OUTCOMES ASSESSMENT FOR LAW SCHOOLS

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The book is meant to excite and inspire those who find reward in promoting student learning of law and making their law schools effective centers of law in society. I thank some of those who find such rewards: Professors Gerry Hess and Mary Pat Treuthart at the Institute for Law School Teaching at Gonzaga University for their editing and suggestions and for the support of the Institute in this project and its publication; Professor J. Martin Burke for being a mentor and editor on this project from the beginning; Professor Carl Tobias for an earlier edit; Dr. Georgine Loacker, a true assessment guru from Alverno College, for her guidance and willingness to review and comment on an earlier draft of this work; my research assistant, Bruce Sneddon, for the masterful job of managing the footnotes and locating the endless sources on assessment that could not be found in law libraries; and the Cowley Trust at the University of Montana which also provided research support for this undertaking.

Chapter 1. Introduction

An assessment movement has been underway in higher education in the United States for at least 15 years. It is profoundly changing many colleges and universities as their units develop explicit mission statements, adopt outcomes, design and implement curricula to achieve the outcomes, and formulate valid and reliable assessment programs to measure the schools' success in meeting their institutional outcomes and promoting student learning. The movement generates excitement in thousands of teachers from undergraduate schools, graduate schools, and professional schools who gather annually for the national assessment conferences of the American Association for Higher Education.

The assessment movement is knocking at the door of American legal education. Legal education in the U.S. is renowned for its adherence to traditional case books, Socratic teaching method, single end-of-semester final exams, and an unwillingness to change. Now, regional accrediting bodies, acting under the aegis of the U.S. Department of Education, are demanding that law schools, as units of accredited colleges and universities, state their mission and outcomes, explain how their curricula are designed to achieve those outcomes, and identify their methods for assessing student performance and institutional outcomes.

A law school can best achieve excellence and have the most effective academic program when it possesses a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure. Absent a defined mission and the identification

of attendant student and institutional outcomes,[1] a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence. If a school does not assess its performance, it can easily be deluded about its success, the effectiveness of its pedagogical methods, the relevance of its curriculum, and the value of its service to its constituencies. A law school that fails to assess student performance or its performance as an institution, or that uses the wrong measures in doing so, has no real evidence that it is achieving any goals or objectives. A law school that lacks evidence of achievement invites demands for accountability.

The emergence of assessment as a program for improving student learning and institutional effectiveness is particularly critical today because of the size of our educational institutions and our classes. Law teachers who face 75 to 100 (and in some cases as many as 200 students) in a single class easily can be overwhelmed by the task of teaching their students and assessing student learning. In the present system, teachers do not have enough contact with each student to determine how the student is learning and to assist that learning. Instead, law schools make the assumption that the student has learned if the student accumulates the credit hours required by the ABA. A properly designed assessment program should provide a means of measuring whether the law school is achieving its mission with respect to its students and to its other constituencies, such as the legal profession and the broader academic community.

This book proposes a program for enhancement of law student learning and institutional effectiveness through the design and implementation of an assessment program. The book is premised on three principles. First, law faculties must examine legal education, including curriculum, pedagogy, and grading, with the same rigor they accord to examination of substantive law. Second, faculties, in conjunction with other constituencies of our respective law schools (deans, alumni, students, the bar, the bench, and the public), must

[1] *See infra* note 29-32 (defining student and institutional outcomes).

define a clear mission, which in turn must inform the development of a coherent law school curriculum. Third, faculties have a responsibility to devise and implement sound methods to assess student learning and institutional effectiveness.

Based upon these premises, this book proposes that each law school develop a mission statement and student and institutional outcomes as a framework for a comprehensive assessment program. It advocates the application of assessment principles to all aspects of American legal education and provides a basic blueprint for implementation. American law schools can resolve the chronic problems that have plagued legal education during the last century through the design and implementation of comprehensive assessment programs. These problems include lack of clear purpose, incoherence in teaching methods and curriculum, and failure to enhance and assess accurately student learning and institutional effectiveness.

Assessment is neither new nor a fad. Socrates spent endless hours amidst a small group of students in a structured dialogue by which he promoted his students' learning and also judged that learning. Indeed, one might describe Socrates as the originator of the first student assessment program. The modern assessment movement is grounded in the extensive research and practice of institutional leaders in higher education.[2] Approximately one-third of the nation's nonspecialized degree-granting colleges had comprehensive student assessment programs in 1990.[3] Perhaps the most important indicator

[2] Among them are Alverno Women's College in Milwaukee, Wisconsin, which embarked on its "assessment as learning" tradition in 1973; Northeast Missouri State University in Kirksville, Missouri, which developed a "value added" approach to assessment in 1974; the University of Tennessee-Knoxville in Knoxville, Tennessee, which initiated a program monitoring tradition of assessment in 1984; and Kean College of New Jersey in Union, New Jersey, which initiated its assessment program in 1984.

[3] REID JOHNSON ET AL., ASSESSING ASSESSMENT: AN IN-DEPTH STATUS REPORT ON THE HIGHER EDUCATION ASSESSMENT MOVEMENT IN 1990, at 2 (Higher Educ. Panel Rep. No. 79, 1991).

of the future of assessment is the large increase in the number of schools and teachers who are educating themselves about assessment.[4] Although education in general and higher education in particular have been embracing assessment as a means of ensuring institutional effectiveness, law schools have been conspicuously absent from national discussions regarding assessment.

The movement is new to law schools. Deans and faculties need a source that will introduce them to outcomes assessment, explain its principles, and propose a plan for law schools. I intend for this book, supported and published by the Institute for Law School Teaching at Gonzaga University, to be such a source. I have attempted to make it a comprehensive handbook for teachers and deans embarking on an assessment program for their institutions or for their own courses.

In PART ONE, the book introduces the reader to the assessment movement, explains the purposes and origins of outcomes assessment, and identifies the characteristics of an assessment program. PART TWO deals with the lack of assessment in law schools and the problems caused by that shortcoming. It presents an argument for the adoption of outcomes assessment in law schools. PART THREE is for readers interested primarily in the process of developing an assessment program in a law school. It describes the process of assessment and the requirements of competent assessment. PART FOUR is for teachers interested primarily in viewing assessment from the perspective of the classroom and the law course. It assists the individual instructor who wants to improve teaching and learning in her[5] classes either as part of the school's overall assessment

[4] The first annual assessment conference of the American Association for Higher Education in 1985 drew 300 participants. The number has increased every year culminating in attendance at the fourteenth annual conference in 1999 of 1,630 participants.

[5] I have intentionally varied gender references throughout the book, randomly switching between male and female pronouns to reflect the makeup of our law classes and faculties.

movement or on her own when other faculty are not yet committed to developing an assessment program. PART FIVE identifies obstacles to developing assessment programs in law schools and discusses ways of overcoming those hurdles. It concludes that a program of outcomes assessment in law schools can bring about a structurally sound solution to many of the problems that have beset American legal education in this century.

Law teachers and deans reading this work may be surprised by the number of footnote and textual references to works by teachers of undergraduate, graduate, and professional schools that are not law schools. This is especially true in PART ONE and reflects the fact that assessment scholarship is almost nonexistent in the legal academy. It has been most satisfying to review and share in this book the excellent work of teachers in other disciplines who have devoted scholarly effort to the assessment movement.

Chapter 2. The Meaning and Purpose of Assessment

Assessment Defined

The term "assessment"[6] was rarely used in education before the 1980s, when it denoted such concepts as "measurement," "testing," "judging," and "evaluation."[7] In the context of higher education

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[6] The Latin derivative, assessus, means to be "seated beside (a judge)," a particularly appropriate derivation in light of the evolving use of the word in education today. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 125 (2d ed. 1987).

[7] Terry W. Hartle, *The Growing Interest in Measuring Educational Achievement of College Students*, *in* ASSESSMENT IN AMERICAN HIGHER EDUCATION: ISSUES AND CONTEXTS 1, 2 (Clifford Adelman ed., 1986) [hereinafter ASSESSMENT IN AMERICAN HIGHER EDUCATION]. "Measure" refers to observation and judgment of the character, ability, or magnitude of a person or thing (derived from the definition of measure). WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1400 [hereinafter WEBSTER'S]. A test is defined as "an instrument designed to measure student competency with respect to knowledge, skills, and other qualities deemed important by the instructor. It is usually composed of a series of separate 'test items,' often referred to as questions." 1 MICHAEL JOSEPHSON, LEARNING AND EVALUATION IN LAW SCHOOL 3 (1984). Evaluation, on the other hand, refers to the process by which the instructor "scores" responses to translate them to a symbol such as a grade that reflects performance. 1 *id.* at 3-4. See JOAN GARFIELD & MARY CORCORAN, ASSESSMENT IN AMERICAN HIGHER EDUCATION: AN HISTORICAL PERSPECTIVE 2-3 (1986) for definitions of test, measurement, evaluation, and assessment. Each of these is incorporated into and plays a role in assessment.

in the 1980s and 1990s, "assessment" acquired new, broader meanings.[8] It now signifies various approaches to improving education.

[8] Theodore J. Marchese identifies six of what he calls "assessment traditions or lines of work" that developed in education during the 1980s. Theodore J. Marchese, *Third Down, Ten Years To Go*, AM. ASS'N HIGHER EDUC. BULL., Dec. 1987, at 3, 4. Terry W. Hartle also observes there are "half a dozen separate (but related) activities" or "dimensions" which refer to the term "assessment." Hartle, *supra* note 7, at 2. A brief survey of each will help inform law schools in arriving at a working concept of assessment.

Hartle first describes traditional assessment as "multiple measures and observers to track intellectual and personal growth over an extended period of time," citing the program at Alverno College as most illustrative of this assessment approach. *Id.* Marchese, too, finds Alverno College's program to be the best illustration of what he denotes "assessment as learning." Marchese, *supra* note 8, at 5. He notes that the traditional approach assumes that an integral part of learning is assessment of student performance in light of agreed criteria and feedback to the student. *Id.* Alverno's comprehensive curriculum is designed around that principle. ALVERNO COLLEGE FACULTY, STUDENT ASSESSMENT-AS-LEARNING, AT ALVERNO COLLEGE 3-4 (1994).

Hartle delineates, as perhaps the most common dimension of assessment, the activities involved in "state-mandated requirements to evaluate students and/or academic programs." Hartle, *supra* note 7, at 3. Many institutions have built assessment programs in response to such mandates. Hartle characterizes another dimension of assessment as "a shorthand way of focusing on the 'value added' by postsecondary education." *Id.* Marchese describes this value-added tradition as "assessing student learning and growth" (i.e., determining what changes students undergo in terms of "knowledge, thinking skills, values, [and] attitudes" during their education). Marchese, *supra* note 8, at 6.

Both note a tradition of "assessment as standardized testing," *(id.; see* Hartle, *supra* note 7, at 3) to "measure achievement, aptitude, values, motivation, satisfaction and so on," (Marchese, *supra* note 8, at 6) for purposes of examining "either general or specialized knowledge." Hartle, *supra* note 7, at 3. Marchese describes an aspect of "assessment as program monitoring" aimed at determining such things as an educational institution's effectiveness, achievement, or success. Marchese, *supra* note 8, at 5. Hartle notes "assessment as a way of making decisions about funding by rewarding institutions for student performance on established criteria." Hartle, *supra* note 7, at 3 (citing Tennessee's Performance Funding Program and the work of the University of Tennessee-Knoxville as the best examples). Marchese describes the assessment center approach generally consisting of a centralized place or process for

(continued...)

For law schools, this book proposes that assessment connotes a set of practices by which an educational institution adopts a mission, identifies desired student and institutional goals and objectives ("outcomes"), and measures its effectiveness in attaining these outcomes.[9] Assessment is not only a means of determining what and how a student is learning, but is itself a learning tool. Because law schools are educating for professional practice, rather than focusing exclusively on what students know, assessment should emphasize the abilities required for effective performance.[10] In this regard, the focus of student assessment in law school should be on enhancing student performance, providing multiple evaluations of student performance, and giving appropriate feedback to students. Hence, assessment is more than just tests and testing. Rather, it is an approach to legal education that fosters more active teaching and learning.[11]

[8] (...continued)
assessing a person's ability to perform specific and sometimes complex tasks. Marchese, *supra* note 8, at 4. Finally, Marchese notes the "senior examiner" approach or tradition in assessment in which assessment consists of the judging of performance of senior students as a "capstone" type of exercise by those completing programs to demonstrate such traits as knowledge, ability, perspective, or character. *Id.* at 5.

[9] Braskamp views assessment as the "continuous gathering, interpretation, and use of information about the life of the institution–its people, work, successes, failures, achievements, goals met and unmet, and character." Larry A. Braskamp, *Purposes, Issues, and Principles of Assessment*, 66 N. CENT. ASS'N Q. 417, 417 (1991).

With regard to student assessment, Clayton State College in Morrow, Georgia, defines it as the "process by which one determines the extent to which expected results have been obtained" noting "that its primary purpose is to help students achieve the expected outcomes [of the college]." CLAYTON STATE COLLEGE, OUTCOME HANDBOOK, Glossary page 1 (1990).

[10] Russell Edgerton, *An Assessment of Assessment, in* ASSESSING THE OUTCOMES OF HIGHER EDUCATION, PROCEEDINGS OF THE 1986 ETS INVITATIONAL CONFERENCE 93, 95-96 (1987).

[11] This definition of assessment for legal education is based substantially on

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An assessment program should include both student assessment and institutional assessment. Institutional or program assessment is a "process that provides meaningful feedback to faculty, staff, and various publics about patterns of student and alumnae performance on a range of curriculum outcomes."[12] Student assessment or "student assessment-as-learning" is a "process, integral to learning, that involves observation and judgment of each student's performance on the basis of explicit criteria, with resulting feedback to the student."[13]

Assessment Assumptions

The assessment model for legal education should be based on four underlying assumptions:

1. Law students should not just know; they should be able to do what they know.[14]

[11] (...continued)
the assessment model developed at Alverno College in Milwaukee and work undertaken by members of the law faculty at the University of Montana since 1979. Marchese, *supra* note 8, and Hartle, *supra* note 8, recognize Alverno, a small women's college, as the national leader in educational assessment. The author has relied heavily on Alverno College for a conceptual framework, definitions, and principles relating to assessment. Alverno College has developed the most comprehensive and sophisticated programs of student assessment and institutional assessment, having embarked on redefinition of their mission as a liberal arts college and rigorous exploration of their goals and values as teachers in the later 1960s. The faculty members have established themselves as the premier experts in assessment through rigorous assessment practice, experimentation, research, and scholarship.

[12] ALVERNO COLLEGE FACULTY, *supra* note 8, at 3.

[13] *Id.*

[14] From Alverno's first assumption, "Education goes beyond knowing to being able to do what one knows." *Id.* at 4.

2. Law teachers must articulate and make known their student learning outcomes.[15]
3. Law students' abilities must relate to their future professional lives in service to society.[16]
4. Assessment is integral to law student learning.[17]

Each of these assumptions suggests the profound impact that a well-conceived assessment program could have upon a law school, its faculty, and students.

(1) Law students should not just know; they should be able to do what they know.

Learning law is a process that is experiential and integrative. That is, a law student learns in context, synthesizing a whole from all of the parts being experienced. If the student is to develop higher-level thinking skills, such as the abilities to apply, analyze, synthesize, and evaluate,[18] she must do something with knowledge and not simply acquire it.[19] The student should use knowledge "to think, judge,

[15] From Alverno's second assumption, "Educators are responsible for making learning more available to the learner by articulating outcomes and making them public." *Id.*

[16] From Alverno's third assumption, "Students' abilities must be carefully identified in relation to what contemporary life requires." *Id.*

[17] From Alverno's fourth assumption, "Assessment is integral to learning." *Id.*

[18] For orders of intellectual abilities, see A COMMITTEE OF COLLEGE AND UNIVERSITY EXAMINERS, TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS: HANDBOOK I: COGNITIVE DOMAIN (Benjamin S. Bloom ed., 1956) [hereinafter BLOOM'S TAXONOMY].

[19] *Id.* at 38.

decide, discover, interact, and create."[20] The learning process for the student must be "active and interactive,"[21] requiring her to engage with others and think in the process of doing. It must be "characterized by self-awareness (conscious realization),"[22] "developmental"[23] (created by a process of adding knowledge and abilities in increasing complexity), and "transferable"[24] (able to be used in other contexts).[25]

This first assumption regarding student learning is particularly appropriate to legal education which prepares students to be contributing members of a practicing profession serving society. For example, a student studying contracts should learn in the integrative and experiential context of negotiating and drafting contracts. The torts student should learn to do what he knows in the context of interviewing the client, investigating the facts, and attempting to formulate viable factual and legal theories to support a claim for relief. In that interactive process, the student must use knowledge "to think, judge, decide, discover, interact, and create."[26]

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[20] Georgine Loacker et al., *Assessment in Higher Education: To Serve the Learner*, *in* ASSESSMENT IN AMERICAN HIGHER EDUCATION, *supra* note 7, at 47, 47.

[21] ALVERNO COLLEGE FACULTY, *supra* note 8, at 16.

[22] *Id.*

[23] *Id.* at 17.

[24] *Id.*

[25] This also assumes that an "educator's best means of judging how well a learner has developed expected abilities is to look at corresponding behavior–thinking behavior, writing behavior, inquiry behavior, or appreciating behavior, for instance." Loacker et al., *supra* note 21, at 47. "Corresponding behavior" is that behavior or action that reflects possession of certain knowledge or depends on certain knowledge for its exhibition.

[26] *Id.*

(2) Law teachers must articulate and make known their student learning outcomes.

Students learn when they "have a sense of what they are setting out to learn, a statement of explicit standards they must meet, and a way of seeing what they have learned."[27] For example, the learning of effective legal writing increases if the teacher has identified the standards for good legal writing, conveyed those standards in advance to the students, and evaluated the writing on the basis of those standards. Similarly, a faculty member could increase learning for students of property law by disclosing at the start of the semester that the students must, by the end of the course, be able to draft, evaluate, and explain particular documents reflecting transactions involved in the acquisition, management, and transfer of estates in real property.

(3) Law students' abilities must relate to their future professional lives in service to society.

This assumption acknowledges that there must be some reference point which faculty use in identifying the knowledge, abilities, and personal attributes which they seek to develop in students. That reference point for educators at most law schools will be the practice of law. In the law school setting, therefore, the faculty developing an assessment program should identify the desired student abilities that a graduate must exercise in serving society as a member of the profession. Identification of those abilities should involve close collaboration among the faculty, the bench, and the bar.

In 1981 the faculty at the University of Montana School of Law surveyed the judges and lawyers of Montana and Idaho in an effort to identify abilities necessary to the practice of law in those rural states. The bench and bar reported that lawyers and judges were

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[27] *Id.*

expected to be community leaders in local government, schools, churches, non-profit corporations, and community associations and needed the attendant abilities to fulfill those roles.[28] Using law practice as a reference point and asking the bench and bar about necessary abilities helped the faculty identify these important aspects of professional lawyers' lives that require knowledge, skills, perspective, and character.

(4) Assessment is integral to law student learning.

Under the student assessment-as-learning tradition, assessment is not just summative, a method of measuring student or institutional achievement after the fact, but it is formative, an instrument of learning. This formative dimension of assessment is limited in most American law schools to the clinical and legal writing programs. However, formative assessment tools can also be used in substantive classes. For example, students in Insurance Law can draft legal advice letters regarding insurance coverage under multiple policies and then receive written feedback during the course. This formative exercise requires them to gather, analyze, and synthesize facts, policy language, controlling statutes, and case interpretations and to competently write their opinions for the client.

The combination of computer and video technology now allows students in an evidence course to engage in programmed learning in which they view and analyze courtroom proceedings on a computer screen, react to proposed evidence by making objections, receive the court's ruling, and learn the legal basis of the ruling. The purpose of assessment is, in the broadest sense, to improve law

[28] *See* John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11, (1988)(reporting on the survey of Montana and Idaho Bar Associations for the purpose of identifying necessary intellectual abilities and skills of lawyers).

student learning (for example, to enhance students' abilities to evaluate and draft complex contracts).

Outcomes Defined

In addition to the four assumptions underlying student assessment-as-learning, central to the assessment program for legal education and critical to the achievement of a law school's mission is the identification of goals and objectives which can be stated in terms of student outcomes and institutional outcomes for assessment purposes.

Student outcomes are the abilities, knowledge base, skills, perspective, and personal attributes[29] which the school desires the students to exhibit on graduation. For example, the school might desire that all graduates possess the necessary knowledge of trust and estate law; the skills, intellectual abilities, perspective, and personal attributes to represent a client in the preparation of a simple will; and the ability to probate an estate.[30]

[29] Knowledge base refers to the cognitive foundation the student has gained (e.g., understanding the estates in land in real property). Skill is the ability to perform a lawyer's tasks well as a result of talent, learned technique, and practice (e.g., to draft, evaluate, and explain a document conveying a particular estate in land). Perspective denotes awareness and appreciation of the role of law and lawyers in society (e.g., understanding the social and political impacts of our system of recording conveyances of real property or of using lawyers to convey property). Finally, personal attributes refer to the qualities, demonstrated values, and attitudes of the student (e.g., MacCrate's fundamental values of "[s]triving to [p]romote [j]ustice, [f]airness, and [m]orality," "[s]triving to [i]mprove the [p]rofession," and "[p]rofessional [s]elf-[d]evelopment"). ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT–AN EDUCATIONAL CONTINUUM. REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138-40 (1992) [hereinafter MACCRATE REPORT].

[30] The following skills, perspective, and attributes may be important in the will

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Institutional outcomes are those goals and objectives which a law school has set for itself in serving the people it has chosen to serve. For example, a law school may want to be a leader in an area of law or policy, or its goal may be to be the leader in using and training lawyers in innovative electronic courtroom systems. Or, the school may adopt as an outcome that it be the leader in the state in developing and implementing programs to educate the public about law and the rule of law in our society.

This focus on student outcomes and institutional outcomes in assessment for legal education serves a number of important purposes. It fosters the evaluation of knowledge, skills, and attitudes of individual students and feedback to students regarding their progress.[31] It promotes program improvement by enhancing learning outcomes in academic disciplines and improving the quality of student life at school.[32] Furthermore, it encourages "enlightenment and self-

[30] (...continued)
drafting and probate contexts. In terms of skills, the attorney must have good interviewing or fact-finding abilities, must be able to counsel a client regarding the disposition of assets, and must be able to draft a document and explain it to the client. With respect to perspective, the attorney must understand that he or she is more than just a scrivener. If the client thinks that he would like to disinherit his spouse or child, the attorney must be competent to discuss the broader issues associated with disinheritance of family members and the impact on the family and the broader community of such action. With respect to attributes, honesty comes to mind in probate where the attorney may have access to, or control over, a range of assets belonging to the estate. Core values of personal integrity, accountability, and compassion would be important in such representation.

[31] John Ashcroft, *A 'Different' Reform Is Coming*, HIGHER EDUC. & NAT'L AFF., Dec. 15, 1986, at 7, 7.

