one focused on litigation and conflict resolution and the other on a transactional practice); to take one real-client experience course and three additional problem-based or practicum style electives; and to participate in a semester-long professionalism course.²³⁹

Capstone courses, used in higher education for many years for program assessment, have also been advocated for law school program

("[P]rograms [using portfolios] have included medical education, teacher training, writing, and engineering." (citing Brenda Johnson, *Summative Assessment of Portfolios: An Examination of Different Approaches to Agreement Over Outcomes*, 29 *STUD. HIGHER EDUC.* 395, 396 (2004))); see also BEST PRACTICES, *supra* note 127, at 262 (Portfolios "'mak[e] the results of learning in higher education more explicit, plac[e] greater responsibility on students to understand and direct their own learning and personal growth, integrat[e] academic and extracurricular development, creat[e] more effective means to track student progress and enhance program quality, and assis[t] students in their search for employment.'" (quoting Wegner, *supra* note 233, at 70)).

236. Curtis, *supra* note 235, at 386. There are five stages of portfolio assembly: "(1) collection of evidence of achievement of learning outcomes; (2) reflection on that learning; (3) evaluation of evidence; (4) defense of evidence; and (5) assessment decision." *Id.* at 389-90.

237. See Johansen, *supra* note 232, at 125, 128 ("[The use of annotated student portfolios] allows students to focus their efforts toward improving their work, rather than toward their defending against perceived external (and unfair) attacks upon their efforts.").

238. See ABA STANDARDS: 2014-2015, *supra* note 128, at 24 (Interpretation 315-1); ABA STANDARDS: 2015-2016, *supra* note 128, at 24 (Interpretation 315); see also Tokarz et al., *supra* note 210, at 33 (highlighting Washington & Lee's "revamped" third-year capstone program as an example of options for redesigning law school curriculum).

239. Tokarz et al., *supra* note 210, at 33; see *Your 3L Year*, W&L LAW, <http://law.wlu.edu/about-wandl-law/curriculum/third-year> (last visited Oct. 27, 2015) ("[The third-year curriculum at W&L law] consists entirely of practice-based simulations, real client experiences, and advanced explorations into legal ethics and professionalism.").

assessment.²⁴⁰ “Examining student work from a capstone course allows faculty to determine students’ strengths and weaknesses at the end of a program, when students can demonstrate cumulative learning, and such capstone work provides a comprehensive view of what students have learned throughout the program.”²⁴¹

Not only do the outcomes from these types of integrated programs allow a law school to assess its performance in light of its students’ achievement of learning goals across the curriculum, but the integrated curricula itself allows the students to practice the variety of skills and judgment required of every day law practice—approximating Dr. Montessori’s “Cosmic Education.”²⁴²

Interdisciplinary Curriculum Approach. Fourth, in her Keynote Address at the Fourth Biennial Conference of Emory’s Center for Transactional Law and Education, Professor Tina Stark shared her “fantasy” for a new curriculum for first-year foundational courses, which was based on her son’s experience at Cornell’s veterinary school.²⁴³ Cornell’s veterinary school adopted an interdisciplinary approach to its curriculum where students take foundational courses in “blocks” that are scheduled based upon the complexity of the material to be covered as opposed to lasting for a traditional semester.²⁴⁴ This approach “integrate[s] diverse, intersecting disciplines, resulting early on in a deeper, more sophisticated understanding of clinical medicine and disease”—an approach that combines practice with theory from the beginning of the educational experience.²⁴⁵

In translating this model to law school, Professor Stark suggests creating “three foundational modules, one module for each of [her stated] three umbrella practice areas: litigation, transactions, and legislation/regulation,” with the goal of completing the three modules in three semesters.²⁴⁶ The litigation module would include civil procedure, evidence, motion practice, and torts with a traditional legal writing course to

240. See Funk & Mauerman, *supra* note 177, at 478, 485 (“Assessment [of student learning] involve[s] the following steps: 1) developing student learning goals; 2) collecting assessment evidence (empirical data) to determine whether and how well the goals are met; 3) analyzing the evidence and creating a plan to improve the program; and 4) using the results to improve the program . . .”).

