UIC School of Law
UIC Law Open Access Repository

UIC Law Open Access Faculty Scholarship

2016

Prepared for Practice? Developing A Comprehensive Assessment Plan for A Law School Professional Skills Program, 50 U.S.F. L. Rev. 245 (2016)

Anthony Niedwiecki
John Marshall Law School, aniedwie@jmls.edu

Follow this and additional works at: https://repository.law.uic.edu/facpubs

 Part of the Legal Education Commons, and the Legal Profession Commons

Recommended Citation

Anthony Niedwiecki, Prepared for Practice? Developing A Comprehensive Assessment Plan for A Law School Professional Skills Program, 50 U.S.F. L. Rev. 245 (2016)

https://repository.law.uic.edu/facpubs/625

This Article is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Open Access Faculty Scholarship by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program

By ANTHONY NIEDWIECKI*

Introduction

WITH THE CHALLENGES FACING LAW SCHOOLS because of declining enrollment and lower job placement rates, there has been an increased push for more practical training in law school.[1] In fact, a number of law schools are now using the phrase "practice-ready" to promote the practical training provided to their students.[2] Additionally, the new accreditation standards from the ABA Section on Legal Education and Admission to the Bar ("ABA Section on Legal Education") focus more on teaching students professional skills. The most significant changes to the standards require law schools to integrate learning outcomes[3] and assessment[4] into their curriculum, with the

* Anthony Niedwiecki, Associate Dean for Academic Affairs, Associate Professor of Law, The John Marshall Law School.

1. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (arguing for a program of legal education that more fully integrates knowledge, skills, and values); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) (providing a detailed guide on how to develop a program of legal education that most effectively prepares students for the practice of law); Steven J. Harper, *Too Many Law Students, Too Few Legal Jobs*, N.Y. TIMES, Aug. 25, 2015, at A19 (detailing the problems facing recent graduates not finding employment).

2. Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J. L. & SOC. JUST. 247, 248 (2012). Some professors have criticized the idea that schools can make students practice-ready because they are unable to provide all of the training necessary within three years of law school. Robert Condlin, *Practice Ready Graduates: A Millennialist Fantasy*, 31 TOURO L. REV. 75 (2014).

3. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 301(b) (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 ("A law school shall establish and publish learning outcomes designed to achieve these objectives.").

4. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 314 (2015) ("A law school shall utilize both formative and summative assessment methods in its

goal of improving student learning.[5] Additionally, students at every law school must now complete at least six credit hours of experiential learning courses.[6] Overall, the standards are meant to better prepare students for the practice of law while establishing assessment techniques that evaluate whether the students are indeed prepared. Some legal educators have expressed anxiety over how to comply with the new standards,[7] and in response, the ABA has said that schools will be evaluated on their *efforts* at assessment and not on whether their students meet the school's learning outcomes.[8]

The new *ABA Standards and Rules of Procedure for Approval of Law Schools* ("*ABA Standards*") require law schools to develop and publish learning outcomes that explicitly state what they want their students to be able to do and know upon completion of the law school curriculum. The *ABA Standards* also require that law schools develop a plan to

curriculum to measure and improve student learning and provide meaningful feedback to students.").

5. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 315 (2015) ("The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.").

6. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 303(a)(3) (2015) ("A law school should offer a curriculum that requires each student to satisfactorily complete at least . . . one or more experiential course(s) totaling at least six credit hours.").

7. *See Comments on Standards 301–307 – Student Learning Outcomes*, AM. LAW DEANS ASS'N (July 24, 2010), *available at* http://www.americanbar.org/groups/legal_education/committees/standards_review/comp_review_archive/comments.html ("We believe that this conjunction of obligations, perhaps inadvertently, sets up a tremendous administrative burden that is inconsistent both with the general values of diversity, innovation and experimentation and the specific goal of establishing minimum rather than maximum accreditation standards.").

8. *See* AM. BAR ASS'N, TRANSITION TO AND IMPLEMENTATION OF THE NEW STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2 (Aug. 13, 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. ("[C]ompliance will be assessed based upon evaluating the 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 in assessing compliance with these Standards are whether a school has demonstrated faculty engagement in the identification of the student learning outcomes it seeks for its graduates; 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.").

assess these learning outcomes through course assessment,[9] programmatic assessment,[10] and institutional assessment.[11] In addition to the ABA, regional accreditors of higher education also require that universities and law schools have an extensive learning outcome and assessment plan.[12] These requirements essentially ask schools to answer two questions:

1. *What does your law school want your students to know and be able to do when they graduate?*

2. *How will you know that your students have obtained these competencies?*

These new accreditation standards will create a fundamental shift in legal education, both as it relates to the substance of what is taught in law school and to the way schools develop their curriculum. This Article will detail a process that law schools can use to comply with the *ABA Standards* that require law schools to develop a comprehensive assessment plan. Because the process will require the faculty to fully engage in curricular planning and development, it is likely going to remove some control individual professors have over their courses, a change that is likely to be met with some resistance.[13] Instead, the process will require a great deal of collaboration among the entire faculty, and it should produce a comprehensive and more effective approach to preparing students for the practice of law. As an example, this Article will detail the steps that The John Marshall Law School took to review and change its professional skills curriculum to incorporate an extensive assessment plan that measured the students' competencies throughout the entire professional skills program.

Part I of this Article will outline the accreditation requirements for developing and publishing learning outcomes. Part II will provide an overview of the process of curricular planning in light of the new *ABA Standards*. Part III will explain the steps schools can take to de-

9. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 315 cmt. interpretation (2015).

10. *Id.*

11. *Id.*

12. *See* MIDDLE STATES COMM'N ON HIGHER EDUC., CHARACTERISTICS OF EXCELLENCE IN HIGHER EDUCATION 63 (2015), *available at* http://www.msche.org/publications/CHX-2011-WEB.pdf.

13. Some professors have argued that developing uniform learning outcomes will infringe on academic freedom. *See* Timothy Reese Cain, *Assessment and Academic Freedom: In Concert, Not Conflict*, 22 NAT'L INST. FOR LEARNING OUTCOMES ASSESSMENT 1, 3–5 (Nov. 2014), http://www.learningoutcomesassessment.org/documents/OP2211-17-14.pdf (debunking the idea that outcomes and assessment infringe upon a professor's academic freedom).

velop learning outcomes and map those across the curriculum. Part IV will discuss the elements of what makes an assessment plan effective, with a focus on the best ways to use formative assessment to improve the metacognitive skills of the students. Part V will detail the approach The John Marshall Law School took to improve its professional skills curriculum and the assessment of its students. Overall, the Article provides some ideas that law schools can adopt when attempting to comply with the new *ABA Standards* on outcomes assessment.

I. The New ABA Accreditation Standards on Outcomes and Assessment

The federal government requires that accreditors of institutions of higher education include standards on outcomes and assessment.[14] This has been a major driving force behind some of the changes to the *ABA Standards.* The Department of Education's Office of Postsecondary Education requires accrediting agencies that accredit postsecondary institutions to have standards and criteria to address the quality of the school's educational program, the educational objectives of the program, and how it assesses the quality of its educational program.[15] The accreditation agency must also assess the success of a school's students based on its mission, state licensing examinations, attrition, and job placement rates.[16] The accrediting agency evaluates a school by examining its success in achieving its "specified educational objectives" and whether the school maintains commonly accepted educational standards.[17] These regulations have set up the framework for the establishment of accreditation standards on outcomes and assessment.

As the main accreditor of law schools in the United States, the ABA Section on Legal Education began a comprehensive review of its standards for accreditation in 2007. The ABA approved a completely revised set of standards in 2014. The ABA Section on Legal Education is currently phasing in the standards on learning outcomes and assessment; law schools will be required to comply with them in the 2016–17 academic year.[18]

14. 34 C.F.R. § 602.16 (a) (2015).
15. 34 C.F.R. § 602.16 (a)(1) (2015).
16. 34 C.F.R. § 602.17 (c) (2015).
17. 34 C.F.R. § 602.17 (a)(b) (2015).
18. *See* AM. BAR ASS'N, MANAGING DIRECTOR'S GUIDANCE MEMO: STANDARDS 301, 302, 314 & 315 (2015), *available at* https://www.aals.org/wp-content/uploads/2015/06/ABA-Guidance-Stds-301-302-314-315-June-2015.pdf

These changes represented a fundamental change to the standards and approach to teaching law. The ABA Section on Legal Education traditionally set its accreditation standards by measuring a school's inputs. For example, law schools were only evaluated prior to the new standards, on whether they offered specific courses or substantial learning opportunities, instead of whether the school assessed the students' competencies upon completion of these courses or learning opportunities.[19] With the new standards that the ABA Section on Legal Education adopted in 2014, the ABA has begun to focus more on learning outcomes and assessment instead of the input measures it has traditionally used.[20]

A. ABA Standards on Learning Outcomes

The *ABA Standards* now require a school to establish learning outcomes, utilize assessment methods across the curriculum, and assess the entire program of legal education.[21] Before a school is able to develop an assessment plan that improves student learning and evaluates a school's program of legal education, it must establish its learning outcomes, which are statements of what it wants its students to learn before they graduate.[22] The *ABA Standards* divide the learning outcomes into three categories: knowledge,[23] skills,[24] and values.[25]

19. *See, e.g.*, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 303 (2015) (requiring legal writing and professional responsibility courses and "substantial opportunities for live-client or other real-life practice experiences . . . [and] participation in pro bono activities.").

20. *See* ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 301 (2015) (requiring law schools to publish the learning outcomes they expect of their students and ways that they will assess whether the students have met those learning outcomes).

21. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 301, 315 (2015).

22. *See* William D. Henderson, A *Blueprint for Change*, 40 PEPPERDINE L. REV. 461 (2013) (Curricular planning includes "five touchstone elements: (1) it identifies examples of professional excellence in both the new and old legal economies, (2) breaks them into discrete domains of knowledge, skills, and behaviors, identifying both overlaps and distinctive feature of specific practice areas, (3) uses an iterative process of theory and data to determine the best way to sequence and teach these competencies, (4) measures the performance of the program as a whole against a baseline (i.e., how well do graduates of this type of program do vis-à-vis graduates of a traditional unstructured J.D. program), and (5) continuously improves the educational process through feedback loops"); Marjorie M. Schulti & Sheldon Zedeck, *Predicting Lauder Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 LAW & SOC. INQUIRY 620 (2011) (discussing the competencies required of lawyers).

23. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 302 (2015).