[32] Gail Deutsch, *Principles and Purposes*, *in* OUTCOMES ASSESSMENT AT KEAN COLLEGE OF NEW JERSEY: ACADEMIC PROGRAMS, PROCEDURES AND MODELS 5, 11 (Michael E. Knight et al., eds., 1991).

understanding"[33] that result from the dialogue and consensus among the constituencies of a law school regarding the law school's mission and student and institutional outcomes.[34] Finally, it facilitates accountability through "required reporting of results to an authority,"[35] for example, to an ABA accreditation team, a regional university accreditation team, or a board of regents. More importantly, student and institutional outcomes promote accountability to our students and to the public.

[33] Braskamp, *supra* note 9, at 417.

[34] *Id.* at 418.

[35] *Id.*

Chapter 3. Origins of Assessment

Assessment in legal education is part of a broader movement in American higher education. There is no precise history of assessment because it is not a monolithic concept. The different assessment "traditions" have varied origins. Nevertheless, looking at periods of concern about effectiveness of higher education gives insight into the origins of the assessment movement.

The Call for Accountability in Undergraduate Education

During the early part of the nineteenth century, students in American colleges demonstrated their learning or proficiency by declamations at the end of their college studies.[36] As enrollment in the colleges increased, the comprehensive examination of each student became problematical, and colleges and universities began to rely on a credit-hour system to measure completion of education.[37] While there were efforts at outcomes assessment after college enrollment

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[36] SEBRENIA J. SIMS, STUDENT OUTCOMES ASSESSMENT: A HISTORICAL REVIEW AND GUIDE TO PROGRAM DEVELOPMENT 12 (1992).

[37] *Id.* at 13.

doubled during the period 1918 to 1952,[38] the rise of assessment as a comprehensive program to improve student learning and institutional effectiveness did not occur until the 1980s and 1990s.[39]

The reform movement that gave birth to assessment began as a reaction to the universities as primarily research institutions. Higher education's emphasis on research was the result of an academic revolution that fostered graduate education, research, and the growth of specialization by faculty members.[40] The research emphasis, while providing money and bolstering faculty expertise, often affected university priorities to the detriment of teaching and student learning. Graduate programs that fostered research grew at the expense of undergraduate education. Faculty promotion and tenure standards emphasized research, and publication became the coin of the academic realm. Those with Ph.D.s gravitated to the laboratory and library while the teaching assistants undertook more classroom lecturing.

By the late 1970s, legislatures and others in the political arena began questioning the effectiveness of educational institutions in preparing students to enter the job market. In 1979, for example, the Arkansas legislature responded to such concerns by mandating an

[38] *Id.*

[39] SIMS, *supra* note 36, at 35, notes the period 1952 to 1975 for its increase in enrollment spurred by the baby boom, state and federal incentives, and the societal value placed on college education. SIMS, *supra*, note 36, at 8, also notes that the Fund for Improvement of Post Secondary Education of the U.S. Department of Education was, by 1972, funding programs for student and program assessment. Hartle, *supra* note 7, at 2, cites a historical root of assessment developed during this period and unrelated to colleges. During the mid-1960s, AT&T developed the concept of assessment centers as a central process for assessing personnel in the corporate world.

[40] ZELDA F. GAMSON, AN ACADEMIC COUNTER-REVOLUTION: THE ROOTS OF THE CURRENT MOVEMENT TO REFORM UNDERGRADUATE EDUCATION (1987).

assessment program.[41] Virginia, Georgia, Florida, and New Jersey eventually adopted programs of mandatory assessment.[42] Other state legislatures followed suit. The concerns of state political leaders were confirmed with the issuance in 1983 of the report of the Secretary of Education's National Commission on Excellence in Education entitled *A Nation at Risk*. K. Patricia Cross best states its impact:

> The report, entitled *A Nation at Risk*, was a serious indictment of American education, making memorable such phrases as "the rising tide of mediocrity" and "unilateral educational disarmament." That report spawned statewide commissions and task forces in virtually every state in the union and eventually resulted in state-mandated assessments, with varying degrees of freedom for colleges to design their own institutional assessments.[43]

A Nation at Risk was not the only report sounding the alarm. During the 1980s, ten other major reports on education in the United States expressed the concern about the failures of education and called for reforms.[44]

[41] In 1979, the Arkansas legislature initiated the Educational Assessment Program when it passed Act 666, the Education Assessment Act. *See* MORRIS HOLMES ET AL., TEACHER'S GUIDE, MINIMUM PERFORMANCE TEST, 1981-82 (1981).

[42] SIMS, *supra* note 36, at 16-17.

[43] K. Patricia Cross, *Teaching to Improve Learning*, 1 J. EXCELLENCE C. TEACHING 9, 14 (1990).

[44] *See, e.g.*, WILLIAM J. BENNETT, TO RECLAIM A LEGACY: A REPORT ON THE HUMANITIES IN HIGHER EDUCATION (1984); NATIONAL GOVERNORS' ASSOCIATION, TIME FOR RESULTS: THE GOVERNORS' 1991 REPORT ON EDUCATION (1986); STUDY GROUP ON THE CONDITIONS OF EXCELLENCE IN AMERICAN HIGHER EDUCATION, NATIONAL INSTITUTE OF EDUCATION, INVOLVEMENT IN LEARNING: REALIZING THE POTENTIAL OF AMERICAN HIGHER EDUCATION (1984).

Educational reform became an issue for governors across the nation. In August 1986, the National Governors' Association issued a report[45] calling for (1) clear definition of educational institution missions in each state; (2) reemphasis on undergraduate instruction, especially in research universities; (3) development in both public and private institutions of "multiple measures to assess undergraduate student learning" with the results to be used to evaluate institutional and program quality; (4) adjustment of funding formulas in the public sector to provide incentives for the improvement of undergraduate education; (5) renewed commitment to access for all socioeconomic groups to higher education; and (6) requirement by accrediting agencies that information about undergraduate student outcomes be used as one basis for reaccreditation.[46]

States adopted diverse methods of encouraging educational reform, including regulation, direct legislation, and indirect incentive programs.[47] Some state legislatures used budget allocations to encourage performance or force change, while others directly legislated or empowered state agencies to force the change.[48] This incursion by state legislatures into higher education caused alarm among educators who responded by challenging the effectiveness of mandated assessment while at the same time implementing their own

[45] NATIONAL GOVERNORS' ASSOCIATION, *supra* note 44.

[46] *Id.* at 160-63.

[47] Eleanor M. McMahon, *The Why, What and Who of Assessment: The State Perspective*, *in* ASSESSING THE OUTCOMES OF HIGHER EDUCATION, *supra* note 10, at 19; *see also* Carol M. Boyer et al., *Assessment and Outcomes Measurement, A View From the States*, AM. ASS'N HIGHER EDUC. BULL., Mar. 1987.

[48] PETER T. EWELL, THE LEGISLATIVE ROLE IN IMPROVING POSTSECONDARY EDUCATION (1985); *see also* SIMS, *supra* note 36, at 16-17.

assessment programs in an effort to avoid the mandates.[49] Nevertheless, substantial sectors of higher education have not engaged in any comprehensive assessment program, with the predictable result that legislatures will continue to impose mandates.[50]

The "movement" that occurred in the 1980s derived from discontent with the quality of higher education and arose in part from demands for accountability and responsibility in education. Without any mandates from governing bodies, during the 1970s Alverno College in Milwaukee developed the most comprehensive student assessment-as-learning program in undergraduate education. Self-initiation stories like Alverno's are the exception. The history of the movement in the 1980s teaches that, if the demands of education's constituencies go unanswered, governmental entities may impose assessment for reasons of accountability.

The Call for Accountability in Legal Education

In many respects, legal education today is similarly situated to undergraduate education at the time that *A Nation at Risk* appeared in 1983. The emphasis on scholarly publication at most law schools taxes the faculty investment of time and effort in their schools' teaching mission, which is weakened already because of the traditionally high student-to-teacher ratios. The absence of any defined student or institutional outcomes, the presence of incoherent curricula,

[49] See AMERICAN ASSOCIATION FOR HIGHER EDUCATION, MANDATED ASSESSMENT OF EDUCATIONAL OUTCOMES: A REPORT ON COMMITTEE C ON COLLEGE AND UNIVERSITY TEACHING, RESEARCH, AND PUBLICATION (n.d.), which points out issues raised by mandated assessment, states the AAHE position on the issues, and makes recommendations for implementation of mandated assessment.

[50] See Peter T. Ewell et al., *Filling in the Mosaic: The Emerging Pattern of State-Based Assessment*, AM. ASS'N HIGHER EDUC. BULL., Apr. 1990, at 3, 3-5, for a discussion of the status of state-based mandates.

and teachers operating in individual isolation are commonplace in our institutions.[51] Other than accreditation standards, no measures exist by which law schools can be held accountable to their constituencies. Quality management proponents suggest that law schools survive "[w]ithout [c]ustomer [s]atisfaction" because they "have a monopoly on entry into the practicing profession."[52] National schools are "immune from market-forces" by reason of "an abundant supply of applicants."[53] In the case of public-supported schools, tax dollars come regardless of outcomes.

In contrast to the experience in undergraduate education, the demand for accountability and responsibility in legal education is coming not from legislatures, but from the American Bar Association (ABA)–the primary accrediting agency for American law schools–and some other college accrediting bodies. The Northwest Association of Schools and Colleges now demands accountability for mission statements and outcomes assessment from the colleges and universities they accredit. This includes law schools at those institutions. Further, the ABA has renewed its century-long effort to encourage reform and accountability in legal education.

Since the early 1900s, the ABA has expressed concern about the preparation of law students for the practice of law. In 1920, after the *Flexner Report*[54] incisively analyzed the problems inherent in medical education in the United States, the ABA requested that the Carnegie Foundation fund a similar study to address the condition of

[51] See Chapter 5 below.

[52] John Mixon & Gordon Otto, *Continuous Quality Improvement, Law, and Legal Education*, 43 EMORY L. J. 393, 442-43 (1994), in which the authors propose the application of Deming's TQM principles to legal education.

[53] *Id.*

[54] ABRAHAM FLEXNER, MEDICAL EDUCATION IN THE UNITED STATES AND CANADA (Carnegie Found. Advancement Teaching Bull. No. 4, 1910).

legal education in the nation. The resulting report, published in 1921, decried the weakness inherent in the homogenous methodology of American legal education already evident at that time.[55] In 1979, an ABA task force studying the role of law schools with regard to lawyer competency issued recommendations for increasing the variety of teaching methods and broadening the skills acquired by law students.[56] The recommendations from the ABA task force have become central themes in the present movement for reforming legal education.

In early 1989, the ABA formed the Task Force on Law Schools and the Profession: Narrowing the Gap[57] with the goal "to serve as a catalyst to stimulate improved preparation of law graduates for participation in today's legal profession."[58] The task force set out to determine the preparation necessary for law graduates to participate effectively in the legal profession by "gather[ing] an all-inclusive overview of the profession today."[59] The task force, in its final report (known by its popular name as the *MacCrate Report*), identified "the

[55] ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 415-20 (Carnegie Found. Advancement Teaching Bull. No. 15, 1921). *See also* ABA SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION, LAW SCHOOLS AND PROFESSIONAL EDUCATION. REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE 5-7 (1980).

[56] ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS. REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY (1979) [hereinafter CRAMTON REPORT].

[57] Robert MacCrate, *Task Force on Law Schools and the Profession Formed*, SYLLABUS, Summer 1990, at 1, 1 [hereinafter MacCrate, *Task Force Formed*]. *See also* Robert MacCrate, *Lecture on Legal Education, Wake Forest School of Law*, 30 WAKE FOREST L. REV. 261 (1995) [hereinafter MacCrate, *Lecture on Legal Education*] (providing a good concise history of the task force and its report).

[58] MacCrate, *Task Force Formed*, *supra* note 57, at 1.

[59] MACCRATE REPORT, *supra* note 29, at 7.

fundamental skills and values that every lawyer should acquire before assuming responsibility for the handling of . . . legal matter[s]."[60] It also made recommendations for the roles that the practicing profession and the academy should assume in preparing lawyers to represent clients.[61]

Embodied in the *MacCrate Report* are strong underpinnings for a program of assessment in American law schools. Implicit in *MacCrate* is the premise that law schools have as a primary mission the inculcation in their students of the fundamental lawyering skills and professional values necessary to represent clients in our society. The report's Statement of Fundamental Lawyering Skills and Professional Values[62] is an explicit statement of outcomes for legal education. Moreover, the *MacCrate Report*, in assigning educational roles to law schools, the bar, and individual lawyers, recognizes that legal education during and after law school is part of a continuum in which self-learning and assessment become increasingly important.[63]

The *MacCrate Report* has the potential to be a catalyst for a sustained effort to reform legal education. The debate over the *MacCrate Report* includes a push for accountability and responsibility by law schools in preparing graduates for the profession. In 1993, for example, the Illinois State Bar Association Board of Governors petitioned the ABA House of Delegates to require that law schools prepare law students "to participate effectively in the legal profession."[64] The amendment, which was the *MacCrate Report's* central

[60] *Id.*

[61] *Id.* at 8.

[62] *Id.*

[63] *See id.* pt. III.

[64] Tom Leahy, *The Isolation of Legal Education*, 81 ILL. B.J. 512, 542 (1993).

recommendation, passed.[65] In addition, the ABA House of Delegates and the Council of the Section of Legal Education and Admissions to the Bar are engaged in a process of studying:

> [t]he manner in which skills and values instruction should be integrated into the accreditation process, including what Standards for the Approval of Law Schools, if any, may be considered for amendment in view of the findings of the Task Force Report concerning the lawyering skills and professional values with which a lawyer should be familiar before assuming responsibility for a client . . .[66]

The extent to which the *MacCrate Report* recommendations find their way into accreditation standards of the ABA may ultimately determine their effectiveness. Although the *MacCrate Report* may languish like some other recommendations, many schools probably will adopt at least some of its recommendations as part of an effort to define their goals and missions.[67]

[65] *Id.*

[66] House of Delegates Resolution 8A, February 1994, as reported in Memorandum D9394-107 from the American Bar Association Section of Legal Education and Admissions to the Bar to Deans of ABA Approved Law Schools 5 (July 15, 1994) (on file with the author).

[67] *See* Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education into the Twenty-First Century*, 30 WAKE FOREST L. REV. 293 (1995) (providing Norwood's vision of legal education).

PART TWO

WHY DO ASSESSMENT IN LAW SCHOOL?

Chapter 4. The Lack of Outcomes Assessment in American Law Schools

". . . what evidence does a particular college have that education is integrated and coherent, not simply a collection of discrete activities?"

–Jean Mather[68]

Assessment, as defined for the purposes of improving student learning and enhancing institutional effectiveness, is woefully inadequate in law schools. The need for effective assessment in law schools is masked by a set of unchallenged presumptions about the success of law school teaching and institutional effectiveness. There is no system of assessment but, instead, nearly universal reliance on a final examination system whose real purpose is not to evaluate student competence but to sort and rank students by assigning grades.[69]

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[68] Jean Mather, *Accreditation and Assessment: A Staff Perspective*, 66 NAT'L C. ASS'N Q. 397, 400 (1997).

[69] Roger Cramton notes the preeminence of the grading function in law schools and warns against merely "performing a convenient grading, sorting and labeling function for legal employers." Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321, 330 (1982). Phillip C. Kissam notes the presence of a seeming need in the law school system for a "highly disaggregated class ranking system" as an "efficient device . . . for sorting students in ways to serve the hiring

(continued...)

Student Outcomes

Examination practices in law schools are so uniform that one can fairly generalize when describing them.[70] The typical law school evaluates students by giving, at the end of the course, a single examination to test the material covered during the semester.[71] The primary form of examination is hypothetical essay questions and, less often, multiple-choice questions[72] whose resolution focuses almost entirely on application of judicial doctrine.[73] The bluebook examinations impose time constraints,[74] averaging two to four hours per

[69] (...continued)
purposes of many law firms." Phillip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 436 (1989). Janet Motley found "the present system is guaranteed to create artificial categories and classes of students, which, in turn, stigmatize and dramatically affect their lives." Janet Motley, *A Foolish Consistency: The Law School Exam*, 10 NOVA L. REV. 723, 724 (1985). Steven H. Nickles observes this same obsession with the grading function. Steven H. Nickles, *Examining and Grading in American Law Schools*, 30 ARK. L. REV. 411 (1977).

[70] *See* Nickles, *supra* note 69. Nickles distributed a questionnaire on law school examinations to the dean and student bar association president at every American law school. He was able to describe the "typical American law school evaluation process" after analysis of the results. While there has been significant change in some courses and at some schools, the author believes that Nickles's observations of 1977 are, with exceptions, still valid today.

[71] *Id.* at 432.

[72] Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, with a Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657 (1997).

[73] Kissam, *supra* note 69, at 439.

[74] *Id.* at 438.

course[75] or longer for take-home exams. In his 1977 study, Steven Nickles found that teachers took five weeks to grade exams and return grades to students,[76] and most teachers generally provided no "post mortem" in which feedback was given to the class or student.[77] Anecdotal evidence suggests that students often find teachers unwilling to spend time with them to discuss individual exams.

Nickles found institutional objective criteria for grading to be rare, ensuring a lack of consistency in grading.[78] He attributed the absence of grading standards to the failure of law schools to define professional expectations for students (student outcomes).[79] There is no evidence to suggest that Nickles's findings are inapplicable today. Instead, it appears from a 1996 survey that 84% of law schools cope with the problem of lack of institutional objective grade criteria by adopting some form of "grade normalization" or grade curve to control distribution of grades.[80]

Law school examinations are summative, meaning that they measure student learning after the fact but are seldom used as a diagnostic tool or instructional device for student learning during the

[75] Robert C. Downs & Nancy Levit, *If It Can't Be Lake Woebegon . . . A National Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 822 (1997).

[76] *Id.* at 426.

[77] *Id.* at 438; *see* Kissam, *supra* note 69, at 471.

[78] *Id.*

[79] *Id.* at 423.

[80] Downs & Levit, *supra* note 75, at 836. Law schools rank students academically, and a host of benefits depends on the grades. Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 886 (1997).

course.[81] Formative evaluation processes, in which students perform tasks, are evaluated, are provided feedback, and learn at the same time, are rare in law school, possibly because of large class sizes. Notable exceptions exist, however, in clinical education, legal writing courses, and professional skills simulations, as well as in moot court, client counseling, trial, and negotiation competitions.

Exceptions aside, law school assessment of student learning not only relies on a narrow band of evaluation, but also makes restricted use of it. It is common in undergraduate education for students to perform a variety of tasks, each of which might in some way be evaluated. For example, students in a business course may take weekly quizzes, make a classroom presentation, work with a partner to formulate a business plan, write a report, and take a final exam. An architecture student may submit multiple drawings, design and build models, make a classroom presentation, and take a final exam. In those cases, the students' final grades in the course represent a synthesis of the multiple evaluations of their performance. By contrast, the law school final examination is the only formal evaluation opportunity and the sole source for the students' grade in a course. Hence, the examination is rarely a learning tool.[82] No provision exists for allowing a student to prepare and perform again to reach competency.[83]

The irony in the fact that legal education has chosen the bluebook essay exam as its primary means of evaluation is that the instrument itself lacks a sound basis in educational or assessment principles. Legal educators who have subjected the essay or bluebook exam to critical analysis during the last seventy-five years have

[81] Deborah Waire Post, *Power and the Morality of Grading--A Case Study and a Few Critical Thoughts on Grade Normalization* 65, UMKC L. REV. 777, 784 (1997).

[82] Nickles, *supra* note 69, at 413.

[83] *Id.* at 436.

roundly criticized it.[84] After studying the examination process and philosophies of teachers at Columbia Law School in 1923,[85] Ben Wood reported that "[i]n general, the method of deriving grades [was] characterized by extreme subjectivity"[86] and said of the essay exam that "the evidence is so strong that we may almost say with finality that the traditional prose examination, singlehanded and alone, is inadequate for the requirements of modern educational administration."[87]

After Nickles's 1977 survey of evaluation techniques at every law school in the nation[88] disclosed the single course essay exam to be the convention in the schools,[89] he asserted that the "typical process

[84] Kissam, *supra* note 69; Motley, *supra* note 69; Nickles, *supra* note 69; Ben D. Wood, *The Measurement of Law School Work (pts 1-3)*, 24 COLUM. L. REV. 224, 226 (1924).

[85] Harlan F. Stone, *Forward* to Wood, *supra* note 84 (pt. 1).

[86] Wood, *supra* note 84 (pt. 1), at 224.

[87] *Id.* at 225-26. Wood also succinctly stated his basis for damning the essay exam:

> To many professors, to some even who have not been influenced by the large masses of evidence against the traditional subjectively scored examinations, the spectacle of a student trying to record an adequate sampling of his gains from a four-hour course of several months' duration in the English prose which he can produce in three hours under the conditions and circumstances of college examination week, and the correlative spectacle of the college professor passing judgment on that student on the sole basis of the product of those three hours of writing, seem, on *a priori* grounds alone, quite incompatible with current ideals of educational measurement and administration.

Id. at 226.

[88] Nickles, *supra* note 69.

[89] *Id.* at 432.

of evaluation in our law schools is composed of procedures and techniques which have been discredited by research in education and psychology."[90] He concluded that "legal education has paid insufficient attention to the problems and issues of student evaluation in American law schools."[91]

Janet Motley, in 1985, summed up the assessment of the bluebook examination as the core of the evaluation tradition in law schools:

> [L]aw school exams, as now administered and used, fail to serve an educational purpose and may be counter-productive to our educational goals, particularly the goal of teaching our students to learn from experience. Furthermore, the present system is guaranteed to create artificial categories and classes of students, which, in turn, stigmatize and dramatically affect their lives. All this, in the light of strong evidence indicating that the exam does not even do a satisfactory job at assessment, calls for a reevaluation of our perpetuation of tradition.[92]

Phillip C. Kissam, in his 1989 exhaustive analysis of the political and social context of bluebook examinations, recommended that law schools make multiple changes in the nature and content of their examinations.[93] Although he concluded that the bluebook

[90] *Id.* at 412.

[91] *Id.*

[92] Motley, *supra* note 69, at 723-24.

[93] Kissam, *supra* note 69.

examination system tests for several complex attributes,[94] he found that it was damaging to "effective and democratic legal education."[95]

Finally, Douglas Henderson, in the latest analysis of the law school essay exam, declares it "psychometrically unsound,"[96] lacking in the precision and accuracy for the function it purports to perform,[97] inconsistently scored, and unreliable.[98] Unfortunately, the problems of this system are compounded because they are used for ranking law students, which Henderson finds deleterious and with few benefits,[99] a view shared by proponents of quality management in law schools.[100]

Institutional Outcomes

Institutional effectiveness of law schools is the subject of minimal valid assessment. The ABA self-study process, in which faculty members engage once each seven years to prepare for the visit of the ABA inspection team, has generally been a law school's only institutional self-assessment. Correspondingly, the ABA inspection

[94] *Id.* at 435. Kissam concedes that the bluebook exam tests for "ability to internalize legal doctrine; . . . 'issue spotting' or . . . 'legal imagination'; and a 'legal productivity' [at drawing legal conclusions by applying rules to legal issues, and] . . . capacity for self-study and self-learning in diffuse, complex, and uncertain situations over sustained periods of time." *Id.*

[95] *Id.* at 436.

