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Law Schools and Learning Outcomes: Developing a Coherent, Cohesive, and Comprehensive Law School Curriculum, 64 Clev. St. L. Rev. 661 (2016)

Anthony Niedwiecki

John Marshall Law School, aniedwie@jmls.edu

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LAW SCHOOLS AND LEARNING OUTCOMES: DEVELOPING A COHERENT, COHESIVE, AND COMPREHENSIVE LAW SCHOOL CURRICULUM

ANTHONY NIEDWIECKI*

This Article will detail a process that law schools can use to comply with the *ABA Standards* requiring schools develop their learning outcomes for the entire institution, academic programs, and courses. At the same time, this process can be used as a roadmap for curricular review and planning. As an example, this Article will use the steps that The John Marshall Law School took to review and change its professional skills curriculum. Part I will outline the accreditation requirements for developing and publishing learning outcomes. Part II of the Article will provide an overview of the process of curricular planning and development, with a focus on developing learning outcomes. This Article will also discuss how assessment and curricular mapping should play a role in curricular planning. Part III will detail the specific steps schools can take to develop learning outcomes for the law school, academic programs, and courses. Part IV will discuss which knowledge, skills, and values should be included in these learning outcomes. The source of these outcomes comes from surveys administered by various law schools, state bar associations, the National Conference on Bar Examiners, and the ABA. Additionally, The John Marshall Law School administered an extensive survey in 2012 to determine the needs of our students and employers to help develop learning outcomes for the school's professional skills program.

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

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INTRODUCTION

Over recent years, law schools have faced serious problems, including a drastic decrease in the number of students attending law school,¹ negative media coverage about the poor job prospects of graduates and increasing costs of a legal education,² and lawsuits filed against schools for how they represent employment rates of graduates.³ Along with the significant declines in the number of students attending law school,⁴ many law schools have seen a shift in the quality⁵ of students attending their respective schools. In fact, many schools have seen a significant decline in the median LSAT score from 2010 to 2014.⁶ For example in 2010, there were no law

¹ See Daniel O. Bernstine, *The State of Law School Admissions: Where Are We in 2014?*, B. EXAMINER, June 2014, at 12 (discussing the nation-wide continuing decline by region, test score, and admittance); Jacob Gershman, *Fewer and Fewer Students Are Applying to Law School*, WALL ST. J.: LAW BLOG (Jan. 15, 2015), <http://blogs.wsj.com/law/2015/01/15/law-school-applicant-pool-continues-to-shrink-2>; Mark Hansen, *Law School Enrollment Continues to Drop, and Experts Disagree on Whether the Bottom Is in Sight*, ABA J. (Mar. 1, 2015), http://www.abajournal.com/magazine/article/as_law_school_enrollment_drops_experts_disagree_on_whether_the_bottom (detailing that schools nationwide have not had enrollment this low since 1987); Natalie Kitroeff, *Law School Applications Set to Hit 15-Year Low*, BLOOMBERG BUS. (Mar. 19, 2015), <http://www.bloomberg.com/news/articles/2015-03-19/law-school-applications-will-hit-their-lowest-point-in-15-years>.

² See Steven J. Harper, Opinion, *Too Many Law Students, Too Few Legal Jobs*, N.Y. TIMES (Aug. 25, 2015), <http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html> (detailing the problems recent graduates face in finding employment); Michael I. Krauss, *Legal Education: What's Wrong With It, and How Do We Fix It?*, FORBES (Mar. 10, 2015), <http://www.forbes.com/sites/michaelkrauss/2015/03/10/legal-education-whats-wrong-with-it-and-how-do-we-fix-it> (criticizing law schools for spikes in tuition and arguing that success will come from retuning to early 2000s pricing); Elizabeth Olson, *Burdened with Debt, Law School Graduates Struggle in Job Market*, N.Y. TIMES (Apr. 26, 2015), http://www.nytimes.com/2015/04/27/business/dealbook/burdened-with-debt-law-school-graduates-struggle-in-job-market.html?_r=1 (detailing the problems facing law school graduates, who struggle with both unemployment and large debt).

³ See, e.g., David Jesse, *Read the Lawsuit: Cooley Law School Sued for Allegedly Misleading Employment Statistics*, DETROIT FREE PRESS, Aug. 10, 2011, at A1; Sophia Pearson, *Law Schools Sued Over Promises: Employment, Salary Statistics Inflated to Recruit, Lawsuit Claims*, HOUS. CHRON., Aug. 14, 2011, at A20. Courts have dismissed most of these lawsuits. See, e.g., *MacDonald v. Thomas M. Cooley Law Sch.*, 724 F.3d 654, 663-64 (6th Cir. 2013) (affirming the dismissal of the lawsuit filed against Cooley Law School because the employment statistics were objectively true and the plaintiffs unreasonably relied on them).

⁴ See David Barnhizer, *Law Schools, Law Jobs and the "Second Wave" of Applicant Decline*, LAWNEXT (Aug. 12, 2015), <http://lawnext.org/law-schools-law-jobs-and-the-second-wave-of-applicant-decline>.

⁵ See Jerry Organ, *Projections for Law School Enrollment for Fall 2015*, LEGAL WHITEBOARD (Aug. 12, 2015), <http://lawprofessors.typepad.com/legalwhiteboard/2015/04/projections-for-law-school-enrollment-for-fall-2015.html>.

⁶ *Id.*

schools with a median LSAT score below 145 in its entering class, and only nine schools' entering class had a median LSAT score below 150.⁷ However, in 2014 those numbers changed drastically, resulting in seven law schools with a median LSAT score below a 145, and thirty-six schools with a median LSAT score below 150 in its entering class.⁸

Throughout these changes, many people in and out of the legal field have criticized legal education for not sufficiently preparing students, for exorbitant costs, and for lack of transparency regarding job prospects. Additionally, the legal profession has suffered many job losses with big and small firms laying off lawyers and not hiring.⁹ All of these problems have forced the academy and the American Bar Association ("ABA"),¹⁰ as the main accreditor of law schools, to re-examine how schools train their students.¹¹

In response to the difficulties facing law schools, the ABA created a task force to look at reforming legal education.¹² One of the main recommendations from the task force was to have law schools provide more professional training in their curriculum: "The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients."¹³

⁷ See Jerry Organ, *The Composition of Graduating Classes of Law Students—2013-2016—Part One*, LEGAL WHITEBOARD (Dec. 29, 2014), <http://lawprofessors.typepad.com/legalwhiteboard/2014/12/the-composition-of-graduating-classes-of-law-students-2013-2016-part-one-.html>.

⁸ *Id.*

⁹ See Jacob Gershman, *Odds Improve for New Law Graduates, But Hiring Levels Remain Soft*, WALL ST. J.: LAW BLOG (June 23, 2014), <http://blogs.wsj.com/law/2014/06/23/odds-improve-for-new-law-graduates-though-hiring-levels-remain-soft>.

¹⁰ Specifically, the ABA Section on Legal Education and Admission to the Bar is the entity that accredits law schools.

¹¹ See generally AM. BAR ASS'N, TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, REPORT AND RECOMMENDATIONS (Jan. 2014), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.athcheckdam.pdf.

¹² *Id.* at 1.

¹³ *Id.* at 3. In making this recommendation, the task force stated that a main mission of all law schools should be on preparing students to engage in some training related to the delivery of legal services:

The educational programs of a law school should be designed so that graduates will have (a) some competencies in delivering (b) some legal services. A graduate's having *some* set of competencies in the delivery of law and related services, and not just some body of knowledge, is an essential outcome for *any* program of legal education. What particular set of competencies a school, through an educational program, should ensure is a matter for the school to determine. However, a law school's judgment in this regard should be shaped in reference to: (a) the fact that most students attend law school desiring to practice law; (b) available studies of competencies sought by employers or considered broadly valuable for long-term professional success; and (c) the mission and strengths of the particular school.

Id. at 26.

Immediately before the task force began its work, the Carnegie Foundation issued a report criticizing how law schools train lawyers by not fully integrating the teaching of skills, knowledge, and values required of a lawyer.¹⁴ Even some state bars are pushing for reforms in legal education, with some requiring that students engage in more practical training in law school, such as simulation courses, clinics, and externships.¹⁵ California is going the furthest with a requirement that all law students take at least fifteen credit hours in experiential learning classes.¹⁶

Most immediately, law schools are now subject to new accreditation standards from the ABA Council on Legal Education and Admission to the Bar, which requires schools to integrate outcomes and assessments into their curriculum and to provide at least six credit hours of experiential learning courses beyond the legal writing courses already required.¹⁷ Overall, the standards are meant to better prepare students for the practice of law while establishing assessment techniques that evaluate the actual preparation level of the students.¹⁸

In light of these fundamental changes, criticisms, recommendations, and requirements, law schools must now be more deliberate in the planning of their curriculum so it is coherent, cohesive, and comprehensive. More specifically, the new *ABA Standards and Rules of Procedure for Approval of Law Schools* (“*ABA Standards*”) require that law schools develop and publish learning outcomes that explicitly state what they want their students to be able to do upon completion of the law school curriculum.¹⁹ The *ABA Standards* also require that law schools develop a plan to assess learning outcomes through course assessment,²⁰ programmatic

¹⁴ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNegie REPORT].

¹⁵ See, e.g., N.Y. STATE BAR ASS’N, INFORMATIONAL REPORT TO NEW YORK STATE BAR ASSOCIATION EXECUTIVE COMMITTEE ON SKILLS TRAINING REQUIREMENT FOR ADMISSION TO THE NEW YORK BAR (Jan. 30, 2014), <http://www.nysba.org/workarea/DownloadAsset.aspx?id=46440>; Karen Sloan, *California’s Practical-Skills Plan Alarms Out-of-State Deans*, LAW.COM (July 8, 2015), <http://www.law.com/sites/articles/2015/07/08/california-practical-skills-plan-alarms-out-of-state-deans/?slreturn=20160215201857>.

¹⁶ See STATE BAR OF CALIFORNIA TASK FORCE ON ADMISSIONS REGULATION REFORM: PHASE II FINAL REPORT 2 (2014), <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000012730.pdf>.

¹⁷ AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015-2016, Standard 303(a)(3) (Aug. 2015), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final.authcheckdam.pdf [hereinafter 2015-16 ABA STANDARDS AND RULES].

¹⁸ See *id.* at Standard 301(a) (“A law school shall maintain a rigorous program of legal education that prepares its students upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”); *id.* at Standard 301(b) (“A law school shall establish and publish learning outcomes designed to achieve these objectives.”).

¹⁹ *Id.* at Standard 301(b).

²⁰ *Id.* at Standard 314 (“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.”).

assessment,²¹ and institutional assessment.²² Additionally, regional accreditors also require that universities and law schools have an extensive learning outcome and assessment plan.²³ Put simply, law schools are now required to answer two questions: (1) what do they want their students to learn, and (2) how will they know when the students have learned the requisite skills or obtained this requisite knowledge?

This Article will detail a process that law schools can use to comply with the *ABA Standards* requiring schools develop their learning outcomes for the entire institution, academic programs, and courses. At the same time, this process can be used as a roadmap for curricular review and planning. As an example, this Article will use the steps that The John Marshall Law School took to review and change its professional skills curriculum.

Part I will outline the accreditation requirements for developing and publishing learning outcomes. Part II of the Article will provide an overview of the process of curricular planning and development, with a focus on developing learning outcomes. This Article will also discuss how assessment and curricular mapping should play a role in curricular planning. Part III will detail the specific steps schools can take to develop learning outcomes for the law school, academic programs, and courses. Part IV will discuss which knowledge, skills, and values should be included in these learning outcomes. The source of these outcomes comes from surveys administered by various law schools, state bar associations, the National Conference on Bar Examiners, and the ABA. Additionally, The John Marshall Law School administered an extensive survey in 2012 to determine the needs of our students and employers to help develop learning outcomes for the school's professional skills program.

I. ACCREDITATION STANDARDS FOR OUTCOMES AND ASSESSMENT

The federal government requires that accreditors of institutions of higher education include standards on outcomes and assessment, which has been a big driver of some of the changes to the *ABA Standards*.²⁴ The Department of Education's Office of Postsecondary Education requires accrediting agencies to

²¹ *Id.* at Standard 315 (“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.”).

²² *Id.* at Standard 311(a) (“A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.”); *id.* at Standard 311(b) (“A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.”); *id.* at Standard 311(c) (“A law school shall not permit a student to be enrolled at any time in coursework that exceeds 20 percent of the total credit hours required by that school for graduation.”).

²³ See MIDDLE STATES COMM’N ON HIGHER EDUC., CHARACTERISTICS OF EXCELLENCE IN HIGHER EDUCATION 63 (2011), <http://www.msche.org/publications/CHX-2011-WEB.pdf>.

²⁴ 34 C.F.R. § 602.16 (a) (2016).

demonstrate that its “standards for accreditation . . . are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits.”²⁵ To meet these standards, an agency that accredits postsecondary institutions must have “accreditation standards [that] effectively address the quality of the institution or program” including “[m]easures of program length and the objectives of the degrees or credentials offered.”²⁶ 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.²⁷ The accrediting agency evaluates a school by examining its success “in achieving its stated objectives and maintain[ing] degree and certificate requirements that at least conform to commonly accepted standards.”²⁸ These regulations have set up the framework for the establishment of accreditation standards on outcomes and assessment.