24. *Id.*

These categories match the recommendations from two major reports that discuss ways to reform legal education and develop a more comprehensive curriculum. One report, known as the *Carnegie Report*, criticizes law schools for focusing too much on teaching legal analysis and not enough on teaching all of the skills required of lawyers.[26] The second report, issued by the Clinical Legal Education Association, details the steps that law schools should take to develop a program of legal education and to teach both doctrinal and experiential law courses.[27]

The *ABA Standards* provide a list of the types of learning outcomes each school should have. First, the *ABA Standards* require that a law school have learning outcomes that focus on students obtaining the "knowledge and understanding of substantive and procedural law."[28] Next, the *ABA Standards* require outcomes that deal with "professional and ethical responsibilities to clients and the legal system."[29]

In addition, what is likely the most significant and expansive part of the *ABA Standards* on learning outcomes focuses on the development of professional skills.[30] This standard first details specific skills that must be taught at all law schools, including legal research and writing, legal analysis and reasoning, problem solving, and oral communication. The standard then asks schools to develop learning outcomes on other "professional skills needed for competent and ethical participation as a member of the legal profession."[31] In an effort to allow schools flexibility in the types of skills training provided to their students, the standards provide an illustrative list of skills that can satisfy the standard, but does not require them. The list includes "interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation."[32] The standards also allow schools to include additional learning outcomes that match the school's culture, mission,

25. *Id.*

26. SULLIVAN ET AL., *supra* note 1.

27. STUCKEY ET AL., *supra* note 1.

28. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 302 (2015).

29. *Id.*

30. *Id.*

31. *Id.*

32. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 302-1 cmt. interpretation (2015).

and program of legal education,[33] but the learning outcomes and assessment methods should be connected to one of the requirements in the *ABA Standards.*

Required Learning Outcomes in ABA Standards

Knowledge	Skills	Values
"Knowledge and understanding of substantive and procedural law."	Legal analysis and reasoning; legal research; problem solving; written and oral communication; other professional skills.	"Proper professional and ethical responsibilities to clients and legal system."

B. ABA Standards on Assessment

Once a law school determines the overall learning outcomes for its program of legal education, it will need to determine where each of the outcomes will be placed in the curriculum and how each outcome will be assessed.[34] This process is often referred to as curricular mapping because it requires law schools to develop a coherent progression on when to teach and assess the knowledge, skills, and values detailed in the school's learning outcomes.[35] This process may also require that schools break down the learning outcomes for the law school into more narrow and specific outcomes that can more easily be placed into particular academic programs or specific courses.

The ABA separates the standards for student assessment and the standards for institutional or programmatic assessment. For student assessment, the ABA requires that every law school "utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."[36] The standards explain that formative assessments are measurements that help promote student learning through effective and "meaningful feedback."[37] The standards define summative assess-

33. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 302-2 cmt. interpretation (2015).

34. Henderson, *supra* note 22, at 496.

35. Susan L. Brooks, Robert D. Dinerstein & Deborah Epstein, *Experience The Future: Papers From The Second National Symposium On Experiential Education In Law,* 7 ELON L. REV. 1, 5 (2015) ("Once data has been gathered to determine areas of limited learning opportunities, an institution can develop a solid list of student learning goals to serve as the basis for curricular expansion.").

36. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 314 (2015).

37. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 314-1 cmt. interpretation (2015).("Formative assessment methods are measurements at different

ments as tools that measure the students' competency at the end of a course, program, or law school.[38]

For institutional and programmatic assessment, the standards require schools to use the data and information taken from student assessment and use it to evaluate the school's success and make adjustments to its curriculum.[39] The standards suggest some approaches to this type of programmatic and institutional review, including direct and indirect forms of assessment. Direct forms of assessment measure the students' achievement of the learning outcomes by evaluating their actual work product.[40] The *ABA Standards* provide student learning portfolios and performance in capstone courses as examples of direct assessment tools. Indirect assessment gathers data by examining indicators of learning, rather than looking at students' work product.[41] Examples of indirect assessment listed in the *ABA Standards* include job placement rates and surveys of employers and alumni.[42]

II. Curricular Planning in Light of the New ABA Standards

Law schools have been one of the last educational institutions to focus on learning outcomes and assessment,[43] although most law professors have included various forms of course objectives and assess-

points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning.").

38. *Id.* ("[S]ummative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education.").

39. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 314 (2015) ("[A] law school shall conduct ongoing evaluation of the law school's program of legal education . . . and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.").

40. Steve Menhart, *Direct and Indirect Assessment Methodologies, in* PROCEEDINGS OF THE 2011 MIDWEST SECTION CONFERENCE OF THE AMERICAN SOCIETY FOR ENGINEERING EDUCATION 4 (2011), *available at* https://www.asee.org/documents/sections/midwest/2011/ASEE-MIDWEST_0004_315750.pdf.

41. *Id.* at 3.

42. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 315-1 cmt. interpretation (2015) (listing the types of assessment methods, including "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").

43. STUCKEY ET AL., *supra* note 1, at 48–49; Neil Hamilton & Sarah Schaefer, *What Legal Education Can Learn from Medical Education About Competency-Based Learning Outcomes Including Those Related to Professional Formation (Professionalism)*, 29 GEO. J. LEGAL ETHICS (forthcoming 2016).

ment into their courses.[44] The *ABA Standards* on learning outcomes and assessment were developed after years of many groups advocating for changes in legal education, starting with the ABA's own report in 1992, known as the MacCrate Report.[45] This report recommended that schools incorporate more skills and values into the law school curriculum, supported by the Carnegie Report and CLEA's Best Practices in Legal Education in 2007.

In determining approaches to address outcomes and assessment in legal education, law schools will be able to draw upon the experiences from other educational institutions that have gone through the process of incorporating outcomes and assessment into their curricula.[46] And for many law schools, the concept of outcomes is not completely new; schools may have had to report their efforts to their university's regional accreditor, which now focuses more on outcomes assessment due to directives from the United States Department of Education.[47]

The *ABA Standards* closely mirror the curricular planning process adopted by almost every other educational entity.[48] In very simple terms, the new accreditation standards from the ABA and regional accreditors of higher education require schools engage in two steps to develop an outcomes assessment plan. The first step is for law schools

44. *See* Ruth Jones, *Assessment and Legal Education: What Is Assessment, and What the *# Does It Have to Do with the Challenges Facing Legal Education?*, 45 McGEORGE L. REV. 85, 89 (2013) (referencing the use of input assessment such as student and faculty credentials.); Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, THE CHRON. OF HIGHER EDUC. (Jan. 10, 2010), http://chronicle.com/article/Law-Schools-Resist-Proposal-to/63494/ (law schools are assessed primarily on "input" measures); ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 315 (2015) ("The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.").

45. *See* AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 3 (1992) [hereinafter MACCRATE REPORT].

46. *Creating The Medical School of the Future*, AM. MED. ASS'N, https://www.ama-assn.org/ama/pub/about-ama/strategic-focus/accelerating-change-in-medical-education/innovations.page (last visited Jan. 10, 2016) (discussing the use of new methods for teaching and/or assessing key competencies for medical students to foster methods to create more flexible, individualized learning plans).

47. *See* 34 C.F.R. § 602.16 (2015).

48. *See* ERIKA N. FELDMAN, EXPLORING THE IMPACT OF A PLATFORM FOR PROFESSIONAL DEVELOPMENT: VALIDATING AND EXAMINING A CURRICULAR PLANNING AND ASSESSMENT FRAMEWORK USING MIXED METHODS (2011); *see also* JACALYN LUND & DEBORAH TANNEHILL, STANDARDS-BASED PHYSICAL EDUCATION CURRICULUM DEVELOPMENT 3–14 (2015); SARAH B. KEATING, CURRICULUM DEVELOPMENT AND EVALUATION IN NURSING 1–4 (Lippincott et al. eds., 2006).

to determine the program's learning outcomes, which are statements of what schools want their students to be able to do or know upon completion of the program.[49] The learning outcomes are stated measurable ways.[50] These learning outcomes are then placed in required courses or academic programs, such as clinics, externships, first-year courses, and legal research and writing programs. Often, these learning outcomes will be placed in several courses along with varying levels of competency. For example, a law school may expect students to be minimally competent in synthesizing multiple legal sources after the first semester of law school, but be fully competent by the end of the first year.

Once schools determine which skills need to be developed by their students and where they should be taught, the second step is to institute appropriate assessment techniques to ensure the students have met these goals.[51] Although most professors already give students a final exam or require a final paper, law faculties generally do not do enough formative, programmatic, or institutional assessments, all of which are now required to be part of the program of legal education.[52]

The final exams or papers that professors have historically given would be considered summative assessment tools because they evaluate the students' ability to master the goals or learning outcomes of the course.[53] Formative assessment occurs when students practice skills or test their knowledge and the professor provides feedback.

49. *Archives: Writing Learning Outcomes*, AM. ASS'N OF LAW LIBRARIES, http://www.aallnet.org/Archived/Education-and-Events/cpe/outcomes.html (last visited Sept. 3, 2015); ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 302 (2015) ("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.").

50. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 314 (2015) ("A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.").

51. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 314-2 cmt. interpretation (2015) ("A law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular assessment method.").

52. Jones, *supra* note 44, at 101 (noting that the use of multiple methods and sources of assessment is more likely to result in an accurate portrayal of student learning).

53. Rogelio A. Lasso, *Is Our Students Learning? Using Assessments To Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 77 (2010).

Formative assessment is used to monitor student learning and to provide information that can be used by the professors to improve their teaching and by students to improve their learning.[54] Programmatic assessment is more summative in nature, as it evaluates whether the students are at the competency level the school expects of its students at different stages in the curriculum. Institutional assessment evaluates whether the students are satisfying all of the learning outcomes of the law school.[55] Currently, law schools often do some type of institutional assessment by examining the data from indirect assessment methods like job placement and attrition rates of their students.[56] These types of indirect assessment, however, do not fully capture which particular skills the students have mastered or the exact knowledge they gained in law school.

When developing an assessment plan, the key is to use a mix of summative, formative, programmatic, and institutional assessment to gather data on student learning and to determine whether any adjustments need to be made to the entire curriculum, an academic program, or a specific course.[57] The proper use of assessment tools can also provide assurances to prospective employers that the students are prepared to practice law.[58] Most importantly, the proper use of various assessment tools should provide students with information so they are better able to self-regulate their learning, metacognitive skills, and adjust their learning.[59]

54. *Id.* at 77 (noting that assessment is a process that provides feedback to students and the instructor on students' progress in meeting learning objectives during a course, and that this information resulting from formative assessment allows professors to alter future lesson plans to help students meet learning needs).

55. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 315 (2015) ("The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.").

56. Sam Flanigan & Robert Morse, *Methodology: 2016 Best Law Schools Rankings*, U.S. NEWS & WORLD REPORT (Mar. 9, 2015, 9:58 PM), http://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology.

57. Jones, *supra* note 44, at 101–02.

58. *Id.* at 99 (noting that an assessment-based approach would allow an institution to identify program goals, such as preparing students with the skills necessary for legal practice generally and those necessary for specific practice areas).