[96] Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399, 407 (1994).

[97] *Id.*

[98] *Id.* at 409-11.

[99] *Id.* at 423-30; 411-18.

[100] Mixon & Otto, *supra* note 52, at 441.

team visit and resulting report have been the only external institutional assessment. The self-study process, while rather comprehensive, is not an assessment of how well the institution is achieving outcomes. Instead, it is a report on the present condition of facility, program, library, finances, and other facets of the institution. It also describes deficiencies and makes recommendations for improvement.

However, because of the assessment movement in higher education, law schools can expect a direct requirement to report on outcomes assessment from their university or college regional accrediting bodies. For example, the Northwest Association of Schools and Colleges[101] requires all units, including law schools which are components of the college or university, to submit an assessment plan. Law schools such as the University of Montana School of Law are required to make institutional assessment by reporting their mission statement, program objectives, and assessment of program objectives.[102]

Attempts to measure the quality of law schools for purposes of ranking the schools have historically been limited to analysis of factors such as name recognition, university prominence, faculty prominence, alumni prominence, background of students, placement networks, graduate programs, financial resources, and educational

[101] The Northwest Association of Schools and Colleges (NASC), headquartered at Bellevue, Washington, is a regional accrediting body authorized by the U.S. Department of Education to evaluate, monitor, and accredit schools, colleges, and universities in the Northwest. Any law school connected with a reputable college or university in the U.S. must be accredited by a regional body under the aegis of the Department.

[102] The University of Montana reported to its units including the law school that the "two most significant changes [in the NASC accreditation requirements for the year 2000] involve the now central role of 'mission' and that of 'assessment'." University of Montana Bulletin, *FAQs (Frequently Asked Questions) and Answers re: Accreditation* (June 24, 1999).

innovation.[103] Analysis of these factors results in delineation of some forty of the accredited law schools as being "quality" while a handful of those receive a "prestige" image.[104] Ironically, the entire analysis and assessment for ranking are done without reference to data on student outcomes or institutional outcomes, which are not available because law schools have failed to formulate them.

Instead of data on institutional outcomes, law schools substitute assumptions that lack adequate foundation. For example, the assumption that a law school is performing well because it attracts the best students is a logical *non sequitur*. The measure of excellence in law school should be the measure of the student at graduation and not upon entry to the school. Admissions requirements are the measure of what the school expects the student to bring upon entry. Exit criteria reflect what the school has contributed to its students' knowledge and skills.[105]

A second common, yet questionable, assumption is that a law school is performing well if it has ample resources. According to D. W. Farmer of Kings College, "This would be tragic, if it were to be true, because today's challenge is to provide quality education with limited resources."[106] Although ample resources should enhance a school's capability to meet outcomes, they are not evidence that the law school is achieving the desired institutional or student outcomes.

The general assumption that the casebook method developed at Harvard in 1870 is a valid basis for a law school curriculum is untested by student outcomes or institutional outcomes. The same

[103] W. SCOTT VAN ALSTYNE, JR. ET AL., THE GOALS AND MISSIONS OF LAW SCHOOLS 5-6 (1990).

[104] *Id.* at 1-2.

[105] D. W. FARMER, ENHANCING STUDENT LEARNING: EMPHASIZING ESSENTIAL COMPETENCIES IN ACADEMIC PROGRAMS 7 (1988).

[106] *Id.* at 6.

can be said of the general assumption that a faculty member's research efforts are, or have been, instrumental in shaping law, policy, or teaching.

Perhaps our most comforting assumption is that the traditional law school curriculum, based on the casebook method, teaches students to "think like a lawyer." Although "thinking like a lawyer" may serve as a "talismatic [*sic*] justification"[107] for the present law school curriculum, it cannot substitute for a sound statement of mission and institutional outcomes. After all, its meaning has never been critically analyzed.[108] It is questionable whether law schools can state precisely what they mean by "thinking like a lawyer" and even more doubtful that they are equipped to teach it. As the author said of lawyers' analytical skills in an earlier article:

> Their legal analytical skills never consist of case analysis alone, but include multiple analyses based on cost-benefit, risk-benefit, comparative risk, predictive probabilistic judgment, ends-means, hypotheses testing, contingency planning, resource allocation, and client and court relations. They must accomplish these labyrinthine analyses while performing the skills of drafting, negotiation, interviewing, counseling, and advocacy.[109]

[107] HERBERT L. PACKER & THOMAS EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION 30 (1972).

[108] *See* John O. Mudd, *Thinking Critically About "Thinking Like a Lawyer,"* 33 J. LEGAL EDUC. 704 (1983) (taking a critical look at the "mystique" of training people to "think like a lawyer"); Sallyanne Payton, *Is Thinking Like a Laywer Enough?*, 18 U. MICH. J.L. REFORM 233 (1985). *See also* David P. Bryden, *What Do Law Students Learn? A Pilot Study*, 34 J. LEGAL EDUC. 479 (1984) (describing this as a "pleasant conviction" which we need to examine).

[109] Gregory S. Munro, *Integrating Theory and Practice in a Competency-based Curriculum: Academic Planning at the University of Montana School of Law*, 52 MONT. L. REV. 345, 364 (1991) (citing Edward J. Imwinkelried, *The Educational Philosophy of the Trial Practice Course*, 23 GA. L. REV. 663, 667 (1989) for the concept of predictive probabilistic judgment, and citing Steven A. Reiss, Remarks at the (continued...)

Law schools have not methodically asked whether the professional practice of law requires a form of analytical or critical thinking peculiar to law and, if so, identified the characteristics of that form of thinking. Consequently, we can only guess at how to teach that thinking and how to measure whether a student has learned it.[110] Assessment in these matters simply does not exist.

Former Secretary of Education William J. Bennett said: "We are uncertain what we think our students should learn, how best to teach it to them, and how to be sure when they have learned it."[111] Sadly, the condition of American legal education is that we do not ask what our students should learn, how best to teach it to them, and how to determine whether they have learned it.

[109] (...continued)
American Bar Association's National Conference on Professional Skills and Legal Education, Albuquerque, New Mexico (Oct. 15-18, 1987) *reprinted in* 19 N.M. L. REV. 28, 30 (1987) for the concept of hypotheses testing).

[110] For an excellent article on "thinking like a lawyer" that examines learning theory and models including Bloom's taxonomy of educational objectives, Perry's scheme on intellectual and ethical development, and Kohlberg's stages of moral development, see Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 U.S.F. L. REV. 121 (1994).

[111] William J. Bennett, *Forward* to ASSESSMENT IN AMERICAN HIGHER EDUCATION, *supra* note 7, at i.

Chapter 5. The Need for Assessment Programs in American Law Schools

"My spirit is vexed because the current debate[s] about legal education echo so many past controversies and add so little that is new."[112]

A review of the criticisms leveled against legal education during this century suggests that inattention to principles of assessment has been at the root of the problems. Conversely, the problems that have historically plagued legal education are problems for which assessment can offer solutions.[113]

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[112] Carl A. Auerbach, *Legal Education and Some of Its Discontents,* 34 J. LEGAL EDUC. 43, 43 (1984).

[113] Review of the work of those who have studied and criticized American legal education during this century supports several conclusions. First, the academy has not valued assessment of legal education. For 14 years the American Association of Higher Education has been holding conferences on assessment with annual attendance of thousands of university and college faculty. The first mention in legal scholarly publications of the "assessment movement" in American law schools may have been in 1997 by Deborah Waire Post, *supra* note 81, at 780, where she says, "As usual, law schools have come late to the party and one suspects that quite a few law professors are reluctant guests." While there is a significant body of legal academic scholarship on grades and grading, *see supra* notes 69 through 96, this book appears to be the first express application of assessment principles and programs to law schools.

(continued...)

Lack of Mission

> *"[N]o faculty, and, I believe, not one per cent of instructors, knows what it or they are really trying to educate for."*[114]

Karl Llewellyn, in a stinging indictment of legal education in 1935,[115] asked "What do lawyers do?"[116] and "What can law schools do?"[117] asserting that "Law school faculties, as distinct from single professors, need to set about discovering what it is they are training for, [so] that joint action may be sanely guided."[118] In 1935, he called for assessment to find out what lawyers do to form a basis for the curricular efforts of the law schools.[119] Herbert L. Packer and Thomas Ehrlich, in their Carnegie-sponsored research study in 1972, reported that law students found "their teachers remarkably vague and inarticulate about the purposes of law school." The authors concluded that law teachers were "confused about legal education"[120] and were "unclear about the goals of the second and third years of legal education."[121] There is no reason to believe that Llewellyn would have any less justification today, a half century later, to label what is happening in law school's "so-called legal education." The questions he raised have not been explored, much less answered.

What is the mission of a law school? Packer and Ehrlich asserted that law school's purpose is preparation for the public profession of law,[122] that the primary mission of law schools is the education of students for entry into the legal profession, and that no

[113] (...continued)

Second, criticism of law schools tends to be cyclical. Throughout this century, the ABA and others have mounted periodic efforts to identify problems in legal education and to promote reform. Cyclical interest in reforming law schools has revolved around the following notable reports: Practice in the Second Circuit, 67 F.R.D. 159 (2d Cir. 1975) [hereinafter Clare Committee Report]; Standards for Admission, 83 F.R.D. 215 (1979) [hereinafter Devitt Committee Report]; CRAMTON REPORT, *supra* note 56; MACCRATE REPORT, *supra* note 29; PACKER & EHRLICH, *supra* note 107; JOSEPH REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS (Carnegie Found. Advancement Teaching Bull. No. 8, 1914); REED, *supra* note 55; Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947) (including the article and citations to Frank's writings and references to his presentations. Frank made an avocation of attempting to change law schools).

Third, some notable voices have confronted the unchallenged assumptions that form so much of the foundation of modern legal education. These notable voices include Roger Cramton, Harry Edwards, Jerome Frank, Karl Llewellyn, John O. Mudd, and Joseph Redlich. These critics did not focus on peripheral matters, but rather identified defects that go to the very core and structure of legal education. They are the problems of ignoring the constituencies a law school serves, not knowing what lawyers do, what law students need to learn, how law students learn best, what teaching methods are most effective, how to determine whether students have learned, what responsibilities the law school has to the profession and society, and how the school knows it is discharging these responsibilities. They are the same core problems that have plagued American higher education and have prompted demands for reform. They are generally problems that can be addressed by developing a tradition of assessment in legal education.

[114] Karl N. Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 653 (1935).

[115] *Id.*

[116] *Id.* at 653.

[117] *Id.* at 656.

[118] *Id.* at 678.

[119] *Id.* at 667.

[120] PACKER & EHRLICH, *supra* note 107, at 33.

[121] *Id.* at 34.

[122] *Id.* at 22.

law school is primarily engaged in research.[123] Other leaders would agree with that characterization of purpose. Alvin B. Rubin[124] said that "we envision the product of the law school to be a lawyer, able to perform a wide variety of tasks and equipped with the fundamental skills necessary to make that possible."[125] Yet, there is an alarming and "growing disjunction" between the public profession of law and the purposes of law schools.[126] Some teachers reject any mission to educate law students to be lawyers. Others accept the mission to educate students to "think like lawyers." However, substantial numbers of teachers will not subscribe to either mission.[127]

Even if there were a consensus that law schools are educating students for the public profession of law, would that translate into any agreement as to mission? Is the mission of law schools the delivery of a wide range of legal services by training generalists, specialists, and limited specialists as asserted by W. Scott Van Alstyne, Joseph Julin, and Larry Barnett?[128] Should we train a "differentiated bar" with some lawyers trained to do one thing and others another, assuring

[123] *Id.* at 24. Packer and Ehrlich assume these to be included in the "universal structural characteristics of law schools." *Id.*

[124] Fifth Circuit judge (now deceased) and member of the ABA Task Force on Lawyer Competency (CRAMTON REPORT, *supra* note 56).

[125] Alvin B. Rubin, The Need for Greater Emphasis on Skills Development, Remarks at the National Conference on Legal Education – Curriculum for Change (May 1979) *in* LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE (Fernand N. Ductile ed., 1981), at 17 [hereinafter Ductile].

[126] See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) for a statement of the case of disjunction between the profession and legal education. See also *Symposium: Legal Education*, 91 MICH. L. REV. 1921 (1993) for reactions to Edwards' assertions.

[127] Edwards, *supra* note 126.

[128] VAN ALSTYNE, JR. ET AL., *supra* note 103, at 111, 115.

quality by standard national examinations as proposed by Reed in 1921?[129] Should we, as Roger Cramton said, view legal education "as preparation for a lifetime career involving continuous growth and self-development over a forty-year period"?[130]

Or is the implicit mission that law schools teach students to "think like a lawyer"? Robert MacCrate said: "There was a time when law schools viewed their mission as much more limited than do law schools today: simply teach law students 'to think like lawyers' and qualify them for admission to the bar."[131] Teaching students to "think like lawyers" is too vague to pass muster as an appropriate mission.[132] Most law schools have not examined what lawyers do, much less what they think, how they think, and whether legal thinking is any different than critical thinking in any other discipline.[133] As Barry Boyer and Roger Cramton note, "[A]t no time in the history of legal education since it was taken over by law schools has there been a comprehensive, systematic investigation of what lawyers do, made for the specific purpose of curriculum planning."[134] Francis Zemans and Victor Rosenblum would agree:

[129] REED, *supra* note 55, at 417-18.

[130] Roger C. Cramton, *Lawyer Competence and the Law Schools*, 4 U. ARK. LITTLE ROCK L.J. 1, 10 (1981).

[131] MacCrate, *Lecture on Legal Education, supra* note 57, at 264.

[132] *See* Bryden, *supra* note 108; Mudd, *supra* note 108; Payton, *supra* note 108 (challenging the meaning of this mission and its propriety).

[133] *But see* Mudd *supra* note 28 (reporting on the survey of Montana and Idaho Bar Associations for the purposes of identifying necessary intellectual abilities and skills of lawyers).

[134] Barry B. Boyer & Roger C. Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 270 (1974)(citing Irwin C. Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. CIN. L. REV. 7, 15 (1968)).

> The practicing bar credits law schools in precisely those areas in which they have chosen to concentrate their attention. It is the neglect of competencies outside the law schools' self-defined mission with which practitioners find most fault. That mission is based on an image of the profession not reflected in the data, for in many cases what is neglected is the very competencies that practitioners find most important to the actual practice of law.[135]

The lack of an express mission means that the law curriculum likely will not have a focus and will not function to achieve any specific purpose. Course offerings, faculty hiring, selecting course materials, and testing are not informed by requirements of a mission statement or by the structure imposed by mission. Although a faculty member in an individual course may have a clear idea of what she wants to accomplish, the result is a curriculum that is merely a collection of courses instead of a coordinated, coherent program of study.

Absence of Student and Institutional Outcomes

If a law school is to be effective as an educational institution, it needs to be guided by student outcomes–a statement of the knowledge, abilities, and attributes its students should derive from their legal education. What does the school expect its students to be able to do upon graduation? Has the law faculty decided or even discussed outcomes? Does anyone disclose the expected outcomes to the students?

There is little evidence that legal educators in this century have thought seriously about outcomes. For example, the Association of

[135] FRANCIS K. ZEMANS & VICTOR G. ROSENBLUM, THE MAKING OF A PUBLIC PROFESSION 164 (1981).

American Law Schools (AALS) in its 1961 report *Anatomy of Modern Legal Education*, purported to "inquire into the adequacy and mobilization of the financial and human resources in American law schools for research and education," yet the report omitted any mention or measure of student outcomes.[136]

An example of student outcomes is the abilities Judith Younger identified as essential to the practice of law:

> If law schools were, as they say they are, successfully training lawyers for practice of the profession, their graduates would emerge with the ability to do eight things:
>
> 1. Put problems in their appropriate places on the substantive legal map; in other words, spot the issues, characterize or affix the right legal labels to facts;
> 2. Plumb the law library to its greatest depth and come up with buried treasure;
> 3. Write grammatically, clearly, and with style;
> 4. Speak grammatically, clearly, and with style;
> 5. Find, outside the library, the facts they decide they need to know. This includes the ability to listen;
> 6. Use good judgment;
> 7. Find their way around courts, clerks, legislatures, and governmental agencies; and
> 8. Approach any problem with enough social awareness to perceive what nonlegal factors bear on its solution.[137]

Unfortunately, few law schools have followed Younger's lead and established student outcomes. The law school that has no student outcomes has little measurable product other than the number of

[136] ASSOCIATION OF AMERICAN LAW SCHOOLS SPECIAL COMMITTEE ON LAW SCHOOL ADMINISTRATION AND UNIVERSITY RELATIONS, ANATOMY OF MODERN LEGAL EDUCATION at iii (1961).

[137] Judith T. Younger, *Legal Education: An Illusion*, 75 MINN. L. REV. 1037, 1039 (1990).

students graduated. There is a significant difference between simply graduating students and graduating students who can, by reason of their law school education, competently perform those tasks required of members of the profession.

The Incoherent and Unstructured Curriculum

Lacking the guidance of an express mission or stated student or institutional outcomes, the traditional law school curriculum is "deficient in both structure and coherence."[138] Most schools have a common first-year curriculum that may date back to 1902,[139] consisting of civil procedure, contracts, property, torts, and a legal methods course.[140] The rationale behind the courses and their teaching is development of analytic skills and a base of substantive legal knowledge.[141] As Packer and Ehrlich said:

> Taking the run of national and regional full-time, university-connected law schools as a unit, a visitor could sit blindfolded in, say, a first-year torts class in any one of them with some assurance that he would not be able to tell whether he

[138] Roger Cramton, The Need for Greater Emphasis on Skills Development, Remarks at the National Conference on Legal Education–Curricula for Change (May 1979), *in* Ductile, *supra* note 125, at 11.

[139] Rutter asserts that "the first-year curriculum is still almost universally some prescribed version of Beale's 1902 package" (referring to Joseph H. Beale, The First-Year Curriculum of Law Schools, Address Before the Annual Meeting of the Association of American Law Schools (1902) *in* PROC. ASS'N AM. L. SCHOOLS, 1902, at 42). Irwin C. Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. CIN. L. REV. 7, 19 (1968).

[140] PACKER & EHRLICH, *supra* note 107, at 28.

[141] *Id.* at 30.

> was at Harvard, Yale, Columbia, Chicago, Stanford, or East Cupcake.[142]

Beyond the first year, the curriculum is, for the most part, elective.[143] The development of that elective curriculum has been described as a "mushrooming process of *ad hoc* responses to a variety of conditions"[144] and is a major source of incoherence in the overall curriculum. As Boyer and Cramton note: "New courses often are simply added on to the existing offerings rather than emerging from a shared faculty concept of how the educational process should be changed."[145] They complain that the curriculum consists of "a bewildering array of largely elective courses, as well as the individual stamp which law teachers impress upon the same courses and even the same teaching materials. . . ."[146] Law faculties generally do not introduce electives into a curriculum based upon a priority list determined by consensus after considering the school's mission and student and institutional outcomes. Instead, it is likely that the elective "hobby horse" course[147] is offered because a faculty member is interested in teaching a particular subject or because some students

[142] *Id.* at 29.

[143] William Powers reflects that less than half of the average curriculum is in required courses and that over 98% of the schools require the traditional first-year courses, such as Contracts, Torts, Property, Civil Procedure, and Criminal Law. WILLIAM B. POWERS, A STUDY OF CONTEMPORARY LAW CURRICULA 10-12 (1986). Generally, the few remaining required courses are Constitutional Law (88.5%), Legal Research and Writing (87.9%), Legal Profession (80.5%), Evidence (46%), Taxation (31%), and Business Organizations (28.2%). *Id.*

[144] Rutter, *supra* note 139, at 48.

[145] Boyer & Cramton, *supra* note 134, at 230.

[146] *Id.*

[147] Rutter, *supra* note 139, at 48.

are interested in taking it. In a world of unlimited resources, such a curricular approach might have some justification; in the law school world, the approach reflects an irresponsible use of precious resources

Lack of structure in the curriculum is also a problem. Boyer and Cramton assert that "the learning experience should be structured so that knowledge, skills, and concepts build upon one another in an orderly progression of increasing difficulty and complexity."[148] Teaching professional skills such as analysis, oral advocacy, or drafting should be incremental and developmental, starting with simpler, discrete tasks; proceeding to more complex and difficult tasks; and ending with "keystone" performances that integrate multiple complex skills. Most law schools' curricular structure, which features discrete, nonintegrated classes and substantially elective second- and third-year curricula, makes progressive educational development nearly impossible.

Ineffective Teaching Methods

> *"There's a lot more teaching going on [in this college] than learning."*[149]

When the mission in legal education is nonexistent and student outcomes are not identified, one can predict that the teaching method will also lack focus and be ineffective. Teaching methods in law schools have been criticized throughout the century. In 1921, Joseph Redlich, in a Carnegie-sponsored study of legal education, criticized

[148] Boyer & Cramton, *supra* note 134, at 233.

[149] PATRICK L. COURTS & KATHLEEN H. MCINERNEY, ASSESSMENT IN HIGHER EDUCATION: POLITICS, PEDAGOGY, AND PORTFOLIOS 24 (1993) (citing Pat Hutchings & Ted Marchese, *Watching Assessment: Questions, Stories, Prospects*, CHANGE, Sept.-Oct., 1990 at 12, 32).

the casebook method and warned of its shortcomings.[150] During the 1930s and 1940s, the noted educator and Second Circuit jurist, Jerome Frank, argued against the Langdellian method for training students for the public profession of law.[151] Albert Harno, in his detailed history of legal education in 1953, criticized the case method[152] and law school instruction in general as "lacking in breadth and perspective."[153] He faulted the case method's failure to provide synthesis,[154] the neglect of practical skills,[155] and the failure to inculcate professional standards and ideals.[156] Irwin C. Rutter, in 1968, challenged the efficacy of teaching by case and Socratic method.[157] In 1972, Packer and Ehrlich noted the discrepancy between the "case-Socratic" method and "the student's intellectual initiative and imagination,"[158] the homogeneity and boredom associ-

[150] REDLICH, *supra* note 113, at 41-47.

[151] *See* Frank, *supra* note 113, at 1313. See also the citations in the article for Frank's writings and references to his presentations for his thoughts on changes for law schools.

[152] ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 137-40 (1953).

[153] *Id.* at 140.

[154] *Id.* at 144-46.

[155] *Id.* at 146-55.

[156] *Id.* at 155-60.

[157] Rutter, *supra* note 139, at 24-36.

[158] *Id.* at 30.

ated with continued case method in second- and third-year classes,[159] and the dubious justification of "thinking like a lawyer" as a basis for such an educational program.[160] Finally, Andrew S. Watson raised the question of the psychological impact of Socratic method on student learning.[161]

The problem of developing teaching methods appropriate to legal education's purpose is compounded because law teachers are selected for their legal acumen and not their teaching abilities.[162] With few exceptions, law teachers are unlikely to have taken a single course in teaching or in learning theory, and most assume their first law teaching job without any meaningful teaching experience. (This is, of course, true of higher education in general.) Law teachers almost universally rely on variations of lecture and Socratic method in their classrooms and ignore any question about whether those methods are effective in the way law students learn. Unfortunately, law teachers may not find much guidance from their peers. As Jay M. Feinman and Marc Feldman note, "At most law schools, the purposes and methods of teaching are regarded as unfruitful, if not unfit, topics for conversation."[163]

The very real risk is that law students are not learning as much as they should, given their academic backgrounds and intellectual abilities. Many students simply record and store substantive legal information for insertion in outlines which they will memorize for the

[159] *Id.* at 32.