241. *Id.* at 478.

242. LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 130.

243. See Tina L. Stark, *What Cornell Veterinary School Taught Me About Legal Education*, 15 TENN. J. BUS. L. 533, 535, 537 (2014).

244. *Id.* at 537-38 (giving the example of the first foundational block of “The Animal Body” wherein “students study each organ, using all the scientific disciplines available”).

245. See *id.* at 538 (for example, in The Animal Body block, in addition to learning about gross anatomy, the students engage in surgical procedures, “learn how to give a heart exam,” and “learn how to palpate the thorax”).

246. *Id.* at 540.

add the skills component.²⁴⁷ The transactions module would include contracts, property, and business associations with a contract drafting course to add the skills component.²⁴⁸ Finally, the legislative/regulatory module would include administrative law, constitutional law, and criminal law with appropriate skills-based courses.²⁴⁹ Each module would also require students to participate in tutorial groups, which include a tutor and a group of students who meet weekly to engage in problem-solving.²⁵⁰ This revolutionary interdisciplinary approach would be aimed at ensuring that, from an early point in their legal education, law students would obtain the deep understanding of the integration between theory and practice that Professor Stark believed was conveyed to young veterinary students at Cornell.²⁵¹

Whether through the relatively straight-forward incorporation of skills training into doctrinal courses or through a complete reimagining of the first-year law school curriculum, law school administrators and faculty members should focus on ways to create a “Cosmic Education” for their students that reaches across legal subject areas and encourages students to see the connections present within the law.

4. *Self-Regulation Through Self-Directed Learning*

Believing that her students could engage in “self-education” through identifying and correcting their own mistakes, Dr. Montessori created materials that contained a “control of error” (*i.e.*, materials within which the evaluation was inherent).²⁵² The same approach could be taken in some form in law school classrooms, thereby transferring the responsibility of

247. *Id.*

248. Stark, *supra* note 243, at 540. Professor Stark offers the following illustration:

Imagine students confronting the following fact pattern in their tutorial group midway through the transaction module: A 25-year-old man and his 14-year-old sister have asked their lawyer to represent them in negotiating the lease of Blackacre to a corporate division. Their father, who recently died, had leased the property to the division for the past ten years – but without any writing memorializing that agreement. Before students could even begin to draft, they would have to resolve multiple legal, strategic, business, and ethical issues. Contracts, business associations, property, ethics, business, and drafting. All in two sentences. Almost sinister.

Id. at 540-41.

249. *Id.* at 541.

250. *Id.* at 538, 540-41.

251. *See id.* at 538.

252. *See* Stark, *supra* note 243, at 58, 174-75.

learning from teacher to student.²⁵³ After all, our students will necessarily engage in self-assessment of their work once they graduate; engaging them in this process prior to graduation will give them reliable context for assessing their work post-graduation. If the responsibility for learning is transferred more squarely from the teacher to the student, the student will more likely achieve the necessary competencies of self-development and judgment.²⁵⁴

As discussed above, one approach suggested for “self-education” requires the students to create annotated portfolios explaining how each selected work satisfies a required learning objective. This ultimately could require the students to provide an overall assessment of their performance in the course, including a final letter grade.²⁵⁵

Professor Mary Beth Beazley suggests another approach—the “self-graded draft.”²⁵⁶ The goal of the self-graded draft is to give the student enough “psychological distance” from her own work so that she is able to objectively review and critique her own writing.²⁵⁷ The psychological distance is created by requiring the writer to concentrate on specific aspects of the document when revising.²⁵⁸ For example, instead of reading and re-reading a document in the editing process (while hoping that grammatical and substantive errors magically appear), the writer is forced to identify and mark specified grammatical errors.²⁵⁹

In designing self-grading guidelines, Professor Beazley suggests that: (1) the guidelines should include “agreed-upon requirements” for the particular work product, (2) the exercise should include “markers” of examples, whether good or bad, for elements required in the particular type of work product, and (3) the exercise should include specific questions that

253. Grant, *supra* note 15, at 21 (citing Erik Gerding, *A Montessori Law School?*, THE CONGLOMERATE (May 8, 2010), <http://www.theconglomerate.org/2010/05/a-montessori-law-school.html>).