59. *See* Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149 (2012) (describing that one of the most important skills to teach law students is metacognitive skills).

III. Learning Outcomes and Curriculum Mapping

Before a school can develop an assessment plan, it needs to state what it wants its students to learn in the form of learning outcomes. Learning outcomes should be developed for the overall program of legal education as well as each course, with direct links between the two sets. The substance of what professors are already teaching in their courses can be a good start in developing learning outcomes.[60] Most professors detail in their syllabi what they want to cover in the course and the required assignments. This generally leads to declarations of what content is important (e.g., "Studying the process of offer and acceptance . . . ," "Addressing the differences between . . . ," "Exploring new legal theories in. . . ," "Familiarizing students with the history of . . . .") While coverage statements may give students an idea of the knowledge and skills the instructor values, they tell little about how the students are expected to use that knowledge or skills. Law school faculties can transform the substance of these statements into learning outcomes by viewing them from the students' perspective, and then making a realistic estimate of what students are supposed to know and be able to do by the end of the course, particular program, or the entire law school curriculum.[61]

A. Developing Learning Outcomes

To develop effective learning outcomes for a school, an academic program, or a course, faculties should follow some basic guidelines. Most importantly, the focus should be on outcomes and not inputs, so the learning outcomes should be based on what the students need to

60. Debra Moss Curtis and David Moss have written about the process of course mapping to help begin the process of curricular planning. This process requires each professor to record what is taught in each class. This record provides a map of the current curriculum, which will help in the discussions among professors when they go through the curricular review and planning process. *See* Debra Moss Curtis & David M. Moss, *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education*, 34 NOVA L. REV. 473 (2010) (detailing the process of mapping courses to help in curricular planning); *see also* 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, 365–69 (2014) (noting that mapping curriculums can help provide information about what is already being taught).

61. *See* Ronald M. Harden, *Learning Outcomes and Instructional Objectives: Is There a Difference?*, 24 MED. TEACHER 151 (2002) (discussing the difference between learning objective and learning outcomes); GEORGE D. KUH ET AL., KNOWING WHAT STUDENTS KNOW AND CAN DO: THE CURRENT STATE OF STUDENT LEARNING OUTCOMES ASSESSMENT IN U.S. COLLEGES AND UNIVERSITIES, A REPORT OF THE NATIONAL INSTITUTE FOR LEARNING OUTCOMES ASSESSMENT (2014). For a useful explanation of outcomes and assessment, see *Assessment Primer: Goals, Objectives and Outcomes*, UNIV. OF CONN., http://assessment.uconn.edu/primer/goals1.html (last visited Sept. 3, 2015) [hereinafter *Assessment Primer*].

learn or be able to do. The focus should be taken away from what the professor will cover in the course or teach at the school.[62] Also, professors need to align their course or programmatic learning outcomes with the law school's learning outcomes.[63] The law school's learning outcomes are broader than the course learning outcomes and should focus on what the school expects each student to know or be able to do upon graduation. The course-specific learning outcomes will include more narrow outcomes that flow directly from the broad law school learning outcomes.[64] Through the process of curricular mapping, law school learning outcomes are then matched with specific course and programmatic learning outcomes.[65]

The two levels of outcomes need to be related to each other and with the *ABA Standards.* For example, the *ABA Standards* require that schools have specific learning outcomes in legal writing, legal research, and communication. Based on this standard, a law school could have the following learning outcome (level 1): Each graduating student will demonstrate a proficiency in synthesizing legal principles and applying them to a client's factual scenario. This is a broad learning outcome because students will need to learn several different skills to be able to accomplish it. This broad outcome would then be divided into more specific and narrow learning outcomes, which would be placed into one or more courses. Three examples include: (1) Students will synthesize authorities into legal principles with elements, factors, or conditions, as appropriate; (2) Students will strategize legal analysis by taking into account the hierarchy and relative weight of authority as appropriate for the jurisdiction and the client's particular issue; and (3) Students will apply synthesized legal principles to the client's factual scenario, analogizing and distinguishing legal sources to the client's facts, as appropriate.

62. *See generally* L. DEE FINK, CREATING SIGNIFICANT LEARNING EXPERIENCES, REVISED AND UPDATED: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES 38–40 (2013) (formulating course goals around significant learning); DAVID REINHOLD, SCHOLARWORKS, DEVELOPING EFFECTIVE LEARNING OUTCOMES, *available at* http://goo.gl/3lQI1W.

63. *See* KUH ET AL., *supra* note 61, at 8–9.

64. Some educators will call these criteria because they state the specific ways that the outcome will be measured. *See e.g.*, Univ. of Dayton Sch. of Law, University of Dayton School of Law Learning Outcomes and Performance Criteria (Nov. 19, 2014), *available at* https://www.udayton.edu/law/_resources/documents/academics/learning-outcomes-and-performance-criteria.pdf.

65. PEGGY L. MAKI, ASSESSING FOR LEARNING: BUILDING A SUSTAINABLE COMMITMENT ACROSS THE INSTITUTION 87–89 (2010). Sometimes, these more specific outcomes will be placed into an academic program like the legal writing program or the experiential learning program.

To begin developing learning outcomes, schools need to have several discussions about what are the knowledge, skills, and values that they want their students to obtain while in law school.[66] Many different sources can help schools develop this list, including surveys on what lawyers need to know and be able to do when practicing law.[67] Regardless of whether the learning outcome is a broad statement for the entire law school or for a particular course, it must contain three elements: (1) a stem, (2) an action verb, and (3) an outcome.[68]

The stem is the part of the outcome that focuses on the students and when or what they should be able to do or know. A learning outcome starts with the stem: Stems can begin with the following language:

By the end of the semester, the students will be able to . . .

Upon graduation, the students should have proficiency in . . .

After completing the course, the students will . . .

The next part of the learning outcome is an action verb that aligns with a cognitive level from Bloom's Taxonomy.[69] The six levels

66. *See* NORMAN E. GRONLUND & SUSAN M. BROOKHART, GRONLUND'S WRITING INSTRUCTIONAL OBJECTIVES (Pearson, 8th ed. 2008); *see also Assessment Primer*, *supra* note 61.

67. Many surveys detail the skills and knowledge that new and experienced lawyers must obtain to properly practice law. *See* STEVE NETTLES & JAMES HELLRUNG, NAT'L CONFERENCE OF BAR EXAM'RS, A STUDY OF THE NEWLY LICENSED LAWYER (July 2012); Neil Hamilton, *Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?*, THE BAR EXAM'R 6 (2014); ALL-SIS, A STUDY OF ATTORNEYS' LEGAL RESEARCH PRACTICES AND OPINIONS OF NEW ASSOCIATES' RESEARCH SKILLS (June 2013), *available at* http://www.aallnet.org/sections/all/storage/committees/practicetf/final-report-07102013.pdf.

68. *See* GRONLUND & BROOKHART, *supra* note 66; *see also* PETER EWELL, GENERAL EDUCATION AND THE ASSESSMENT REFORM AGENDA (2004).

69. David R. Krathwohl, *A Revision Bloom's Taxonomy: An Overview*, 41 THEORY INTO PRACTICE 212, 212–13 (2002) (detailing the reasons Benjamin Bloom developed the taxonomy of learning). Bloom saw the original Taxonomy as more than a measurement tool. He believed it could serve as a:

> [C]ommon language about learning goals to facilitate communication across persons, subject matter, and grade levels; basis for determining for a particular course or curriculum the specific meaning of broad educational goals, such as those found in the currently prevalent national, state, and local standards; means for determining the congruence of educational objectives, activities, and assessments in a unit, course, or curriculum; and panorama of the range of educational possibilities against which the limited breadth and depth of any particular educational course or curriculum could be contrasted.
>
> Krathwohl revised the original cognitive levels from nouns to verbs, which helps with developing learning outcomes.

Id.

of cognition, with the first one requiring the lowest level of cognition and the sixth one requiring the highest level of cognition, are:

1. Remember: Retrieving, recognizing, and recalling relevant knowledge from long-term memory.

2. Understand: Constructing meaning from oral, written, and graphic messages through interpreting, exemplifying, classifying, summarizing, inferring, comparing, and explaining.

3. Apply: Carrying out or using a procedure through executing, or implementing.

4. Analyze: Breaking material into constituent parts, determining how the parts relate to one another and to an overall structure or purpose through differentiating, organizing, and attributing.

5. Evaluate: Making judgments based on criteria and standards through checking and critiquing.

6. Create: Putting elements together to form a coherent or functional whole; reorganizing elements into a new pattern or structure through generating, planning, or producing.[70]

A detailed list of verbs to use in learning outcomes that fit under each of these cognitive levels appears in Appendix A.

Finally, the learning outcome should end with some product, process, or outcome that is measurable.[71] This should be the most specific part of the learning outcome. Some examples include:

. . . *draft a predictive office memorandum.*

. . . *analogize specific cases to a client's legal problem.*

. . . *find the relevant law using electronic and print resources.*

The stem, action verb, and outcome should be put together in one sentence to form a learning outcome. These steps are the same for any type of learning outcome, including those for the entire law school, an academic program, or a course.

To comply with the *ABA Standards* on outcomes and assessment, The John Marshall Law School faculty started with developing learning outcomes that related to professional skills. To determine the professional skills outcomes at John Marshall, the faculty sent surveys to the school's employers and alumni seeking their input on the types of documents, lawyering skills, and research skills that are typical for a first-year attorney. Based on this survey, the faculty developed a list of professional skills in which the students should have some compe-

70. LORIN W. ANDERSON ET AL., A TAXONOMY FOR LEARNING, TEACHING AND ASSESSING: A REVISION OF BLOOM'S TAXONOMY OF EDUCATIONAL OBJECTIVES 67–68 (2001).

71. *See* GRONLUND & BROOKHART, *supra* note 66.

tency level. This list was subsequently the basis for the skills learning outcomes.

B. Curricular Mapping

After a school develops learning outcomes, the next step is to determine where they should be taught in the curriculum.[72] Some learning outcomes may be placed in one or more classes, and some may be placed into specific programs or parts of the curriculum at the school (e.g., legal research and writing program, clinical program, first-year courses, etc.). Some of the broader outcomes may need to be further developed into narrower outcomes so they can be placed into multiple courses, this is the process of curricular mapping.[73]

Knowing students do not generally learn a skill in only one class, but as a progression through multiple courses, part of the curricular mapping process will require the law school to determine at which level it wants its students to achieve a particular learning outcome in each course.[74] For example, students may be introduced to researching state law using online resources in their first semester of legal research and writing, but most schools will not expect the students to have mastered this skill yet. Instead, a curricular map may only require the students be introduced to online research in the first semester but expect them to be competent by the end of their second semester.