[160] *Id.* at 30.

[161] Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 119-37 (1968).

[162] Frank R. Strong, *The Pedagogic Training of a Law Faculty*, 25 J. LEGAL EDUC. 226-27 (1973).

[163] Jay M. Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985).

ultimate purpose of succeeding in final exams. This is a logical approach for students who perceive that the major student outcomes are the ability to succeed on essay exams and pass the bar exam. This would explain Williston's lament as reported by Llewellyn:

> I was talking with Mr. Williston the other day. He agreed that his experience was my experience. He had them in Contracts in the first year, and he had them in Sales in the second year and, when they got into the Sales of the second year, they didn't know the Contracts that he supposedly had taught them in the first year.[164]

Teachers commonly make variations on this complaint but seldom blame their teaching for the failure of student learning. Williston did not say, "Damn, I failed to get contract law across to my Sales students!" As David P. Bryden says of law teaching, "The moral seems to be that what we 'teach' is not what they learn."[165]

Lack of Assessment Measures

In the traditional law classroom situation, bluebook examinations and classroom recitation by the student provide the only information on whether students are learning what we are teaching.[166] The bluebook exam takes place only once, at semester's end, and the process of individual student recitation provides precious little reliable data on student learning. As Bryden said, "There is, then, a serious dissonance between our higher aspirations as teachers and our

[164] Karl N. Llewellyn, Remarks at the Proceedings of the Annual Meeting of the Association of American Law Schools (Dec. 29, 1947), *in* ASS'N AM. L. SCHOOLS 1947 HANDBOOK, 1947, at 68.

[165] Bryden, *supra* note 108, at 503.

[166] *Id.* at 480.

examination and grading practices. We aspire to teach mental habits that transcend substantive law but we do not try very hard to find out how well we are succeeding."[167]

Bryden conducted a study to determine how well law schools succeed in the area that they claim to emphasize–that they teach students to think like lawyers.[168] He tested functional analysis in students from three respected law schools by having the students analyze for holding, dictum, and statutory construction. He concluded that the results of the testing raised "serious questions about our teaching of legal reading and reasoning."[169] Bryden's ultimate conclusion was that the solution lay not in the traditional curricular reform of "inventing, requiring, and moving courses,"[170] but in pedagogic or teaching reform.[171]

Legal education also expends little effort to determine its success in meeting institutional outcomes. John Mixon and Gordon Otto describe the problem from a quality management perspective:

> Law schools do not systematically ask their customers whether they are well-served, and most managers (deans) and workers (professors) show little inclination to find out. The merest suggestion brings howls of complaints that students do not know what is good for them, that customer feedback (particularly in teaching evaluations) is suspect, that the practicing bar has nothing useful to say, and that law school faculties best serve their customers by producing law review articles.[172]

[167] *Id.*

[168] Bryden, *supra* note 108, at 479.

[169] *Id.* at 502.

[170] *Id.* at 505.

[171] *Id.* at 506.

Consequently, those who have studied legal education have called for measures by which a law school could assess its role, needs, and performance as an institution. Llewellyn called for study to determine what law schools could do.[173] Boyer and Cramton called for study to assess legal education including students, their selection and motivation, faculty, the professionalization process in law school, graduated lawyers, the early years of practice, and the economics of legal education.[174] Rutter called for the "comprehensive, systematic investigation of what lawyers do, made for the specific purpose of curriculum planning."[175]

Aside from collecting data on alumni for purposes of fund raising, law schools do not have a viable means of assessing institutional outcomes. Does the profession see the school as the legal center it purports to be? Are its graduates equipped to practice law? What do its alumni who have been in practice two to five years think about their preparedness? What do law firm partners think of the graduate's ability to think like a lawyer? Are graduates community leaders? What do they think about the school? Is the school meeting its commitment to diversity?

The absence of a comprehensive assessment program by which a school can measure and evaluate progress in student learning and meet institutional outcomes complicates the achievement of educational excellence because the school must, at best, make its decisions on assumptions and, at worst, on delusions.

[172] Mixon & Otto, *supra* note 52, at 436-37.

[173] Llewellyn, *supra* note 114, at 678.

[174] Boyer & Cramton, *supra* note 134, at 234-35.

[175] Rutter, *supra* note 139, at 15.

Lack of Feedback to Students

Without an appropriate program of assessment of student performance, the feedback loop is broken. Legal education's system of examinations is inadequate as a learning tool and has been roundly condemned. Talbot D'Alemberte, former Dean of the Florida State University College of Law and former ABA President, said: "Is there any education theorist who would endorse a program that has students take a class for a full semester or a full year and get a single examination at the end? People who conduct that kind of educational program are not trying to educate."[176]

From the perspective of the quality management advocates, this system amounts to mass "inspections" that do not produce quality in the corporate domain[177] and do not produce student learning in the domain of legal education. "A company that depends on mass inspections wastes money by first paying workers to produce inferior goods, then paying them to find the imperfections, and finally paying them to throw the rejects away."[178] The law school invests in the student who produces work that needs improvement, grades the work generally after the student has finished the class, and, in essence, throws the results away because they have no real formative use other than ranking the student.

[176] Talbot D'Alemberte, *Law School in the Nineties: Talbot D'Alemberte on Legal Education*, A.B.A. J. Sept. 1990, at 52, 52.

[177] Mixon & Otto, *supra* note 52, at 401.

[178] *Id.* It is sobering to ponder the large size of law school classes and the difficulty of providing useful feedback to students in light of the fact that the student-to-faculty ratio in medical schools is 1:1. Many law schools lack the resources to lower their student-faculty ratio.

Accountability for the Institution's Mission

A law school that lacks the components of a comprehensive program of assessment–a clearly stated mission, explicit student and institutional outcomes, appropriate teaching methods, effective instruments for measuring success or failure, and feedback–will not be able to account for itself. That, in turn, will affect the school's relations with its students, alumni, contributors, regents, legislators, and accrediting bodies.

A real problem in law schools is to continue the present course in the face of concerns from credible critics, such as the ABA. Consider again the words of D'Alemberte:

> But it's also possible to conclude that we run legal education in a way that is least burdensome to professors, and most advantageous to the university systems, because we allow extremely large classes with a very small number of professors, and we do not require much burden of testing or exchange between students and faculty.
>
> One way of looking at this whole thing is to ask who benefits from such a system. The profession is not benefiting [*sic*], the students are not benefiting [*sic*]. In whose interest are we running legal education? I can not think of any other profession that operates with so little connection between those who are practicing and those who are the gatekeepers for the profession. This is not a healthy situation for either the academy or the profession.[179]

A law school that develops its structure, curriculum, and teaching methods in accordance with principles of a comprehensive assessment program can respond to the challenges and issues raised by D'Alemberte.

[179] D'Alemberte, *supra* note 176, at 52.

Furthermore, the academy needs to admit that there are "appropriate domains of accountability" to which we should respond.[180] Law schools need to identify the legitimate groups or constituencies that have an interest in educational outcomes and begin the positive steps of accounting to them.

Groups meriting accountability from law schools are:[181]

1. The ABA and AALS in their authority to review and accredit law schools in their teaching, scholarship, and public service;
2. State governments in their authority to regulate and govern state university law schools;[182]
3. Potential students who need information to assist them in making choices of law schools and programs; and
4. Other constituencies with connections to the law school such as the bench, bar, alumni, and students.

The reports of the Clare[183] and Devitt[184] Committees, the *Cramton Report* in 1979,[185] and the *MacCrate Report*[186] in 1992 must be considered as requests for accountability from constituencies with an interest in legal education. The law school can state its mission,

[180] PETER T. EWELL, ASSESSMENT, ACCOUNTABILITY, AND IMPROVEMENT: MANAGING THE CONTRADICTION 3-8 (1987).

[181] Adapted from *id.*

[182] For an example of a state's interest and role in improving higher education, see ROBERT O. BERDAHL ET AL., THE STATE'S ROLE AND IMPACT IN IMPROVING QUALITY IN UNDERGRADUATE EDUCATION: A PERSPECTIVE AND FRAMEWORK (1987).

[183] Clare Committee Report, *supra* note 113.

[184] Devitt Committee Report, *supra* note 113.

[185] CRAMTON REPORT, *supra* note 56.

[186] MACCRATE REPORT, *supra* note 39.

adopt student and institutional outcomes, develop teaching methods suitable to the outcomes, and assess to determine effectiveness, all of which will validate its existence in the community of those with an interest in legal education.[187]

Conclusion

The development of student and institutional outcomes for a law school will resolve some of the most troubling problems of legal education. Statement of outcomes affords a school several valuable benefits. Identification of competencies requires a faculty to consider what graduates of the school will be doing and the obligation of the school and its graduates to its constituencies. Further, the faculty will have to review its chosen mission, qualifications of students, teaching assets, and resources to determine the viability of the outcomes. Collaboration and dialogue with the bench and bar in drafting outcomes will invigorate the faculty members, educate the bench and bar, and forge a bond between the law school and the profession.

The structure provided by competencies promotes continuity in the academic program. The statement of outcomes will serve as a standard of assessment in determining whether the school is meeting its desired objectives. Moreover, articulated competencies allow faculty members to coordinate the teaching of outcomes in appropriate classes and using appropriate methods. Competencies help determine the qualifications of faculty candidates for hiring purposes. They inform the structure of individual courses and promote team teaching and other collaborative efforts by faculty members. When guided by competencies, each faculty member will better understand

[187] For a paper on the necessity of carefully considering the benefits and detriments to system-level and institutional-level obligations of accountability, see DENNIS P. JONES & PETER T. EWELL, ACCOUNTABILITY IN HIGHER EDUCATION: MEANING AND METHODS (1987).

what his colleagues are doing. Finally, competencies can be used as a standard to remove matters from the academic program that lack real relevance.

PART THREE

HOW TO DO ASSESSMENT

Chapter 6. Characteristics of an Effective Assessment Program

Principles from the student assessment-as-learning movement form a clear conceptual framework for law schools. For example, the Consortium for the Improvement of Teaching, Learning and Assessment–a consortium of high schools, colleges, and professional schools[188]–has identified the following principles:

1. Student learning is a primary purpose of an educational institution.
2. Education goes beyond knowing to being able to do what one knows.
3. Learning must be active and collaborative.
4. Assessment is integral to learning.
5. Abilities must be developed and assessed in multiple modes and contexts.
6. Performance assessment–with explicit criteria, feedback, and self-assessment–is an effective strategy for ability-based, student-centered education.

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[188] The Consortium's eleven members have included such diverse institutions as the University of Wisconsin School of Medicine, Purdue University School of Pharmacy and Pharmacal Sciences, Alverno College in Milwaukee, and Bloomfield Hills Model High School at Bloomfield Hills, Michigan.

7. A coherent curriculum calls for faculty investment in a community of learning and judgment.
8. The process of implementation and institutionalization of a curriculum is as important as the curriculum; the process is dynamic, iterative, and continuous.
9. Educators are responsible for making learning more available by articulating outcomes and making them public.
10. Responsibility for education involves assessing student outcomes, documenting inputs, and relating student performance over time to the curriculum.[189]

These educational principles can serve to improve legal education.

"Student learning is a primary purpose of an educational institution."

An overarching tenet of the assessment movement is that the essential function of an assessment program is to improve student learning. If law school teachers view scholarship as their primary focus, one can expect them to resist the assessment movement, especially insofar as assessment affects allocation of law school resources.

Although there is debate in law schools about the relationship and priorities between scholarship and teaching,[190] student learning is

[189] CONSORTIUM FOR THE IMPROVEMENT OF TEACHING, LEARNING AND ASSESSMENT, SHARED EDUCATIONAL ASSUMPTIONS (Alverno C. 1992) [hereinafter CONSORTIUM]. See also the "Seven Principles of Good Practice in [Higher] Education," which includes student-faculty contact, cooperation among students, active learning, prompt feedback, time on task, high expectations, and respect for diverse talents and ways of learning. These principles are set out in GERALD F. HESS & STEVEN FRIEDLAND, TECHNIQUES FOR TEACHING LAW 15 (1999) and taken from the American Association for Higher Education Bulletin, March 1987.

[190] *See, e.g.*, John S. Elson, *The Case Against Legal Scholarship or, If the* (continued...)

the primary purpose of law schools.[191] This is not to deny the important link between faculty scholarship and student learning, that scholarship is a major purpose of law schools, or even that some law teachers would say that scholarship is the primary function of their law schools. But the assertion by a faculty that scholarship is the primary function of its law school is unsupportable. If the primary purpose of a law school and law faculty is research and scholarship, a major source of revenue that supports the law school would be dollars for research. For instance, in other disciplines, NASA, General Motors, Boeing, or the Department of Defense fund research so heavily that faculty members can substantiate the assertion that their primary purpose is research and scholarship. However, law schools are supported by relatively little externally funded research. Instead, student tuition dollars (or state support in the case of state-funded or -assisted law schools) are channeled into faculty research and scholarship.

This is not to denigrate the very important research function of law school. Law school research informs legal education, the courts, the profession, all levels of government, and society in general. Research improves law teaching by improving faculty knowledge and intellectual abilities. A law school's mission statement will probably call for research service to constituencies of the school, and the research mission can be reflected in institutional outcomes.

Although the constituencies of a law school are likely to agree that faculty scholarship is a major function of the law school and integral to its mission, it is unlikely that they would find scholarship to be the school's main purpose. Constituencies of the law school are

[190] (...continued)
Professor Must Publish, Must the Professor Perish?, 39 J. LEGAL EDUC. 343 (1989).

[191] PACKER & EHRLICH, *supra* note 107, at 24. Packer and Ehrlich found that among the assumed "universal structural characteristics of law schools" were the facts that "[t]heir primary mission [was] the education of students for entry into the legal profession" and that the "faculties of none [were] primarily engaged in research."

likely to conclude that the institution's primary mission is to foster student learning. After all, catalogs and promotional materials emphasize teaching, and the ABA accreditation standards place heavy emphasis on it. Hence, assessment in the law school should have as its primary focus improvement of student learning.

"Education goes beyond knowing to being able to do what one knows."

An old Chinese proverb says, "I hear, and I forget; I see, and I remember; I do, and I understand." Although few law teachers would deny the truth of this proverb, most legal education is based around acquiring knowledge as opposed to being able to do what one knows. Debate rages over the role of professional skills simulations and clinical education in law school. Indeed, the conflict between law faculties and the ABA over the *MacCrate Report*[192] reflects the tension between law school's tradition of teaching for knowledge and the ABA's insistence that students be able to apply what they learn to meet the *MacCrate Report's* Statement of Fundamental Lawyering Skills and Values.[193] If law teachers accept the proposition that legal education involves being able to do what one knows, profound changes in teaching methods are in order.

[192] MACCRATE REPORT, *supra* note 29.

[193] Robert A. Stein, Dean of the University of Minnesota School of Law, predicts that the future will feature continuing conflict in the academic versus professional focus of law schools. Robert A. Stein, *The Future of Legal Education*, 75 MINN. L. REV. 945, 953 (1990).

"Learning must be active and collaborative."

This principle does not comport with the current state of American legal education where, apart from clinical education, the dominant teaching methods are lecture and discussion with limited student participation. Large class size, high student-to-faculty ratio, and adherence to traditional teaching methods make learning in law schools a passive experience for most students. As William O. Douglas said: "The customary technique has been to conceive of the minds of students as receptacles for the information which the faculty have garnered over the years. Education is commonly thought of as the process of filling the receptacles with what the faculty in its wisdom deems fit and proper."[194]

The person in the classroom who is active in his learning–and therefore who learns the most–is the law teacher. This is unfortunate because we have selected the best and brightest students who could make similar gains if they were the ones doing active learning. If they are simply gathering information to memorize for bluebook examinations at semester's end, their intellectual abilities are wasted.

A passive learning process does not lead to student retention of concepts. It is common for teachers to report that the students have, as a whole, not retained what they supposedly learned in previous classes. Education that actively involves both the student and the teacher will increase student retention of content and skills.

Collaborative learning is not common in law schools, which have a tradition of individual performance and competition among students. However, Thomas Shaffer makes a convincing argument that collaborative models should work particularly well in law schools.[195] If legal education adopts the principal assumption that

[194] Healy v. James, 408 U.S. 169, 196 (1972).

[195] Thomas L. Shaffer, *Collaboration in Studying Law*, 25 J. LEGAL EDUC. 239, 240 (1973).

learning must be active and collaborative, law teachers will become facilitators, and students will become initiators of their learning.[196]

"Assessment is integral to learning."

For those involved in assessment, learning is a loop in which the teacher facilitates the student's active learning, the student performs what she has learned, student and teacher assess the student's performance, and the teacher provides the student feedback that shows where and how the student's learning and performance can improve. This learning scenario is the basis for the assumption that assessment is a critical learning tool and not just a means of measuring learning after the fact.

Assessment tools used to evaluate student performance can be formative or summative. A summative exam, for instance, might test the student's knowledge and abilities at the end of a course and provide the student and teacher information on how well the student learned. A summative exam is not primarily a learning experience and does not provide the student extensive feedback. Conversely, a formative tool is designed to facilitate the student's learning and to provide extensive feedback.

An essay exam at semester's end will test the student's knowledge in a summative fashion and provide almost no feedback to the student. On the other hand, suppose a teacher presents students with incremental problems of increasing complexity at the start of each chapter of a law textbook and requires students to analyze and solve the problems by seeking out and applying the law to the facts of the problem. When completed, the teacher reviews the answers and

[196] Cramton notes the important implication of the word "teaching" which "implies that it is the teacher of the message that is important, not the learning" and "learning" which implies that the "initiative and energy must come from the learner." He points out that "our task as teachers is to organize, inspire, and facilitate the learner in acquiring new knowledge, skills, and potentialities." Cramton, *supra* note 69, at 322.

gives the students feedback, which they use to tackle the next set of problems. This is a type of formative learning experience that provides significant feedback to the student.

Legal education characteristically makes only summative use of exams,[197] utilizing them primarily to assign grades.[198] Summative forms of assessment of student learning should be the exception in law schools, not the rule. To make assessment integral to learning in law school, we must think of assessment in a formative role providing useful and timely feedback to students during the learning process. Students should be judged while demonstrating those abilities called for in the school's student outcomes (such as skills of analysis, problem solving, oral communication, writing, or drafting). Students should take part in the assessment, discussion, and critique that follow their performance, and then perform again to integrate what they have just learned.

Formative assessment is consistent with the way people typically learn. Consider, for example, how the graduate learns in law practice. The opposing counsel demands an accident reconstruction report. The graduate thinks it is protected from discovery by the attorney work product doctrine. Opposing counsel moves to compel production of the report. The graduate analyzes the motion and facts; researches the rule, annotations to the rule, and cases; and exercises intellectual skills of comprehension, application, analysis, synthesis, and evaluation followed by skills of drafting, legal writing, and oral advocacy. The graduate will self-assess based on the reaction of counsel and the court to the work and the result achieved. In the end, the graduate will learn with a good deal of retention, because the task itself is the learning tool and not just a means of measuring learning. Assessment by opposing counsel, the court, and the graduate is built into the learning process.

[197] Nickles, *supra* note 69, at 420.

[198] *Id.* at 414-15.

"Abilities must be developed and assessed in multiple modes and contexts."

The assessment movement emphasizes the use of multiple and varied modes of assessment over time. In part, this is because a major prerequisite to any form of assessment is "validity," whether the assessment "effectively measure[s] student competence with respect to the various instructional objectives of the law teacher."[199] To attempt to measure student competence on a single occasion, using only a single mode (oral or written) and using a single form of instrument (for example, a multiple-choice exam), may be ineffective and invalid. Furthermore, methods of assessment that serve one purpose may be inappropriate for others.[200] For example, a multiple-choice exam may be valid for assessing student ability to differentiate estates in land and invalid for assessing ability to draft pleadings.

As a result, an essay exam administered to students under time pressure on a single occasion may purport to identify student *A* as having competence in the subject of the exam, when in fact student *A* is merely competent at studying for and performing well on that type of exam. It may indicate that student *B* has not achieved competency when student *B* is in fact fully competent and could do what she knows by performing the legal transaction.

Adherence to assessment principles would foster profound change in the way that we judge student performance to determine who is fit to practice law. The first step for law schools would be assessment at various points during the term of instruction; the second would be to vary the modes of assessment.

This is also true for institutional assessment. Conclusions about the performance of the institution should be based on multiple

[199] 1 JOSEPHSON, *supra* note 7, at 5.

[200] T. EDWARD HOLLANDER, N.J. ST. DEP'T HIGHER EDUC., A POSITION PAPER ON POSTSECONDARY ASSESSMENT 6 (1987).

measures.[201] A law school might be able to make a valid assessment of its performance in meeting student outcomes by analyzing survey responses of groups of law students, recent graduates, law firm senior partners, and judges. To base the assessment on the responses of only one of the groups would greatly reduce the validity of the assessment. Consider the difference in perspective of first-year students, practicing recent graduates, and judges in evaluating the effectiveness of various law school programs.

"Performance assessment–with explicit criteria, feedback and self-assessment–is an effective strategy for ability-based, student-centered education."

Although this assumption has many components, the concept of "explicit criteria" merits special attention. After law teachers have analyzed what they want students to be able to do (outcomes), then they must identify the criteria for a competent performance. The task of identifying the criteria for competent performance is a valuable learning tool for the faculty member. Law teachers too often judge student work without ever considering exactly what constitutes competent performance. Students are concerned when the criteria by which they are being judged are absent, variable, or arbitrary.

Picture the teacher who wants students to understand the interrelationship of fact and law in the context of dispute resolution and the essential function of summary judgment as a tool for resolving certain classes of disputes. More specifically, the teacher wants students to be able to move for or defend against summary judgment. Traditional legal education might dictate that the teacher cover cases on summary judgment during the semester and include summary judgment in a bluebook exam at semester's end. Performance assessment would necessitate an entirely different approach.

[201] *Id.* at 7.

In performance assessment, the students would receive a case file that provides the facts and the legal problem. Their task would be to move for summary judgment. The teacher would have settled on, and provided the students, criteria for the research and writing of a competent summary judgment brief. Students would review the file, and research, analyze, synthesize, and evaluate facts and law to draft their motion and write the supporting summary judgment brief. The teacher or an assistant would review and assess the students' draft briefs, provide appropriate feedback, and assess the final briefs. Next, the teacher would provide the students the criteria for competent oral advocacy in motion practice, after which the students would make practice arguments. The students, teachers, and teaching assistants would each judge and discuss the performance in light of the criteria. The students would use suggestions for improvement in demonstrating proficiency in the final argument. The entire process could be structured "so that knowledge, skills, and concepts build upon one another in an orderly progression of increasing difficulty and complexity."[202]

Exercises such as the summary judgment example above require the integration of a broad range of skills acquired in law school as a prerequisite to performance. The students who engage in the exercise must call upon knowledge of civil procedure, knowledge of the underlying substantive law, research skills, intellectual skills (comprehension, application, analysis, synthesis, and evaluation), problem solving, drafting, legal writing, oral advocacy, self-assessment, and communication. This is far different from legal education that places students in the role of passive note takers. Education that is student-centered and ability-based and that features performance assessment based on explicit criteria, feedback, and self-assessment is tailor-made for law school.