Well before the ABA passed its new version of accreditation standards in 2014, regional accreditation agencies, whose main function is to accredit all institutions of higher education, began implementing new accreditation standards that focused heavily on whether a school was properly developing learning outcomes and assessing the students’ successful completion of the outcomes.²⁹ The ABA Council on Legal Education and Admission to the Bar began a comprehensive review of its standards for accreditation in 2007, and approved a completely revised set of standards in 2014.³⁰ The ABA is currently phasing in the standards on outcomes and assessment, and law schools will be required to comply with them in the 2016-17 academic year.³¹

A. Requirements of Regional Accreditors of Higher Education

Well before the ABA amended its standards in 2014, many regional accreditation agencies³² developed standards that emphasized learning outcomes and assessment.

²⁵ *Id.*

²⁶ *Id.* §§ 602.16 (a)(1), (a)(1)(vii).

²⁷ *Id.* § 602.16(a)(1).

²⁸ *Id.* §§ 602.17 (a)(2)-(3).

²⁹ *See* Section II.B. *infra* and accompanying footnotes.

³⁰ AM. BAR ASS’N, SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, REPORT OF THE OUTCOME MEASURES COMMITTEE 1-3 (July 27, 2008), <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>.

³¹ *See* AM. BAR ASS’N, MANAGING DIRECTOR’S GUIDANCE MEMO: STANDARDS 301, 302, 314 & 315, at 6 (June 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf [hereinafter MANAGING DIRECTOR’S GUIDANCE MEMO].

³² There are six regional accreditation originations that accredit institutions of higher education and in keeping with federal regulations. The Higher Learning Commission’s (HLC) region includes nineteen states (AZ, AR, CO, IL, IN, IA, KA, MI, MN, MO, NE, NM, ND, OH, OK, SD, WV, WI, and WY). *See About the Higher Learning Commission*, HIGHER LEARNING COMM’N, <https://www.hlcommission.org/About-the-Commission/about-hlc.html> (last visited Mar. 16, 2016). The New England Association of Schools and Colleges’ (NEASC) region includes six states (CT, MA, ME, NH, RI, and VT). *About Our Institution*,

Because most law schools are part of a university that requires accreditation from a regional accrediting body, law schools must satisfy both the accreditation standards of the ABA and its relevant regional accreditation agency.³³ This requires law schools to develop learning outcomes and ways to assess the effectiveness of the institution, programs, and courses before the ABA instituted its new standards.³⁴

One of the largest regional accreditors is the Higher Learning Commission (“HLC”), which oversees the accreditation of colleges and universities in nineteen states.³⁵ Similar to the ABA and other regional accreditors, the HLC requires its members to develop learning outcomes, but the HLC standards are more explicitly intertwined with the concept of assessment than is stated in the *ABA Standards* and many other regional accreditors.³⁶ Throughout the accreditation standards for the HLC, the two concepts are discussed together, focusing on the importance of using “the information gained from assessment to improve student learning.”³⁷ Additionally, the HLC clarifies that to be in compliance, the institution must consistently assess the “achievement of the learning outcomes that it claims for its curricular and co-curricular programs.”³⁸ Throughout its standards, the HLC only discusses learning outcomes when discussing assessment.³⁹ In contrast, the *ABA*

COMM’N ON INST. HIGHER EDUC. NEW ENG. ASS’N SCH. & C., <http://cihe.neasc.org> (last visited Mar. 16, 2016). The Northwest Commission on Colleges and Universities’ (NWCCU) region includes seven states (AK, ID, MT, NV, OR, and UT). *History*, NW. COMM’N ON C. & U., <http://www.nwccu.org/About/History/NWCCU%20History.htm> (last visited Mar. 16, 2016). The Middle States Commission on Higher Education’s (MSCHE) region includes four states (MD, NJ, NY, and PA), the District of Columbia, and Puerto Rico. *About Us*, MIDDLE STATES COMM’N ON HIGHER EDUC., <http://www.msche.org> (last visited Mar. 16, 2016). The Southern Association of Colleges and Schools Commission on Colleges’ (SACS) region includes eleven states (AL, FL, GA, KY, LA, MS, NC, SC, TN, TX, and VA). *About the Commission*, SCH. ASS’N C. & SCH. COMM’N ON C., <http://www.sacscoc.org> (last visited Mar. 16, 2016). The Western Association of Schools and Colleges Senior College and University Commission’s (WASC) region includes two states (CA and HI) and a number of United States territories in the Pacific. *About Us*, WASC SENIOR C. & U. COMM’N, <http://www.wascenior.org/about> (last visited Mar. 16, 2016).

³³ See Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning By Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 462 (2011).

³⁴ But most regional accreditors do not focus as much on law schools because they are also accredited by the ABA. Stand-alone schools that are also accredited by a regional accreditor are most affected by the regional accreditation standards, although universities may have some minimal requirements for the law school (i.e., including outcomes in each course syllabus, determine ways to assess the academic programs).

³⁵ *About the Higher Learning Commission*, *supra* note 32.

³⁶ See *Criteria for Accreditation*, HIGHER LEARNING COMM’N, <http://policy.hlcommission.org/Policies/criteria-for-accreditation.html> (last visited Mar. 16, 2016).

³⁷ *Id.*

³⁸ *Id.*

³⁹ *See id.*

Standards and other regional accreditors separate the standards for outcomes from the standards on assessment.⁴⁰

Under HLC accreditation standards, an “institution’s processes and methodologies to assess student learning [must] reflect good practice, including the substantial participation of faculty and other instructional staff members.”⁴¹ Additionally, the law school’s data on assessment of student learning must be “accurate and address the full range of students who enroll.”⁴² The HLC standards emphasize that the assessment of learning outcomes should result in data from a snapshot of the student population, not just certain subsets, to be able to best utilize the data collected for analysis.⁴³ Other regional accreditors have similar requirements dealing with outcomes and assessment.⁴⁴

B. The Development of the ABA Standards on Outcomes and Assessment

The process of reviewing and rewriting the *ABA Standards* began around the same time that two major reports were issued that both criticized legal education and offered a series of recommendations on better preparing students for the practice of law. In *Educating Lawyers*, best known as the “*Carnegie Report*,” the authors discuss how law schools successfully teach students legal analysis using the case method, but they criticize law schools for not adequately preparing students for the

⁴⁰ Compare 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standard 302, with *id.* at Standard 314.

⁴¹ *Criteria for Accreditation*, *supra* note 36.

⁴² *Assumed Practices*, HIGHER LEARNING COMM’N, <http://policy.hlcommission.org/Policies/assumed-practices.html> (last visited Mar. 16, 2016).

⁴³ *Id.* The specific standards on outcomes and assessment are contained in Criteria 4 and 5 of the Criteria for Admission:

4.B. The institution demonstrates a commitment to educational achievement and improvement through ongoing assessment of student learning.

4.C. The institution demonstrates a commitment to educational improvement through ongoing attention to retention, persistence, and completion rates in its degree and certificate programs.

5.C. The institution engages in systematic and integrated planning.

5.D. The institution works systematically to improve its performance.

Criteria for Accreditation, *supra* note 36.

⁴⁴ *Standards for Accreditation*, NEW ENG. ASS’N. SCH. & C.: COMM’N ON INST. HIGHER EDUC. 24-25, <https://cihe.neasc.org/standards-policies/standards-accreditation/standards-effective-july-1-2016> (Revisions Effective July 1, 2016); NW. COMM’N ON COLL. & UNIV., ACCREDITATION HANDBOOK 23 (2015), <http://www.nwccu.org/Pubs%20Forms%20and%20Updates/Publications/Accreditation%20Handbook,%202015%20Edition.pdf>; MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS AFFILIATION 4 (2014), <http://www.msche.org/documents/RevisedStandardsFINAL.pdf>; S. ASS’N OF COLL. & SCH. COMM’N ON COLL., THE PRINCIPLES OF ACCREDITATION: FOUNDATIONS FOR QUALITY ENHANCEMENT 28 (2012), <http://www.sacscoc.org/pdf/2012PrinciplesOfAcreditation.pdf>; WASC SENIOR COLL. & UNIV. COMM’N, 2013 HANDBOOK OF ACCREDITATION REVISED 8 (2015), <https://www.wascsenior.org/content/2013-handbook-accreditation>. The specific outcomes and assessment standards for each regional accreditation agency can be found in Appendix A.

practice of law and the lawyer's role in society.⁴⁵ The report encourages law schools to focus more on teaching practical skills and integrating the learning of analysis with ethical and professional training.⁴⁶

The same time the *Carnegie Report* was published, the Clinical Legal Education Association issued its own set of recommendations. The report, *Best Practices in Legal Education*, criticizes legal educators for not establishing appropriate learning outcomes and using effective assessment models to make law students better prepared for the practice of law.⁴⁷ The report makes a series of recommendations on how to plan a curriculum, establish broad learning outcomes for the school, develop specific learning outcomes for each type of course, assess those learning outcomes, and best teach students for the practice of law.⁴⁸ The report recommends that learning outcomes should be developed in collaboration with the bench, Bar, and all of the relevant constituencies.⁴⁹ Additionally, the report recommends that outcomes be measurable and available to students.⁵⁰

With the *Carnegie Report* and *Best Practices in Legal Education* framing the discussion about legal education in 2007, the ABA began examining how to integrate outcomes and assessment into the law school curriculum. The ABA Council on Legal Education and Admission to the Bar, the branch of the ABA that oversees the law school accreditation process, began discussing outcomes and assessment when it began a comprehensive review of the entire accreditation standards for law schools in 2007.⁵¹ The ABA appointed a "Special Committee on Output Measures" in October 2007.⁵²

This committee will determine whether and how we can use output measures, other than bar passage and job placement, in the accreditation process. The Committee may consider approaches taken by other accreditation agencies, evaluate criticisms of existing measures, and analyze relevant information and studies. The Committee also should consider methods to measure whether a program is accomplishing its stated mission and goals. The Committee should define appropriate output measures and make specific recommendations as to whether the Section should adopt those measures as part of the Standards.⁵³

⁴⁵ See generally CARNEGIE REPORT, *supra* note 14.

⁴⁶ See *id.* at 87-95.

⁴⁷ See generally ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007).

⁴⁸ *Id.*

⁴⁹ *Id.* at 41-43.

⁵⁰ *Id.* at 189.

⁵¹ AM. BAR ASS'N, SECTION ON LEGAL EDUC. & ADMISSION TO THE BAR, REPORT OF THE ACCREDITATION POLICY TASK FORCE (2007), http://www.americanbar.org/content/dam/aba/migrated/legaled/actaskforce/2007_05_29_report_accreditation_task_force.authcheckdam.pdf.

⁵² AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, REPORT OF THE OUTCOME MEASURES COMMITTEE 1-3 (2008), <http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf> [hereinafter ABA, OUTCOME REPORT].

⁵³ *Id.* at 1.

This committee used the “insights gleaned” from the *Carnegie Report* and *Best Practices in Legal Education* to develop its recommendations on outcomes and assessment.⁵⁴ The committee issued a series of recommendations to guide law schools that are in the process of developing an outcomes and assessment plan at their school.⁵⁵ This committee recommended that the standards be amended to require schools to produce learning outcomes, but still remain flexible enough for schools to develop outcomes that conform to each law school’s missions and goals, while developing some “broad contours” that would provide a minimum bar for all law schools to meet in developing their outcomes.⁵⁶

Following the report, the Standards Review Committee⁵⁷ began reviewing specific changes to the ABA standards. The early drafts of the ABA standards during the 2008 review process were more detailed and directive than the draft that was ultimately adopted.⁵⁸ For example, the proposed ABA standards required law schools to “identify, define, and disseminate the learning and other outcomes it seeks for its graduates” and included a fairly detailed list of outcomes that all law schools should have, including substantive knowledge of the law, skills necessary for an entry-level professional, and professional values and ethics.⁵⁹ These standards

⁵⁴ *Id.*

⁵⁵ *Id.* at 2. The main recommendation related to Chapter 3 of the *ABA Standards*, specifically Standards 302 and 303. See AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 304 (2013-14 ed.), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf.

⁵⁶ ABA OUTCOME REPORT, *supra* note 52, at 2.

⁵⁷ The ABA Section on Legal Education and Admission to the Bar has a long process when adopting new standards. The section has a Standards Review Committee that first reviews proposed standards. This committee then makes recommendations to the Council on Legal Education and Admission to the Bar. The Council makes final recommendations, and the ABA House of Delegates makes the final decision at its annual or mid-year meetings. For more information about the ABA Section on Legal Education and Admission to the Bar’s Standards Review Committee, see *Standards Review Committee*, AM. BAR ASS’N, http://www.americanbar.org/groups/legal_education/committees/standards_review.html (last visited Mar. 16, 2016).

⁵⁸ See *Meeting Drafts: October 9-10, 2009, Standards 301-305: Student Learning Outcomes*, AM. BAR ASS’N: STANDARDS REVIEW COMM., http://www.americanbar.org/groups/legal_education/committees/standards_review/comp_review_archive/meeting_drafts.html (last visited Mar. 16, 2016) (click on Standards 301-305 under Meeting Date: October 9-10, 2009).

⁵⁹ *Id.* at 3-4. These standards include:

- a) A law school shall identify, define, and disseminate the learning and other outcomes it seeks for its graduates and for its program of legal education to enable its students to participate effectively, responsibly and ethically in the legal profession. The learning outcomes shall be consistent with and support the stated mission and goals of the law school. The learning outcomes shall include these outcomes:
 - (1) knowledge and understanding of the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
 - (2) entry-level proficiency in professional skills including:

detailed many outcomes focusing on professional identity.⁶⁰ Finally, the proposed ABA standards allowed law schools to add any other outcomes that satisfied the school's mission and goals, and this proposal was ultimately adopted.⁶¹

The biggest change dealt with the ABA standards that assessed learning outcomes. For assessing student learning, the proposed ABA standards required law schools to create a comprehensive assessment plan identifying the methods of assessment, using a "variety of valid and reliable assessment methods," providing frequent feedback throughout a student's studies, and involving faculty in the development of this assessment plan.⁶² The proposed ABA standards also required that law schools measure student progress of the learning outcomes set forth by the school, and that law schools keep and utilize that data to improve student learning and the curriculum as a whole.⁶³

These proposed changes represented a fundamental change to the ABA standards and the overall approach to teaching the law. The ABA traditionally sets its standards on input measures.⁶⁴ For example, law schools have been evaluated on the size of the library,⁶⁵ the faculty-student ratio,⁶⁶ and the minimum amount of time a

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- (i) legal analysis and reasoning, legal research, problem solving, written and oral communication in a legal context;
 - (ii) the ability to recognize and resolve ethical and other professional dilemmas; and
 - (iii) a sufficient number of other professional skills that the law school identifies as necessary for effective, responsible and ethical participation in the legal profession . . .