In going through this mapping process, the professional skills faculty at John Marshall used four levels of competence when placing the outcomes into specific courses in its Lawyering Skills Program ("LSP"):

1. Introductory: The students are only *introduced* to a skill. They also may practice the skill, but are not fully assessed on their competency. These are skills that are introduced to the students but will be covered in another course. One example may be introducing the students to client interviewing. The students may interview a client in class, but they are not fully assessed on how well they did. Assessment

72. *See* Nelson P. Miller, *Mapping Lawyer Competencies Onto the Law School Curriculum to Confirm that Graduates Are Prepared for Law Practice*, W. MICH. UNIV. COOLEY LAW SCH. 3–4 (June 30, 2011), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2461037.

73. *Id.*; *see* Susan Duncan, *Mind the Gap: How Curriculum Mapping Plays a Role in the Outcome Measures Regime*, UNIV. OF LOUISVILLE – LOUIS D. BRANDEIS SCH. OF LAW (July 5, 2010), *available at* http://ssrn.com/abstract=1635071.

74. *See* Veronica Boix Mansilla et al., *Targeted Assessment Rubric: An Empirically Grounded Rubric for Interdisciplinary Writing*, 80 J. HIGHER EDUC. 334, 339–46 (2009).

is defined as a tool for providing students feedback or grades on their progress or competency level.

2. Competent: The students are expected to be minimally *competent* in this skill by the end of the course. This is an important skill in the class, but that skill will be further developed in another course (whether in another lawyering skills, doctrinal, or specialized skills-based course). The student should be able to complete the skill satisfactorily; mastering the skill is not required. An example of a skill requiring only competency in LS 1 may be using citation signals or parentheticals. A professor may teach the skill during the semester and provide feedback on it (and maybe even factor it into a student's grade), but the student is expected to have much more practice with it in LS 2 or beyond.

3. Mastery: The students will need to *master* the skill by the time they complete the course. The students are expected to perform this skill satisfactorily without any further instruction. The students should be able to satisfactorily perform this skill in the practice of law at a competency level of a first-year attorney. An example of this skill would be organizing an office memorandum or using IRAC/CREAC.[75]

4. Advanced: The students already should have mastered the skill, but will need more *advanced* instruction.

The process of mapping a curriculum can be difficult, and it often needs to be adjusted.[76] A curriculum map can come in any form that clearly shows which courses will cover each specific learning outcome.[77] Additional information in the curriculum map could be the exact competency level the school expects each student to obtain in each course and the specific forms of assessment that will be used to

75. IRAC and CREAC are acronyms for organizing legal analysis. IRAC represents Issue, Rule, Analysis, and Conclusion. CREAC represents Conclusion, Rule, Rule Explanation, Application, and Conclusion. The two paradigms, along with several others, generally follow the same organizational path. *See* Tracy Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational Structure: A Review and Analysis of the Use of IRAC and Its Progenies*, 9 LEGAL COMM. & RHETORIC: JALWD 351, 357–58 (2012).

76. An effective place to begin is with the outcomes are already being taught Debra Curtis and David Moss have written about a process of course mapping that took place at Nova Southeastern University to help the faculty review and plan the school's curriculum. *See* Curtis & Moss, *supra* note 60 (detailing the process of mapping courses to help in curricular planning); Curtis, *supra* note 60, at 365–70 (detailing how mapping a curriculum can help provide information about what is already being taught). *See* SUSAN UDELHOFEN, KEYS TO CURRICULUM MAPPING—STRATEGIES AND TOOLS TO MAKE IT WORK xvii (2005).

77. *See* UDELHOFEN, *supra* note 76, at xvii.

evaluate that competency level.[78] Here is an example from the University of Connecticut[79]:

Program- or Institution-level Map

Learning Outcomes	Course or Educational Experience #1	Course or Educational Experience #2	Etc.
Outcome #1	I		
Outcome #2	E	R	
Outcome #3		R	
Outcome #4	I	E	
Etc.			
I = introduced, **R** = reinforced, **E** = emphasized			

In developing the curricular map for the professional skills taught at John Marshall, the faculty developed a table that included columns for the four required courses in the LSP, the school's comprehensive professional skills and legal writing program, and one column for "other courses." The John Marshall Law School has four required semesters in LSP. LS 1, the first semester of LSP, focuses on the basics of legal research, legal analysis, and writing. Students draft predictive/objective office memoranda. LS 2 teaches students persuasive writing through typical pre-trial motions and documents. LS 3 focuses on appellate advocacy. The school offers several LS 4 courses, where students learn how to write and engage in the lawyering skills typical in different specific areas of the law. With these as the overarching goals of the four courses, the faculty placed all of the learning outcomes into each of the courses and designated the level of competency expected of the students in that course. To illustrate this, here is part of the curricular map for the John Marshall Lawyering Skills Program. The complete map is detailed in Appendix B:

78. *See* AUSTRALASIAN PROF'L LEGAL EDU. COUNCIL, COMPETENCY STANDARDS FOR ENTRY LEVEL LAWYERS 4 (Nov. 2000), *available at* http://www.aplec.asn.au/Pdf/Competency_Standards_for_Entry_Level_Lawyers.pdf.

79. MAKI, *supra* note 65, at 87–89.

Learning Outcomes for Lawyering Skills Program

Learning Outcome	LS 1	LS 2	LS 3	LS 4	Other Courses
Students will recognize and apply basic concepts of federalism and the three branches of government.	M				
Students will recognize and apply basic concepts regarding jurisdiction, hierarchy, and weight of authority.	M				
Students will appreciate the importance of, and obligation to, gather facts relevant to key legal issues and will employ strategies to gather such facts.	I	C	M		

IV. Effective Assessment Across the Law School Curriculum

Using the curriculum map as a guide, law schools next need to determine how the students will be assessed on these different learning outcomes. As required by the *ABA Standards*, schools will need to test these outcomes at the course, programmatic, and institutional level.[80] Professors will also need to use multiple forms of assessment, including a mix of formative and summative assessment.[81] Developing a comprehensive assessment plan requires a law school to be more deliberate in planning its curriculum. All aspects of assessment should be tied together and to the school's learning outcomes so the school has all of the data to evaluate and adjust its program of legal education.

A. Rubrics and Score Sheets

A rubric is a tool that can promote student learning and focus the professor on what he or she expects of the students.[82] Rubrics are effective tools for formative, summative, programmatic, and institutional assessment.[83] Rubrics are sets of detailed criteria professors use

80. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 315 (2015).

81. *See* Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 J. LEGAL WRITING INST. 313, 320 (2010).

82. Sandra L. Simpson, *Riding the Carousel: Making Assessment a Learning Loop Through Continuous Use of Grading Rubrics*, 6 CANADIAN LEGAL EDUC. ANNUAL REV. 35 (2011).

83. *See* Jessica L. Clark & Christy Hallam DeSanctis, *Toward a Unified Grading Vocabulary: Using Grading Rubrics to Set Student Expectations and Promote Consistency in Legal Writing Courses*, 63 J. LEGAL EDUC. 3 (2013).

to assess students on specific aspects of an assignment.[84] Sophie Sparrow, in her article *Describing the Ball: Improve Teaching By Using Rubrics—Explicit Grading Criteria*, details the purpose of rubrics: "More specific than letter grades or raw numbers, rubrics describe how a student performed in a number of areas. Varying in complexity and approach, rubrics identify the knowledge and skills a teacher assesses, and provide criteria for how a student demonstrates success in these skills."[85]

A typical rubric will be similar to this:

Levels of Quality			
	Mastery Advanced work for a second-year law student—on a job, the work would need very little revision for a supervising attorney to use	Competent Proficient work for a second-year law student—on a job, the work would need to be revised with input from a supervising attorney	Developing Work needs additional content or skills to be competent—on a job the supervising attorney would need to start over
Legal Analysis Skills: Questions/Summary/Facts			
Questions Presented	Includes clear legal issues, jurisdiction, and most significant facts. Focus is on the essential facts of the case without being so general that is makes legal conclusions	Includes legal issues but may lack clarity, legal references, or is missing some significant facts. Includes legal issues, but makes some legal conclusions.	Is unclear, identifies a different issue, or is missing major parts. Makes legal conclusions without stating the essential facts.

This type of rubric provides detailed information to the students about their performance by explaining the gradations of what constitutes success. These should be tied to the learning outcomes and the curricular map detailed in the preceding sections.

Well-developed grading rubrics can help facilitate student learning because they explicitly state the expectations for an

84. Sophie M. Sparrow, *Describing the Ball: Improve Teaching By Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 5 (2004).

85. *Id.* at 7–8.

assignment.[86] Too often, students complain that assessing a written product or some other professional skill is too subjective.[87] Failure to provide detailed feedback on assignments explaining the reason for a particular grade only fosters this type of thinking on behalf of the student. Rubrics can help stop some of the common complaints students have about grading, including: "I do not know what the professor wants," "I only learn what the professor wants after we completed an assignment," and "I never really knew why I did something well or poorly."[88]

Law professors are equally frustrated with student performance, even when they try new teaching techniques. Rubrics can fix many of these problems because they will provide students more information regarding professor expectations before an assignment is due and the basis for a particular grade on an assignment.[89] Rubrics also help professors by requiring them to explicitly state what makes a part of an assignment bad, average, or good.[90]

Rubrics provide several benefits: First, they provide timely feedback by reducing the time for grading. Instead of writing the same detailed response on each paper, the professor can simply mark the appropriate statement in the rubric.[91] Second, it provides detailed feedback to the students and shows them where they can improve.[92] Third, it helps refine a professor's teaching. Because rubrics force the professor to reflect on expectations and outcomes, professors become more focused and clear in their teaching. Fourth, it treats students equally during the assessment process. Professors who grade papers over long periods of time can grade papers differently because they may be tired or do not remember what they said in an earlier paper. Rubrics provide more consistent feedback to each student.[93] Lastly and most importantly, rubrics help professors focus their teaching and more explicitly guide the learning of their students.[94]

86. *See* Beverly Petersen Jennison, *Saving the LRW Professor: Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments by Section and Provide More Effective Assessment in Less Time*, 80 UMKC L. REV. 353, 364 (2011).

87. *See* Clark & DeSanctis, *supra* note 83, at 4.

88. Sparrow, *supra* note 84, at 2.

89. *Id.* at 5.

90. *Id.*

91. *See* DANNELLE D. STEVENS & ANTONIA J. LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNING 17–28 (2d ed. 2012).

92. *Id.*

93. *Id.*

94. Sparrow, *supra* note 84, at 16.

B. Summative Assessment

Summative assessment techniques should evaluate whether the students have satisfied the learning outcomes listed in the syllabus.[95] Law schools and professors already do this through final exams, midterm exams, papers, assignments, and simulations.[96] Effective summative assessment techniques should be directly linked to the learning outcomes for the course.[97] For example, a legal writing professor could require students to draft a judicial opinion for a motion for summary judgment if a learning outcome is: "Upon completion of the course, the students will be able to predict an outcome of a discrimination claim at all stages of litigation, including a summary judgment motion, a trial, and post-trial motions."