254. *See id.* at 51 (acknowledging that, while law professors have a responsibility to help students develop a proper work ethic, “[a]llowing students the freedom to select which tasks to work on and for what period of time mirrors the choices they will make later in their own office”).

255. *See* Johansen, *supra* note 232, at 136 (“I also believe that students who have spent a full semester carefully assessing and reflecting upon their writing come to view letter grades as generally superfluous to their learning. Because they can recognize the growth they have made in their writing and thinking, they do not measure their success by the letter grade they receive. Simply put, learning surpasses grading as a motivator for most students.”).

256. Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 J. LEGAL WRITING INST. 175, 175 (1997).

257. *Id.* at 175.

258. *See id.* at 180-81.

259. *See id.* at 181 (noting that this process “forces the writer to discover for himself or herself what words and ideas actually made it onto the paper, and what words and ideas are still inside the writer’s brain”).

help the writer improve his or her work product.²⁶⁰ Professor Beazley also suggests that the self-grading assignment should: (1) include an opportunity for the student-writer to reflect on what revisions he or she discovered were necessary, and (2) include an opportunity for the student-writer to identify overall strengths and plans for revision.²⁶¹ While Professor Beazley's self-graded exercises are directed at legal writing students, professors in other courses (including substantive or doctrinal courses) should look for opportunities to help their students help themselves and engage in Dr. Montessori's process of self-education.

C. Fostering a Student's Intrinsic Motivation to Learn

Dr. Montessori believed that offering extrinsic rewards in the form of candy or even grades for academic achievement "spoiled" the experience of learning and negatively affected a student's motivation.²⁶² Scholars in the legal field have also looked to theories of motivation and found that research in the self-determination theory of human motivation reveals that "students learn more effectively and deeply when they are intrinsically motivated and are offered autonomy support."²⁶³

Although students in most law schools generally receive a letter grade in their classes, that grade does not necessarily reflect a particular student's achievement of competency in the course.²⁶⁴ Rather, the grade reflects that student's performance in the course compared to the performance of other students in the course—a function of the law school curve.²⁶⁵ While law school grades are necessary and important, some have recommended a move away from the use of the curve and have instead advocated for the use of criteria-referenced assessments.²⁶⁶

260. *Id.* at 182. Professor Beazley gives the following example of requirements (1) and (2): Legal writing students are generally taught to repeat "'key words' of the rule" (or what Professor Beazley refers to as the "phrase that pays") when applying the law to the facts. Beazley, *supra* note 256, at 182. She tells her students to write a sentence that includes the "*phrase that pays* [equals or does not equal] *legally significant facts.*" *Id.* The "two 'agreed-upon requirements' are 1) phrase that pays and 2) legally significant facts." *Id.* at 182-83. These two "requirements are also 'markers' that identify a good example of application of law to facts." *Id.* at 183.

261. *Id.* at 186.

262. See LILLARD, *THE SCIENCE BEHIND THE GENIUS*, *supra* note 57, at 172-74.

263. Leslie M. 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, 142 (2011).

264. See *id.* at 124, 129-30 (stating that some top-tier law schools, "including Harvard, Yale, and Stanford, have switched to a modified pass-fail grading system[,] but arguing that such "grading policies seem to be a form of norm-referenced grading because they restrict the number of students that can be in each of the possible categories [of high honors, honors, pass, low pass, and fail]").

265. *Id.* at 124 (citing Jay M. Feinman, *Law School Grading*, 65 UMKC L. REV. 647, 648 (1997); Memorandum from Andy Mroch, to Ass'n of Am. Law Schs., on Law School Grading Curves 2-5 (2005)).