Id.

⁶⁰ *Id.* at 4. These standards include:

- (3) knowledge and understanding of a lawyer's ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice.
- (4) a commitment to the profession's values of justice, fairness, candor, honesty, integrity and respect for the rule of law;
 - (i) responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them; and
 - (ii) responsibility to enhance the capacity of law and legal institutions to do justice.

Id.

⁶¹ *Id.* The proposed standard allowed schools to develop "any other outcomes the school identifies as necessary or important to meet the needs of its students and to accomplish the school's mission and goals. The additional learning outcomes may be targeted for all students or only for students choosing particular courses of study." *Id.*

⁶² *Id.* at 6.

⁶³ *Id.*

⁶⁴ MANAGING DIRECTOR'S GUIDANCE MEMO, *supra* note 31, at 3.

⁶⁵ See AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Interpretation 606-5 (2013-14 ed.), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter6.authcheckdam.pdf [hereinafter 2013-14 ABA STANDARDS AND RULES OF PROCEDURE] (listing the types of sources that must be in each library).

student spends in class before graduation.⁶⁷ With these proposed standards, along with the final ABA standards adopted in 2014, the ABA moved away from the traditional input measurements and toward standards that focused more on learning outcomes and assessment.⁶⁸

Although the standards that the ABA adopted in August 2014 are easier to apply than those proposed outcomes and assessment standards in 2009, it still represents a significant modification to the practice of measuring inputs instead of outputs.⁶⁹ Although not as specific as those standards from other accreditors of higher education, the new *ABA Standards* require that schools develop and publish learning outcomes and determine ways to assess those outcomes.⁷⁰ The new standards also reflect the criticisms of some law school deans by emphasizing that a law school is not evaluated on whether the school has satisfied its learning outcomes, but on the school's efforts to "establish and assess student learning."⁷¹ Before these changes,

⁶⁶ See *id.* at 402-1.

⁶⁷ See AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 304 (2013-14 ed.), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf (detailing the number of minutes and days each academic year and course must have).

⁶⁸ See 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standards 301-308 (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).

⁶⁹ The ABA Section on Legal Education and Admission to the Bar Standards Review Committee worked on several drafts of the proposed standards from 2009 until 2014, often modifying the drafts to respond to the criticisms that the standards would stifle innovation during a time when law schools were feeling the pressure of lower enrollment. A group of law schools dean formed an organization to fight against many of the proposed changes to the ABA Standards because they believed the changes would make law schools less likely to engage in experimentation. See Memorandum from the American Law Deans Association to Standards Review Committee (July 24, 2010), http://www.americanbar.org/groups/legal_education/committees/standards_review/comp_review_archive/comments.html (click on ALDA, Part I, July 2010) ("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.").

⁷⁰ See 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standards 301-308.

⁷¹ See AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, TRANSITION TO AND IMPLEMENTATION OF THE NEW STANDARDS AND RULES OF PROCEDURE FOR APPROVED LAW SCHOOLS 2 (2014), 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.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

the only form of assessment of student learning required by the *ABA Standards* involved the Bar passage rate for law school graduates,⁷² although schools have likely assessed their institutions success by measuring the attrition and employment rates of its graduates.⁷³

C. The New ABA Standards on Outcomes and Assessment

The *ABA Standards* now require a school to establish learning outcomes, utilize assessment methods, and assess the entire program of legal education.⁷⁴ Before a school is able to develop an assessment plan that improves student learning and evaluates a school's legal education program, it must establish its learning outcomes, which are statements of what it wants its students to learn before they graduate.⁷⁵ The *ABA Standards* divide the learning outcomes into three categories—knowledge,⁷⁶ skills,⁷⁷ and values⁷⁸—which mirror the recommendations of the *Carnegie Report*, stating that law schools should do more to ensure integration of knowledge, skills, and values throughout the curriculum.⁷⁹

The *ABA Standards* begin with a requirement that a law school must have learning outcomes that focus on students obtaining the “knowledge and understanding of substantive and procedural law.”⁸⁰ The *ABA Standards* also require outcomes that deal with “professional and ethical responsibilities to clients and the legal system.”⁸¹

What is likely the most significant and expansive part of the ABA requirements focuses on skills development, including legal research and writing, legal analysis and reasoning, problem solving, oral communication, and any other “professional skills needed for competent and ethical participation as a member of the legal

identified when and how students receive feedback on their development of the identified outcomes.

Id.

⁷² The ABA has had standards on bar passage, which require that “for students who graduated from the law school within the five most recently completed calendar years . . . 75 percent or more of these graduates who sat for the bar passed a bar examination.” See 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standard 316.

⁷³ ABA Standard 502 requires schools to measure their attrition rate and ABA Standard 504 requires that law school measure the bar passage rate of their students. These are the two main outcomes that schools have assessed for the past several years.

⁷⁴ See *id.* at Standards 302, 314 & 315.

⁷⁵ See *id.* at Standard 302.

⁷⁶ *Id.* at Standard 302(a).

⁷⁷ *Id.* at Standard 302(b).

⁷⁸ *Id.* at Standards 302(c) & (d).

⁷⁹ CARNEGIE REPORT, *supra* note 14, at 12 (arguing for a program of legal education that more fully integrates knowledge, skills, and values).

⁸⁰ 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standard 302(a).

⁸¹ *Id.* at Standard 302(c).

profession.”⁸² In an effort to allow law schools flexibility in the types of skills training they provide their students, the *ABA Standards* provide an illustrative list of skills that satisfy the requirement, but these skills are not required.⁸³ 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.”⁸⁴ The *ABA Standards* also allow law schools to include additional learning outcomes that match the school’s culture, mission, and program of legal education,⁸⁵ but the learning outcomes and assessment methods should be connected to one of the requirements in the *ABA Standards*.

Figure 1: Required Learning Outcomes in ABA Standards

Types of Outcome	ABA Standard	Language of Standard
Knowledge	Standard 302(a)	“Knowledge and understanding of substantive and procedural law”
Skills	Standard 302(b) & (d) Interpretation 302-1	Legal analysis and reasoning; legal research; problem solving; written and oral communication; other professional skills
Values	Standard 302 (c)	“proper professional and ethical responsibilities to clients and legal system”

II. CURRICULAR DEVELOPMENT IN LAW SCHOOLS

Unlike universities and colleges, law schools have not taken a global view of their curriculum, with the exception of the first-year curriculum.⁸⁶ Although some people may find the process required by the *ABA Standards* onerous and unnecessary,⁸⁷ it can provide schools with an opportunity to take a fresh look at their

⁸² *Id.* at Standards 302(b) & (d).

⁸³ *Id.* at Interpretation 302-1.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *See, e.g.*, GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 3 (2000), <http://www.lawteaching.org/publications/books/outcomesassessment>; 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*, NAT’L INST. LEARNING OUTCOMES ASSESSMENT (Jan. 2014), <http://www.learningoutcomeassessment.org/documents/2013%20Abridged%20Survey%20Report%20Final.pdf> (discussing the increasing use of learning outcomes assessment in universities, often citing regional accreditors as the driving force in making these changes).

⁸⁷ *See* Memorandum from the American Law Deans Association, *supra* note 69 (“In the abstract, the injunction to list “each” of the learning outcomes a school seeks for its students, including any that is even important to accomplishing its goals might lead a school to list many tens and perhaps hundreds of specific learning outcomes (the mandatory list in Standard

curriculum.⁸⁸ A broad and comprehensive review may even be necessary now with so many law schools facing declining enrollment.⁸⁹ If done well, the review can lead to a more coherent, cohesive, and comprehensive curriculum.

The process of creating a coherent, cohesive, and comprehensive curriculum can be divided into three parts.⁹⁰ First, the school will begin by developing broad learning outcomes for the program of legal education. For definitional purposes, learning outcomes must be distinguished from learning objectives. Historically, most law professors focused on course objectives instead of learning outcomes.⁹¹ Course objectives focus on what the professor wants to accomplish in the course, where learning outcomes focus on what the students will be able to do upon completion of the course, a program, or law school.⁹² Course objectives focus on the content and skills important in the classroom, where learning outcomes are measurable criteria for guiding teaching and student learning.⁹³ Assessing a learning outcome focuses on whether the student has successfully mastered a skill or obtained some knowledge.⁹⁴ Assessing a course objective focuses on whether the professor covered the topic or skill in the class.⁹⁵ Put simply, course objectives are faculty-focused and learning outcomes are student-focused.⁹⁶

302 alone already numbers 14, counting conservatively). At the same time, Standard 305 establishes an elaborate and seemingly rigorous assessment process that each law school must apply to “its learning outcomes” (305(a), a phrase which appears to encompass every single learning outcome listed in Standard 302(a)).”

⁸⁸ See MUNRO, *supra* note 86, at 3-4 (“Absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and becomes a collection of discrete activities without coherence.”).

⁸⁹ See *supra* notes 2-9 and accompanying text.

⁹⁰ As detailed in the Part II.C. *supra*, the ABA standards require that schools develop outcomes, place those outcomes into the curriculum, and assess those outcomes. These requirements align well with the general process of curricular development.

⁹¹ Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 351-52 (2001) (criticizing law school teaching because it focuses on teaching using one method—the case method—which puts the focus on what the professor does in the classroom instead of what the students learn).

⁹² STUCKEY ET AL., *supra* note 47, at 31 (“Currently, when law schools articulate educational goals, they most universally refer to what students do in the class, what they will learn about the law, or what specific skills they will acquire, not what they will be able to do with their knowledge and skills or how they should do it.”); R.M. Harden, *Learning Outcomes and Instructional Objectives: Is There a Difference?*, 24 MED. TCHR. 150, 152 (2002) (stating that learning objectives “reflect a more teacher-centered approach to the curriculum,” where outcomes are focused on the student).

⁹³ STUCKEY ET AL., *supra* note 47, at 44-45.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ As described more fully in Part IV.A. *infra*, learning objectives are a great basis for developing learning outcomes. Once professors determine what their course goals are, they can easily develop them into course learning outcomes.

The second part of developing a curriculum requires law schools to engage in curricular mapping.⁹⁷ Curriculum mapping can be best explained as both a forward-looking and backward process. It is a forward-looking process when it is used to place learning outcomes into specific parts of the curriculum.⁹⁸ This process may require broad learning outcomes for the entire law school be divided into more specific learning outcomes that are placed into one or more courses or into a specific academic program. For example, a school may have the following learning outcome for the entire J.D. degree: *Upon graduation, the student will be able to research and find the relevant law to solve a client's problem.* To satisfy this outcome, students may need to be able to do legal research using print or online sources. They will also need to be able to find law using Lexis and Westlaw. These specific skills and learning outcomes are then placed into the legal research and writing program, and then one of the legal research and writing courses. One of these outcomes could even be placed into a specific doctrinal law course. This type of curricular mapping is a forward-looking process because it provides a roadmap of where the students should expect to learn a skill or legal concept.

Table 1

<p>Institution: Upon graduation, the student will be able to research and find the relevant law to solve a client's problem.</p>
<p>Program: Upon completion of the Lawyering Skills Program, the student will be able to find cases and statutes using print and online sources.</p>
<p>Course: Lawyering Skills I: By the end of the course, the student will be able to find cases and statutes using Westlaw and LexisNexis.</p>

Curricular mapping can also be backwards focused when it is used to gather data on the topics and skills currently being covered in each of their courses.⁹⁹ This type of curricular mapping is often used to help begin the process of developing learning outcomes because it provides a baseline of what is already happening at the school.¹⁰⁰ It also provides information about the faculty's expectations and priorities.

⁹⁷ Cecilia M. Plaza et al., *Curriculum Mapping in Program Assessment and Evaluation*, 71 AM. J. PHARM. EDUC. 1, 20 (2007) ("Curriculum mapping is a consideration of when, how, and what is taught, as well as the assessment measures utilized to explain achievement of expected student learning outcomes.").

⁹⁸ *Id.*

⁹⁹ See Debra Moss Curtis & David M. Moss, *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education*, 34 NOVA L. REV. 473, 474-80 (2010) (detailing the process of mapping courses to help in curricular planning); 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, 365-70 (2014) (mapping curriculums can help provide information about what is already being taught).

¹⁰⁰ Moss Curtis & Moss, *supra* note 99, at 477.

Curricular mapping is a fairly new concept for law schools and has not played much of a role in developing a law school curriculum.¹⁰¹ If done appropriately and comprehensively, a law school can more deliberate in planning its curriculum. This type of curricular mapping is more fully explained in Part IV.A. below.

The third part of curricular planning is developing an assessment plan to determine the extent of student learning at the school. This assessment plan should include formative and summative assessment, programmatic assessment, and institutional assessment.¹⁰² All accreditors of higher education, and now the ABA, require every law school to integrate these different forms of assessment across the curriculum.¹⁰³ While developing the learning outcomes and engaging in curriculum mapping will take a great deal of time at the beginning of the curricular planning process, assessment should be a constant part of the law school experience for it to properly improve student learning.