[202] Barry B. Boyer & Roger C. Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 233 (1974).

"A coherent curriculum calls for faculty investment in a community of learning and judgment."

This assumption is based on the belief that education should be "integrated and coherent, not simply a collection of discrete activities."[203] The "fragmentation of the curriculum" and the "bewildering array of largely elective courses" reflect the lack of faculty community involved in law school learning.[204] An academic plan structured around assessment principles cannot be based on the "Lone Ranger" theory of legal education.[205] Faculty must collaborate in the dialogue to determine mission and outcomes. Just as a coherent curriculum cannot be composed of discrete and isolated courses, an integrated curriculum cannot be formed by individual teachers. Faculty members must invest as a group in learning about ability-based, student-centered education and performance assessment and must make themselves a community of experts in changing legal education. The core structures of the law school–the mission statement, student outcomes, institutional outcomes, teaching methods, and assessment program–all depend on the collective judgment of a faculty acting as community.

[203] Jean Mather, *supra* note 68, at 400.

[204] Boyer & Cramton, *supra* note 134, at 230-31.

[205] Cramton identified the Lone Ranger approach as that in which each teacher is responsible for his course and no one is responsible for the curriculum. Cramton, *supra* note 69, at 327-28.

"The process of implementation and institutionalization of a curriculum is as important as the curriculum; the process is dynamic, iterative, and continuous."

Academic planning under the principles of assessment is never finished. The process evolves and continues as a faculty evaluates and changes teaching methods, courses, materials, and the curriculum. In the process, faculty members develop their knowledge and experience in assessment. The process promotes faculty dialogue and collaboration for the sake of developing a mission statement, student and institutional outcomes, criteria for student performance, and valid assessment tools. Such dialogue and collaboration can be professionally satisfying and broaden the horizons of faculty members. Teachers and students are involved in the process of evaluating aspects of the program such as learning methods, extent of learning, assessment methods, and overall success of the program and in using the information gained to modify those aspects of the program.

"Educators are responsible for making learning more available by articulating outcomes and making them public."

Boyer and Cramton said that "learning proceeds most efficiently when the goals of the enterprise are clearly articulated at the outset."[206] Assessment assumes that it is a faculty's responsibility to determine and articulate outcomes. Then, the faculty, students, and the constituencies of the institution can be guided by the outcomes.

Insofar as the *MacCrate Report's* Statement of Fundamental Lawyering Skills and Professional Values[207] constitutes a statement of

[206] Boyer & Cramton, *supra* note 134, at 233.

[207] MACCRATE REPORT, *supra* note 29, at ch. 5.

outcomes,[208] its very creation by the ABA may be the result of law faculties' failure to exercise the prerogative of determining and articulating outcomes. This is not to say that determining outcomes should be entirely a faculty function, but it is a faculty responsibility. Ideally, a faculty will determine outcomes in consultation with the bench and bar. A law school that has no expressed and implemented outcomes invites its constituencies to doubt its commitment and productivity.

"Responsibility for education involves assessing student outcomes, documenting inputs, and relating student performance over time to the curriculum."

Assessment assumes that teachers are responsible for determining what students are learning and whether to change their teaching to improve student learning. It is not enough to engage in teaching as an exercise consisting of lecture, testing, and grading. Teachers must determine the extent to which students can do what they know, and teachers must evaluate that information to determine what changes need to be made in the curriculum.[209]

[208] The Statement of Fundamental Lawyering Skills and Values does indeed appear to be an intended statement of outcomes. The *MacCrate Report* says,

> Surprisingly, throughout the course of extensive decades-long debates about what law schools should do to educate students for the practice of law, there has been no in-depth study of the full range of skills and values that are necessary in order for a lawyer to assume the professional responsibility of handling a legal matter. Recognizing that such a study is the necessary predicate for determining the extent to which law schools and the practicing bar should assume responsibility for the development of these skills and values, the Task Force prepared a Statement of Fundamental Lawyering Skills and Professional Values.

Id. at 7.

[209] HOLLANDER, *supra* note 200, at 7.

The mandated assessment dictated by legislatures and aimed at kindergarten through grade 12 and undergraduate education has usually arisen from frustration over lack of accountability in education. The imposed solution often calls for a system of tests by which schools measure achievement for purposes of comparison with a national norm. The problem is that measures imposed for purposes of accountability are superficial. The administration and teachers focus on imparting that information which will insure that the largest number of students succeed in the exam to satisfy public expectations.

Legislatures have not mandated assessment in law schools. Law schools can control their own destiny by taking responsibility to develop a sound mission statement, statement of student and institutional outcomes, teaching methodology, and assessment program. At that point, a faculty can respond easily to any demand for accountability.

Chapter 7. The Assessment Process

Benefits of the Process

The process envisioned by the Consortium for the Improvement of Teaching, Learning and Assessment[210] requires that faculty members to answer the most fundamental questions that have always faced legal education and have often been ignored: Who is our constituency? What is it that lawyers do? What do our students need to learn to enter the profession and serve society? How do our students learn? By what methods should we teach? How do we know whether students have learned? What should the law school do for the profession and society in addition to teaching? How do we know that we are accomplishing those goals?

The collaborative work and sense of community involved in determining mission, student and institutional outcomes, and performance criteria will include constituencies of the law school such as the bench, bar, legislature, and students.[211] Their inclusion will result in a tremendous professional and personal investment in the law school by the constituencies, bridge the gap that traditionally exists between

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[210] *See* CONSORTIUM, *supra* note 189.

[211] The Academic Planning Project at the University of Montana School of Law started in 1979 with a survey of the entire bar of the states of Montana and Idaho to determine the relative importance of skills and abilities necessary to practicing lawyers and the degree to which those surveyed felt they were addressed in law school. See Mudd & LaTrielle, *supra* note 28, for a detailed explanation of the survey process.

law teachers and the profession, and send a message that the school is part of a larger community and very serious about fulfilling a mission.

Such dialogue and collaboration should result in an assessment program that reflects strong institutional self-definition. The program will fit what the school is and wants to be. It is unlikely that an assessment program borrowed from another institution or dictated to a school by federal or state mandate would be successful because it will not reflect the individuality of the law school.

Starting the Process

The call for the development and institutionalization of an assessment program can come from a critical mass of faculty members or from a dean who can motivate her faculty to start the process.[212]

[212] In higher education, the process may start as a president's challenge to faculty or as an identity crisis when the institution loses its traditional mission. Such events are opportunities to explore questions about the validity of the school's approach to education and issues of the priority and the value of what is being taught.

Harry Downs, founding president of Clayton State College, challenged his faculty as follows:

1. To identify and define the outcomes [of General Education] that all graduates should be able to demonstrate;
2. To develop the curriculum structure, course content, and instructional techniques which will best produce these outcomes; and
3. To develop a comprehensive system for assessing student progress with respect to the outcomes. CLAYTON STATE COLLEGE, GENERAL EDUCATION AT CLAYTON STATE COLLEGE 1 (1991).

At Alverno College, the faculty embarked on its nationally recognized curriculum and comprehensive program of assessment when its mission of training nuns became obsolete. The school had to form a new mission as "a small, urban Catholic liberal arts college for women."

In 1970-71, Alverno's dean challenged the academic departments with questions about issues of validity of their discipline in the total college program, how (continued...)

In 1979, in the wake of the *Cramton Report*, Dean John O. Mudd, at the University of Montana School of Law, charged the faculty with two goals: "(1) identify the requirements of legal education for the subsequent ten to fifteen years and (2) identify the needs that must be filled by legal education generally, and the University of Montana School of Law in particular."[213] The faculty at Gonzaga University School of Law decided at a retreat in 1990 to undertake a broad curricular reform that resulted, by 1993, in the formation of an ambitious set of "skills, values, and content" and a plan for their integration into the required curriculum.[214]

The dean plays a critical role in the implementation of an assessment program. First, it is essential that she become educated in the principles of assessment. Second, the dean can make available to the faculty the facilitators necessary to create a mission statement, to design statements of student and law school outcomes, and to develop explicit criteria for assessed performances. Third, the dean can provide faculty incentives to implement an assessment program, including release time for development of the program and special recognition of scholarship on assessment. Fourth, the dean can insure that those implementing assessment function as a committee, either as a part of the curriculum committee or a denominated assessment

[212] (...continued)
they were dealing with problems of validity in the general education courses, and what they were teaching that they considered so critical that students should not miss it. *See* ALVERNO COLLEGE FACULTY, *supra* note 8, at 7-8.

[213] Munro, *supra* note 109, at 350. Dean Mudd set forth in detail an account of the barriers to academic change in law schools and strategies for overcoming them to implement reform. John O. Mudd, *Academic Change in Law Schools*, 29 GONZAGA L. REV. 29 (1993).

[214] Gonzaga University School of Law, Revised Curriculum Reform Plan (Nov. 5, 1993)(unpublished, on file with the Institute for Law School Teaching, Gonzaga University School of Law, Box 3528, Spokane, WA 99220-3528; 509-323-3740; ilst@lawschool.gonzaga.edu).

committee. Fifth, the dean can promote regular meetings of faculty to promote assessment and further implementation. Sixth, the dean can provide administrative support. As Nichols notes, "providing the coordination and logistical support to 'see that assessment gets done' is an administrative responsibility."[215] In some cases, the dean may adopt the role of persuader, seeking to motivate faculty members who do not intend to be involved in any change. The dean's support will lend legitimacy[216] to the implementation of the assessment program.

Law schools are slow to change; however, a committed minority of faculty members can initiate major change, especially with the support of the dean. Consequently, cultivation of an interested and cohesive group of faculty members is important to the process of implementing an assessment program in a law school. The most expeditious way to produce such a group is to educate faculty members and deans in assessment. This can be accomplished by promoting faculty attendance at assessment conferences, by inviting someone with expertise in assessment to educate the faculty at the law school, or by individual study.

Assessment conferences like the annual American Association for Higher Education (AAHE) Conference on Assessment[217] feature a range of assessment experts and faculty members involved in assessment who share their experiences in lectures, meetings, panel discussions, and working groups. The enthusiasm of the participants is infectious, and the intense experience of focusing for three days on assessment is an excellent way to immerse faculty members in the

[215] JAMES O. NICHOLS, THE DEPARTMENTAL GUIDE TO IMPLEMENTATION OF STUDENT OUTCOMES AND INSTITUTIONAL ASSESSMENT EFFECTIVENESS 56 (1991).

[216] See Mudd, *supra* note 213 (pt. 2), at 254, about developing legitimacy in law school change.

[217] The American Association for Higher Education (AAHE) holds a three-day conference each year at a different major city. Contact AAHE Assessment Forum, One Dupont Circle, Suite 600, Washington, D.C. 20036; phone (202) 293-6440.

movement. Many university departments and schools follow a policy of sending two or three different faculty members to the AAHE conference each year to increase the size of the assessment group in the department. The detriment to this method is the expense of sending individuals to the conference and the time it takes to send all members of a faculty to such conferences. Nevertheless, teachers who attend report that the AAHE conference is a broadening experience which rekindles their enthusiasm for teaching and provides an excellent forum for learning assessment principles.[218] While the AAHE conference does not focus on law schools and does not involve discussion of the law school mission and outcomes, it can provide excellent basic information about all aspects of assessment.

The benefit of bringing an assessment expert to the law school is the ability to provide the entire faculty and the deans the concurrent opportunity to learn about assessment for relatively little cost. The expert can tailor discussion to the particular school and may maintain an ongoing mentor's relationship with the faculty as it later progresses in developing an assessment program. As compared to assessment conferences, the detriment is that the faculty members cannot choose from a wide range of approaches to assessment and are exposed to only one of the experts in the field.

Unfortunately, the method least likely to produce results is individual study. Not only are materials on assessment specifically designed for law schools slim,[219] but busy faculty members are unlikely

[218] Other major assessment conferences include: Annual Workshops on Assessment at Alverno College, 3401 South 39th Street, Milwaukee, WI 53215, phone (414) 382-6087; The Assessment Workshops at Indianapolis put on by Indiana University-Purdue University at Indianapolis, 355 N. Lansing, Indianapolis, IN 46202; The Outcomes Assessment Institute at Knoxville, Center for Assessment Research and Development at the University of Tennessee-Knoxville, 1819 Andy Holt Avenue, Knoxville, TN 37996-4350, phone (615) 974-2350.

[219] For an exception, see MARLENE LEBRUN & RICHARD JOHNSTONE, *Evaluating and Improving Law Teaching*, *in* THE QUIET (R)EVOLUTION: IMPROVING

(continued...)

to set aside the time to study assessment. More importantly, individual teachers studying assessment in isolation miss the creativity, dialogue, enthusiasm, and excitement of learning with others involved in assessment.

Stating the Mission of the Law School

An assessment program must have its roots in the mission of the law school. The *MacCrate Report* recognizes the importance of a statement of mission.[220] The quality management proponents also call for a statement of mission.[221] A clear sense of mission is one of the most important features of educational institutions that have appropriate forms of assessment.[222]

Ideally, the articulated mission of the school will be the result of dialogue between members of the faculty and representatives of the constituencies of the law school.[223] Such a group can identify the

[219] (...continued)
STUDENT LEARNING IN LAW 331, 331-376 (1994), discussing assessment in Australian law schools. Major sources of materials on assessment in higher education include: Alverno College, 3401 South 39th Street, Milwaukee, WI 53215-4020, phone (414) 382-6000; American Association for Higher Education, One Dupont Circle, Suite 360, Washington, DC 20036, phone (202) 293-6440; Center for Research and Development, 1819 Andy Holt Avenue, Knoxville, TN 37996-4350, phone (615) 974-2350; National Education Goals Panel, 1850 M Street, NW, Suite 270, Washington, D.C. 20036, phone (202) 632-0952.

[220] MacCrate, *Lecture on Legal Education, supra* note 57, 30 WAKE FOREST L. REV. at 264.

[221] Mixon & Otto, *supra* note 52, at 456.

[222] HOLLANDER, *supra* note 200, at 8.

[223] From a quality management perspective, John Mixon and Gordon Otto identify the law school constituencies ("customers") as:
(continued...)

functions that the law school should serve. The process of articulating a mission will likely identify functions that the school already performs. But it may reveal other roles that the group feels ought to be undertaken, or it may uncover a consensus that the school should no longer perform a particular function. The group should distinguish mission from outcomes and teaching methods. For example, being the academic legal center of the state may be a part of the mission for schools in some states. Producing scholarship on matters of state law and policy might be an outcome, and development of a program of research and writing support would be a method used to meet the outcomes.

The resulting mission statement should reflect the values of the particular institution. As Mixon and Otto state:

> In defining their purposes, law schools should assume a systems perspective and suspend the narrow tradition of "follow the leader." They must accept the incontestable fact that law schools have different potentialities, different missions, and different sets of customers. National law schools have an international, governmental, and elite customer base that defines their missions. As a necessary step toward quality, faculty must work out a consensus concerning the mission or

[223] (...continued)
"1. The public that is served by the social order process.
2. Students.
3. Employers of law graduates.
4. Law faculty.
5. Applicants for admission.
6. Potential clients of graduates.
7. Taxpayers.
8. Alumni.
9. Courts.
10. The entire licensed profession.
11. The university to which the law school is attached.
12. The entire life process."
Supra note 52, at 460.

purpose for its particular school. From this, a vision can be constructed that describes the successful school as it performs its mission at a quality level.[224]

Although the primary mission of most law schools is to educate students to enter the profession,[225] that mission is accompanied in American law schools by missions of research and service. Some questions integral to defining a mission are:

- What should this law school be doing for society?
- What will the needs of the profession be during the next ten years and the next twenty years?
- For what should the school prepare its students? Should students be equipped with a broad base of knowledge and a wide range of skills that allow them to perform a variety of tasks in society,[226] or should they be trained as specialists?
- What is the teaching mission? Is it to teach students to "think like lawyers"? Pass the bar exam? Practice law?
- What is the law school's role aside from teaching?
  - Is the law school the legal center of a geographic region or of a political region like a state?
  - Should it serve as a center for legal professionalism, scholarship, law reform, judicial support, and continuing legal education?
  - In each of its functions, will the law school serve society on a global, national, regional, state, or local basis?
- Are there any significant areas of law which this school will emphasize?

[224] *Id.* at 456-57.

[225] PACKER & EHRLICH, *supra* note 107, at 24.

[226] Rubin differentiates between producing practitioners and producing "lawyers, able to perform a wide variety of tasks and equipped with the fundamental skills necessary to make that possible." Ductile, *supra* note 125, at 17.

In the end, the articulated mission should be a brief statement of the overall goals and objectives of the law school in its role in serving society. Ideally, it is concisely and perhaps elegantly drafted to inspire in others a desire to support the mission.[227]

Determining Student and Institutional Outcomes

Having agreed on a mission statement for the law school, the next task involved in forming a sound structure for legal education is the determination of outcomes. The school will adopt outcomes regarding student achievement and the school's role in the community and society.[228] Faculty participation in the process of determining outcomes is important so that faculty members are invested in the outcomes.

Andrew Pirie, who makes the argument for "systematic instructional design" to remedy the problems in the law school curriculum, bases his approach on the clear identification of learning objectives.[229] Outcomes are statements of what we expect our students to know, think, or do upon graduation. "They represent an integrated combination of multiple components including skills, behaviors, knowledge, values, attitudes, motives or dispositions, and

[227] See Appendix A for samples of mission statements from law schools. For an example of a mission statement and other documents developed by Samford University Cumberland School of Law under a quality management process, see Alexander J. Bolla, Jr., *Reflections from the TQM Case File in Legal Education*, 43 EMORY L.J. 541, 571-73 (1994).

[228] ALVERNO COLLEGE FACULTY, *supra* note 8, at 10-11.

[229] Andrew J. Pirie, *Objectives in Legal Education: The Case for Systematic Instructional Design*, 37 J. LEGAL EDUC. 576 (1987).

self-perceptions."[230] For example, suppose a school has adopted as an outcome the ability to counsel clients. Demonstration of that ability might involve components of knowledge of substantive law, analysis, positive attitude toward clients, compassion, confidence, and a record of having conducted interviews in clinics.

The concept of student outcomes for law schools is not new. Many who have analyzed legal education during this century have identified those fundamental skills that students should be able to perform as a result of law school education.[231]

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[230] ALVERNO COLLEGE FACULTY, *supra* note 8, at 9.

[231] Strong identified the following three categories of skills:

1. Perceptional ability (cognitive skill): legal information, legal analysis, fact discrimination, legal synthesis, legal doctrine, problem formulation, and problem resolution;
2. Instrumental (cognitive and affective): legal language, legal method, legal theory, legal process, legal philosophy, legal policy, and legal design (fashioning means to ends);
3. Operational (integrates effective and cognitive learning in a real setting): fact ascertainment, law ascertainment, implementation (drafting, presentations, etc.), lay interviewing, client counseling, representation, and legal mechanics (routine office and court procedures).

Strong, *supra* note 162, at 230-31.

Eric Holmes identified the skills as:

1. Legal perspective: the functions of law, social and ethical responsibility, and legal reasoning;
2. Legal information: legal doctrine, legal theory, and the theory of related disciplines;
3. Legal dialectics: fact sensitivity, legal reading, legal analysis, and legal synthesis;
4. Legal operations of functional skills: research, implementation (drafting and advocacy), interviewing, counseling, and representation (negotiation, mediation, adjudication, and legislation);
5. Fact management: gathering, selecting, and using facts.

Eric M. Holmes, *Educating for Competent Lawyering–Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 578-80 (1976).

The *Cramton Report* listed the fundamental skills as problem solving, research, writing, oral advocacy, fact gathering, interviewing, counseling, negotiating, (continued...)

Bayless Manning's proposed list of characteristics that legal education seeks to imprint on its students is:[232]

1. Analytic skills
2. Substantive legal knowledge
3. Basic working skills
4. Familiarity with institutional environment
5. Awareness of total non-legal environment
6. Good judgment

H. Russell Cort and Jack L. Sammons identified the competencies of the former Antioch School of Law:[233]

1. "Oral Competency": proper and effective use of language, skills of listening and persuading;
2. "Written Competency": sub-abilities similar to oral competency;
3. "Legal Analysis Competency": analyzing facts, law, and formulation of legal theory;
4. "Problem-Solving Competency": problem diagnosis, selection, and implementation of strategy;
5. "Professional Responsibility Competency": identification of conflicts with professional norms or other values and acting consistently with decisions; and
6. "Practice Management Competency": proper use of time, working effectively with others, selecting and following appropriate management procedures.

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[231] (...continued)
and litigation for those who elected it. CRAMTON REPORT, *supra* note 56, at 3.

[232] PACKER & EHRLICH, *supra* note 107, at 23.

[233] Cort & Sammons, *supra* note 118, at 405-6, 439-44. H. Russell Cort & Jack L. Sammons, *The Search for "Good Lawyering": A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397, 405-6, 439-44 (1980).

The *MacCrate Report,* in its statement of Fundamental Lawyering Skills, identifies what may be termed outcomes of the "educational continuum." Indeed, MacCrate refers to them as the "outputs of legal education":[234]

Skill 1: Problem solving
Skill 2: Legal analysis and reasoning
Skill 3: Legal research
Skill 4: Factual investigation
Skill 5: Communication
Skill 6: Counseling
Skill 7: Negotiation
Skill 8: Litigation and alternative dispute-resolution procedures
Skill 9: Organization and management of legal work
Skill 10: Recognizing and resolving legal dilemmas[235]

These are accompanied by the Fundamental Values which graduates presumably would also demonstrate:[236]

Value 1: Provision of competent representation;
Value 2: Striving to promote justice, fairness, and morality;
Value 3: Striving to improve the profession; and
Value 4: Professional self-development.

[234] MacCrate, *Lecture on Legal Education, supra* note 57 at 263.

[235] MACCRATE REPORT, *supra* note 29, at 138-40. See Appendix B for the complete overview of the Fundamental Lawyering Skills and Professional Values from the report included as a sample of "outcomes" for law schools.

[236] *Id.* MACCRATE REPORT at 140-41.

The University of Montana School of Law, while focusing on fundamental skills and values,[237] has adopted also a set of ten transactional competencies:[238]

1. The graduate shall be able to represent clients in the acquisition, management, and transfer of real property and chattels real.
2. The graduate shall be able to represent clients in the acquisition and transfer of chattels personal.
3. The graduate shall be able to represent clients in the legal aspects of relationships in which persons manage property for others.
4. The graduate shall be able to represent clients in the legal aspects of creating, managing, and exchanging wealth through the medium of the common business firm or non-profit organization.
5. The graduate shall be able to represent clients in decedent estate planning and management.
6. The graduate shall be able to represent clients in debtor/ creditor matters.
7. The graduate shall be able to represent clients in administrative proceedings that general practitioners customarily handle when such proceedings are governed by the U.S. Administrative Procedure Act or the Montana Administrative Procedure Act.
8. The graduate shall be able to represent clients in the resolution of certain kinds of judicial cases involving disputed legal rights and obligations.