Types of summative assessment techniques include: essay exams; graded midterm exams; multiple choice exams; short answer exams (answers are less than a paragraph); take home exams; research papers; short opinion papers; drafting legal documents; writing assignments; trials; oral arguments; complex simulation assignment (mediation, deposition, etc.).

In developing the techniques for assessing learning outcomes the school will need to determine where to include summative assessment. Each learning outcome can be assessed in specific classes or as part of special assessment program for the entire school.[98] For example, an important goal could be to have the students pass the bar examination. A school can have a learning outcome that says: "Each graduating student will demonstrate an ability to succeed on the state bar exam by applying the knowledge, skills, and values learned throughout the curriculum and mastering the components of the exam." To assess this outcome, the school and each professor will need to determine the best places to include summative assessments to see if the students are satisfying this outcome on the bar exam. First, the assessment would likely be part of the final exam for each one of the courses tested on the bar exam. Second, the school may institute programmatic or institutional assessment by creating and ad-

95. *See Designing Fair and Effective Assessment Plans*, DREXEL UNIV., http://drexel.edu/dcae/assessment/assessment-plans/ (last visited Sept. 14, 2015).

96. David Thomson, *When the ABA Comes Calling, Let's Speak the Same Language of Assessment*, 23 PERSP.: TEACHING LEGAL RES. & WRITING 68, 71 (2014).

97. STUCKEY ET AL., *supra* note 1, at 178–96.

98. *Id.*

ministering a shortened version of the bar exam that every student takes after the third semester of school.[99]

Overall, the goal of summative assessment is to see if the students have reached the competency level the school expects at any given time in the curriculum. This can be accomplished by using a common rubric or some objective test like a multiple choice exam. Grading rubrics are helpful when assessing professional skills like writing and trial practice, because it provides information to the student on what is expected and what will be tested. It also provides more uniformity in assessing the students, especially when multiple professors or graders assess the assignments.

C. Formative Assessment

Formative assessment is specifically intended to provide feedback to the students during the learning process to improve the students' learning.[100] Formative assessment generally occurs before summative assessment.[101] Formative assessment provides information to both the students and professor so they can adjust the learning and teaching process to promote further learning.[102]

Formative assessment is an ongoing process that requires frequent testing, appropriate feedback, and additional opportunities to improve learning.[103] Examples of formative assessment tools used in law schools include mid-term exams, feedback on drafts of student

99. The "mini-bar exam" could be at any point where the students have completed the courses that are tested on the bar exam. That could be at the end of the first year or some other place in the curriculum.

100. *Outcomes Based Education*, U.C. HASTINGS COLL. OF LAW, http://www.uchastings.edu/about/consumer-info/wasc/outcomes/index.php (last visited Sept. 7, 2015) (discussing formative assessment as a method of assessment that provides feedback to the students in meeting the student learning outcomes); *see also* Jones, *supra* note 44, at 107 (discussing how formative assessment is a process that provides feedback on students' progress).

101. *Summative and Formative Assessment*, INDIANA UNIV. BLOOMINGTON, http://citl.indiana.edu/resources_files/teaching-resources1/teaching-handbook-items/assessment-summative-formative.php (last visited Sept. 7, 2015) (contrasting the uses of formative and summative assessment; noting that formative assessment is used for improving rather than evaluating; and noting that summative assessment is used to demonstrate that students have reached the course goals).

102. Jones, *supra* note 44, at 107 (noting that the feedback provided to professors allows them to reinforce or alter future lessons to help meet learning objectives).

103. *Assessing Student Learning*, EDTECHTEACHER, http://edtechteacher.org/assessment/ (last visited Sept. 7, 2015) (noting that formative assessment is ongoing); Sarah McMillian McManus, A Study of Formative Assessment and High Stakes Testing: Issues of Student Efficacy and Teacher Views in the Mathematics Classroom 23 (2008) (unpublished Ph.D. dissertation, North Carolina State University) (noting that formative assessment is an ongoing process).

papers, and short reflective papers throughout the course. Effective formative assessment techniques provide feedback to students and assist them in answering the following questions:

1. Where am I going?
2. Where am I now?
3. How can I close the gap between the two?[104]

Formative assessments also provide professors with information on how well the students are learning.[105] When professors know how students are progressing and where they are having trouble, they can use this information to make necessary instructional adjustments, such as re-teaching, trying alternative instructional approaches, or offering more opportunities for practice.[106] These activities can lead to improved student success.[107]

A formative assessment technique will be most effective when it:

1. Helps clarify what constitutes good performance
2. Delivers high quality information
3. Helps close the gap between current and desired performance
4. Encourages a dialogue between the student and teacher
5. Facilitates the development of self-assessment
6. Provides information to the teacher to help shape teaching
7. Encourages positive motivational beliefs.[108]

Although the best formative assessments include detailed feedback to the student, a professor can improve the students' learning using some of the following formative assessment techniques (although there are countless other ways to assess).[109] Remember the

104. Stephan Chappuis & Jan Chappuis, *The Best Value in Formative Assessment*, 65 EDUC. LEADERSHIP 14, 17 (2007); Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N.U. L. REV. 227, 233–34 (2015) (presenting similar questions that lead to the outcome of how formative assessment provides feedback for improvement).

105. Jones, *supra* note 44, at 107 (discussing how formative assessment is a process that provides feedback on students' progress in meeting learning objectives during a course).

106. *Assessing Student Learning*, *supra* note 103 (noting that formative assessment provides information needed to adjust teaching and learning for a more effective outcome); Bloom, *supra* note 104, at 232 (noting that what makes assessment formative is that it is used immediately to make adjustments to form new learning).

107. Niedwiecki, *supra* note 59 (discussing how formative assessment can effectively teach students how to be lifelong learners).

108. Developed from David J. Nicol & Debra Macfarlane-Dick, *Formative Assessment and Self-Regulated Learning: A Model and Seven Principles of Good Feedback Practice*, 31 STUD. IN HIGHER EDUC. 199, 205 (2006).

109. MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 137–139 (2009).

goal is to provide students practice, feedback on their learning, and to provide information regarding how well the students are doing.[110]

Think, pair, share. Provide the students with a question or short assignment. Have the students answer the question or complete the assignment. Then have the students share their responses with a neighbor. Then have the students share their answers with the entire class.[111]

Short questions. Provide the students with a question at the end of class. Have them write an answer. Review the answers to see whether the students are learning to plan for the next class.[112]

Multiple choice questions. Give the students a multiple-choice question at the beginning of class. Use this question to begin a discussion in class.[113]

Reflective papers. Have the students reflect on the class. A professor can give a prompt (i.e., what was the most important principle from *Jones v. Smith*?), or just ask what they learned for the day.[114]

Simulations. Have the student engage in a practical skill that requires the students to apply some material learned in class (i.e., interview a client or witness, argue a motion, draft a contractual provision, depose a party, negotiate a deal, etc.) For example, have the students interview a client so they can apply what they have learned about sexual harassment law.[115]

Message board. On Moodle or Blackboard, use a chat room or message board. Then, pose a question on the board, and the students may answer the question or respond to their classmates' answers.[116]

Short essays. Create a one-issue essay, which could be adapted from the *Examples and Explanations*[117] series or some other book. Critique each one personally, or have the students peer review another's work. A grading rubric or score sheet that guides the peer review pro-

110. Jones, *supra* note 44, at 107 (discussing how formative assessment provides feedback to students and the instructors on students' progress in meeting learning objectives during a course).

111. SCHWARTZ ET AL., *supra* note 109, at 116.

112. *Id.* at 139.

113. *Id.*

114. *Id.* at 150–51.

115. *Id.* at 139.

116. *Id.* at 117.

117. The *Examples and Explanations* series of study aids provides a series of short hypothetical questions followed by an answer and explanation of the answer. For more information about the series, see *Examples & Explanations*, WOLTERS KLUWER, http://www.wklegaledu.com/series/examples-explanations (last visited Jan. 28, 2016).

cess may also be used, as well as providing an answer sheet or going through the answer in class.[118]

D. Metacognition

Law schools generally see a wide range of abilities and skills among the students, both during the first year and throughout law school.[119] Regardless of their skills and abilities, they all are beginning law school and a profession that require life-long learning.[120] Life-long learners need to have strong metacognition skills, and law schools need to do more to improve the metacognitive skills of their students so students can transfer their learning to law practice.[121]

There are many definitions of metacognition, but learning theorists essentially break it down into two parts: the knowledge of cognition and the regulation of cognition.[122] Some have described metacognition as the voice in one's head that tells you when you do not understand something, need to change your methods of learning, or believe you completed a task.[123] Some scholars and teachers may

118. *Id.* An excellent resource on exercises and formative assessment techniques that are tailored to specific subject areas is STEVEN FRIEDLAND & GERALD F. HESS, TEACHING THE LAW SCHOOL CURRICULUM (2004), *available at* http://lawteaching.org/resources/books/techniquesforteachinglaw1999/hess-gerald-techniquesforteachinglaw1999.pdf.

119. *See* Cheryl Preston, Penée Wood Stewart & Louise R. Moulding, *Teaching "Thinking Like a Lawyer": Metacognition and Law Students*, 2014 B.Y.U. L. REV. 1053, 1086–87 (2014) (discussing their study that shows that law students are under-prepared and come with a wide range of skills and abilities).

120. *See* Anthony Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33, 42 (2006) (arguing that the "goal of legal education should be to make students self-regulated learners" because the practice of law requires constant learning of new information and tasks).

121. STUCKEY ET AL., *supra* note 1, at 172 ("[D]eveloping lifelong learning skills may be the most important goal of legal education.").

122. For a discussion on how different learning theorists approach the concept of metacognition, see Emily Fox & Michelle Riconscente, *Metacognition and Self-Regulation in James, Piaget, and Vygotsky*, 20 EDUC. PSYCHOL. REV. 373 (2008). *See* Kate E. Bloch, *Cognition and Star Trek: Learning and Legal Education*, 42 J. MARSHALL L. REV. 959 (2009); Jackie Dobrovolny, *How Adults Learn from Self-Faced, Technology Based Corporate Training: New Focus for Learners, New Focus for Designers*, 27 DISTANCE EDUC. 155 (2006); Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public and the Legal Profession*, 44. CAL. W. L. REV. 219 (2007); Paul S. Steif, Jamie M. Lobue & Levent B. Kara, *Improving Problem Solving Performance by Inducing Talk About Salient Problem Features*, 99 J. OF ENG'G EDUC. 135 (2010).