The focus of this Article is on developing clear and useful learning outcomes, but this is only one step in curricular planning. Although developing learning outcomes for the entire program of legal education will shape the remaining steps in developing a curriculum, the process is not linear.¹⁰⁴ As Figure 2 shows, each of the three parts of curricular planning—learning outcomes, assessment, and curricular mapping—play a role in developing the other. For example, once a school develops its learning outcomes, it will need to determine where each outcome will be taught and how and where it will be assessed. Data that comes from this assessment process will then help to determine if the school needs to place the outcomes in more courses or in a different academic program (curricular mapping). True curricular development is never complete, because schools should constantly engage in the process of determining whether their students are learning, and if not, how the curriculum can be altered to improve student learning.

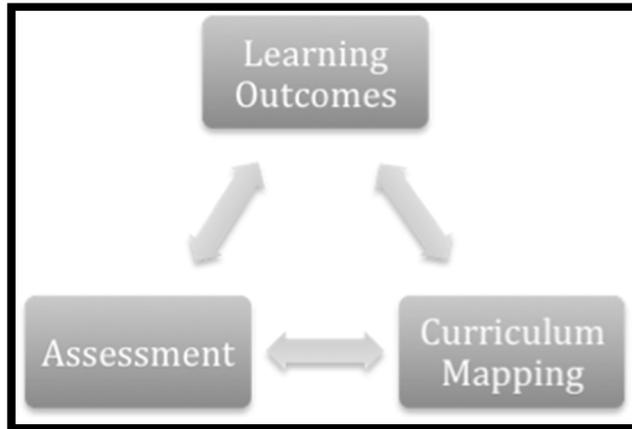
¹⁰¹ *Id.*

¹⁰² See MUNRO, *supra* note 86, at 121 (detailing the various forms of assessment that educators should use). The new ABA Standards require that the schools engage in all of these forms of assessment. See 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standard 314; see also *id.* at Standard 315.

¹⁰³ See MUNRO, *supra* note 86, at 121.

¹⁰⁴ Moss Curtis & Moss, *supra* note 99, at 477-78 (describing how curricular mapping can be a continuing process of assessing the curriculum).

Figure 2: The Process of Curricular Development



III. DEVELOPING LEARNING OUTCOMES

To comply with the new *ABA Standards*, law schools will likely be spending the next couple of years determining what they want their students to know and what they want them to be able to do upon graduation in a more deliberate manner.¹⁰⁵ One way for faculty to begin developing learning outcomes is to closely examine what is already being taught, initiate discussions on the goals and objectives of the curriculum, and examine what lawyers in modern practice should be able to do. Faculty will then need to take this information and develop; broad learning outcomes for the entire curriculum, specific learning outcomes for each academic program, and narrow learning outcomes for each course.¹⁰⁶

One source of information for determining the outcomes is the required curriculum and the topics detailed in the course descriptions and syllabi of the required courses. Most professors detail in their syllabi what he or she wants 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 the syllabus may give students a vague idea of the knowledge and skills the instructor values, it tells little about how the students are expected to use that knowledge or skills. Therefore, faculty can make these statements in their syllabi, view them from the students’ perspective, and make a realistic estimate of what students are supposed to know and be able to do by the end of the course or the program. By completing this

¹⁰⁵ See Sharon K. Krackov & Henry Pohl, *Building Expertise Using the Deliberate Practice Curriculum-Planning Model*, 33 MED. TCHR. 570, 571 (2011) (explaining how developing a curriculum requires that the program establish the competencies it requires of its graduates).

¹⁰⁶ *Id.*

process, professors will be forced to plan and develop their outcomes so they also align with the school's assessment measures and instructional activities.¹⁰⁷

To develop effective learning outcomes for the school, a program, or a course, faculties should follow some basic guidelines. First, the focus should be on what the students should be learning and not on how much material is covered in the course.¹⁰⁸ A course's outcomes should be tied directly to an outcome at the programmatic or institutional level. Similarly, a program's outcomes should be tied to the institution's outcomes.¹⁰⁹ The outcomes should also reflect what is important in a particular area of law or for law practice,¹¹⁰ and focus on those skills or the knowledge that will endure.¹¹¹ Finally, learning outcomes should be specific enough to be measurable.¹¹²

Schools can use a standard formula for developing their learning outcomes, one that has been used by all types of educational institutions.¹¹³ Under this formula, each learning outcome should have a *stem*, an *action verb*, and *outcome*.¹¹⁴ 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.¹¹⁵ A learning outcome starts with the stem. For example, typical stem statements begin with: (1) By the end of the course, the students will be able to . . . , (2) Upon graduation, the students should have the following skills

The next part of the learning outcome is an action verb that aligns with a cognitive level from Bloom's Taxonomy.¹¹⁶ Benjamin Bloom developed six levels of

¹⁰⁷ See Harden, *supra* note 92, at 151-52 (discussing the difference between learning objective and learning outcomes); Kuh et al., *supra* note 86. For a useful explanation of outcomes and assessment, see *Assessment Primer: Goals, Objectives and Outcomes*, U. CONN., <http://assessment.uconn.edu/primer/goals1.html> (last retrieved on Sept. 3, 2015).

¹⁰⁸ See generally L. DEE FINK, *CREATING SIGNIFICANT LEARNING EXPERIENCES: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES* (2013); David Reinhold, *Developing Effective Learning Outcomes*, SCHOLARWORKS, <http://goo.gl/3lQ11W> (last visited Mar. 16, 2016).

¹⁰⁹ PEGGY L. MAKI, *ASSESSING FOR LEARNING: BUILDING A SUSTAINABLE COMMITMENT ACROSS THE INSTITUTION* 87-89 (2010).

¹¹⁰ *Id.* at 88.

¹¹¹ *Id.* at 88-89.

¹¹² *Id.*

¹¹³ See NORMAN D. GRONLUND & SUSAN M. BROOKHART, *GRONLUND'S WRITING INSTRUCTIONAL OBJECTIVES* 21 (8th ed. 2008); see also *Assessment Primer*, *supra* note 107.

¹¹⁴ See PETER EWELL, *GENERAL EDUCATION AND THE ASSESSMENT REFORM AGENDA* 1 (2004); GRONLUND & BROOKHART, *supra* note 113, at 25.

¹¹⁵ See GRONLUND & BROOKHART, *supra* note 113, at 61.

¹¹⁶ David R. Krathwohl, *Revising Bloom's Taxonomy*, 41 *THEORY INTO PRAC.* 212, 212 (2002). Krathwohl detailed 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:

- common language about learning goals to facilitate communication across persons, subject matter, and grade levels;

cognition, which has generally been the basis for curricular and course development for several decades.¹¹⁷ Bloom's Taxonomy was later revised to change the types of cognition from nouns to verbs, and this version is used more often now. The six levels 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; and (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.¹¹⁸

The focus of the course may include all or just some of these cognitive levels from Blooms Taxonomy, depending on the course and where it is placed in the curriculum (i.e., first-year, elective course, etc.). Some examples of verbs that can form the basis of the learning outcome:

Table 2

Remember	Understand	Apply	Analyze	Evaluate	Create
Define Underline Relate	Choose Discriminate Discuss	Illustrate Operate Operationalize	Compare Inspect Predict	Assess Compare Critique	Predict Reconstruct Synthesize

A detailed list of verbs that fit under each of these cognitive levels appears in Appendix B.

Finally, the learning outcome should end with some product, process, or outcome that is measurable.¹¹⁹ This should be the most specific part of the learning outcome.¹²⁰ Some examples include: (1) Draft a settlement agreement; (2) Interview

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- 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.

Id. at 212.

¹¹⁷ *Id.* at 212-13.

¹¹⁸ A TAXONOMY FOR LEARNING, TEACHING, AND ASSESSING: A REVISION OF BLOOM'S TAXONOMY OF EDUCATIONAL OBJECTIVES 67-68 (Lorin W. Anderson & David R. Krathwohl, eds. 2001).

¹¹⁹ See GRONLUND & BROOKHART, *supra* note 113, at 61.

¹²⁰ *Id.*

a client to determine the facts of a dispute; and (3) Synthesize multiple cases to determine a relevant rule. 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.¹²¹

Figure 3: Example of Learning Outcomes

Stem: At the end of the semester, students will be able
Action Verb: to use
Outcome: thesis sentences and appropriate transitions to create coherence.
Learning Outcome 1: *At the end of the semester, students will be able to use thesis sentences and appropriate transitions to create coherence.*

Learning Outcome 2: *Upon completion of the course, students should be able to speak in a clear, concise, well-organized, and professional manner that is appropriate to the audience and circumstances.*

IV. THE SUBSTANCE OF LAW SCHOOL LEARNING OUTCOMES

As detailed above, the *ABA Standards* require that law schools develop specific learning outcomes in three areas: knowledge of the law, professional skills, and legal ethics and values.¹²² The *ABA Standards* also provide schools flexibility to develop additional skills that fit within the law school's culture and mission.¹²³

The *ABA Standards* do not specify the specific "substantive and procedural law" that should part of a law school's learning outcomes, instead allowing each school to determine the specific legal concepts it wants its students to learn.¹²⁴ The sources of these outcomes can come from examining the mission of the law school and the likely careers of its graduates, foundational courses, and those subjects tested on the bar exam.¹²⁵ For example, some law schools are beginning to focus more on international law, administrative law, and accounting for lawyers to reflect the realities of practice, so those law schools may want to tailor their learning outcomes to reflect these changes.¹²⁶

¹²¹ *See id.*

¹²² 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standard 302.

¹²³ *Id.* at Interpretation 302-2.

¹²⁴ *See id.* at Standard 302.

¹²⁵ Foundational courses may include torts, criminal law, property, contracts, evidence, civil procedure, constitutional law, among others. For a list of courses covered on the Multistate Bar Exam, see *2016 MBE Subject Matter Outline*, NAT'L CONF. B. EXAMINERS, <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F182> (last visited Mar. 16, 2016). For a list of state-specific materials, see *Jurisdictions Administering the MBE*, NAT'L CONF. B. EXAMINERS, <https://www.ncbex.org/exams/mbe> (last visited Mar. 16, 2016).

¹²⁶ For example, the McGeorge School of Law integrates international law into its curriculum and includes these types of outcomes: 1) Each student will demonstrate the ability to identify and understand key concepts in substantive law, legal theory, and procedure in

For the professional responsibility and ethics requirement, the *ABA Standards* specify that the outcomes must address the lawyer's ethical responsibility to the client and to the legal system.¹²⁷ These concepts are driven by the state's specific ethical rules and the subjects tested on the Multistate Professional Responsibility Exam. Further, the *ABA Standards* also require that every law school require students to take at least two credits in a professional responsibility course that includes "substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession," which could be the basis of learning outcomes for the school and the course.¹²⁸ Additionally, the ABA issued one of the most important reports on legal education in 1992 detailing the fundamental lawyering skills and values that should be taught in law schools.¹²⁹ This report, better known as the *MacCrate Report*, listed a series of values that all law schools should include in their curriculum including commitment to: (1) developing and maintaining competence; (2) promoting justice, fairness, and morality; focus on quality justice; (3) improving the profession; and (4) self-development; understanding that the law is a learned profession.¹³⁰

The school could add additional values or professionalism requirements that match its mission. For example, a religious-based law school could have an outcome related to religion.¹³¹ For those schools that claim to have a public interest mission, they can include a learning outcome on understanding the value of providing *pro bono* legal services to the community.¹³²

The professional skills requirement is where most law schools will have the most flexibility when developing learning outcomes. Faculties should use a deliberate process that determines the professional skills lawyers need when they begin practicing law. Faculties can use multiple methods to gather this information. First,

domestic and international law contexts; and 2) Each student will demonstrate the ability to conduct domestic and international legal research. See *Learning Outcomes*, MCGEORGE SCH. L., http://www.mcgeorge.edu/Students/Academics/JD_Degree/Learning_Outcomes.htm (last visited Apr. 24, 2016).

¹²⁷ See 2015-16 ABA STANDARDS AND RULES, *supra* note 17, at Standard 302(c).

¹²⁸ *Id.* at Standard 303.

¹²⁹ AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138-41 (1992) [hereinafter MACCRATE REPORT].

¹³⁰ *Id.*

¹³¹ For example, the Ave Maria School of Law has this learning outcome: "Ave Maria School of Law is committed to ensuring that Ave Maria School of Law graduates have achieved competency in...knowledge and understanding of the moral foundations of the law, appreciating the contributions of the Catholic intellectual tradition to the law and society, and understanding the importance of integrating one's moral and religious principles into one's vocation in the law." *Academics—Learning Outcomes*, AVE MARIA SCH. L., <http://www.avemarialaw.edu/academics/learning-outcomes> (last visited Apr. 24, 2016).

¹³² The Loyola School of Law in Chicago has this learning outcome: "Graduates should understand the importance of promoting justice, fairness, and morality in their practices, in the profession, and in the greater society." *Learning Outcomes and Competencies*, LOYOLA SCH. L., <http://www.luc.edu/law/about/learningoutcomesandcompetencies> (last visited Apr. 24, 2016).

schools can look at which skills their faculties are already teaching by mapping the current courses. Second, schools can review the many different sources that enumerate the basic skills that should be part of the law school curriculum.¹³³ Third, schools can review the most recent surveys of lawyers that detail the skills needed to practice law. Finally, the school can do its own survey to see what its alumni and employers believe are the most important skills that lawyers need for practice. Throughout the process, it is important to include the constituents of the school, including students, faculty, local lawyers and judges, and alumni.