[237] The faculty at the University of Montana School of Law is in the process of integrating the Statement of Fundamental Lawyering Skills and Professional Values of the *MacCrate Report* and the school's Competencies so that the final outcomes require demonstration of ability in the fundamental skills by performance of transactions requiring those skills. The transactions are those commonly required of practitioners.

[238] University of Montana School of Law, Competencies (Apr. 9, 1992) (unpublished, on file with the University of Montana School of Law). See Munro, *supra* note 109, at 345, for a full explanation of the competency-based curriculum.

9. The graduate shall be able to represent clients in the litigation of civil disputes of the kind customarily handled by general practitioners.
10. The graduate shall be able to represent clients in the litigation of criminal disputes of the kind customarily handled by general practitioners.

At Montana, each of the general competencies is broken into a set of specific outcomes. The specific competencies embody transactions which, when performed by the student, will demonstrate the general competency and the fundamental skills and values the school seeks to inculcate in the student. Some outcomes are as specific as being able to plan an estate, explain the strengths and weaknesses of the American adversarial system of justice, or try a jury trial.[239] The competencies are a work in progress, and faculty members commonly debate the extent to which the competencies should be based in transactions versus statements of fundamental professional skills and values like those stated in the *MacCrate Report*.

Seven principles will help a law school determine its outcomes:

1. A faculty should formulate outcomes in collaboration with the bench, bar, and perhaps other constituencies. The practicing profession, for instance, can assist in identifying what graduates need to be able to do to serve clients and society.
2. Outcomes should be consistent with and serve the school's mission.
3. A faculty should adopt an outcome only upon arriving at consensus after dialogue and deliberation. By this means, an outcome gains acceptance and permanence. Outcomes adopted on an *ad hoc* basis on the whim of individual professors or members of the bench and bar may present problems of inconsistency with mission, lack of acceptance, and lack of credibility.

[239] University of Montana School of Law, *supra* note 238.

4. Outcomes should be measurable. It is self-defeating to state an outcome which cannot be assessed. At the same time, it is important not to be bound by expectations of objective decimal-place accuracy. In this context, "measurable" means "a general judgment of whether students know, think, and can do most of what we intend for them."[240] For example, if MacCrate's fundamental skill "Recognizing and Resolving Ethical Dilemmas"[241] were a school's outcome, it would be difficult, if not impossible, to measure with mathematical accuracy. Yet, clinical faculty members who work with a student for a semester report with some confidence that they are able to form a general judgment as to whether the student has the ability to recognize and resolve ethical dilemmas.
5. An outcome should be stated explicitly, simply, in plain English, and without legal and educational jargon. The strength of a program based on student abilities is that the outcomes are clear to students, faculty members, and the constituencies, so that all focus on common goals. The explicit statement of outcomes assures continuity in the academic program. Lack of explicit statements makes it more likely that outcomes will be ignored by new or visiting faculty members.
6. There is no "correct" number of outcomes for a law school. Outcomes are suggested by the mission statement; their number is a function of mission, resources, and time. Faculty need to consider how many outcomes they can reasonably address and assess during law school.[242]
7. The demands which the outcomes make on students should be reasonable in light of the abilities of the students and the faculty.

[240] NICHOLS, *supra* note 215, at 22.

[241] MACCRATE REPORT, *supra* note 29, at 140.

[242] NICHOLS, *supra* note 215, at 20.

Developing a Curriculum for Student Outcomes

The next step in the assessment process is the design of a curriculum to achieve student outcomes. The question is: What curriculum best facilitates student development of the knowledge, intellectual skills, and abilities reflected in the outcomes?[243] Necessary characteristics of such a curriculum are that it be (1) a coherent whole, (2) focused on the mission and outcomes; (3) provide for incremental and developmental formation of student abilities; (4) be the result of faculty coordination; (5) be required for all students; and (6) provide for valid assessment and continual feedback to faculty and students.

The Curriculum as a Coherent Whole

Legal education that addresses mission and outcomes cannot be accomplished in a curriculum consisting of a collection of disaggregated courses without any unifying structure. Each piece of the curriculum (i.e., courses, materials, programs, faculty, and assessment) should function as a component of a structured whole. This requires communication, collaboration, and cooperation among members of the faculty which, in turn, promotes teamwork and can be most rewarding.

Curriculum Focused on Mission and Outcomes

Curriculum design is a function of the law school's purpose and the knowledge, skills, and abilities the graduates must be able to

[243] See Lewis D. Solomon, *Perspectives on Curriculum Reform in Law Schools: A Critical Assessment,* 24 U. TOL. L. REV. 1 (1992), for a consideration of attempts at curricular reform including efforts for more theoretical curricula at Columbia University School of Law and Georgetown University Law Center, "piecemeal skills-oriented" reforms at Illinois Institute of Technology Chicago-Kent College of Law, New York University School of Law, and Marshall-Wythe School of Law at the College of William and Mary; and "holistic innovations" at Mercer University Law School and the University of Montana School of Law.

demonstrate. Consequently, courses, course content, teaching materials, and selection of faculty must contribute to achieving the school's mission and outcomes.

Incremental and Developmental Curriculum

The curriculum must provide for formation of student abilities in a manner that is incremental (performed in parts) and developmental (performed in tasks of successively increasing complexity). Tasks or transactions that build one upon the other in increasing complexity help students to understand better the components of the task or transaction. Law teachers often provide students a block of instruction and then allow them only a single, complex performance for a grade, perhaps in a bluebook exam, mock trial, appellate brief, or appellate argument. For example, many schools require students to conduct a mock trial during their trial class. The student's grade often depends on her performance of an entire trial. Consider the following alternative approach. In the first year, students might make an oral argument of a summary judgment motion, which has been practiced in student law firms. Trial class would involve separately assessed performances of jury *voir dire*, opening statement, direct exam, cross-exam, and closing before the student encounters the actual mock jury trial. This incremental and developmental approach fosters student learning much better than the traditional, do-or-die approach.

Curriculum Coordinated by Faculty

Teaching to outcomes demands collaboration and cooperation by faculty members in a community effort to accomplish student learning. Faculty must coordinate the responsibility for meeting outcomes without duplication. Successful faculty collaboration makes developmental and incremental learning possible, ensuring that tasks performed by graduating students are capstone experiences combining multiple skills at high levels of competency.

The "Required" Aspect of the Curriculum

To achieve the mission and outcomes, the curriculum must entail a substantial required component. Abilities-based legal education assumes that each student will secure what is needed to meet the outcomes. Either the school must require a substantial core of courses available to all students to insure development of all abilities reflected in the outcomes or the school must require students to select from categories of elective courses that are designed to address the outcomes. The law faculties at the University of Montana and Gonzaga University have adopted substantial required curricula to implement their respective efforts at competency-based legal education.[244]

The issue of required versus elective curriculum plagues legal education. Faculties often respond to criticism of deficiencies in curricula by adding elective courses which merely insure that some students have the opportunity to address the deficiency. The best example is clinical education. All but a handful of ABA-accredited law schools instituted clinical education as an elective, but enrollment is often restricted and cannot meet student demand. Adding elective courses does not provide a coherent curriculum or give any assurance that each student gains desired abilities by graduation. Although diverse elective offerings are an asset to any curriculum, development of a coherent required curriculum is a necessity.

Providing for Assessment and Continual Feedback to Students

In teaching to achieve outcomes, valid and reliable assessment of student performance and feedback to the student and the faculty are essential. The focus of the teaching must be student learning, as

[244] Gonzaga University School of Law, *supra* note 214; Munro, *supra* note 109.

defined and measured by specifically identified outcomes. Through the use of carefully designed formative and summative assessment tools, teachers can ensure that students develop the knowledge base, perspective, and skills to achieve the desired outcomes.

Just as student learning must be assessed to measure success and provide feedback, the academic program must be assessed to measure its effectiveness. The best assessment of the program is student performance, so assessment of student learning will also provide feedback to the faculty on achievement of program outcomes.

Developing Explicit Criteria for Performance

To judge students as they demonstrate their knowledge and abilities, we must make explicit the criteria for competent performance. If students know the criteria ahead of time, they can strive to meet them in their performance. The criteria are the structure around which teachers evaluate student performance and provide feedback. See Appendix C for a list of twenty-four specific criteria for oral argument of motions.

Planning and Designing the Assessment Program

A faculty might plan, design, and implement a comprehensive assessment program all at one time.[245] A new law school would miss a golden opportunity if it did not construct a comprehensive assessment program at its inception. Because of the difficulty of making

[245] For example, with regard to institutional or program assessment, Grove City College, in Grove City, Pennsylvania, uses a comprehensive system of standardized tests assessing for general educational background, competence in major, cultural literacy, perceived values and goals, post-educational experience, and long-term goals. Grove City College, Remarks at the Sixth American Association for Higher Education Conference (June 12, 1991).

change in law schools[246] a faculty will often find it preferable to develop the program in stages.

A faculty should not be discouraged by an inability to plan, design, and implement a grand assessment scheme all at once. The faculty at Alverno College has spent almost 30 years developing its assessment program to its present point.[247] Indeed, that faculty has concluded that development of assessment will be a permanent and dynamic process.[248] It is far better that a few instructors succeed by experimenting with assessment in their individual classes than to demand that assessment occur only as part of a grand design, the demands of which overwhelm the faculty to the point of failure. If faculty members learn assessment by experimenting in their classrooms, they can expand the program for broader application in the curriculum.

A law school assessment program will have three major aspects: (1) assessment as a tool to ensure student learning, (2) assessment to determine program success, and (3) assessment to measure the institutional effectiveness.[249]

The considerations involved in planning student or institutional assessment are:

1. The outcomes being assessed.
2. The indicators of success or failure in meeting outcomes.
3. Sources from which the school can gather information about student learning and law school effectiveness. Possible sources

[246] *See* Mudd, *supra* note 213.

[247] ALVERNO COLLEGE FACULTY, *supra* note 8, at 102.

[248] *Id.*

[249] Measuring student outcomes or law school effectiveness will require that the law school secure baseline data. Baseline data about students allow measurement of change in students' professional skills performance and values. The same is true of baseline data for the law school.

are students, alumni, or those who observe students and graduates in action, such as judges and practicing lawyers.

4. Number of measures of performance that will be included in the assessment program.
5. Types of assessment instruments that will be used, whether standardized or internally developed.
6. Who the assessors will be. Possible assessors are full-time faculty members, adjuncts, lay and lawyer contract assessors, teaching assistants, and students.
7. Where the assessment will take place. Possibilities are the classroom, assessment centers, or clinics.
8. Appropriate time for assessment. Some convenient times to conduct assessment are at a student's entry to law school, at academic year's end, at semester's end, at multiple points during the semester, at graduation, and at periodic points during professional practice.

Implementing an Assessment Program

The faculty members interested in assessment should meet on a regular basis to form the community which will learn together, coordinate, and share experiences.[250] Appointment in the law school of an assessment committee comprised of anyone interested in assessment will foster the community necessary to begin a program. However, assessment is inextricably linked to curriculum planning, and making the curriculum committee the center of assessment activity would place assessment in the mainstream and give it the credibility and visibility it needs for implementation.

[250] At Alverno College, the entire faculty meets every Friday afternoon to continue their discussions on all aspects of assessment. Discussion with Alverno College faculty at *A Day at Alverno College*, Seminar, in Milwaukee, Wis. (Nov. 12, 1992).

It is also important to inform students of the implementation of the assessment program. Students appreciate the logic of creating a mission statement, determining student and law school outcomes, and measuring to see whether the outcomes are being met. They need to be apprized of their own role in assessing their work, the courses, curriculum, school, and activities. They, too, need education in the principles of assessment, and that education will make implementation easier. Faculties need to remember that students can find change difficult especially because some may have a vested interest in a system that guarantees they need only perform and be assessed on a bluebook examination at the end of the semester. Students may not welcome the prospect of performing on a regular basis. Keeping students informed will facilitate implementation of the assessment program.

Evaluating the Assessment Program

A good assessment program should include a process by which the program itself is observed and measured for purposes of evaluating effectiveness and improving the program.[251] Faculty members must periodically review each aspect of the program to determine if information gained is valid, reliable, and useful. Assessment methods need to be reviewed to determine if they are providing the necessary information. Individual faculty members involved in assessment will create new forms of assessment that need to be shared and incorporated in other areas of the program.

[251] This characteristic of an assessment program was stated by the Commission on Institutions of Higher Education, North Central Association of Colleges and Schools, Chicago, Illinois, the accrediting body for institutions of higher education in the north-central United States. Austin Doherty & Gerald W. Patton, *Criterion Three and the Assessment of Student Academic Achievement*, 66 N. CENT. ASS'N Q. 406, 409-12 (1991).

Using the Results to Improve Student Learning

Finally, the law school needs to insure that the results of the assessment program are utilized to improve student learning. In the classroom, teachers need to use formative assessment tools that students can use to improve their learning. Almost every assessment tool used, even most of those involved in measuring effectiveness of the law school, will invariably have value in improving student learning. For example, many schools retain a law student's graded work in a file throughout the student's tenure in law school. At the end of three years, the file includes much information on that student's abilities, attitudes, and behavior. Yet, law schools make no use of the file other than to store it in the event of disputes about grades or performance. Review of such a "portfolio" of the student's work would allow faculty to analyze and summarize such things as the student's performance, change over time, strengths, and weaknesses. If students are involved in the development of such a portfolio and its assessment, the file becomes part of their education, particularly their ability to self-assess. Portfolio data from one group of students can be gathered for comparison with other classes to determine trends in student learning.

Chapter 8. The Requirements for Effective Methods of Assessment

It is a problem when a law professor gives students an end-of-semester multiple-choice final exam on which they are not allowed to write any comments or assumptions and which will be graded by a scan-tron device. The students have no way of stating the premises which may make their answer right or of identifying ambiguity or problems in the questions. Similarly, the professor who surprises students by giving the same exam she gave last semester creates an advantage for students who have a copy of the last exam and a detriment for those who do not. Or, consider the plight of the student whose class consisted of a running dialogue on the social, economic, and political aspects of the decisions in the casebook but who is confronted with an exam which seeks to have him resolve in writing hypothetical problems on the basis of the doctrinal case law in the book.

For any assessment mode to be effective it must exhibit qualities of validity, reliability, and fairness. This chapter will examine these basic principles.

Validity

Validity means the mode of assessment must "effect or accomplish what is designed or intended."[252] Just as you do not measure light intensity with a barometer,[253] you would not measure legal writing skills with a multiple-choice exam.

Validity in choice of measuring devices is an issue in law school assessment. For instance, does performance on bluebook essay exams actually measure whether the law school successfully teaches analytical skills, when the group to whom the exam is administered are the top students from undergraduate schools? Does performance on bluebook essay exams predict ability to represent clients competently? With regard to institutional effectiveness, does one smeasure a law school's success in teaching by counting its famous graduates, measuring its wealth, or surveying to calculate its prestige level?

In law school courses, validity means the test or other assessment of student performance measures whether the course goals and objectives have been met. This is content validity.[254] A major factor affecting validity is whether the instructions involved in administration of the assessment instrument are clear and precise.[255] If, for example, students can interpret test instructions in different ways, the test is invalid.[256] On a larger scale, the validity question is

[252] *Id.*

[253] 1 JOSEPHSON, *supra* note 7, at 7. "As one psychometrician has pointed out, 'an inappropriately designed test is like trying to measure light intensity with a barometer.'" *Id.* quoting RICHARD LINDEMAN & PETER MERENDA, EDUCATIONAL MEASUREMENT 74 (2d ed. 1979).

[254] 1 *id.*

[255] 1 *id.* at 9.

[256] *See* 1 *id.* for a discussion of "imprecise call of the question."

whether the mode of assessment measures how well the student outcomes are being met. There must be a reasonable connection between that which was taught in the course and that which is being assessed. This means, of course, that teachers must be clear about course goals and what they are teaching.

At the institutional level, the question is whether the instrument measures if the law school is meeting its institutional outcomes. That is, if the law school aims to be the state's legal center, the instrument must assess the school's success in fulfilling that role.

Reliability

The second requisite is reliability,[257] which Webster's defines as "the extent to which an experiment, test, or measuring procedure yields the same result on repeated trials."[258] An assessment instrument which does not consistently yield the same results lacks reliability and is of no value in an assessment program. Reliability depends on representative content sampling.[259] If the exam samples too little of the course content, then student performance may not reflect the extent to which the student met the goals and objectives for the course, but may only demonstrate that the student excelled or failed in learning the aspect which is the subject of the exam. For example, testing a student on a single tort defense will not reliably reflect whether the student learned the tort defenses.

[257] 1 *id.* at 15.

[258] WEBSTER'S, *supra* note 7, at 1917.

[259] 1 JOSEPHSON, *supra* note 7, at 16.

Reliability also depends on scoring consistency.[260] If three assessors watching a videotape of a student's oral argument would give three different grades for the performance, then the assessment method lacks reliability. If one inserted three copies of the same student-drafted contract into the pile of contracts being graded by the instructor and the instructor gave the three copies three different grades, the assessment would lack reliability.

Lack of reliability by reason of scoring inconsistency may be a grave problem in law schools which have no internal coordination among faculty members in scoring exams even when teachers are teaching sections of the same course. Michael Josephson cites a disturbing study involving scoring reliability of the California Bar Exam which showed that a candidate had only a sixty-seven percent chance that two different examiners would agree on whether the answer was a pass or a fail.[261]

Equally disturbing is the potential unreliability in the grading by a single instructor. Contrast the common teacher's belief that "I know a 'D' when I see one" with the California study's finding that when the same examiner graded an exam answer twice he or she had only a seventy-five percent chance of being consistent in deciding whether an answer passed or failed.[262] As Josephson notes, this evidence of lack of reliability occurred under a system that has sophisticated techniques for promoting reliability, techniques which are absent in law school grading.[263] Most teachers have probably experienced anxiety about reliability when grading for a long period,

[260] 1 *id.* at 17.

[261] 1 *id.* at 19. *See also* MICHAEL B. BUNCH & WENDY LITTLEFAIR, TOTAL SCORE RELIABILITY IN LARGE-SCALE WRITING ASSIGNMENT (1988) (providing results of a study of 2,000 essays written by 1,000 students and read by six readers).

[262] 1 JOSEPHSON, *supra* note 7, at 20-21.

[263] 1 *id.* at 21.

grading under fatigue, grading after reading a particularly galling paper, or grading after experiencing anything that changes the assessor's "frame of reference."[264]

Fairness

Fairness,[265] as a requisite, applies primarily to assessment of student outcomes. Fairness requires that the assessment be equitable in both process and results. Student learning is inhibited if the student perceives that the assessment process is unfair. For example, suppose some students are scored by assessor *X*, who gives all "A"s, while others have assessor *Y* who views all performances as "C"s.[266] Or, suppose the facts used in the assessment exercise are based entirely in football strategy and terminology, so that most men are better able to understand and solve the problem than most women. Exercises which assume familiarity with dominant culture may present problems of fairness for those of minority cultures.

Josephson lists primary areas of unfairness as unequal access to all relevant information by reason of multi-section classes; private discussion with the professor before student performance; the use of prior exam questions; inconsistent policies regarding makeup performances and postponements; inadequate information about the logistics, format, and scope of exams; lack of information about what learning the teacher thinks is important; and testing for skills and

[264] 1 *id.* at 24.

[265] 1 *id.* at 26.

[266] This could be why we do not have teaching assistant graders in law school, although the same problem could exist wherever two or more faculty members teach sections of the same class.

abilities not taught in the course.[267] Note, also, that an assessment tool that is not valid (test instructions that are ambiguous) or that is unreliable (the assessors score the same performance differently) is inherently unfair.

[267] 1 *id.* at 27-34.

Chapter 9. Means of Assessment

For many legal educators, their experience as law student and as law teacher has provided them little knowledge of means of assessment. End-of-semester examinations are familiar. They may include essay or objective questions, be open- or closed-book, and take place in or out of a classroom. Law teachers have little knowledge of the broad range of assessment methods available, strengths and weaknesses of those methods, and their applicability for legal education. Even examinations are used narrowly, seldom as "impetus or motivation for study, devices for feedback, and teaching tools themselves."[268] However, means of assessment can be effective and innovative learning tools. Use of a broader range of assessment can reinvigorate a faculty member, not to mention break the endless tedium of grading bluebook essay exams. Means of assessment may be categorized as qualitative and quantitative.

Qualitative Assessment Methods

"Qualitative means of assessment describe those evaluations in which a holistic judgment concerning a subject is made."[269] Examples pertinent to law school are the assessment of student

[268] Downs & Levit, *supra* note 75, at 822.

[269] NICHOLS, *supra* note 215, at 36.

performance in a mock jury trial or the assessing and reporting involved in a letter of recommendation to a prospective employer for a graduating student. Nichols notes three problems inherent in qualitative assessment: (1) difficulty of identifying criteria for competent performance, (2) subjectivity of evaluators, and (3) lack of consistency and reliability in judgment.[270]

Identifying Criteria for Competent Performance

A common problem in assessment of student work is lack of clarity about the criteria for competent performance. Students are frustrated by the fact that teachers assign grades on the premise that "I know a 'C' when I see one" and make the assumption that somehow the student knows the criteria that the teacher applies in arriving at the grade. Often the problem is that the teacher is not aware of the "extreme subjectivity"[271] involved in her intuition about whether a paper merits an "A," "B," "C," "D," or "F," because she has not thought about explicit criteria for successful, competent performance. Some teachers conclude that criteria cannot be identified or stated because (1) the faculty could not agree on the criteria; (2) the skill being demonstrated is intellectual ability and could not be subject to criteria; (3) the skill being demonstrated is an art, not a science, and is therefore not appropriately the subject of criteria; or (4) the criteria would be so vague as to be useless.

None of these assertions is valid. If a student is asked to demonstrate knowledge, a skill, or an ability–be it analysis, writing, oral argument, or problem solving–a faculty member (or preferably faculty members) should themselves have demonstrated the analytical skill, knowledge, and experience necessary to state the criteria for

[270] *Id.*

[271] Wood noted the "extreme subjectivity" of grading by law school professors at Columbia University. Wood, *supra* note 84 (pt. 1), at 224.

competent performance. Though conducting a jury trial involves a great deal of art, a group of experienced and knowledgeable law teachers or trial lawyers can arrive at a consensus on the fundamental criteria for competent performance. If, on the other hand, the performance or task that the student is asked to undertake is subject to criteria so vague that they cannot be stated, assessment of that performance is invalid.

Students who write and teachers who evaluate even the most theoretical papers need to know the criteria on which the papers will be judged. Likely criteria might include the extent to which the paper (1) reflects knowledge of certain special or technical information; (2) reflects intellectual skills of comprehension, application, analysis, synthesis, and evaluation; (3) exhibits good organization and structure; (4) exhibits clear and concise writing style; (5) exhibits good grammar, punctuation, and sentence structure; and (6) reflects an academic tone.

Professional skills courses often are not graded, due in part to the perceived problem of identifying criteria for competent performance. However, there is no reason to treat qualitative assessment of professional skills differently from quantitative assessment in substantive courses.