123. *See* Niedwiecki, *supra* note 120, at 41–42. Fox & Riconscente, *supra* note 122, at 383 (metacognition is "the internal voice people hear when they are engaged in the learning process—the voice that will tell them what they have to do to accomplish a task, what they already know, what they do not know, how to match their previous learning to the new situation, when they do not understand what they are reading or learning, and how to evaluate their learning).

describe metacognition in different terms, including self-regulated learners or expert learners,[124] but it is simply the internal reflection and deliberate control that learners should engage in when learning.[125]

All people employ different metacognitive skills when they learn, often without even knowing it. They will read text and know whether they understand it or not. They may listen to a speech and realize that they do not understand the underlying assumptions made by the speaker. They may see their son or daughter complete math homework using new methods and then realize they do not understand this new process and cannot draw any similarities with what they did when they learned mathematics. Or they realize that they are not completing a work assignment because they lack the motivation to do so. All of these are examples of people employing their metacognitive skills to complete separate tasks.[126]

Common examples of the type of metacognitive skills students employ in law school include monitoring one's reading comprehension, evaluating one's process of learning, understanding the influence of outside stimuli on one's learning, and knowing when one lacks motivation, just to name a few. The students who use many metacognitive skills well are often the best learners.[127] Consequently, those law students who come to school and are immediately successful are often the ones who have developed good metacognitive abilities through their previous learning experiences.[128]

To fully understand what constitutes a metacognitive skill, it needs to be differentiated with cognitive skills. Cognitive skills are those that are needed to perform a specific task, while "[metacognitive skills involve an] understanding of how [that] task is performed."[129] The focus at most law schools is training students in

124. Dale H. Schunk, *Metacognition, Self-Regulation, and Self-Regulated Learning: Research Recommendations*, 20 EDUC. PSYCHOL. REV. 463 (2008); Charlotte Skinner, *Self-Regulated Learning, in* DEVELOPING FACULTY LEARNING COMMUNITIES AT TWO-YEAR COLLEGES 93–108 (SUSAN SIPPLE & ROBIN LIGHTER eds, 2013).

125. Niedwiecki, *supra* note 120, at 41–43.

126. *Id.;* Preston, Stewart & Moulding, *supra* note 119, at 1051–55.

127. *See, e.g.*, Nicol & Macfarlane-Dick, *supra* note 108, at 205 ("[L]earners who are more self-regulated are more effective learners: they are more persistent, resourceful, confident and higher achievers.").

128. *See* Annamari Heikkilä & Kersti Lonka, *Studying in Higher Education: Students' Approaches to Learning, Self-Regulation, and Cognitive Strategies*, 31 STUD. IN HIGHER EDUC. 99, 101 (2006).

129. Niedwiecki,, *supra* note 120, at 42–43, (citing to Gregory Schraw, *Promoting General Metacognitive Awareness*, 26 INSTRUCTIONAL SCI. 113, 113 (1998)).

various cognitive skills, from legal analysis in a doctrinal class to the drafting of a legal document in a skills course.[130] For example, students eventually become skilled at using IRAC to organize their writing, which is a cognitive skill. Determining when to modify the IRAC structure would be considered a metacognitive skill, which requires a much more complex and deliberate thought process.[131]

The problem is that law schools do not focus enough on teaching metacognitive skills because the focus is on teaching doctrine and specific cognitive skills without enough emphasis on ensuring that students have the ability to transfer these skills and knowledge. As a result, students focus more on surviving law school—to survive the class, exam, or law school in general.[132]

Unfortunately, law schools focus much more on summative assessment instead of formative assessment, which hinders the expansion of students' metacognitive skills. For example, many classes only provide a final exam or a final paper without giving students the necessary feedback to improve student learning, so students generally determine how to get the highest grade on the assignment without fully knowing if they used the correct process to get there. This emphasis on summative assessment focuses too much on the end-product and not enough on the process of how a student got the final product. Sometimes, students will get the "right answer" but went through the wrong process to get there. A positive result will encourage the student to apply those techniques in the future.[133] To improve the metacognitive skills of students, professors need to do more than provide summative assessment tools. Properly integrating more formative assessment into each class will do the most to improve the metacognitive skills of law students.

Professional skills courses are more likely to improve the metacognitive skills of students because the focus is not just on the end-product in a class. Instead, these classes often employ multiple formative assessment techniques that focus on the process of the stu-

130. *See* Stephen J. Friedman, *Why Can't Law Students Be More Like Lawyers?*, 37 U. TOL. L. REV. 81, 84 (2005); Sarah Valentine, *Legal Research as a Fundamental Skill: A Lifeboat for Students and Law Schools*, 39 U. BALT. L. REV. 173, 173 (2010).

131. Niedwiecki, *supra* note 120, at 42–43.

132. Leah M. Christensen, *Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement, and the Declining Self-Efficacy of Our Law Students*, 33 LAW & PSYCHOL. REV. 57, 59 (2009) (noting that law students are "performance oriented learners" who are led to believe that success is measured by high grades and academic honors rather than comprehension).

133. *See* Niedwiecki, *supra* note 120, at 151–52.

dent through multiple critiques of the students' writing and individual conferences. The authors in the *Carnegie Report* understand the importance of this formative assessment process and recognize that all learning will impact future learning:

> This last step, which psychologists call metacognition, turns the student's activity back on itself in order to produce awareness in the student of what is being learned—a "second order" or reflective awareness; then the process is reiterated, with gradually more difficult and complex tasks, toward the aim of improved competency in writing.[134]

Because all learning impacts future learning, it is important that professors use the formative assessment process in a way that strengthens the students' metacognitive skills.

In the article, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques,* this author describes a process of using formative assessment to attack the process of learning instead of the end-product of learning. It is shown how the use of student self-assessments at multiple times during the course can open a dialogue between the professor and student on how the student developed a particular assignment. The seven principles of effective formative assessment are used to guide the development of these self-assessments.[135] Examples of how self-assessments work include:

1. Preliminary Course Planning: Asks the students for their expectations for and understandings of the course. This is given to the students at the beginning of the semester to engage the students in the knowledge of cognition phase of metacognition.[136]

2. First Self-Assessment of an Assignment: Given to students immediately after they submit their papers, asking the students about their perceived strengths and weaknesses. This self-assessment can also ask a variety of other questions, including the amount of time they spend on the paper, any questions they have for the professor, or ideas on how they will change their process on the next assignment.[137]

3. Post-Critique Self-Assessment: Given to the students when their critiqued papers are returned, asking the students to interpret and analyze the professor's comments.[138]

134. SULLIVAN ET AL., *supra* note 1, at 110.
135. Niedwiecki, *supra* note 59, at 184–93.
136. *Id.* at 187.
137. *Id.* at 188.
138. *Id.* at 189.

4. Rubrics: Give the students the grading rubric right before they get their critiqued papers from the paper. The students re-read their paper and use the grading rubric to assess their own paper. The students then get the professor's filled-out grading rubric. The students are then required to compare the rubrics and answer questions about the similarities and differences between the two. This activity will be a great way to focus students when they have individual conferences with their professors.[139]

5. Final Assessment for Course: Review all of their previous self-assessments forms and determine if they met their goals and expectations. It also requires them to plan for future learning by asking them which skills they still need to develop further.[140]

6. These self-assessment forms coupled with good feedback improves the ability to understand the students' process of completing a task to help them make the necessary adjustments.

V. John Marshall's Assessment Plan for Professional Skills

Based on the foregoing steps and best practices of developing a comprehensive assessment plan, The John Marshall Law School took the curriculum map for the school's professional skills and developed a plan to improve the assessment and learning of its students. Detailed below are all of the proposals that the faculty has adopted.

A. Define Themes for Each Skills Course to Provide More Cohesiveness

John Marshall has several required professional skills courses, including a four-semester Lawyering Skills Program (LSP). In an effort to make LSP more cohesive and comprehensive, the school adopted a theme for each of the semesters in the program. LS 1, the first semester course, continued to focus on the basics of legal analysis, research, and writing, but the program began to include assignments on planning and problem solving instead of only litigation or legal disputes. Professors were encouraged to make their final major assignment in LS 1 a transactional planning problem to expose students to a wider range of problems lawyers are likely to encounter. For example, the final assignment could be a memorandum of law that would analyze an issue that is more transactional-based, like preparing a covenant not to compete or developing a trust. The students would then use the

139. *See id.* at 178, 183.
140. *Id.* at 192.

memorandum to practice some other lawyering skill, such as negotiating a deal or drafting a contractual provision.

LS 2 would move the students from drafting predictive memoranda on transactional-based problems to drafting persuasive documents associated with the steps of a lawsuit. The assignments are designed to walk the student through the pre-trial steps of a lawsuit, including counseling and interviewing a client, filing pleadings, seeking an injunction, drafting various motions, developing basic discovery requests, and drafting a motion and arguing for summary judgment. The students would also be exposed to how administrative law impacts and influences litigation. The class would include practicing the students' oral communication and advocacy skills.

By separating the courses into these two separate themes, it allows the school to include coverage of many of the skills that were identified in the survey of the school's employers and alumni. It also introduces the students to the difference between transactional and litigation practices. Additionally, it allows professors to collaborate more easily because the themes of LS 1 and LS 2 would correspond to the doctrinal courses that the students are taking. For example, an LS 1 professor could work with a contracts professor in drafting a contract provision that is related to a memorandum drafted in LS 1. For LS 2, the course could correspond with the students' civil procedure course.

LS 3 has recently been modified and now focuses solely on advanced advocacy skills. As a result, the faculty removed the teaching of an appellate brief that was previously part of LS 2 and moved it to LS 3. LS 3 covers these advanced advocacy skills using appellate problems. The faculty also approved an additional credit to LS 3 to accommodate the additional appellate brief that was moved from LS 2. The biggest change was to add an appellate brief from a current federal court case and require the students to deal with an actual appellate record. After providing the students with a 200-page appellate record, the students are required to synthesize a large amount of facts, an overlooked professional skill.