For example at The John Marshall Law School in Chicago, the professors who taught in the Lawyering Skills Program¹³⁴ engaged in yearlong project to determine the learning outcomes for the entire program, each course, and courses outside of the program. The faculty in the program wanted to know which skills the students were likely to use when they began to practice law, so they could spend the appropriate time teaching those skills in the program. The faculty in the Lawyering Skills Program uses course-mapping review, surveys and reports on law practice and legal education, and administers their own survey of the program's alumni and employers. The faculty subsequently developed a series of learning outcomes for the entire program.

A. Mapping the Current Courses to Determine Learning Outcomes

Most relevant to determining the learning outcomes for the school is using curricular mapping to see what the school's professors are currently teaching. As mentioned earlier, this is a backward process designed to help determine learning outcomes.¹³⁵ Debra Moss Curtis and David Curtis have written the most about this approach to curricular planning. In their article *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education* they discuss the mapping process they used at Nova Southeastern Law School to see the knowledge and skills that each professor was teaching in each course.¹³⁶ The process also detailed the ways that professors were assessing students' learning of these tasks. The authors described this form of curriculum mapping as "a coordinated effort conducted by faculty members to better understand the scope and sequence of their own curriculum with the explicit outcome of engaging in a coordinated and evidence-based reform process."¹³⁷ This process is meant to open a dialogue and improve "communication and instruction throughout the curriculum."¹³⁸

The authors detailed the history of curricular mapping, but point to Heidi Hayes Jacobs as a leader of the movement. Jacobs believed that the mapping process should

¹³³ For examples on the types of sources a school can use to determine the substance of their learning outcomes, see *infra* Part IV.C.

¹³⁴ The Lawyering Skills Program at John Marshall is a four-semester program that covers the basic legal writing, reasoning, research, and communication skills. It also includes the skills the students will need when they graduate.

¹³⁵ This is different from the forward-looking curricular mapping process described earlier in Part II *supra*.

¹³⁶ See generally Moss Curtis & Moss, *supra* note 99.

¹³⁷ *Id.* at 474.

¹³⁸ *Id.* at 477.

include several phases.¹³⁹ The process begins with the professors collecting data on their own teaching.¹⁴⁰ They each record the skills and subjects emphasized in their courses and the “product/performances of the assessments.”¹⁴¹ This process is followed with several steps of sharing the information with colleagues to open a dialogue of what should be taught and assessed throughout each course.¹⁴² The data is then combined with other courses, and the result is a detailed view of what is being taught, when it is being taught, how it is being assessed, and when it is being assessed. The sharing of this information alone can begin a larger process of collaboration among professors teaching the same course, or among professors teaching in similar programs. These discussions are meant to produce information, start a conversation, and engage in curricular evaluation and self-reflection.¹⁴³ This process can inform the process of developing learning outcomes, by showing where there is commonality among the professors.¹⁴⁴

Nova Southeastern used a formal process of curricular mapping where each professor completed a timesheet for each class, which the authors described as a “CourseMap.”¹⁴⁵ Each professor used the CourseMap to describe the skills and topics covered in class along with the amount of time spent on each topic or skill.¹⁴⁶ The professors also indicated the types of assessment used in the class for these skills and topics.¹⁴⁷ The professors then added together the time for each skill and topic covered over the course of the semester.¹⁴⁸ The professors who taught the same subject then met to discuss their maps, with an eye toward identifying common learning goals for the course.¹⁴⁹

This process requires a great deal from work of each professor, and it can be a long process before it produces information that is helpful to developing learning outcomes. Instead, a school can use a slightly less formal process. At John Marshall, the professors in the Lawyering Skills Program used a curricular mapping form to gather data on what each professor taught in his or her course.¹⁵⁰ The form included a detailed checklist of topics and skills, which was developed from the skills listed in the Clinical Legal Education Association’s *Best Practices in Legal Education*, the *Sourcebook on Legal Writing*, the *MacCrate Report*, and different surveys on the

¹³⁹ *Id.* at 477-78.

¹⁴⁰ *Id.* at 478.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.* at 478-80.

¹⁴⁴ *Id.* at 478.

¹⁴⁵ *Id.* at 493.

¹⁴⁶ *Id.* at 493-94.

¹⁴⁷ *Id.* at 494.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ The form appears in Appendix C *infra*.

skills needed to practice law.¹⁵¹ Each professor detailed the amount of time spent on each skill, the competency they wanted students to achieve by the end of the course, and the manner in which they assessed the skill. The competency levels were defined as follows:

*INTRODUCE=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 you introduce to your students, but you know they will be covered in another course. One example may be introducing the students to client interviewing. You could have the students 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.

*COMPETENT= You expect the students to be minimally competent in this skill by the end of LS 1. This is an important skill in the class, but you know that the 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 you don't expect that the student will have completely mastered the skill. You assess the students on this skill, but you do not require mastery. An example of a skill requiring only competency in LS 1 may be using citation signals or parentheticals. You may teach the skill during the semester and provide feedback on it (and maybe even factor it into your grade), but you expect the student to have much more practice with it in LS 2 or beyond.

*MASTERY= You expect the students to master the skill by the time they complete LS 1. You expect the students to perform this skill satisfactorily without any further instruction. The students should be able to do this skill in the practice of law without any further law school courses. An example of this skill would be organizing an office memorandum or using IRAC/CREAC.

When all of the professors submitted their timesheets, we placed the data into one document, which was distributed to all of the professors without attribution. At the same time the professors were completing the timesheets, the law school administered a survey to employers and alumni. Given all of this information, the entire faculty was able to engage in an informed discussion about what should be taught in each of the semesters of the Lawyering Skills Program.

We began our discussions with the areas of commonality, and those skills most emphasized in the surveys. Generally, the professors were covering very similar skills, but they differed on the amount of time and level of competency. It was important not to attribute the mapping data to individual professors because it allowed the faculty to discuss ideas in a more neutral manner without having to defend what they were doing in their class, especially when it might conflict with the data from the survey. The result was a list of professional skills that we agreed

¹⁵¹ See, e.g., ERIC EASTON ET AL., SOURCEBOOK ON LEGAL WRITING PROGRAMS 6 (2d ed. 2006); STUCKEY ET AL., *supra* note 47; MACCRATE REPORT, *supra* note 129; see also *Hiring Partners Reveal New Attorney Readiness for Real World Practice*, LEXISNEXIS, https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf (last visited Mar. 16, 2016). See generally Kathy Morris, *Law Students Need Professional Development*, L. PRACTICE TODAY (May 2014), http://www.americanbar.org/content/newsletter/publications/law_practice_today_home/lpt-archives/2014/may14/law-students-need-professional-development-too.html; STEVEN NETTLES & JAMES HELLRUNG, NAT'L CONF. OF BAR EXAMINERS, A STUDY OF THE NEWLY LICENSED LAWYER (2012), <https://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F56>.

should be taught, which then led to the process of deciding in which courses each skills should be taught.¹⁵²

B. Basic Lawyering Skills

Most people in legal education and in the practice of law can agree on some very basic lawyering skills that all new attorneys will need. The *MacCrate Report* was one of the first reports on legal education that detailed the skills that law schools should teach, and it has been the basis for professional skills training in law schools across the country for several years.¹⁵³ The report lists ten skills that should be included in the law school curriculum: (1) problem solving; (2) legal analysis; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) choosing between and counseling about ADR and litigation options; (9) recognizing and resolving ethical dilemmas; and (10) organization and management of legal work.¹⁵⁴

Along with the *MacCrate Report*, the new ABA accreditation standards, the *Carnegie Report*, and CLEA's *Best Practices in Legal Education* provide clear guidance on what the minimal competencies of law school graduates should be. The ABA also publishes the *Sourcebook on Legal Writing Programs*, which provides another detailed list of recommended competencies of law school graduates.¹⁵⁵ The guide focuses on the skills of legal research, legal analysis, advocacy, and communication. There is a general consensus among these sources on the skills that should be taught in law school, including the following: (1) understanding the U.S. legal system; (2) analyzing facts, issues, and legal authorities; (3) conducting efficient legal research; (4) communicating effectively in writing and orally; (5) recognizing and addressing professional responsibility issues; (6) applying knowledge and skills to solve legal problems; (7) engaging in oral and written advocacy; (8) interviewing, counseling, and negotiation; and (10) engaging in self-regulated learning and self-assessment¹⁵⁶

Although some of these skills are taught in legal writing programs, many are not. For example, most professors do not teach or introduce interviewing, counseling, or negotiation into their legal research and writing courses, nor do all legal writing professors fully integrate the teaching of the relevant ethical rules into assignments. Many law schools teach skills courses separately from a stand-alone professional responsibility course.¹⁵⁷

¹⁵² The data was compiled into an Excel sheet, which is on file with the author.

¹⁵³ STUCKEY ET AL., *supra* note 47, at 12 (“The responsibility of law schools to prepare students for practice was not made clear by the accreditation standards until 1996 after the 1992 McCrate Report prompted this clarification.”).

¹⁵⁴ *Id.* at 121-24.

¹⁵⁵ See EASTON ET AL., *supra* note 151, at 6 (publication of the American Bar Association's Communication Skills Committee of the Section of Legal Education and Admissions to the Bar).

¹⁵⁶ *Id.*

¹⁵⁷ Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MD. L. REV. 465, 467-72 (2011) (discussing a course at Georgia State that integrates lawyering skills and ethics, something that the author claims is missing from most school's law school curriculum).

C. Surveys of the Skills Needed to Practice Law

In addition to the very basic skills that most people agree should be part of the law school curriculum, several different surveys on the skills and competencies a first-year attorney will need when entering practice have been released in the past couple of years. These all provide some guidance on additional learning outcomes law schools may want to include in their curriculum. These surveys asked lawyers about their practice habits (i.e., research, writing, lawyering skills, etc.) and the skills needed to be a competent lawyer.

The most comprehensive report was issued by the National Conference on Bar Examiners (NCBE) based on a survey it completed in 2011 and 2012.¹⁵⁸ The report, *A Study of the Newly Licensed Lawyer*, details the skills and knowledge needed by all lawyers and those that are needed in several specific areas.¹⁵⁹ The survey and report was divided into four categories: (1) General Lawyering Tasks; (2) Knowledge; (3) Skills and Abilities; and (4) Specific Content Tasks.¹⁶⁰

Most relevant to determining the learning outcomes for a law school, the survey details the knowledge and skills needed by all lawyers.

Table 3

Knowledge	Skills and Abilities
Rules of Civil Procedure	Written communication
Rules of Evidence	Paying attention to details
Other Statutory and Court Rules of Procedure	Listening
Rules of Evidence	Oral communication
Professionalism	Professionalism
Research Methodology	Using office technology
Statutes of Limitation	Critical reading and comprehension
Rules of Professional Responsibility and Ethical Obligations	Synthesizing facts and law
Statutory Interpretation	Legal reasoning
Document Review	Knowing when to go back and ask questions
Privileges	Organizational skills
Contract Law	Working within time constraints
Tort Law	Interpersonal skills
Criminal Law	Issue spotting

¹⁵⁸ See generally Nettles & Hellrung, *supra* note 156.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 1. The Specific Content Tasks section included thirteen areas of law: Administrative, Business Organizations, Civil Litigation, Commercial, Criminal, Debtor/Creditor Relations, Employment, Environmental Law/Natural Resources, Family, Immigration, Intellectual Property, Real Estate, and Wills, Trusts, Estate Planning, and Probate. *Id.*

After this report was issued, Neil Hamilton, a professor at the St. Thomas School of Law, synthesized the data from four different studies, including the NCBE's report, to develop a list of core competencies that each new lawyer needs.¹⁶¹ The skills and abilities that appeared at the top of all of the surveys include: (1) integrity, honesty, and trustworthiness; (2) effective written and oral communication skills; (3) project management skills, including high quality, efficiency, and timeliness; (4) analytical skills: identify legal issues from facts, apply the law, and draw conclusions; (5) dedication to client service and responsiveness to client; (6) good judgment, common sense, and problem solving; (7) research skills; (8) seeks feedback and is responsive to feedback.¹⁶²

In July 2011, the Academic Law Libraries Special Interest Section of the Association of Law Libraries administered a survey on the research practices of new associates.¹⁶³ The survey showed that new associates regularly use free resources for their research, did not use case digests often, and regularly used fee-based services.¹⁶⁴ Most lawyers use Westlaw instead of Lexis Advance or Bloomberg.¹⁶⁵ The most common free resources that new lawyers use include Google, court websites, and governmental websites.¹⁶⁶ They do not use Google Scholar or legal blogs very often.¹⁶⁷

Almost annually, new surveys are completed that can provide a full view of what is currently happening in law practice. Some surveys detail the technology habits of lawyers, the research skills of new attorneys, and types of skills necessary to be a successful lawyer. These reports can be the basis for the skills portion of the learning outcomes, and law schools should examine these reports regularly to determine if any adjustments should be made to the curriculum.

D. Determining School-Specific Skills for the Learning Outcomes

In addition to the general surveys that detail the current practices of lawyers, law schools can administer their own surveys or focus groups to determine the types of skills that may be particular to a school. To determine those skills that fit within the mission of The John Marshall Law School and best prepare its students for the types

¹⁶¹ Neil Hamilton, *Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?*, B. EXAMINER, Sept. 2014, at 6. The paper synthesized data from a study done by Marjorie Shultz and Sheldon Zedeck at the University of California-Berkeley in 2003, a study on the value of outside counsel from the perspective of in-house lawyers done by the Association of Corporate Counsel in 2009, the 2013 Altman Weil Chief Legal Officer Survey, and the NCBE's *A Study of the Newly Licensed Lawyer*. *Id.* at 6-8.

¹⁶² *Id.* at 13.