Most importantly, criteria for competent performance should be shared with students. They need to know what comprises mastery of a lawyer's task, and they need to establish a pattern of thinking about the criteria for competent performance.[272]

Subjectivity of Evaluators

Nichols expresses concern about the possible lack of objectivity involved when the teacher is also the assessor.[273] A solution is to

[272] See Appendix C for samples of criteria for student performance.

[273] NICHOLS, *supra* note 215, at 36.

occasionally use outside evaluators.[274] Objectivity is more likely if teachers have stated the criteria by which evaluators will judge the performance and have prepared assessment instruments clearly reflecting the performance criteria. This is especially true if the criteria result from consensus forged by a group of faculty members and practicing adjuncts.

Consistency and Reliability in Judgment

An assessment program in a law school must insure consistency when the school uses outside evaluators. A cadre of practicing lawyers, contract assessors, trained lay persons, teaching assistants, judges, and faculty members may be involved in an assessment program for performances of client interviews, estate planning, legal research, writing, or mock trials. When multiple assessors review the work of a class many students have concerns about consistency and reliability in assessment and grading.

A combination of techniques can help ensure consistent, reliable assessment. First, clear assessment criteria communicated to students well in advance of their performance let students know the basis for judgment of their performance regardless of who is scoring them. Second, assessor training will familiarize the assessors with the criteria for performance and the assessment scoring instrument. Then, in a practice session, all assessors observe a single student performance, assesses it on the instrument, and compare results. If assessors identify problems of validity, reliability, or fairness in the instrument, it can be revised. Assessors talk about what it takes for a student performance to be identified as "mastered," "good,"

[274] Use of outside evaluators may sound like heresy but is, in fact, what happens when your students take the bar exam or compete in regional or national moot court, trial, negotiation, or client counseling competitions. On a program or institutional level, the school is subject to outside assessors when the ABA/AALS make a site visit for accreditation purposes.

"satisfactory," "marginal," or "unsatisfactory."[275] Such communication can help assure consistency and reliability. Nevertheless, an element of what students perceive as "subjectivity" exists in all assessment, particularly qualitative assessment. That fact of life needs to be acknowledged and discussed with students.[276]

Quantitative Assessment Methods

Quantitative assessment is "that form of evaluation characterized by its identification of individual components and provision of a quantitative score."[277] Quantitative assessment has important uses in assessing student and institutional outcomes in a law school. For example, the school may want to determine whether it is achieving an institutional outcome of "promoting pro bono legal services." The school could survey the attitudes toward pro bono legal services of its entering class, graduating class, and alumni of five years' experience. In addition, the school could survey graduates of different specialties for behavior, that is, how many pro bono cases they are handling.

Nichols adopts the following taxonomy for quantitative assessment:

Cognitive assessment means assessment of learning or knowledge.[278] For example, this could entail assessment of whether a student in Property has acquired the applicable knowledge of the substantive law. This is different from assessment of behavioral

[275] See Appendix D for samples of assessment instruments for student performances.

[276] Student evaluations of courses using multiple assessors often contain helpful suggestions for dealing with subjectivity in assessment.

[277] NICHOLS, *supra* note 215, at 37.

[278] *Id.*

change and performance,[279] which is characterized by the students' ability to use knowledge.[280]

Behavioral assessment measures change in that which a student does before and after the course of learning.[281] "This 'observation' is made concerning an event in the student's life which is not regulated, contrived, or designed for the purposes of assessment or grading."[282] An example would be examining whether students who studied attorney engagement agreements in their professional skills and contracts courses later recorded in the file and warned clients of the statute of limitations during their clinical internships.

Performance assessment measures the student's ability in a task that the student is asked to perform for purposes of the assessment[283] (for example, having the student find the errors in a civil complaint).

Attitudinal assessment can measure differences in students' attitudes before and after a course of learning.[284] For instance, we can measure change in student attitude after a Professional Responsibility course. Law schools may want to know the attitude of incoming students on a host of issues or their perception about the law school or its programs. As student education progresses, the faculty may

[279] *Id.* at 42.

[280] *Id.* at 37.

[281] *Id.* at 42.

[282] *Id.*

[283] *Id.* at 43.

[284] *Id.* at 44. The identification of attitudes of students as they enter institutions and subsequently degree programs is frequently designed to determine their opinions regarding social, ethical, and moral issues. Such surveys are utilized as benchmarks with which to compare similar responses after the students' completion of the institution's general education or degree programs.

wish to know how particular parts of the program change student attitudes. On graduation, exit interviews may reveal attitudes the student has about her legal education, social issues, or moral issues. Finally, attitudes of practitioners toward the law school or any other relevant issues might be measured.

Each of these forms of quantitative assessment (cognitive, behavioral, performance, and attitudinal) will be an important part of a program for assessing student learning and institutional outcomes. For example, it would take a combination of these forms of assessment to determine if the school's graduates were, "[s]triving to [p]romote [j]ustice, [f]airness, and [m]orality" (MacCrate's Fundamental Values #2), or "[s]triving to [i]mprove the [p]rofession" (MacCrate's Fundamental Values #4).[285]

Specific Methods of Assessment

The assessment methods below may be used for qualitative or quantitative measurements. For example, the school could interview alumni to learn how often they make written engagement agreements with clients (quantitative), or the school could conduct interviews to determine the reputation of its graduates (qualitative).

Interviews

An interview can be used to measure behavior, attitudes, or performance. A law school can interview incoming students to obtain baseline data for measuring later change in behavior and attitudes and can conduct exit interviews to observe any change. It can interview judges, practitioners, students, and others to provide information on achievement of student outcomes or law school effectiveness.

[285] MACCRATE REPORT, *supra* note 29, at 138.

Interviews can also be used to learn from the student the knowledge and abilities she gleaned from a course of instruction.

Questionnaires and Surveys

Written questionnaires can be sent to virtually any constituency of the law school to gain information necessary to gauge and improve law school effectiveness.[286] Boyer and Cramton, in *American Legal Education: An Agenda for Research and Reform*, call for study of students, faculty, graduated lawyers, and the economics of legal education. Questionnaires and surveys would be key tools in this type of assessment.

Statistical Indicators

One of the first things a law school should do in developing an assessment program is to determine the amount of existing statistical information. Existing information can save resources and time involved in gathering data. For example, law school admissions files contain LSAT scores, GPAs, ages, occupations prior to law school, reasons for seeking admission, college transcripts, and other information that offer statistical indicators about the student population. Registrar records include data from which statistics on class choices, grade distribution, and other indicators can be calculated. Statistical indicators may bear on student performance, behavioral changes, or attitudes. Finally, archival records will contain information that may reflect attitudinal, behavioral, and performance changes in students, teachers, the bar, and the judiciary.

[286] For example, in 1980, the University of Montana School of Law surveyed the entire bar in the states of Montana and Idaho, asking their opinions of the relative importance of particular knowledge, skills, perspectives, and affective characteristics in law practice, as well as their opinion about the extent to which graduates were being prepared in each area. *See* Mudd & LaTrielle, *supra* note 28 (reporting the findings of the study).

Examinations and Papers

Three types of tests occur in legal education: (1) tests of basic skills (the writing test administered to entering law students), (2) tests of subject matter mastery (the bluebook exam in Property), and (3) tests to predict future performance (the supervisor's review of student performance in clinical practice). All three types of tests are valuable components of law school assessment to improve student learning.[287]

Exams in law school can be criterion-referenced, meaning the student's performance is compared with criteria adopted by the faculty[288] or norm-referenced, comparing the student's performance with that of other students taking the test.[289] Norm-referenced exams are useful where a faculty wants disaggregated grade results to insure an acceptable grade curve. By using a range of questions of varying degrees of difficulty and by comparing student scores, the faculty can obtain a curve even in a class with high intellectual capabilities. Most law school testing is norm-referenced. A student might write a paper that meets all of the criteria for competence, yet still earn a "B" because other students wrote better papers. On the other hand, a student might earn an "A" on a paper that did not meet criteria for competent performance because the other papers in the class were worse. Norm-referenced grading is inconsistent with sound assess-

[287] Law school can make broader use of exams. Students taking an exam can be asked to undertake a policy analysis, propose legislation, draft a partnership provision, review and criticize a pleading, outline a litigation plan, counsel a client, or draft a jury instruction. For a range of exam possibilities, see HESS & FRIEDLAND, *supra* note 189, at 292-324.

[288] 1 JOSEPHSON, *supra* note 7, at 4.

[289] For an explanation of selection (norm-referenced) versus criterion-referenced tests, see John Harris, *Assessing Outcomes in Higher Education, in* ASSESSMENT IN AMERICAN HIGHER EDUCATION, *supra* note 7, at 13, 16.

ment principles. In education that is student-centered and ability-based, criterion-referenced testing is more appropriate because students are evaluated on the degree to which they meet criteria that the teacher clearly identified and explicitly stated to the students.

Performance Appraisals

In evaluating student performance, teachers can use simulation or clinical conditions. Simulation allows the teacher much control over the conditions that confront the student. Clinical performance places the student in the real environment that requires application of knowledge, decision making, problem solving, and solution of ethical dilemmas. However, the unpredictability of real life gives the teacher less pedagogical control. In either situation, performance appraisal requires explicit criteria by which the evaluator will judge student performance.

Consider, for example, a simulation in which the student is required to research and write a legal advice letter. Criteria will include technical aspects such as format, grammar, punctuation, and spelling; aspects of writing such as style, tone, organization, and structure; subject matter mastery; and quality of research reflected, disclaimers, qualifications, and evaluation of risk. In clinical settings, a semester performance appraisal of a student might involve criteria that cover abilities in problem solving, analysis, reasoning, legal research, fact investigation, writing skills, oral skills, organization and management of legal work, recognizing and resolving ethical dilemmas, client relations, self-assessment, judgment, and responsibility.

Student Portfolios

A form of qualitative assessment that has great potential in law schools is analysis of student portfolios. Professional schools such as the Southern Illinois University Department of Forestry, the Colorado School of Mines (Engineering), and the Bloch School of Business at

the University of Missouri at Kansas City use student portfolios to assess a range of student outcomes and institutional effectiveness. Southern Illinois University student portfolios include baseline data on the entering student, analysis of the student's work over time, information on out-of-class experiences, performance assessment, and measures of maturity.[290] The Colorado School of Mines evaluates students' technical ability, communication skills, critical thinking, ability to self-educate, familiarity with humanities and social sciences, and leadership.[291] The school assesses a sample of students,[292] which limits the use to assessment of the program and not of individual students. However, at the Bloch School of Business, all the professional students begin, during their first semester, to develop a portfolio which evidences their individual achievements during their entire academic program.[293] The portfolio is reviewed by the student's Portfolio Adviser from the business community.[294] The portfolio is, in part, designed to present the student's "skills clearly and concisely to potential employers."[295] The school assesses

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[290] Southern Illinois University, Assessment Program: Forestry (June 12, 1991) (handout for the Sixth AAHE Conference on file with author).

[291] Barbara M. Olds, Remarks at the Sixth American Association of Higher Education Conference (June 12, 1991) (presentation slides on file with author).

[292] *Id.*

[293] HENRY M. BLOCH SCHOOL OF BUSINESS & PUBLIC ADMINISTRATION, L-E-A-P-S PORTFOLIO SYSTEM: DESCRIPTION & INSTRUCTIONS 2 (Winter 1992) (on file with author).

[294] *Id.*

[295] *Id.*

leadership, experiential learning, applications skills, practicum learning, and societal awareness.[296]

In many law schools, student portfolios already exist insofar as the schools collect and save student work in a single file. If the school relies entirely on bluebook exams, review of the "portfolio" will tell less about the student than the portfolio in a school that requires students to write papers, draft pleadings, write opinion letters, prepare jury instructions, perform in clinics, and make videotape presentations. Nevertheless, an assessor reviewing a portfolio that consisted only of bluebook exams from a couple of semesters, each of which contained a grade and the instructor's margin comments, would be able to secure a general picture of the student's abilities in subject matter mastery, analytical skills, communicating under pressure, and general ability to organize and write. Faculty reviewing a student file that contains not only exams, but student papers, pleadings, opinion letters, mock jury trial assessment, summary of clinical performance, and a videotape presentation can draw a very thorough picture of the student's knowledge, intellectual abilities, skills, and even attitudes.

A qualitative assessment of a student's portfolio, encompassing the students' entire academic program, would provide the school and the profession extensive information about the student when compared to the present transcript of classes and grade point average.[297] Consider the information that can be gained about a law school curriculum in which the student file consists of bluebook exams interspersed with research papers, briefs, pleadings, estate plans, legal advice letters, attorney engagement agreements, and assessment

[296] *Id.*

[297] *See also* DALE MANN, PERFORMANCE ASSESSMENT AND RECORDS OF ACCOMPLISHMENT FOR EMPLOYABILITY (1991) (describing the use of visual records of student achievement to assist students in seeking employment).

documents from client interviews, client counseling, mock trial, and appellate argument.

Faculty Teaching Portfolios

Lee Schulman of the Stanford School of Education and Psychology has proposed a teacher assessment portfolio which a mentor would help a new teacher develop.[298] The portfolio would include the faculty member's essay about the course goals, objectives, and design, as well as the course syllabus, a videotaped classroom teaching session, samples of student work, student assessments, and colleagues' evaluation of the work in the portfolio.[299] Portfolios provide great potential for qualitative assessment of individual performance and, when viewed as a whole, of institutional performance.

Alumni Follow-Up Reports

Alumni who have entered the profession can report to the school on their behavior, attitude, and performance after law school. That information can be used to examine questions involving institutional effectiveness such as: Is the law school adequately preparing lawyers for the tasks they face? Are there knowledge, skills, perspectives, or affective characteristics which are necessary to the profession that the law school is not addressing? Is the law school's library adequate for the profession's and the professors' needs? Is the law school adequately involved in law reform?

[298] Lee S. Schulman, Dangerous Liaison: Connecting the Assessment of Faculty with the Assessment of Students, Keynote Address Before the Sixth American Association of Higher Education Conference (June 9, 1991).

[299] *Id.* Schulman notes as an aside that many experienced faculty could not perform the essay exercise with their syllabi. *Id.*

Employer Reports

Employers can act as outside evaluators assessing the student and institutional outcomes of the law school by observing graduates in action. Employers, to some extent, could also report on attitudes, behavior, or performance of the law students.

Student Self-Assessment

A most important aspect of assessment is student self-assessment. Throughout an attorney's professional life after law school, her success in practice will depend on the ability to self-assess professional performance, behavior, and attitudes. "An indispensable trait of the truly competent lawyer, at whatever stage of career development, is that of knowing the extent and limits of his competence: what he can do and what requires the assistance of others."[300] Yet law students are trained in a tradition in which all assessment is external so that she never must assess herself. Early in law school, students need to be taught the essentials of assessment and need to be introduced to self-assessment. They need to assess their own work and then compare their assessment with that of their instructor. They need feedback on their ability to self-assess so that they can improve. Teachers can provide students with assessment instruments that reflect explicit criteria for the performance so that the students can judge their own performance. As Cramton said, we should view legal education "in long-run terms as preparation for a lifetime career involving continuous growth and self-development over a forty-year period."[301]

[300] Cramton, *supra* note 130, at 8.

[301] *Id.* at 10.

External Examiners

External examiners can provide an objective assessment as to whether student and law school outcomes are being met. Their use is important in a credible law school assessment program for three reasons. First, teachers, acting alone, have limited capacity for assessing individual student performances. External assessors can greatly expand that capacity. Second, use of external assessors from the community, university, and the practicing profession build support for the law school. Third, the law school can gain credibility by tendering its students for assessment by individuals other than members of the faculty. Assessment by others can remedy the inherent problem of lack of objectivity which exists when the teacher is also the assessor of the effectiveness of the teaching.

To help students learn to interview, lay persons can be trained to play the role of client, assess student performance in conducting the interview, provide feedback to the student, and report evaluations to the teacher. Communication experts can assess students' oral and written skills. Practicing lawyers can assess drafting as well as simulated performances like mock trials and estate planning. The law school may retain on contract a lawyer-assessor to provide ongoing objective assessment services to the law school, or a group of assessors may be hired to assess the work of individual students engaged in a single lawyering task.[302] Many members of the bar and judiciary are willing to donate great amounts of time and expertise observing, assessing, and providing students feedback on their performances.[303]

[302] See Appendix G for a copy of the guidelines used by faculty at the University of Montana School of Law in selecting and using adjunct assessors.

[303] For a discussion of external examiners, see BOBBY FONG, THE EXTERNAL EXAMINER APPROACH TO ASSESSMENT (1987).

Assessment of Collaborative Student Work

Collaborative assignments have benefits for students and teachers. When students engage in analysis, critical thinking, and problem solving together, the result will most often be better than when students work alone. Students learn from each other and often help one another see errant thinking. A tangible benefit for teachers is that collaborative assignments reduce the number of documents, papers, or performances to be assessed.

Faculty at the University of Montana School of Law have assigned students to collaborate on such things as estate plans in the trusts and estates course, drafting of insurance opinions and insurance policies in the insurance course, appellate briefs in appellate advocacy, classroom presentations in constitutional law, and programmed learning in fact finding investigations on computer databases.[304] In the first-year law firm program, groups of seven or eight students engage in sessions in which they collaboratively solve problems, practice interviewing and arguments, draft pleadings and discovery, create outlines for their briefs, and edit each others' legal writing. Because of the collaborative nature of the assignments, instructors assess and grade 12 documents instead of 75.

Teachers are rightly concerned about allocation of responsibility and work in collaborative projects. A viable method of insuring participation by each student is to require each member of each collaborative partnership to certify to the teacher privately, writing at the end of the project her estimate of the percentage of the total effort that each of the working partners put forth in production of the product to be assessed.[305] There is a substantial inducement for the

[304] See Appendix F for samples of student collaborative projects.

[305] See Appendix F for a sample of this certificate. Several teachers at the University of Montana School of Law use variations of this method which was devised by Professor Theresa Bead at the University of Montana School of Business.

student to contribute in such a system and a reasonable likelihood that contributing law students will report a slacker.

Means of Assessment–Conclusion

The wide range of assessment techniques identified in this section illustrate that methods of assessment are limited only by the creativity of the teachers and the resources available. On a university campus, collaboration with teachers from a school of education will enhance law teachers' ability to design methods of assessment.[306] Using differing modes of assessment (videotape presentations, classroom argument of decisions from the casebook, and student interviews) will show a teacher a side of the students she has never observed. Variation in methods and timing of assessment can give teachers relief from the marathon of grading the one-shot final essay exam.

[306] During 1993 and 1994, University of Montana President George Dennison promoted a monthly breakfast Assessment Forum in which School of Education faculty members played a strong role in sharing of assessment techniques and ideas.

Chapter 10. Assessment in the Classroom

Classroom assessment[307] helps the individual law teacher find out how well the students are learning and what works in enhancing that learning.[308] The purpose of classroom assessment is "to help students learn more effectively and efficiently than they could on their own."[309] Classroom assessment focuses on "small-scale assessments conducted continuously by . . . teachers to determine what students are learning in that class."[310] The substantial feedback that can be gained from students through classroom assessment fits into two broad categories: (1) measures of student learning and (2) student observations of and reactions to teaching.[311]

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[307] For an excellent overall source on classroom assessment, see THOMAS A. ANGELO & K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS (2d ed. 1993). In HESS & FRIEDLAND, *supra* note 189, at 261-284, the authors have applied classroom assessment to the law course.

[308] *Id.* at 3.

[309] *Id.* at 3.

[310] K. PATRICIA CROSS, FEEDBACK IN THE CLASSROOM: MAKING ASSESSMENT MATTER 5 (1988).

[311] ANGELO & CROSS, *supra* note 307, at 6-7.

Measures of Student Learning

Angelo and Cross list the characteristics of classroom assessment as follows:[312]

"Learner-Centered." Classroom assessment "focuses on . . . observing and improving learning, rather than on observing and improving teaching."

"Teacher-Directed." Effective classroom assessment depends on the professional judgment, wisdom, and experience of the teacher.

"Mutually Beneficial." Mutual cooperation of teacher and students in classroom assessment helps students improve learning and teachers improve teaching.

"Formative." The classroom assessment process is not designed to be evidence for grading but functions to improve learning and is almost never graded. It is part of the learning process.

"Context-Specific." Good classroom assessment needs to fit the teacher, students, discipline, and other conditions of learning.

"Ongoing." Classroom assessment involves a daily feedback loop between students and teacher.

"Rooted in Good Teaching Practice." "Classroom Assessment is an attempt to build on existing good practice by making it more systematic, more flexible, and more effective."

[312] *Id.* at 4-6.

Also, Angelo and Cross state "seven basic assumptions of classroom assessment":[313]

Assumption 1: The quality of student learning is directly, although not exclusively, related to the quality of teaching. Therefore, one of the most promising ways to improve learning is to improve teaching.

Assumption 2: To improve their effectiveness, teachers need first to make their goals and objectives explicit and then to get specific, comprehensible feedback on the extent to which they are achieving those goals and objectives.

Assumption 3: To improve their learning, students need to receive appropriate and focused feedback early and often; they also need to learn how to assess their own learning.

Assumption 4: The type of assessment most likely to improve teaching and learning is that conducted by faculty to answer questions they themselves have formulated in response to issues or problems in their own teaching.

Assumption 5: Systematic inquiry and intellectual challenge are powerful sources of motivation, growth, and renewal for college teachers, and classroom assessment can provide such challenge.

Assumption 6: Classroom assessment does not require specialized training; it can be carried out by dedicated teachers from all disciplines.

Assumption 7: By collaborating with colleagues and actively involving students in classroom assessment efforts, faculty (and students) enhance learning and personal satisfaction.

[313] *Id.* at 7-11.

A variety of small-scale assessments can be used to gauge student learning. A law teacher can, prior to or at the beginning of a class, find out the students' level of knowledge using a "Background Knowledge Probe."[314] A professor might ask students to write a "Minute Paper"[315] setting forth the most important point of the reading assignment, to write a "Muddiest Point Paper"[316] setting forth the point that was least clear, or to fill in "Empty Outlines."[317]

During class, the law professor might assess analytical or critical thinking skills by having students complete a "Categorizing Grid," "Pro and Con Grid," or "Analytic Memo," all of which require students to analyze and sort thoughts or arguments.[318] Techniques exist for assessing skills in problem solving,[319] skills in application and performance,[320] awareness of attitudes and values,[321] and study skills.[322] At the end of class, a law teacher might check student

[314] *Id.* at 121 (consisting of a questionnaire requiring short answers or multiple-choice selection to collect information on the students' level of preparation).

[315] *Id.* at 148.

[316] *Id.* at 154.

[317] *Id.* at 138 (requiring students to fill in parts of an outline of some portion of the course material, so that the instructor can see the material or relationships they do not understand).

[318] *Id.* at 159.

[319] *Id.* at 213-30.

[320] *Id.* at 231-53.

[321] *Id.* at 257-98.