The school made no real changes to LS 4, which is a specialty lawyering skills course. The school offers a dozen LS 4 courses in specific areas of the law, including health, criminal, and family law, among many others. The only change was to include more choices for students based on where the students typically get their initial legal jobs. Here's how the school divided the skills into each of the first three semesters:

LS 1—Legal Analysis, Research, Predictive Writing, and Planning	
Core Concepts Understanding the legal system Legal analysis and synthesis Memoranda and general correspondence (email and letters) Citation Research—focus on state with some introduction to federal Books—introduce Online fee-based research Secondary sources	Subsidiary Concepts Ethics and professionalism—introduce relevant ethical rules Client counseling and interviewing Include a transactional planning problem Negotiation and contract provision Basic oral communication
LS 2—Persuasive Writing and Pre-Trial Issues	
Core Concepts Complaint Motions Research—state and federal with focus on federal Fee-based online services Free sources Administrative materials Oral argument	Subsidiary Concepts Correspondence—persuasive and client letter Basic discovery requests Ethical rules on advocacy Negotiation and settlement agreement Performance exam Filing documents with the court Understanding how administrative law impacts litigation
LS 3—Advanced Advocacy and Programmatic Assessment	
Core Concepts Persuasive writing Appellate Brief Oral argument Advanced concepts of rhetoric and persuasion Research—all forms of research Introduce legislative history Intra-school moot court competition as final writing assignment with oral argument Intra-school competition is used as an assessment tool for the program Will use uniform rubric to score students and store the corresponding data	Subsidiary Concepts Ethical rules Citation—Bluebook

B. Develop and Administer Learning Modules

The school's survey of its employers and alumni showed that almost 50% of John Marshall graduates go to work in offices with less than five attorneys and almost 75% go to offices with less than twenty-

five attorneys.[141] This statistic requires that the school teach more skills because the students are unlikely to receive additional support or training after they graduate. With only four LS courses to cover a great deal of material, the school needed to develop ways to train its students outside of the classroom. To accomplish this type of training, the school developed learning modules that each student must complete in LS 2. The school has plans to expand this to LS 1 and LS 3. The modules provide repetition on important skills, introduce students to skills that are more effectively taught outside of class, and provide another opportunity for the professors to assess the learning of their students.

The modules introduce the students to a lesson, allow them to practice the skills taught in the lesson, and test them to determine if they learned the material. Some modules are online and resemble a CALI lesson,[142] while others are a combination of live and online lessons. Examples of modules include teaching students how to research using government databases, drafting contractual provisions, going to court to file a document, and drafting an email to a client based on a memorandum the student wrote. Because many students will have to file documents with a court without any guidance from their employers, the school is developing a module that shows the student the process of filing a document in state court and requires the students to file a fake document.

C. Create E-Portfolios for All Students

An electronic portfolio allows students to collect all of their work into one place, including any written work or videos. For example, students can include their briefs from LSP, a will or trust they drafted, or a video of a trial they completed. The portfolio can be used in two basic ways. First, the students can select their best work to send to prospective employers. Second, it can be used to assess the learning of the students. For example, the school could randomly select twenty-five portfolios from each graduating class and evaluate their work using a uniform rubric or score sheet. This will provide the school with information on whether the students are mastering the learning out-

141. For details about the survey and its results, see Anthony S. Niedwiecki, *Law Schools and Learning Outcomes: Developing a Coherent, Cohesive, and Comprehensive Law School Curriculum*, EXPRESSO (2015), *available at* http://works.bepress.com/anthony_niedwiecki/31/.

142. CALI is an acronym for Computer-Assisted Legal Instruction. CALI lessons are online learning modules that teach various legal skills or doctrine. For the list of CALI lessons, see *Lessons*, CALI, http://www.cali.org/lesson (last visited Jan. 28, 2016).

comes developed institutionally. It also provides a place where the students will be able to complete the self-assessment forms detailed in Part III above.

D. Implement a Programmatic Assessment Tool

The school developed a common grading rubric that is tied to the learning outcomes of the school and used in LS 3. In LS 3, the students work on two appellate briefs. The first brief is used to teach students how to write an appellate brief, work with an appellate record, and argue in front of a court. The second appellate brief is used as a programmatic assessment tool.

John Marshall requires all of the students to participate in an intra-school moot court competition for the second assignment. The competition is an effective programmatic assessment tool because the students in LS 3 work on the same assignment regardless of who their professor may be. The students are scored using a uniform grading rubric for the appellate brief and a uniform score sheet for their oral argument. Three separate graders use the rubric to score the briefs, and the data is then collected and analyzed. The resulting data provides the school with information on its students' competencies and whether any adjustments need to be made to the program. It also provides the students with an idea of whether they have mastered the learning outcomes expected of graduates. This rubric should be given to the students in the first year so they know what is expected of them throughout the program.

E. Require Each Student to Take a Clinic or Externship to Build upon Their Training in LSP

All of the required skills courses at John Marshall are simulation courses, which do not provide the students with an opportunity to work with real clients and deal with the unpredictable nature of law practice. A school can replicate real life examples as much as possible in simulation courses, but the most effective experience would be to provide the students an opportunity to work with real clients.[143] To satisfy this need, the school adopted an experiential learning require-

143. SULLIVAN ET AL., *supra* note 1, at 120–21. NALP did a survey of law school graduates on their experiences in law school. Most respondents stated that their experiences in clinics and externships were the most beneficial in law school for preparing them for the practice of law. NALP, 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS (2011), http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf.

ment where each student takes at least three credits in a clinic or externship. The school expanded its offerings in its clinical program to include ten different in-house clinics, and it increased its supervision and coursework in the externship program so it more closely resembled a clinical experience. The requirements for a clinic or externship to satisfy this new 3-credit experiential requirement are detailed in Appendix C.

Conclusion

The changes to the ABA Standards on outcomes and assessment will require a fundamental change to the way that law schools develop their programs of legal education. These changes will require that each school have a more comprehensive view of its curriculum and a more deliberate process of assessing students. Requiring schools to engage in more assessments throughout the curriculum will also provide the students more data on their learning, helpful data for the school to adjust its teaching or program of legal education, and improve the metacognitive skills of its students. If done in a way that encourages professors to collaborate more often and provides much more formative assessment in every aspect of the curriculum, the students are likely to have a better experience and be more prepared for the practice of law.

APPENDIX A

Bloom's Taxonomy (Revised):

Learning Outcome Verbs for Each Level of Bloom's Taxonomy

Cognitive Level	Illustrative Verbs	Definitions
Remembering	arrange, define, describe, duplicate, identify, label, list, match, memorize, name, order, outline, recognize, relate, recall, repeat, reproduce, select, state	remembering previously learned information
Understanding	classify, convert, defend, discuss, distinguish, estimate, explain, express, extend, generalize, give example(s), identify, indicate, infer, locate, paraphrase, predict, recognize, rewrite, report, restate, review, select, summarize, translate	grasping the meaning of information
Applying	apply, change, choose, compute, demonstrate, discover, dramatize, employ, illustrate, interpret, manipulate, modify, operate, practice, predict, prepare, produce, relate schedule, show, sketch, solve, use write	applying knowledge to actual situations
Analyzing	analyze, appraise, breakdown, calculate, categorize, classify, compare, contrast, criticize, derive, diagram, differentiate, discriminate, distinguish, examine, experiment, identify, illustrate, infer, interpret, model, outline, point out, question, relate, select, separate, subdivide, test	breaking down objects or ideas into simpler parts and seeing how the parts relate and are organized
Evaluating	appraise, argue, assess, attach, choose, compare, conclude, contrast, defend, describe, discriminate, estimate, evaluate, explain, judge, justify, interpret, relate, predict, rate, select, summarize, support, value	making judgments based on internal evidence or external criteria
Creating	arrange, assemble, categorize, collect, combine, comply, compose, construct, create, design, develop, devise, explain, formulate, generate, plan, prepare, propose, rearrange, reconstruct, relate, reorganize, revise, rewrite, set up, summarize, synthesize, tell, write	rearranging component ideas into a new whole

This table is adapted from: http://www.au.af.mil/au/awc/awcgate/edref/bloom.htm.

APPENDIX B

Learning Outcomes for Lawyering Skills Program

Definition of Codes:

a. **I**= The students are only ***introduced*** to this skill. They also may practice the skill, but are not fully assessed on their competency. These are skills that are introduced to the students, but they will be covered in another course. One example may be introducing the students to client interviewing. The students may interview a client in class, but they are not fully assessed on how well they did. Assessment is defined as a tool for providing students feedback or grades on their progress or competency level.

b. **C**= The students are expected to be minimally ***competent*** in this skill by the end of the course. This is an important skill in the class, but that skill will be further developed in another course (whether in another LS, doctrinal, or specialized skills-based course). The student should be able to complete the skill satisfactorily, but the student may not have completely mastered the skill. The students are assessed on this skill, but mastery is not required. An example of a skill requiring only competency in LS 1 may be using citation signals or parentheticals. A professor may teach the skill during the semester and provide feedback on it (and maybe even factor it into your grade), but expect the student to have much more practice with it in LS 2 or beyond.

c. **M**= The students will need to ***master*** the skill by the time they complete the course. The students are expected to perform this skill satisfactorily without any further instruction. The students should be able to satisfactorily perform this skill in the practice of law at a competency level of a first-year attorney. An example of this skill would be organizing an office memorandum or using IRAC/CREAC.

d. **A**= The students already should have mastered the skill, but will need more ***advanced*** instruction.

Learning Outcome	**LS 1**	**LS 2**	**LS 3**	**LS 4**	**JD Courses or Module**
Students will recognize and apply basic concepts of federalism and the three branches of government.	M				
Students will recognize, differentiate between, and apply concepts related to sources of law, and explain and/or apply how each is applied and enforced, and how they relate to one another.	M				
Students will identify and apply concepts related to the basic structure and function of the American court system.	M				
Students will recognize and apply basic concepts regarding jurisdiction, hierarchy, and weight of authority.	M				
Students will appreciate the importance of, and obligation to, gather facts relevant to key legal issues and will employ strategies to gather such facts.	I	C	M		
Students will synthesize authorities into legal principles with elements, factors, or conditions, as appropriate.	C	M	A		

Students will strategize legal analysis by accounting for the hierarchy and weight of authority relative to the jurisdiction and the client's particular issue.	M	A	A		
Students will apply synthesized legal principles to the client's factual scenario through analogizing and distinguishing legal sources to the client's facts.	C	M	A		
Students will be able to interview and provide counsel to their clients.	I	C			
Students will identify, discriminate between, and select appropriate and conventional frameworks for legal analysis; including text-based, analogical, narrative, and policy-based reasoning.	C	C	M		
Students will recognize the range of possible outcomes/solutions for client problems. Including reasonable arguments, counterarguments, reasonable predictions, and available alternative courses of action.	C	M	A		
Students will be able to locate, discriminate between, and use basic sources of legal authority, including primary and secondary authority, to select legally relevant and factually relevant sources for a particular issue.	C	M	A		
Students will employ and document effective research strategies, including the production of research plans.	M	A	A		
Students will recognize the obligation, and employ appropriate strategie to update and validate sources.	M	A			
Students will determine when research has been exhausted for the paticular jurisdiction and for neighboring jurisdictions as well.	C	M	A		
Students will cite each legal proposition.	M	A	A		
Students will employ accurate citation format.	M	A	A		
Students will accurately use signals.	C	M	A		
Students will accurately use explanatory parentheticals.	C	M	A		
Students will accurately format quotations.	M	A	A		
Students will accurately use citation formats for embedded sources.	C	M	A		
Students will identify and distinguish between conventional legal documents, including the purpose of a particular document and how the purpose affects content and approach, and be able to craft those documents according to their conventional frameworks.	C	M	A	A	
Students will employ appropriate large-scale organization.	C	M	A		
Students will employ appropriate small-scale organization.	C	M	A		
Students will accurately and effectively communicate legal argument, including analysis and counter-analysis.	C	M	A		
Students will have a thesis sentence, topic sentences, and appropriate transitions to create coherence.	C	M	A		
Students will draft clear, concise legal documents that use appropriate tone and purpose.	C	M	A	A	