¹⁶³ ALL-SIS TASK FORCE ON IDENTIFYING SKILLS AND KNOWLEDGE FOR LEGAL PRACTICE, A STUDY OF ATTORNEYS' LEGAL RESEARCH PRACTICES AND OPINIONS OF NEW ASSOCIATES' RESEARCH SKILLS (2013), <http://www.aallnet.org/sections/all/storage/committees/practicetf/final-report-07102013.pdf>.

¹⁶⁴ *Id.* at 58-68.

¹⁶⁵ *Id.* at 72-75.

¹⁶⁶ *Id.* at 58-68.

¹⁶⁷ *Id.*

of practice its graduates would likely encounter, the law school developed and administered a survey to employers and its alumni in April 2011.¹⁶⁸ Many of the questions were based on the recommendations in CLEA's *Best Practices in Legal Education*¹⁶⁹ and the *Sourcebook on Legal Writing Programs*,¹⁷⁰ as well as similar surveys done by the ABA, other law schools, and state bar associations. Specifically, the law school examined and used parts of similar surveys done at Dayton Law School, at Phoenix Law School, and through the Arizona Bar Association. The annual ABA Technology Survey also provided a foundation for the research and technology questions for the school's survey.¹⁷¹

The goal of the survey was to determine which skills are needed for a first-year attorney. The survey questions were divided into several general categories: general research habits, the use of technology in the practice of law, the typical documents that new attorneys draft, and the lawyering skills required of an entry-level attorney. The survey to employers concluded with a series of questions about their views of John Marshall graduates. The alumni survey concluded with questions about their views on how well John Marshall prepared them to practice law.

The career services office provided lists of current and prospective employers to target. The list included both legal employers who have hired John Marshall graduates and those who have not. This list included legal employers throughout Illinois. It also included public interest employers who hire graduates from Illinois schools even if they do not have any offices in Illinois. For the employers, the school asked that the person most familiar with the skills needed of a first-year attorney complete the survey. For the alumni, the school sent the survey to those who graduated within the preceding five years.

Three notices were sent over the month of April asking the employers and alumni to complete the survey. We sent a letter in early April, an email reminder in the middle of April, and a postcard reminder at the end of April. Accounting for returned letters due to wrong address, the law school sent the survey to 2,403 people.¹⁷² The school received responses from 602 people, for a response rate of approximately 25%.

Of the alumni who responded to the survey (475) approximately sixty-seven percent engage in litigation-focused work while twenty-four engage in transactional-oriented work (IP, real estate, trust and estates, business planning, etc.). The top areas were: general litigation (29%), real estate (10%), criminal (9%), bankruptcy (7%), and commercial litigation (6%). The majority of alumni work in a law firm (53%), while many others were solo practitioners (10%). The overwhelming majority work in offices with less than twenty-five attorneys (75%), and almost half work in offices with less than five attorneys (45%). Our respondents' practice areas

¹⁶⁸ For the complete details of the results of the survey, see Appendix D.

¹⁶⁹ See STUCKEY ET AL., *supra* note 47, at 39-92.

¹⁷⁰ See EASTON, *supra* note 156, at 5-46.

¹⁷¹ See generally AM. BAR ASS'N, LEGAL TECHNOLOGY SURVEY (2015), http://www.americanbar.org/groups/departments_offices/legal_technology_resources/publications.html.

¹⁷² This number represents the total number of letters sent minus those that were returned to the law school because of the addresses were wrong or no longer valid.

were similar to those statistics reported to our career services office. Here is a comparison:

Area of Practice	% of Graduates Employed - Survey	% of Graduates Employed - JMLS Office					
		2010	2009	2008	2007	2005	2004
Private Practice	62%	50.8%	57.2%	54.9%	62.2%	62.5%	56.6%
Business/Industry	18%	22.0%	22.0%	22.8%	21.4%	18.2%	20.9%
Government	14.8%	15.7%	13.5%	15.3%	12.8%	13.4%	16.7%
Judicial Clerkship	1.9%	1.8%	1.2%	1.7%	2.5%	2.0%	1.9%
Public Interest	1.2%	2.4%	1.2%	1.9%	0.6%	1.0%	1.9%
Academic	n/a	7.3%	5.0%	3.3%	0.6%	2.9%	1.9%

Of the employers who responded, forty-six percent were from law firms and thirteen percent were from governmental entities. Similar to the alumni, seventy-six percent were from offices with less than twenty-five attorneys and sixty-eight percent had a mostly litigation focus. Essentially, the demographics of the employers matched the demographics of the alumni who responded. These demographics of John Marshall graduates were important in developing learning outcomes because it told the faculty that most of their students will likely be in employed in small law firms or governmental settings. Thus, the faculty needed to expose the students to more skills than if they were going to places that had others to do those skills or places where they would receive additional training or mentoring.

No matter how the data was sorted (number of attorneys or type of practice), each survey produced very similar results. The only difference occurred between areas of practice and the documents they draft.¹⁷³ Across all practice areas, the research habits and typical lawyering skills were very similar.

The surveys produced helpful information about the types of skills new lawyers will need and the typical documents they will draft. The survey showed that the types of documents most common for lawyers in their first year include: (1) memos and emails with legal analysis; (2) correspondence to other lawyers (with the possible exception of demand letters); (3) client letters and emails to clients; (4) complaints and answers; (5) motions to dismiss; (6) motions for summary judgment; (7) discovery motions; (8) settlement agreements; and (9) basic contractual provisions.¹⁷⁴

The surveys showed that the types of lawyering skills most common to first-year lawyers include the following: (1) filing documents; (2) fact investigation and interviews; (3) client counseling and problem solving; (4) negotiation; (5) oral communication; (6) oral argument; (7) ethics and professionalism. Most of these

¹⁷³ For example, if the firm or alumnus had a largely transactional practice, they drafted more contracts, while litigators drafted more motions.

¹⁷⁴ The documents that were the most commonly done by first-year attorneys doing litigation include office memoranda (mostly informal ones), email correspondence, client letters, general correspondence, and basic pre-trial documents. The most common transactional documents were simple contracts and real estate documents.

skills were universal regardless of practice area, with the exception of filing court documents. The skills most common in practice were fact investigations, document filing, client counseling, networking, negotiation, oral communication, and professional responsibility.

The curricular mapping process, the review of lawyer surveys, and its own survey of employers and alumni produced a great deal of data that allowed the John Marshall faculty to engage in a more informed and deliberate process in determining the law school's learning outcomes for professional skills. The faculty subsequently developed a series of general learning outcomes for the entire law school. The faculty then developed more specific and narrow learning outcomes that were mapped across the Lawyering Skills Program and its courses. Some of the learning outcomes were also added to courses outside of the Lawyering Skills Program because all of the skills could not be covered in the four courses in the program. A list of learning outcomes for the Lawyering Skills Program is in Appendix E.

CONCLUSION

Overall, the new *ABA Standards* provide a roadmap on how to develop learning outcomes and properly develop a coherent, cohesive, and comprehensive curriculum. The process should begin with the *ABA Standards*, which require learning outcomes based on the knowledge, skills, and values required to practice law. The school should then develop learning outcomes for the school, more specific outcomes for a program, and even more narrow outcomes for courses. Here is an example of learning outcomes that the Lawyering Skills Program at John Marshall designed that are aligned with the *ABA Standards* and the law school outcomes:

Table 4

ABA Standard 302(d)	“[P]rofessional skills needed for competent and ethical participation as a member of the legal profession”
Law School Learning Outcome	Each student will be able speak and write in a clear, concise, and well-organized manner that is appropriate to the audience and circumstances.
Professional Skills Program	Each student will be able to write a pre-trial motion that is clear, organized, persuasive, and supported by relevant authority.
Specific Course	Each student will be able to write a pre-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

	<p>required by the civil procedure and local rules of a court;</p> <p>Organizes the argument section around a synthesized rule of law;</p> <p>Employs a deductive framework for large and small-scale organization (overview and thesis paragraphs);</p> <p>Explains the law within each analytical element with appropriate detail from the relevant authorities that supports the arguments in the brief;</p> <p>Applies the law clearly and persuasively, referencing the relevant authority and its relationship to relevant client facts while illustrating analysis and rebutting counter-analysis;</p> <p>Employs an appropriate tone that persuades the court while maintaining the writer's credibility.</p>
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The process adopted at John Marshall resulted in a unanimous vote for the changes to the Lawyering Skills Program, including adding another credit to the third course in the program's sequence.

Law schools can go through the process of developing learning outcomes by reviewing and copying what other law schools are doing, or they can take the new *ABA Standards* as an opportunity to engage in a comprehensive review of their law school curriculum. Law schools can take many different steps to complete the process of developing learning outcomes, but the most time-consuming step will be determining the learning outcomes for professional skills. Engaging in a thorough and comprehensive process will better inform the faculty when making its decision, allow for less ideological battles, and better prepare the students for the types of practice they are likely to face when they graduate.

APPENDIX A

SUMMARY OF OUTCOMES AND ASSESSMENT REQUIREMENTS FOR EACH REGIONAL ACCREDITATION AGENCY

NEW ENGLAND ASSOCIATION: REQUIREMENTS FOR OUTCOMES

NEASC expects its members to develop and publically disclose information regarding learning outcomes. An institution must "publish[] its mission, objectives, and expected educational outcomes" as well as "statements of its goals for students' education and the success of students in achieving those goals."¹⁷⁵ Institutions must "undertake[] academic planning and evaluation as part of its overall planning and evaluation to enhance the achievement of institutional mission and program

¹⁷⁵ *Standards for Accreditation*, COMM'N ON INST.'S HIGHER EDUC. NEW ENG. ASS'N SCH. & C., 24-25, <https://cihe.neasc.org/standards-policies/standards-accreditation/standards-effective-july-1-2016> (Revisions Effective July 1, 2016).

objectives... [in a] realistic [manner that] take[s] into account stated goals and available resources.”¹⁷⁶ And where “multiple sections of the same course” are offered at an institution, the institution should “ensure an appropriate balance between achieving consistency in learning outcomes and flexibility, allowing students to benefit from individual faculty members’ experience and teaching style.”¹⁷⁷

NEASC expects “learning goals and requirements” to be published for every program.¹⁷⁸ In graduate degree programs, institutions should create “[l]earning objectives [that] reflect a high level of complexity, specialization, and generalization.”¹⁷⁹ Programs, such as JD programs, should reflect the “general expectations of the larger academic community for the level of degree awarded and the field of study.”¹⁸⁰ Law school “[p]rograms encompassing both research activities and professional practice [should] define their relative emphases in program objectives that are reflected in curricular, scholarly, and program requirements.”¹⁸¹ Law schools should also provide information on the “knowledge, intellectual and academic skills, and methods of inquiry to be acquired” and “specific career-preparation practices to be mastered” to be in compliance with NEASC standards.¹⁸² Additionally, a law schools expectations should be “consistent[] with the institution’s mission in preparing students for . . . employment, as appropriate.”¹⁸³

NEW ENGLAND ASSOCIATION: REQUIREMENTS FOR ASSESSMENTS

NEASC “institution[s] regularly and systematically evaluate[] the achievement of its mission and purposes.”¹⁸⁴ NEASC expects its “institution[s to] implement[] and provide[] support for systematic and broad-based assessment of what and how students are learning through their academic program and experiences outside the classroom.”¹⁸⁵ Institutional assessments ought to “primar[ily] focus [on] the realization of its educational objectives.”¹⁸⁶ Schools need to use “a variety of quantitative and qualitative methods and direct and indirect measures to understand the experiences and learning outcomes.”¹⁸⁷ NEASC also expects “evaluation of student learning or achievement and the award of credit [to be] based upon clearly

¹⁷⁶ *Id.* at 7-8.

¹⁷⁷ *Id.* at 15-16.

¹⁷⁸ *Id.* at 7.

¹⁷⁹ *Id.* at 9.

¹⁸⁰ *Id.* at 12.

¹⁸¹ *Id.* at 10.

¹⁸² *Id.* at 7.

¹⁸³ *Id.* at 12.

¹⁸⁴ *Id.* at 4.

¹⁸⁵ *Id.* at 12.

¹⁸⁶ *Id.* at 4.

¹⁸⁷ *Id.* at 13.

stated criteria that reflect learning objectives.”¹⁸⁸ Assessment of student learning should be “based on clear statements of what students are expected to gain, achieve, demonstrate, or know by the time they complete their academic program.”¹⁸⁹

NORTHWEST COMMISSION: REQUIREMENTS FOR OUTCOMES

A NWCCU accredited school “establishes objectives for each of its core themes and identifies meaningful, assessable, and verifiable indicators of achievement that form the basis for evaluating accomplishment of the objectives of its core themes” as a part of its accreditation obligations.¹⁹⁰ Members are expected to “provide[] programs . . . [that] culminate in achievement of clearly identified student learning outcomes[which] lead to collegiate-level degrees . . . consistent with program content in recognized fields of study.”¹⁹¹ A member school “identifies and publishes expected course, program, and degree learning outcomes” “in a catalog . . . [or other] manner reasonably available to students and other stakeholders.”¹⁹² NWCCU schools must distribute “[e]xpected student learning outcomes for courses . . . in written form to enrolled students.”¹⁹³

NORTHWEST COMMISSION: REQUIREMENTS FOR ASSESSMENTS

NWCCU expects its members to “engage in an effective system of evaluation of its programs and services . . . to evaluate achievement of clearly identified program goals or intended outcomes.”¹⁹⁴ A NWCCU accredited law school would be expected to “engage[] in ongoing systematic collection and analysis of meaningful, assessable, and verifiable data—quantitative and/or qualitative, as appropriate to its indicators of achievement—as the basis for evaluating the accomplishment of its core theme objectives.”¹⁹⁵ In achieving these goals, “faculty with teaching responsibilities [are expected to] take collective responsibility for fostering and assessing student achievement of clearly identified learning outcomes.”¹⁹⁶

MIDDLE STATES COMMISSION: REQUIREMENTS FOR OUTCOMES

MSCHE accredited institutions are expected to have a “clearly defined mission [in addition to] goals that[] guide faculty, administration, staff, and governing

¹⁸⁸ *Id.* at 11.