266. See Rose, *supra* note 263, at 123-24.

Law school assessment techniques, including the use of a “scaled grading system,”²⁶⁷ have been criticized as “less [of] a means for measuring student learning than as a means for sorting and ranking students and for ‘weeding out’ students who are not developing the requisite knowledge, skills, and values to pass a bar examination”²⁶⁸ and for “increase[ing] student stress, interfer[ing] with deep learning, and . . . not adequately inform[ing] students whether they have reached a level of competence.”²⁶⁹ While the use of a curve allows employers to identify how students compare to one another, the use of such a system has been said to “impede[] learning, community building, and moral development.”²⁷⁰ Furthermore, the Carnegie Foundation showed that first-year testing practices “have harmful effects on students’ motivation and opinions of law school.”²⁷¹

As a result, in 2007, the authors of *Best Practices* suggested five focal points that “should influence the design process of an improved assessment system: learning is the point, learning must be made visible in order to be assessed, learning is multifaceted and develops over time, assessment must reflect the particular purposes being served . . . and assessment occurs in context.”²⁷² The authors offered the use of criteria-referenced assessments as a best practice in lieu of norm-referenced assessment, which they believed, in its aim to achieve a normal “bell curve” among students, reflected “a failure of instruction.”²⁷³ In contrast to norm-referenced assessment, “[c]riteria-referenced assessments rely on detailed, explicit criteria that identify the abilities students should be demonstrating . . . and the bases on which the instructor will distinguish among excellent, good, competent, or incompetent performances.”²⁷⁴ As a result of the clearly established outcomes and communicated levels of performance required, it is believed that criteria-referenced assessment methods “encourage[] students to become reflective, empowered, self-regulated learners.”²⁷⁵

267. BEST PRACTICES, *supra* note 127, at 237.

268. *Id.* at 236-37 (quoting Wegner, *supra* note 233, at 19-22, 34).

269. Rose, *supra* note 263, at 124. “The authors of *Best Practices*, the *Carnegie Report*, and the literature on assessment and humanizing law school are unanimous in their criticism of norm-referenced grading policies. They favor criteria-referenced systems because they more reliably communicate whether students are proficient in the skills required of competent professionals.” *Id.* at 125.

270. BEST PRACTICES, *supra* note 127, at 237.

271. *Id.* at 237.

272. *Id.* at 239-40 (citing Wegner, *supra* note 233, at 55).

273. *Id.* at 244. The authors describe norm-referenced assessment as assessment “based on how students perform in relation to other students . . . rather than how well they achieve the educational objectives of the course.” *Id.* at 243.

274. BEST PRACTICES, *supra* note 127, at 244. “[T]he implicit pedagogical philosophy underlying criterion-referenced assessment is that the fundamental purpose of professional education is not sorting, but producing as many individuals proficient in legal reasoning and competent practice as possible.” *Id.* at 245 (quoting CARNEGIE REPORT, *supra* note 127, at 210-11).

275. *Id.* at 245.

Not only is it argued that criteria-referenced assessment would provide students with more transparency in the objectives of their courses and performance, but it has also been argued that “[m]andatory curves interfere with autonomy needs and create an ‘external locus of control’ for a student’s learning efforts, displacing intrinsic motivation.”²⁷⁶ When students know that there is a pre-established limit on the number of high and low grades that are available, students can more easily attribute their grade to outside factors rather than to their own effort and level of understanding.²⁷⁷ Importantly, in the norm-referenced grading world of law schools, it is not uncommon for upper-level students, learning of their position in class rank after the first semester of law school, to become complacent with that rank and put forth only those efforts necessary to maintain that ranking, likely achieving less than would otherwise be possible in a system that provided students with an incentive to achieve certain learning outcomes irrespective of their peers’ level of achievement in those outcomes.²⁷⁸

Beyond mere grading methodologies, there is a larger cause for concern over the currently hyper-competitive law school environment.²⁷⁹ Studies indicate that “while law students begin law school with mental health that is similar to the general population . . . [they] quickly develop an inordinate amount of depression and other stress-related symptoms that ebb and flow and are often carried into their professional lives.”²⁸⁰ Furthermore, evidence exists that the competitive nature of law school causes students, who arrive at law school with a specific intrinsic motivation and “ethic of care,”²⁸¹ to become motivated by the extrinsic rewards offered by a norm-referenced grading system and to develop “psychological discomfort and stress, [which] often leads to unhappiness, depression, or substance abuse.”²⁸²