Students will write a legal memorandum that accomplishes the following: Articulates a question presented that identifies the relevant source of law, the legal question, and legally significant facts; Predicts a result for the client; Organizes the discussion section around a synthesized rule of law; Employs a deductive framework for large and small-scale organization within the overview and thesis paragraphs; Explains the law within each analytical element with appropriate detail from the relevant authorities (RE paragraphs); Applies the law clearly and thoroughly, referencing the relevant authority and its relationship to relevant client facts and illustrating analysis and counter-analysis.	M				
Students will write legal correspondence that accomplishes the following: Summarizes the purposes of the correspondence; Uses the appropriate format; Explains the law thoroughly; Uses the appropriate tone and language; and Includes any necessary disclaimers and protections for the attorney-client privilege.	I	C		M	
Students will write an email that accomplishes the following: Summarizes the analysis of the legal issue in a concise, manner; Employs the appropriate tone and language of an email while remaining formal; Includes any necessary disclaimers and protections for the attorney-client privilege.	I	C		M	
Students will draft an enforceable contractual provision.	I	I		M	
Students will write a trial brief that accomplishes the following: Articulates a thorough and complete statement of the issue that identifies the relevant source of law, legal question, and legally significant facts; Clearly articulates the relevant and necessary facts in a persuasive manner; Follows the appropriate format and includes all of the necessary sections required by the civil procedure and local rules of a court; Organizes the argument section around a synthesized rule of law; Employs a deductive framework for large and small-scale organization within the introduction and thesis paragraphs; Explains the law within each analytical element with appropriate detail from the relevant authorities that supports the arguments in the brief; Applies the law clearly and persuasively;		M			

Employs an appropriate tone that persuades the court while maintaining the writer's credibility.					
Students will write an appellate brief that accomplishes the following: Articulates a thorough and complete issue presented that identifies the relevant source of law, the legal question, and the legally significant facts; Clearly articulates the relevant and necessary facts in a persuasive manner; Follows the appropriate format and includes all of the necessary sections required by a court; Organizes the argument section around a synthesized rule of law; Employs a deductive framework for large and small-scale organization within the introduction and thesis paragraphs; Explains the law within each analytical element with appropriate detail from the relevant authorities that supports the arguments in the brief; Applies the law in a clear and persuasive manner while referencing the relevant authority and its relationship to relevant client facts; Employs an appropriate tone that persuades the court while maintaining the writer's credibility.			M		
Students will understand and apply basic negotiation techniques and strategies.	I	C			
Students will write a clear, enforceable settlement agreement based on a negotiated settlement.	I	C			
Students will draft basic discovery requests and responses that are complete, clear, and relevant to the legal issues.		I		M	
Students will write a complaint that accomplishes the following: Abides by the jurisdiction's formatting requirements; Establishes standing within the appropriate jurisdiction; Alleges facts in an organized, clear manner that establishes a cause of action. Articulates a specific request for relief and the relevant support for it.		C		M	
Students will observe law school and court rules, procedures, and etiquette.	C	M	A	A	
Students will speak in a clear, concise, well-organized, and professional manner that is appropriate to the audience and circumstances.	I	C	M		
Students will prepare and present an oral argument that is clear, organized, persuasive, and that is supported by logical legal arguments.		C	M		
Students will utilize various advocacy strategies that effectively persuade a relevant audience.		C	M		
Students will follow all of the necessary steps for filing a document with the court, including e-filing and filing directly with the clerk of the court.					C

Students will identify and apply relevant administrative rules and regulations.		C			
Students will employ appropriate strategies in administrative advocacy.				C	
Students will locate and apply relevant legislative history.			C		
Students will recognize and apply basic concepts of ethics, professionalism, and civility as they relate to legal writing, and integrate professional knowledge, skills, and ethics into their judgment.	I	C	M	A	
Students will recognize and address limits on expertise with respect to legal analysis, research, and conventional forms of lawyering communication.	C	C	M	A	
Students will recognize and apply the obligation of candor, including the obligation to advance meritorious claims and to present adverse authority, and the prohibition on presenting false information.		C	M	A	
Students will recognize and apply the ethical and professional obligations associated with conventions of attribution.	C	M	M	M	
Students will recognize and apply the principle of allocation of authority between lawyer and client with respect to representation.	I	C			
Students will identify and follow work priorities and scheduling systems related to time and resources in order to achieve objectives.	C	C	M	A	
Students will memorialize events and communications.	C	M			
Students will record work and bill time effectively and ethically.	I	I			
Students will collaborate by working with others to share responsibility and credit.	I	C			
Students will develop legal documents required of a first-year attorney in specific practice areas.	C	C		M	
Students will develop basic lawyering skills of a first-year attorney in specific practice areas.				C	
Students will identify and apply various negotiation strategies	I	I			
Students will identify and effectively use technology that is relevant to the practice of law.	C	C	C	C	C
Students will practice techniques to pass the Multi-State Performance Exam		C			

APPENDIX C

Summary of Experience-Based Requirements

Category	Requirement
Nature of Field Work	Actual legal work: live-client representation; in-house clinic; externship. This could also include a judicial externship, an apprenticeship (including an apprenticeship at a firm, especially working on pro bono or public interest matters), work in an in-house counsel office, work in a government agency, work in a nonprofit, or work in another schools' clinics.
Credit Hours	Four hours of actual legal work per credit hour per week
Skills, Values, and Work	A qualifying offering must satisfy six of the twelve Skills, Values, Work categories described below (See attached Table).
Academic and Classroom Components	A qualifying experience must include a classroom component, designed to prepare students to participate in the experience.
Assessment	Each student receives a letter grade based on a portfolio of his or her work, evaluated mid-semester and at the end of the semester. Students must also continually self-evaluate.
Reporting	Participating students must record and report their hours.
Classroom Components and Prerequisites	Each qualifying offering must include a classroom component, including the doctrine, skills, and information necessary to complete the actual legal work. If a qualifying offering has a prerequisite that covers this material, the concomitant classroom component may be adjusted accordingly. If not, the concomitant classroom component is all the more important.
Professionalism	A qualifying experience must address issues of professionalism, including professional responsibility standards, as part of both the classroom instruction and field experience.

Table: Twelve Categories of Skills, Values, and Work

A qualifying offering must include any six of the following twelve Skills, Values, and Work:

Skills, Values, and Work	Examples
1. Interviewing	• Demonstrating good oral (or written, when necessary) communication with clients, witnesses, victims, lawyers, judge, officials, others • Obtaining and learning goals and special needs of clients and others • Establishing professional expectations and establishing an attorney-client relationship • Eliciting information • Employing empathy and active listening • Demonstrating sensitivity to diversity and difference • Communicating in plain English
2. Counseling	• Demonstrating an ability to evaluate facts • Explaining legal issues • Exploring the range of options, solutions, and consequences • Understanding the client's needs • Establishing the lawyer-client relationship • Recommending a course/courses of action, where appropriate • Employing empathy and active listening • Demonstrating sensitivity to diversity and difference • Communicating in plain English
3. Negotiation	• Understanding and complying with client interests, goals, and parameters • Understanding feasibility of options • Applying negotiation theory, strategy, and tactics • Determining when to negotiate • Understanding the negotiation process and dynamics
4. Drafting Legal Documents	• Demonstrating good drafting fundamentals and mechanics • Using appropriate organization • Following rules (e.g., court rules, citation) • Differentiating between and knowing when to use documents • Understanding the audience • Drafting legal documents which include but are not limited to pretrial motions, appellate briefs, opinions, and legislation

5. Legal Research	• Using the most fundamental tools of legal research, including books and electronic sources • Understanding the process of devising and implementing an effective research plan • Understanding hierarchy of authority • Understanding the relationships between sources of law • Understanding the nature of legal rules and institutions • Understanding how to read the law • Knowing when you are done with research
6. Fact Investigation	• Determining the need for factual investigation • Understanding the various sources of factual investigation • Understanding the goals of factual investigation • Understanding the process of devising and implementing an effective factual investigation plan • Demonstrating an ability to work with documents, people, and other sources of factual investigation • Understanding how to interview • Understanding how to find documents, witnesses, and other sources • Memorializing and recording information in an organized and accessible form • Evaluating the information that has been gathered
7. Problem-Solving	• Understanding how to identify a problem • Understanding how the problem sits within a broader context • Understanding the client's goals • Understanding other stake-holders' interests • Developing a course of action • Understanding and applying different models of techniques of problem solving • Generating and evaluating alternative solutions and strategies • Understanding when to be flexible • Being open to new information and ideas • Working with other people and collaborating
8. Alternative Dispute Resolution (ADR)	• Understanding the different forms of ADR • Understanding how to determine which ADR technique is most effective • Understanding how to be an advocate and facilitator in ADR • Understanding how ADR relates to other forms of dispute resolution and advocacy • Understanding the rules and procedures of different forms of ADR • Applying different theories of negotiation and advocacy within ADR

9. Managing Legal Work	• Understanding the fundamentals of law practice management, including time management, file organization, time keeping, record management • Understanding ethical and professional responsibility issues in managing legal work, including identifying conflicts of interest • Understanding how to work with and relate to other professionals and different constituencies • Understanding the financial aspects of maintaining a law practice • Collaborating • Understanding and using technology efficiently and effectively
10. Advocacy and Public Education	• Understanding different forms of advocacy and when to use them • Understanding when and how to conduct outreach • Understanding when and how to conduct public education • Understanding the procedures of different forums, including trial courts, appellate courts, administrative agencies, and legislative bodies • Understanding the audience • Understanding and applying different advocacy strategies and tactics
11. Oral Communication	• Understanding and assessing the audience • Organizing presentations effectively • Expressing ideas with precision, clarity, and logic • Using appropriate language • Exhibiting professionalism • Understanding the dynamics of interpersonal communication • Tailoring the communication to suit the particular situation
12. Legal Analysis	• Identifying and formulating legal issues • Synthesizing material • Identifying and accurately formulating rules and principles of law • Formulating and evaluating relevant legal theories • Critically examining legal materials • Applying the law to facts • Understanding inductive, deductive, and analogical legal reasoning • Organizing legal analysis