¹⁸⁹ *Id.* at 12.

¹⁹⁰ NW. COMM’N ON COLL. & UNIV., ACCREDITATION HANDBOOK 23 (2015), <http://www.nwccu.org/Pubs%20Forms%20and%20Updates/Publications/Accreditation%20Handbook,%202015%20Edition.pdf>.

¹⁹¹ *Id.* at 27.

¹⁹² *Id.* at 27, 30.

¹⁹³ *Id.* at 27.

¹⁹⁴ *Id.* at 35.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 27.

structures in making decisions related to planning, resource allocation, program and curricular development and the definition of institutional and educational outcomes [and] goals that focus on student learning and related outcomes.”¹⁹⁷ With MSCHE accreditation, the member “institution possesses and demonstrates . . . institutional [and individual unit based] objectives . . . that are clearly stated, assessed appropriately, linked to mission and goal achievement, reflect conclusions drawn from assessment results, and are used for planning and resource allocation[.]”¹⁹⁸ Institutions strive for “educational goals at the institution and degree/program levels which are interrelated with one another, with relevant educational experiences, and with the institution’s mission.”¹⁹⁹ Additionally, MSCHE advises members that they should “define meaningful curricular goals with defensible standards for evaluating whether students are achieving those goals [and] articulate how they prepare students in a manner consistent with their mission for successful careers, meaningful lives, and, where appropriate, further education.”²⁰⁰

MIDDLE STATES COMMISSION: REQUIREMENTS FOR ASSESSMENTS

As a member of MSCHE, the law school must demonstrate “periodic assessment of the effectiveness of programs providing student learning opportunities.”²⁰¹ To meet this goal, institutions have to “collect and provide data,” perform “organized and systematic assessments, conducted by faculty and/or appropriate professionals, [to] evaluat[e] the extent of student achievement of institutional and degree/program goals,” and “support and sustain assessment of student achievement and communicate the results of this assessment to stakeholders.”²⁰²

SOUTHERN ASSOCIATION: REQUIREMENTS FOR OUTCOMES

The institution that is accredited by SACS “publishes policies that include criteria for evaluating . . . are consistent with its mission and ensure that course work and learning outcomes are at the collegiate level and comparable to the institution’s own degree programs.”²⁰³ Law school programs that are members of SACS must “identif[y] expected outcomes, assesses the extent to which it achieves these outcomes, and provides evidence of improvement based on analysis of the results in . . . [its] educational programs, to include student learning outcomes.”²⁰⁴

¹⁹⁷ MIDDLE STATES COMM’N ON HIGHER EDUC., STANDARDS FOR ACCREDITATION AND REQUIREMENTS AFFILIATION 4 (2014), <http://www.msche.org/documents/RevisedStandardsFINAL.pdf>.

¹⁹⁸ *Id.* at 12.

¹⁹⁹ *Id.* at 10.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 7-8.

²⁰² *Id.* at 10.

²⁰³ S. ASS’N OF COLL. & SCH. COMM’N ON COLL., THE PRINCIPLES OF ACCREDITATION: FOUNDATIONS FOR QUALITY ENHANCEMENT 28 (2012), <http://www.sacscoc.org/pdf/2012PrinciplesOfAcreditation.pdf>.

²⁰⁴ *Id.* at 27.

SOUTHERN ASSOCIATION: REQUIREMENTS FOR ASSESSMENTS

SACS schools have to “engage[] in ongoing, integrated, and institution-wide research-based planning and evaluation processes.”²⁰⁵ These processes are to include the “incorporate[ion of] a systematic review of institutional mission, goals, and outcomes.”²⁰⁶ From the research and evaluation that takes place, “results in continuing improvement in institutional quality.”²⁰⁷ Additionally, SACS institutions must “developed an acceptable Quality Enhancement Plan (QEP) that includes an institutional process for identifying key issues emerging from institutional assessment and focuses on learning outcomes and/or the environment supporting student learning and accomplishing the mission of the institution.”²⁰⁸

WESTERN ASSOCIATION: REQUIREMENTS FOR OUTCOMES

Schools must “have clear educational goals and student learning outcomes” and “collect, analyze, and interpret valid and reliable evidence of learning as a way of assessing student achievement and success” to “seek to understand and improve student success.”²⁰⁹ An “institution’s student learning outcomes and standards of performance are [to be] developed by faculty...[who take a] collective responsibility for establishing appropriate standards of performance and demonstrating through assessment the achievement of these standards.”²¹⁰ Information on learning outcomes and performance standards should be “widely shared among faculty, students, staff, and (where appropriate) external stakeholders.”²¹¹ What an institution expects of its students with regards to “learning outcomes and standards of performance are to be clearly stated at the course, program, and, as appropriate, institutional level.”²¹² Law school programs (as graduate level programs) must “establish clearly stated objectives differentiated from and more advanced than undergraduate programs in terms of admissions, curricula, standards of performance, and student learning outcomes.”²¹³

WESTERN ASSOCIATION: REQUIREMENTS FOR ASSESSMENTS

Institutions that are accredited by WASC are expected to “demonstrate[] that its graduates consistently achieve its stated learning outcomes and established standards

²⁰⁵ *Id.* at 18.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 21.

²⁰⁹ WASC SENIOR COLL. & UNIV. COMM’N, 2013 HANDBOOK OF ACCREDITATION REVISED 8 (2015), <https://www.wascsenior.org/content/2013-handbook-accreditation>.

²¹⁰ *Id.* at 15.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

of performance.²¹⁴ WASC requires accredited law schools to have “expectations for student learning are embedded in the standards that faculty use to evaluate student work.”²¹⁵

APPENDIX B

BLOOM'S TAXONOMY (Revised):
Learning Outcome Verbs for Each Level of Bloom's Taxonomy²¹⁶

Cognitive Level	Illustrative Verbs	Definitions
Remember	arrange, define, describe, duplicate, identify, label, list, match, memorize, name, order, outline, recognize, relate, recall, repeat, reproduce, select, state	remembering previously learned information
Understand	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
Apply	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
Analyze	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
Evaluate	appraise, argue, assess, attach, choose, compare, conclude, contrast, defend, describe, discriminate, estimate, evaluate, explain, judge, justify, interpret, relate, predict, rate, select, summarize, support,	making judgments based on internal evidence or external criteria

²¹⁴ *Id.* at 15.

²¹⁵ *Id.*

²¹⁶ This Table is adapted from *Bloom's Taxonomy: Learning Objective Verbs at Each Bloom Taxonomy Level*, <http://www.au.af.mil/au/awc/awcgate/edref/bloom.htm> (last visited Apr. 24, 2016).

	value	
Create	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

APPENDIX C

Lawyering Skills 1
Program Assessment Table

To better assess the curriculum for our LS Program, I am asking that you complete this table during the semester. You can complete it over the course of the semester (after each class) or while reviewing your syllabus. You will likely get a better assessment of what you teach if you complete this as you go through the semester. Please give your completed form to Diane Gordon. To enable you to make the best and most complete assessment of what you teach, I will not look at individual responses. Diane will compile the data into one document without any reference to individual professors. This should give us a good starting point for any discussions about the curriculum and what needs to be covered in LS 2, 3 and 4.

Here are the directions for completing this chart.

Find the skill that best represents what you are teaching. If none exist, write what you believe the skill to be into one of the blank spaces. Try to fit the new skill under the appropriate category.

Estimate the number of hours and minutes you spend teaching those skills in the classroom. Remember that you only have approximately 2400 minutes for the semester, but there may be times when you teach two or more skills at the same time. Please include any teaching that others may do for your class (i.e., teaching assistants, Lexis/Westlaw reps). The amount of time is less important than the competency level you believe the students should have.

Designate the competency level you expect the students to have for this skill by the end of LS 1. Use the following codes:

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 you introduce to your students, but you know they will be covered in another course. One example may be introducing the students to client interviewing. You could have the students 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.

C=You expect the students to be minimally competent in this skill by the end of LS 1. This is an important skill in the class, but you know that the 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 you don't expect that the student will have completely mastered the skill. You assess the students on this skill, but you don't require mastery. An example of a skill requiring only competency in LS 1 may be using citation signals or parentheticals.

You may teach the skill during the semester and provide feedback on it (and maybe even factor it into your grade), but you expect the student to have much more practice with it in LS 2 or beyond.

M=You expect the students to master the skill by the time they complete LS 1. You expect the students to perform this skill satisfactorily without any further instruction. The students should be able to do this skill in the practice of law without any further law school courses. An example of this skill would be organizing an office memorandum or using IRAC/CREAC.

Discuss briefly how you analyze whether the students have mastered or are competent in a particular skill. A few examples of assessment tools include: grading a memorandum, giving the students a quiz, offering a performance exam, or critiquing an oral presentation.

Name of Professor:

Semester:

Topic/Skill	Time (hours & mins)	Competency (I, C, M)	Assessment (briefly describe)
Understanding the legal system and court system			
Legal Analysis			
Reading and understanding cases			
Reading and understanding statutes			
Briefing cases or using case charts			
Synthesizing law			
Statutory interpretation			
Understanding and using regulations and administrative materials (rules, regs, executive orders, government opinions, etc.)			
Organization of legal analysis			
Understanding CREAC, IRAC, etc			
Organizing multiple issues (umbrella paragraphs, roadmaps, placement of issues, etc.)			
Developing rules			
Explaining rules			
Applying rules			

Topic/Skill	Time (hours & mins)	Competency (I, C, M)	Assessment (briefly describe)
Office Memorandum			
Question/Issue Presented			
Brief Answer			
Statement of facts			
Conclusion			
Overall format			
Purpose and use of predictive writing			

Topic/Skill	Time (hours & mins)	Competency	Assessment
Legal Research-Book			
Secondary sources			
State case research			
Federal case research			
State statutes			
Federal statutes			
Administrative materials and executive orders			
Legal Research-Electronic			
Secondary sources			
State case research			
Federal case research			
State statutes			
Federal statutes			
Administrative materials and executive orders			
Free resources			
Citation			
Secondary sources			
State case research			
Federal case research			
State statutes			

Federal statutes			
Administrative materials and executive orders			
Other sources			
Using signals			
Using parentheticals			
Paraphrasing and quoting material			
Editing			
Self-editing			
Peer editing			
Ethics and Professionalism			
Model Rules of Professional Conduct			
Illinois Rules of Professional Conduct			
Professional conduct			
Role of lawyer in society			
Plagiarism			

Topic/Skill	Time (hours & mins)	Competency	Assessment
Exams			
Exam taking techniques			
Outlining			
Performance exam for bar			
Writing and grammar			
Conciseness and clarity			
Punctuation			
Sentence structure			
Paragraph structure			
Grammar			
Other lawyering skills			
Interviewing			
Client counseling			
Client letters			
Demand letters			

Pleadings			
Negotiation			
Mediation			
Other ADR techniques			
Email correspondence			
Client billing and timesheets			
Courtroom conduct			
Process of lawsuit			
General Contract drafting			
Settlement agreements			
Other			

APPENDIX D

Survey Results: Types of Documents Typical of First-Year Attorneys

EMPLOYERS: How often are first-year attorneys in your office expected to draft the following documents?

	Never	Seldom	Sometimes	Often	Very Often	Total
Office memos-formal	18.6%	16.1%	22.9%	24.6%	17.8%	100%
Office memos-informal	9.3%	8.5%	26.3%	28.0%	28.0%	100%
Emails involving legal issues	2.5%	10.2%	22.0%	36.4%	28.8%	100%
Client letters	10.2%	9.3%	22.9%	28.0%	29.7%	100%
Demand letters	30.5%	17.8%	26.3%	14.4%	11.0%	100%
Letters to other lawyers	5.9%	10.2%	26.3%	28.8%	28.8%	100%

ALUMNI: How often did you draft the following documents in your first year of practicing law?

	Never	Seldom	Sometimes	Often	Very Often	Total
Office memos (formal)	20.9%	25.4%	23.4%	14.5%	15.8%	100%
Office memos (informal)	12.9%	14.9%	26.3%	25.4%	20.5%	100%
Emails involving legal issues	5.1%	7.8%	19.8%	29.6%	37.6%	100%
Client letters	15.1%	11.1%	19.4%	24.5%	29.8%	100%
Demand letters	30.5%	22.3%	17.6%	14.5%	15.1%	100%
Letters to other lawyers	10.2%	16.3%	22.3%	22.5%	28.7%	100%

EMPLOYERS: How often are first-year attorneys in your office expected to draft the following trial, appellate, and administrative documents?

	Never	Seldom	Sometimes	Often	Very Often	Total
Requests or responses for injunctive relief	33.1%	28.0%	23.7%	8.5%	6.8%	100%
Complaints or Answers	20.3%	6.8%	21.2%	31.4%	20.3%	100%
Motions to Dismiss	16.9%	17.8%	31.4%	22.0%	11.9%	100%

	Never	Seldom	Sometimes	Often	Very Often	Total
Motions for Judgment on the Pleadings	24.6%	23.7%	27.1%	16.1%	8.5%	100%
Discovery requests or responses	16.1%	8.5%	23.7%	30.5%	21.2%	100%
Motions to Compel	18.6%	21.2%	30.5%	16.1%	13.6%	100%
Motions for Summary Judgment	22.9%	25.4%	28.0%	17.8%	5.9%	100%
Pre-Trial Memorandum	19.5%	21.2%	34.7%	16.1%	8.5%	100%
Motions in Limine	22.9%	33.1%	19.5%	16.1%	8.5%	100%
Jury instructions	35.6%	28.0%	18.6%	10.2%	7.6%	100%
Post-Trial Motions	22.9%	28.8%	28.0%	16.1%	4.2%	100%
Settlement agreements	26.3%	19.5%	24.6%	16.9%	12.7%	100%
Administrative law filings (e.g., EEOC, health law, immigration, environmental, social security)	39.0%	16.1%	17.8%	16.9%	10.2%	100%
Appellate Briefs	32.2%	32.2%	22.9%	6.8%	5.9%	100%
Other motions (please specify)	57.4%	8.5%	10.6%	10.6%	12.8%	100%

ALUMNI: How often did you draft the following trial, appellate, and administrative documents in your first year of practicing law?