When viewed in light of new law school outcomes-based assessment, the argument in favor of criteria-referenced assessment takes on an additional level of allure. Law schools will be required to establish learning outcomes and performance criteria and to assess whether their students have achieved competency in the stated outcomes.²⁸³ To assess whether a student

276. Rose, *supra* note 263, at 143, 145 (quoting Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 298 (2008)).

277. *See id.* at 143.

278. Rose, *supra* note 263, at 144-45 (quoting Feinman, *supra* note 265, at 650).

279. Jacobowitz, *supra* note 206, at 322.

280. *See id.*

281. *See id.* (citing SUSAN SWAIM DAICOFF, LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES 74-77, 123, 158 (2004) [hereinafter LAWYER, KNOW THYSELF]).

282. *See id.* (citing LAWYER, KNOW THYSELF, *supra* note 281, at 74-77, 123, 158).

283. *See* ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302); *see also* ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standard 302).

has achieved competency, the law school will be required to particularly define various levels of performance that constitute “competency” or “proficiency” or “emerging competence” for each particular performance criterion and will likely create a rubric that uses specific guidelines or examples to define these terms.²⁸⁴ This process of defining levels necessary to assess the achievement of learning outcomes is similar (if not identical) to the process of establishing the criteria against which students would be graded in a criteria-referenced assessment model.²⁸⁵ As a result, the grades given in a course that uses criteria-referenced assessment could simultaneously provide the student with a grade and the law school with an assessment for Standard 315 purposes of the learning outcomes covered by that course.

The same ease of translation does not exist in a class with norm-referenced grading because there, students are graded against each other and not against a rubric that clearly defines what a “competent” or “incompetent” answer would look like.²⁸⁶ While a movement to outcomes-based assessment at a program level will require a good deal of effort by an administration and faculty, that effort could begin at a more granular level with the movement of individual classes to criteria-referenced assessment.

Dr. Montessori’s desire to maintain a student’s intrinsic motivation to learn by allowing a student to experience the joy of learning for the sake of learning can be incorporated into a law school’s curriculum by shifting toward criteria-referenced assessment.

V. CONCLUSION

In order to create and reform her curriculum, Dr. Montessori became a scientist of her students and their use of didactic materials within her classrooms.²⁸⁷ With the same goal of curriculum reform, the American Bar Association has called upon law schools and law professors to become scientists of their students and classroom approaches in the movement to outcomes-based assessment.²⁸⁸ The Montessori pedagogical approaches discussed in this Article can provide a roadmap as law schools begin to articulate learning outcomes, desired competencies, and assessment tools.

Embracing the teacher’s role as an observer, sparking students’ interests by providing opportunities for choice, providing integrated curricular

284. *See supra* Part III.B.

285. *See* Rose, *supra* note 263, at 128 (explaining how criteria are established using grading rubrics or other detailed metrics in criteria-referenced assessment).

286. *See id.* at 124.

287. *See* LILLARD, MONTESSORI TODAY, *supra* note 11, at 21-22.

288. ABA STANDARDS: 2014-2015, *supra* note 128, at 15 (Standard 302); *see* ABA STANDARDS: 2015-2016, *supra* note 128, at 15 (Standard 302).

opportunities that encourage the student to see connections between concepts, and engaging in assessment practices that provide meaningful learning opportunities and maintain a student's intrinsic motivation to learn are all ways in which the Montessori method can guide law schools and law professors as we attempt to build legal competencies within our students. After all, "[w]hen a skill is perfected in a freely chosen field, and it creates the will to succeed and to overcome obstacles, something more than a simple accomplishment has occurred; a feeling of one's own worth has developed."²⁸⁹

289. MONTESSORI, FROM CHILDHOOD TO ADOLESCENCE, *supra* note 14, at 134.