	Never	Seldom	Sometimes	Often	Very Often	Total
Requests or responses for injunctive relief	62.4%	19.8%	11.8%	3.1%	2.9%	100%
Complaints or answers	28.7%	9.6%	16.3%	20.5%	24.9%	100%
Motions to Dismiss	36.7%	10.5%	22.0%	16.9%	13.8%	100%
Motions for Judgment on the Pleadings	51.4%	16.9%	14.3%	10.5%	6.9%	100%
Discovery requests or responses	27.8%	11.1%	20.3%	14.5%	26.3%	100%

Motions to Compel	44.5%	17.8%	17.6%	10.2%	9.8%	100%
Motions for Summary Judgment	45.0%	15.8%	19.6%	10.2%	9.4%	100%
Pre-Trial Memorandum	45.9%	21.8%	16.5%	11.1%	4.7%	100%
Motions in Limine	54.8%	18.3%	15.1%	7.1%	4.7%	100%
Jury instructions	60.6%	19.4%	9.4%	6.7%	4.0%	100%
Post-Trial Motions	61.7%	17.4%	12.2%	6.0%	2.7%	100%
Settlement agreements	41.4%	14.0%	18.7%	14.9%	10.9%	100%
Administrative law filings (e.g., EEOC, health law, immigration, environmental, social security)	68.4%	9.8%	8.5%	7.1%	6.2%	100%
Appellate Briefs	69.7%	11.1%	11.8%	4.0%	3.3%	100%
Other motions (please specify)	69.9%	2.5%	10.2%	6.8%	10.6%	100%

EMPLOYERS: How often are first-year attorneys in your office expected to draft the following transactional documents?

	Never	Seldom	Sometimes	Often	Very Often	Total
Contracts	44.1%	20.3%	20.3%	9.3%	5.9%	100%
Corporate documents (e.g., mergers, financing, corporate by-laws, etc.)	66.9%	14.4%	9.3%	8.5%	0.8%	100%
Real estate documents (e.g., deeds, mortgages, sales contracts, etc.)	56.8%	15.3%	12.7%	11.0%	4.2%	100%
Wills or trusts	68.6%	10.2%	11.0%	7.6%	2.5%	100%
Intellectual law documents (e.g., patent or copyright applications)	82.2%	9.3%	3.4%	3.4%	1.7%	100%
Other (please specify the type)	75.0%	0.0%	11.4%	6.8%	6.8%	100%

ALUMNI: How often did you draft these types of transactional documents in your first year of practicing law?

	Never	Seldom	Sometimes	Often	Very Often	Total
Contracts	42.3%	16.5%	19.6%	11.8%	9.8%	100%
Corporate documents (i.e., mergers, financing, corporate by-laws, etc.)	68.2%	10.9%	11.8%	5.8%	3.3%	100%
Real estate documents (i.e., deeds, mortgages, sales contracts, etc.)	65.3%	11.8%	9.1%	6.2%	7.6%	100%
Wills or trusts	69.7%	13.1%	8.9%	3.1%	5.1%	100%
Intellectual law documents (e.g., patent or copyright applications)	84.6%	5.8%	2.7%	1.6%	5.4%	100%
Other (please specify)	84.2%	2.0%	3.0%	3.0%	7.9%	100%

EMPLOYERS: How often are first-year attorneys in your office expected to engage in the following lawyering skills?

	Never	Seldom	Sometimes	Often	Very Often	Total
Client intake interviews	30.5%	8.5%	22.9%	15.3%	22.9%	100%
Drafting attorney/client agreements	44.1%	21.2%	19.5%	5.9%	9.3%	100%
Fact investigations	8.5%	5.1%	31.4%	26.3%	28.8%	100%
Filing documents	11.0%	4.2%	27.1%	32.2%	25.4%	100%
Client counseling	17.8%	15.3%	30.5%	13.6%	22.9%	100%
Obtaining clients	52.5%	22.9%	16.1%	4.2%	4.2%	100%
Networking	21.2%	21.2%	29.7%	20.3%	7.6%	100%
Negotiations	16.9%	20.3%	25.4%	20.3%	16.9%	100%
Mediations	33.9%	30.5%	24.6%	11.0%	0.0%	100%
Arbitrations	47.5%	31.4%	17.8%	2.5%	0.8%	100%

	Never	Seldom	Sometimes	Often	Very Often	Total
Depositions	27.1%	16.1%	39.8%	10.2%	6.8%	100%
Trial advocacy	23.7%	23.7%	19.5%	19.5%	13.6%	100%
Oral arguments (motions and appellate advocacy)	22.0%	19.5%	22.9%	25.4%	10.2%	100%
Oral communication in general	7.6%	3.4%	12.7%	32.2%	44.1%	100%
Law practice management	39.0%	31.4%	16.9%	9.3%	3.4%	100%
Ethics and professional responsibility	9.3%	8.5%	26.3%	19.5%	36.4%	100%
Administrative advocacy (appear before an agency)	39.0%	22.0%	18.6%	14.4%	5.9%	100%
Drafting legislation	69.5%	20.3%	5.1%	4.2%	0.8%	100%
Lobbying governmental agencies	78.0%	15.3%	4.2%	2.5%	0.0%	100%
Political advocacy (for a candidate, issue, or cause)	85.6%	5.9%	6.8%	0.0%	1.7%	100%
Others (please specify)	83.3%	2.8%	13.9%	0.0%	0.0%	100%

ALUMNI: How often did you engage in the following lawyering skills in your first year of practice?

	Never	Seldom	Sometimes	Often	Very Often	Total
Client intake interview	37.0%	12.9%	17.6%	15.4%	17.1%	100%
Drafting attorney/client agreements	51.0%	15.4%	14.0%	10.5%	9.1%	100%
Fact investigation	14.9%	8.0%	23.2%	25.8%	28.1%	100%
Client counseling	21.4%	14.9%	21.2%	21.2%	21.4%	100%
Filing documents	18.7%	10.5%	18.7%	23.8%	28.3%	100%
Obtaining clients	50.6%	18.3%	13.1%	7.8%	10.2%	100%
Networking	14.3%	19.8%	31.8%	19.2%	14.9%	100%

	Never	Seldom	Sometimes	Often	Very Often	Total
Negotiation	23.2%	14.7%	25.2%	15.8%	21.2%	100%
Mediations	58.4%	17.6%	16.5%	3.6%	4.0%	100%
Arbitrations	63.0%	14.7%	11.4%	4.5%	6.5%	100%
Depositions	45.9%	18.5%	17.6%	11.1%	6.9%	100%
Trial advocacy	47.4%	14.3%	13.6%	10.5%	14.3%	100%
Oral argument (motions and appellate advocacy)	39.6%	12.0%	18.9%	16.0%	13.4%	100%
Oral communication in general	11.1%	3.6%	13.4%	24.3%	47.7%	100%
Law practice management	44.3%	16.3%	15.6%	11.4%	12.5%	100%
Ethics and professional responsibility	18.5%	15.8%	25.2%	18.0%	22.5%	100%
Administrative advocacy (appear before an agency)	64.6%	13.8%	10.0%	4.7%	6.9%	100%
Drafting legislation	92.9%	2.7%	2.4%	0.7%	1.3%	100%
Lobbying governmental agencies	93.8%	3.1%	1.3%	0.9%	0.9%	100%
Political advocacy (for a candidate, issue, or cause)	92.2%	2.9%	2.4%	0.9%	1.6%	100%
Others (please specify below)	91.7%	0.0%	1.6%	0.5%	6.2%	100%

APPENDIX E

Learning Outcomes for Lawyering Skills Program

Definition of Codes:

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 you introduce 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.

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. You may teach the skill during the semester and provide feedback on it (and maybe even factor it into your grade), but you expect the student to have much more practice with it in LS 2 or beyond.

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.

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

Learning Outcomes
Students will recognize and apply basic concepts of federalism and the three branches of government.
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.
Students will identify and apply concepts related to the basic structure and function of the American court system.
Students will recognize and apply basic concepts regarding jurisdiction, hierarchy, and weight of authority.
Students will appreciate the importance of, and obligation to, gather facts relevant to key legal issues and will employ strategies to gather such facts.
Students will synthesize authorities into legal principles with elements, factors, or conditions, as appropriate.
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.
Students will apply synthesized legal principles to the client's factual scenario, analogizing and distinguishing legal sources to the client's facts, as appropriate.
Students will be able to interview and counsel clients about their legal issues.
Students will identify, discriminate between, and select appropriate and conventional frameworks for legal analysis, including text-based, analogical, narrative, and

Learning Outcomes
policy-based reasoning.
Students will recognize the range of possible outcomes/solutions for client problems, including reasonable arguments and counterarguments, and will produce reasonable predictions as to the resolution of a client matter, including available alternative courses of action.
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.
Students will employ and document effective and efficient research strategies, including the production of research plans and research trails.
Students will recognize the obligation, and employ appropriate strategies, to update and validate sources.
Students will determine when research has been exhaustive in the jurisdiction, and when it has been exhaustive beyond the jurisdiction, given the time and financial limitations of law practice.
Students will cite to every legal proposition.
Students will employ accurate citation format.
Students will accurately use signals.
Students will accurately use explanatory parentheticals.
Students will accurately format quotations.
Students will accurately use citation formats for embedded sources.
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.
Students will employ appropriate large-scale organization.
Students will employ appropriate small-scale organization.
Students will accurately and effectively communicate legal argument, including analysis and counter-analysis.
Students will use topic and thesis sentences and appropriate transitions to create coherence.

Learning Outcomes
Students will craft legal documents that are clear and concise and that employ appropriate tone and purpose.
Students will write a legal memorandum that accomplishes the following: Articulates a thorough and complete question presented that identifies the relevant source of law, 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 (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.
Students will write legal correspondence that accomplishes the following: Summarizes the goals or purposes of the correspondence; Uses the appropriate format for the correspondence; Explains the law thoroughly enough to accomplish the purpose of the letter; Uses the appropriate tone and language for the purpose of the correspondence; Includes any necessary disclaimers and protections for the attorney-client privilege.
Students will write email that accomplishes the following: Summarizes the analysis of the legal issue in a concise, clear, and direct manner; Employs the appropriate tone and language of an email while remaining formal; Includes any necessary disclaimers and protections for the attorney-client privilege.
Students will draft a simple and enforceable contractual provision.
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 (overview 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, referencing the relevant authority and its relationship to relevant client facts while illustrating analysis and rebutting counter-analysis; Employs an appropriate tone that persuades the court while maintaining the writer's credibility.

Learning Outcomes
<p>Students will write an appellate brief that accomplishes the following:</p> <ul style="list-style-type: none"> Articulates a thorough and complete issue presented 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 a court; Organizes the argument section around a synthesized rule of law; Employs a deductive framework for large and small-scale organization (overview 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, referencing the relevant authority and its relationship to relevant client facts while illustrating analysis and rebutting counter-analysis; Employs an appropriate tone that persuades the court while maintaining the writer's credibility.
<p>Students will understand and apply basic negotiation techniques and strategies.</p>
<p>Students will write a clear and enforceable settlement agreement based on a negotiated settlement.</p>
<p>Students will draft basic discovery requests and responses that are complete, clear, and relevant to the legal issues.</p>
<p>Students will write a Complaint that accomplishes the following:</p> <ul style="list-style-type: none"> Employs the appropriate format required by a court; Establishes the appropriate jurisdiction; Alleges facts in an organized and clear manner that establishes a cause of action. Articulates a specific request for relief and the relevant support for it.
<p>Students will observe law school and court rules, procedures, conventions, and etiquette.</p>
<p>Students will speak in a clear, concise, well-organized, and professional manner that is appropriate to the audience and circumstances.</p>
<p>Students will structure and present an oral argument that is clear, organized, supported by effective legal analysis, and persuasive.</p>
<p>Students will utilize various advocacy strategies that effectively persuades a relevant audience.</p>
<p>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.</p>
<p>Students will identify and apply relevant administrative rules and regulations.</p>

Learning Outcomes
Students will employ appropriate strategies in administrative advocacy.
Students will locate and apply relevant legislative history.
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.
Students will recognize and address limits on expertise with respect to legal analysis, research, and conventional forms of lawyering communication.
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.
Students will recognize and apply the ethical and professional obligations associated with conventions of attribution.
Students will recognize and apply the principle of allocation of authority between lawyer and client with respect to representation and how that allocation.
Students will identify and follow work priorities and scheduling systems related to time and resources in order to achieve objectives.
Students will memorialize events and communications.
Students will record work and bill time effectively and ethically.
Students will collaborate by working with others to share responsibility and credit.
Students will develop legal documents required of a first-year attorney in specific practice areas.
Students will develop basic lawyering skills of a first-year attorney in specific practice areas.
Students will identify and apply various negotiation strategies
Students will identify and effectively use technology that is relevant to the practice of law.
Students will practice techniques to pass the Multi-State Performance Exam