[322] *Id.* at 299-315.

learning by "One-Sentence Summary,"[323] "Word Journal,"[324] or "Paper or Project Prospectus."[325]

Student Observations of Teaching

The other category of feedback derived from classroom assessment is student observations of teaching. Even the finest teachers on a law faculty have suffered the slings and arrows of the standard student evaluations of teachers. Student anonymity, without the benefit of peer review, allows students to submit evaluations that can be arbitrary, illogical, and sometimes mean spirited. Teachers often cannot tell what criteria students use in assessing the teacher and course. This is true whether the evaluation is favorable or not favorable. The students may find one instructor popular because he spoon-feeds the black letter law in outline form while finding another unpopular because he requires students to demonstrate that they can do what they know. Worse, teachers cannot gauge at what point a criticism becomes valid. For example, if five out of seventy-five students agree, is the criticism well taken? Who hasn't been tempted to change a class because of a particularly stinging criticism by a single student in the entire class or high praise by a single student for a particular teaching method or lecture? The problem is that student evaluations of teachers often lack the essential requisites of good

[323] *Id.* at 183 (answering "[w]ho does what to whom, when, where, how, and why (represented by the letters WDWWWWHW)?").

[324] *Id.* at 188 (requiring student to characterize the text or idea in a single word and then explain why she chose that word).

[325] *Id.* at 248 (requiring student to draft a plan or outline for a paper or project, thereby having to think about the elements of the assignment).

assessment–validity, reliability, and fairness.[326] The standard form of student evaluation is a flawed assessment tool which is susceptible to abuse.

An excellent example of a classroom assessment technique for improving teaching is the Small-Group Instructional Diagnosis (SGID) which was developed at the University of Washington during the 1970s.[327] In SGID, feedback about the course and instructor is gathered by breaking the class into small discussion groups to which an outside facilitator puts two questions: "(1) What helps you learn in this course?" and "(2) What improvements would you like, and how would you suggest they be made?"[328] Students in each small group discuss and arrive at a consensus in answer to the first question. The facilitator then engages the reporters from each of the small groups in a dialogue to arrive at a consensus from the class as to what helps the class learn in the course. The same process is followed with regard to the second question, producing a written set of answers that the facilitator can share with the teacher being evaluated.

Prior to the session with the small groups, the facilitator again meets with the teacher to discuss course goals, objectives, processes, materials, and other aspects of the class. After the session with the students, the facilitator meets with the teacher and shares the feedback provided by the students. The information is provided to only the teacher, not to the administration.[329] The teacher can use the

[326] 1 JOSEPHSON, *supra* note 7, at 5. See *infra* Chapter 8 for definitions of validity and reliability.

[327] Ken White, *Mid-Course Adjustments: Using Small Group Instructional Diagnosis to Improve Teaching and Learning, in* WASH. CENTER NEWS, Fall 1991, at 20, 20.

[328] *Id.*

[329] White, *supra* note 327.

information to make appropriate adjustments in the course to maximize student learning.

Note that the SGID process subjects all student comments or criticisms to peer review while the use of a facilitator maintains student anonymity. This increases the validity, reliability, and fairness of the feedback. From the author's experience, peer review screens student comments that would be overly solicitous or particularly hurtful while ensuring that shared objective observations, no matter how harsh, are stated. To preserve student anonymity, the author recommends trading facilitation duties with members of faculty from other departments, especially communication and education departments.[330] Students prefer this group interview method of providing feedback about teachers and courses compared to individual standardized student ratings.[331]

[330] *See also* D. J. Clark & J. Bekey, *Use of Small Groups in Instructional Evaluation*, PROF & ORGANIZATIONAL DEV. Q., vol 1, 1979, at 87, 87-95; William E. Bennett, *Small Group Instructional Diagnosis: A Dialogic Approach to Instructional Improvement for Tenured Faculty*, J. STAFF, PROGRAM, & ORGANIZATIONAL DEV., Fall 1987, at 100, 100-104 (providing additional information on small-group instructional diagnosis).

[331] Robert D. Abbott et al., *Satisfaction With Process of Collecting Student Opinions About Instruction: The Student Perspective*, 82 J. EDUC. PSYCHOL. 201, 204 (1990). For a method that provides student feedback to the instructor during the entire course through use of the Student Advisory Team (SAT), see Gerald F. Hess, *Student Involvement in Improving Teaching and Learning*, 67 UMKC L. REV. 343 (1998).

Chapter 11. Course Design and Instruction

While an effective assessment program can be developed only at an institutional level, its existence depends on commitment of teachers of the course. Moreover, committed individual teachers following assessment principles in their own courses can cause the seeds of an assessment program to germinate and grow into an institutional program. Consequently, it is important to consider the assessment-centered course, a course in which the law teacher follows the principles of assessment to improve student learning and institutional effectiveness. The following guidelines are organized into course design and instruction considerations.

Designing the Assessment-Centered Course

Serving the Law School's Mission

It is possible to design a law course by selecting a casebook and simply following the table of contents, apportioning so many cases or pages per day for the allotted number of course days. But will such a course serve the mission of the law school? If the school's mission is simply subject matter mastery, the course may have some relevance. But if the school has as its mission educating students for entry into the profession, the course developed around the table of contents of

the casebook will likely be ineffective because it concentrates on knowledge and neglects intellectual abilities, skills, and professional values.

The question is how to design the course to promote student learning with regard to the mission. For example, how do you train a legal scholar if that is part of your mission? Surely a course in which the student engages in self-learning by researching and writing in the library is much more appropriate to such a mission. The student educated to meet a mission of competency for entry-level law practice needs subject matter mastery and the intellectual abilities required in practice, as well as professional skills such as counseling, drafting, writing, researching, and resolving ethical dilemmas. Also, the *MacCrate Report* dictates that the course be designed to promote values such as striving to improve the profession[332] and professional self-development.[333]

Meeting Student and Institutional Outcomes

What does the instructor hope to accomplish by way of outcomes in the course? Does the school have outcomes that have been identified? Does the school have specific "competencies" which need to be addressed or served in this course?[334] It is critical that the teacher identify the specific objectives that the course seeks to achieve.

Bloom's taxonomy of educational objectives specifies three overall educational objectives: knowledge, intellectual skills, and abilities. These objectives are broken into six categories of knowledge, comprehension, application, analysis, synthesis, and evaluation.[335] Josephson proposes a law school model taxonomy consisting of knowledge, understanding, issue-spotting, problem-solving, judgment, and synthesis.[336] To meet the educational objectives of Bloom or Josephson, law schools need to develop in their students not only knowledge but also the range of intellectual skills and abilities exercised by the profession.

The teacher should design the course to address different levels of competencies or abilities. For instance, the instructor may place a value on competencies that have a universal application such as analysis, problem solving, and self-assessment.[337] The course might serve general skill competencies such as interviewing, counseling, or drafting, and it may be the appropriate place to address specific or transactional competencies such as planning an estate, preparing a contract for deed, or drafting legislation.

Learning for Law School, Profession, and Community Life

An excellent law course accomplishes far more than preparing the student for final exams or the bar exam. It imparts knowledge, skills, and values which are useful in law school, in law practice, and in community life. In designing a course, a teacher should consider what knowledge, skills, and values can assist the student in law school (as a prerequisite to other courses, clinical work, competitive teams, or student organizations) and after graduation (as building blocks to becoming an effective, reflective professional). Skills such as analysis, problem solving, self-assessment, drafting, writing, and oral advocacy

[332] MACCRATE REPORT, *supra* note 29, at 141 (Fundamental Value 3).

[333] *Id.* (Fundamental Value 4).

[334] For good examples, see the MACCRATE REPORT, *supra* note 29, for the competencies embodied in the Statement of Fundamental Lawyering Skills and Professional Values; Competencies, *see* Appendix B.

[335] BLOOM'S TAXONOMY, *supra* note 18, at 15, 18.

[336] 1 JOSEPHSON, *supra* note 7, at 58.

[337] Munro, *supra* note 109, at 355.

have direct value to students during and after law school. Teachers need to help students understand that the knowledge, skills, and values learned in the course will be valuable in and after law school. Students need to know, for instance, that the oral advocacy skills they learn will assist them in their work in student organizations, clinical representation, and moot court in law school; that the same skills will serve them when they appear in front of zoning boards, corporate boards, and courtrooms in law practice; and that their success in their communities at school board meetings and church vestries and as participants and leaders in community events will be a function of their skills in advocacy.

Designing with High Expectations of Students

The complexity, variability, and number of skills lawyers must learn to perform is exhilarating, even if intimidating. Law students are chosen for high intellectual abilities and a demonstrated ability to achieve. Courses need to be challenging and demanding to help students meet their maximum potential. Their horizons will be broader and their morale higher if teachers express confidence in them by having high expectations of them.

Identify Explicit Criteria for Student Performance

Fairness in assessment dictates that the teacher identify criteria by which she will assess student performance. If the teacher cannot state the criteria for demonstrating competent ability, then students have grounds to complain that the grading is too subjective, if not entirely arbitrary. The criteria should be written and provided to the students because students prepare better for performance when they know the criteria.

Design Multiple, Varied Forms of Assessment

The traditional law school practice of evaluating student performance based on a single exam at the end of the course is inappropriate in the assessment-centered course. Instead, teachers should design a number of exercises in which students demonstrate what they know. The exercises should be varied to include such things as a drafting assignment, an oral video presentation, a paper, and an exam.

A faculty member need not add her new assessment on top of the load created by final exams. A teacher can calculate the total number of hours she spends designing, administering, and grading present assessments such as bluebook exams. The challenge is to design and administer multiple, varied short exercises in the same amount of time in place of the single exam at semester's end.[338] One benefit of doing so is spreading the assessment time over the semester instead of engaging in an assessment endurance contest after final exam week. The author administers five or six forms of assessment in each course during the semester with no final exam.[339]

Teaching the Assessment-Centered Course

Introducing Students to Course Goals and Objectives

As Cramton and Boyer said, "learning proceeds most efficiently when the goals of the enterprise are clearly articulated at

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[338] See Appendix E for sample demonstrating multiple and varied forms of assessment for a pretrial advocacy course.

[339] One problem with this is that the law school sets aside two weeks for assessment at the end of the semester and assumes that the faculty members will grade during and after that time. Using other forms with feedback during the semester means the teachers and students do not get the benefit of the scheduled time.

the outset and students are given adequate and timely feedback which enables them to evaluate their progress toward those goals."[340] Learning makes more sense for students if specific course goals and objectives are set out in the syllabus so they understand what they are supposed to learn in the course. Then as the course proceeds, the teacher can refer to the course objectives so that students can see how the pieces of instruction fit into their learning.

Involving Students in Their Learning

Although many would concede that teaching methods in the elective curriculum, particularly in clinical studies, have broadened, the required curriculum still attempts to develop student knowledge, intellectual skills, and (to some extent) abilities through the casebook method of instruction in a format that includes lecture, discussion, and Socratic dialogue. Teaching methods in the required curricula in law schools focus heavily on the knowledge aspect of education centered on "black letter" law. However, outcomes such as the fundamental lawyering skills of the *MacCrate Report*[341] involve far more than simply knowing doctrinal law. Skills of problem solving, factual investigation, counseling, or negotiation require an integration of knowledge, intellectual skills, and abilities and, consequently, do not lend themselves to the traditional law school teaching method.

To achieve a broad range of student and institutional outcomes law school education must emphasize participatory learning in which students are not just passive note takers, but have an opportunity to learn as well as their teacher does in preparing for the class. For example, to foster development of the full range of intellectual abilities

[340] Boyer & Cramton, *supra* note 134, at 233.

[341] MACCRATE REPORT, *supra* note 29, at 138-40.

set forth by Bloom,[342] teachers must avoid methods that result in students' simply recording information for final exams. Instead, the teacher must require students to perform learning tasks that demand application, analysis, synthesis, and evaluation.

Students can participate in their learning from the beginning. They can study and make presentations for class just as teachers do. They can argue cases or positions in class, critique, discuss, analyze, problem solve, collaborate in groups, and generally arrive at any proposition about which teachers normally lecture. For the teacher the biggest obstacles to student involvement are setting aside the traditional role of lecturer to students and having the humility (and eventual satisfaction) of becoming a facilitator to learners. One of the best examples of involving students in their learning is the practice of Gerry Hess at Gonzaga University School of Law of collaborating with a student advisory team in the planning, designing, and management of their courses.[343]

I recall my frustration in teaching the essential characteristics of the American adversarial system in a first-year pretrial advocacy course. The subject should have been engaging, because the history of the development of the adversarial system involved the medieval forms of trial by battle, wager of law, and trial by ordeal. Students indicated that they found the lectures interesting, but their work on bluebook exams reflected only a superficial ability to evaluate the American adversarial system, generally reflecting the information one would read in the media. Their work showed poor understanding of the essential characteristics of the system as compared to other systems of justice.

The following year, I provided the students the same materials I used to prepare myself for class and instructed them that they had to

[342] BLOOM'S TAXONOMY, *supra* note 18, at 39-43.

[343] HESS & FRIEDLAND, *supra* note 189 at 279-281; *see* Hess, *supra* note 331 at 345-366.

become knowledgeable enough to prepare a five-minute videotape in which they introduced Chinese students to the essential characteristics of the American adversarial system. I developed explicit criteria for evaluating the substance of the student work and for evaluating their oral skills.[344] I provided the criteria to the students and later assessed the student videotape performances based on those criteria. I was surprised by the high quality of the student work, as reflected in their ability to analyze, evaluate, and synthesize the essential material to present. I was pleased with the knowledge reflected in their lectures, the creativity and originality demonstrated in approaching the task, and the quality of their basic oral skills. I found the experience of assessing the exercise far more interesting than assessing papers on the subject. Most importantly, I was haunted later by the realization that some people who tested so poorly in bluebook exams demonstrated high competence in this exercise.[345]

This exercise illustrates the importance of effective teaching method. The method focuses on student learning as opposed to the instructor's teaching. It is an active, participatory method for students in which they demonstrate their learning. The method uses oral and visual communication skills which has the benefit of varying the mode of assessment.

[344] The author did not provide criteria for the technical aspects of the videotapes or judge those aspects, since that was not a pedagogical purpose of the exercise.

[345] Before instructor assessment, the author required students to pick up their own videotapes, review them, and self-assess them using the same score sheets as the instructor. Students were substantially more critical of themselves in their assessment than was the author.

Using Situational Learning

An effective method to promote student learning and shift the focus from the teacher to the student is the "situation method,"[346] which places the student in a concrete lawyering situation so that he bears the special responsibility to a client and to society. For example, when engaged in simulations, students develop fundamental professional skills including "situational judgment"[347] and "professional judgment."[348] To paraphrase Sallyanne Payton, we must teach so that students develop abilities to serve as smart generalists, counselors, problem-solvers, and transaction builders.[349] Payton notes the tasks that are at the core of law practice "are tasks for which lawyers receive no training, and in which lawyers have no particular comparative advantage."[350] Situation method involves the integration of theory and practice so that the student not only knows, but is able to apply what she knows.[351]

Computer-assisted legal instruction (CALI) also promotes student situational learning. Teachers using computers now have the capability to place students in a situation as lawyer, confront them with a problem calling for knowledge and the exercise of particular

[346] John E. Sexton, *The Preconditions of Professionalism: Legal Education for the Twenty-First Century*, 52 MONT. L. REV. 331, 336 (1991).

[347] Payton, *supra* note 108, at 241-42 (1985).

[348] Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994).

[349] Payton, *supra* note 108, at 241-42.

[350] *Id.*

[351] *See* 1 JOSEPHSON, *supra* note 7, at 108-19 (providing a "Teaching/Learning Checklist" which is divided into two parts: "Things You Should Know" and "Things You Should Be Able To Do With Things You Know").

intellectual skills, allow them to attempt solutions, give them feedback and instruction, and provide the instructor data for assessment of the students' performances.

Encouraging Collaborative Learning

Teaching to outcomes can be enhanced greatly through collaborative learning. Although the hallmark of law school has been individual effort which has bred competitiveness, collaborative learning has much to offer faculty interested in assessment. Twenty years ago, Thomas Shaffer made a compelling argument for a collaborative model for "humanistic legal education" which "fosters a learning community within the law school."[352] Shaffer noted that collaborative learning promotes growth in both teacher and student; that students learn from each other; that the "best learning is discovery learning"; and that the learning community model in law schools changes relationships in professional practice.[353] One of Quality Management's core principles is that "competition diminishes quality."[354] However, law schools seldom consider cooperation as an alternative to competition.[355] As Mixon and Otto note, "cooperation among [law] students is called 'cheating.'"[356]

[352] Shaffer, *supra* note 195, at 240. *See also* Karl A. Smith, *The Craft of Teaching. Cooperative Learning: An Active Learning Strategy*, *in* 1989 FRONTIERS IN EDUCATION CONFERENCE PROCEEDINGS (1989), at 188 (discussing ways to involve students in learning). For a variety of ideas and techniques for collaborative learning, see HESS & FRIEDLAND, *supra* note 189, at 131-148.

[353] *Id.*

[354] Mixon & Otto, *supra* note 52, at 400.

[355] *Id.* at 436.

[356] *Id.* at 440.

> Yet, on graduation, newly licensed lawyers are thrust into teams with other lawyers, secretaries, legal assistants, and clients. Some make the transition to team playing; some do not. Law schools seldom provide training in effective team behavior, and legal education may actually disable team skills (and ensure marital discord) by reinforcing only competitive behavior."[357]

One vehicle for collaborative learning employed at a number of law schools is the law firm program in which students work in small groups in various exercises. Law firm programs[358] not only encourage collaboration, they also enable teachers and student teachers to assess many student performances. For example, at the University of Montana, the first-year law firms meet twice weekly to resolve ethical dilemmas, practice interviewing, draft pleadings, develop theories of fact and law for summary judgment motions, draft discovery, draft attorney engagement agreements, and hear each other practice oral presentations. Law firm programs provide a laboratory in which students, under the direction of a student teacher assistant, apply the knowledge they have acquired in substantive courses.[359] They are feasible for schools with larger entering classes because each firm is like a modular unit and the numbers can be expanded. Teachers meet weekly with the teaching assistant "junior partners" to train them for their role as facilitators of student learning in the law firm sessions.

[357] *Id.* at 440-41.

[358] See Munro, *supra* note 109, at 360 & n.47, for a description of the law firm program that has existed since 1979 at the University of Montana School of Law. See also James Moliterno, *The Legal Skills Program at the College of William and Mary: An Early Report*, 40 J. LEGAL EDUC. 535 (1990), for a description of the law firm program at the Marshall-Wythe School of Law at the College of William and Mary.

[359] While I focus on the educational aspects of the law firm program, I would be remiss if I did not note the very strong student support and social function served by the firms and their teaching assistants. This has been repeatedly reflected in student evaluations of the program.

Collaborative learning need not be confined to law firm programs but can be part of regular classroom work. In preparing their plans for a course, teachers should consider the opportunities to use small-group discussion. Small-group work in a classroom provides a vehicle by which students use their collective wisdom and learning to analyze and resolve problems. The teacher's role becomes that of facilitator who poses the problems, observes the groups during discussion, and engages the "reporters" from each group in dialogue about the various solutions, noting key points on the blackboard. There is little in the teacher's lecture outline that cannot be collaboratively developed by students working from a problem designed to assist them in deducing the desired principles. The teacher can intersperse lecture, Socratic dialogue, blackboard writing, and summarization to facilitate the desired learning.

Teachers can model collaboration for their students by teaching with practicing lawyers or team teaching with other faculty members. For example, whenever professional skills are being taught, a learning method involving demonstration, critique, and discussion is valuable. Such a method lends itself to collaboration with practicing lawyers who can demonstrate the skill in the classroom for purposes of modeling high standards or of varying techniques.[360] Team teaching[361] allows faculty to combine their respective skills and strengths to integrate theory and practice in the classroom. Teams can perform demonstrations, appear as adversaries, share teaching responsibilities, and provide a better faculty-to-student ratio.

[360] The author found particularly persuasive the advice of a good student during an exit interview at graduation. She advised against bringing practicing lawyers to the classroom to lecture on substantive content, saying that they are seldom as focused or as clear about pedagogy as law teachers. However, she recommended bringing them to show a class what they do and how to do it. According to this student, such demonstrations, combined with the faculty instruction on theoretical concepts, are the most beneficial.

[361] Feinman & Feldman, *supra* note 163, at 528.

Interdisciplinary instruction[362] allows the inclusion of learning from other disciplines that advise the law.

Providing Prompt Feedback to Students

If assessment is to be effective as a formative tool, then students need prompt feedback. The learning loop is complete only if what the teacher learns about the student's performance is communicated to the student, so that the student knows how to improve. The longer the delay, the less effective the feedback. One way to provide feedback to students throughout the course is through the use of multiple and varied assessment exercises, including student presentations, drafting, papers, quizzes, and exams. Another means to provide prompt, ongoing feedback is through classroom assessment techniques, such as Minute Papers.[363]

Providing Course Closure at Semester's End

At the end of the semester, it is important to review with the students the mission, goals, objectives, and outcomes and to show them how the pieces of instruction and their performances have contributed to meeting those purposes. Remind the students of the potential uses of the knowledge and abilities gained for school, law practice, and life. This provides students a sense of understanding, achievement, completion, and reward.

[362] Sexton, *supra* note 346, at 336.

[363] See Chapter 10 for a description of classroom assessment techniques. For ideas and techniques in course and class planning, see HESS & FRIEDLAND, *supra* note 189, at 21-54. For techniques in enhancing classroom communication and learning, see Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941 (1997); HESS & FRIEDLAND, *supra* note 189, at 55-80.

Chapter 12. Overcoming Obstacles to Assessment

Problems can arise when a faculty contemplates developing an assessment program. In an excellent article on change in law schools, Mudd identified and discussed obstacles to change in law schools and responses to those obstacles.[364] The discussion here is limited to problems that specifically involve assessment.

In a response to a survey, fifteen Minnesota college deans identified three primary obstacles to assessment:[365] (1) Fear about possible intrusion of assessment into teaching and learning; (2) misuse of assessment results; and (3) fears related to limited resources of time and money. Among assessment concerns identified in an American Council on Education survey were lack of student and faculty motivation and participation and the availability of valid assessment tools.[366] Finally, there is the problem of assessing values.

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[364] Mudd, *supra* note 213 (pts. 1 & 2).

[365] ALICE THOMAS, THE ROLE OF ASSESSMENT IN THE PRIVATE INSTITUTIONS IN MINNESOTA 10 (1987).

[366] JOHNSON ET AL., *supra* note 3, at 6.

Intrusion of Assessment into Teaching and Learning

Fear about possible intrusion of assessment into teaching and learning reflects a common misapprehension about assessment. Many see program or institutional assessment as an administrative addition, perhaps a form of accountability, that is not a part of the learning process. Thus, legislatively-mandated assessment by means of norm-referenced, standardized exams whose purpose is accountability, could intrude on teaching and learning. However, in the case of student assessment-as-learning, assessment has as its principal purpose the improvement of student learning. It provides the feedback for students that is integral to teaching and learning.

Misuse of Assessment Results

Misuse of assessment results arises when an authority, such as a legislature, mandates assessment through standardized tests allowing comparison of students under a national norm. Results in such situations can be misused to draw invalid conclusions. However, a law school should not fear misuse of assessment results if they are evidence that the school takes its mission and outcomes seriously. If the law school develops its own assessment program so that the assessment validly and reliably measures the school's specific outcomes (for example, student learning, faculty scholarship, and professional service) the school can demonstrate its competence and have much more assurance that the results will not be misused or misinterpreted.

Limited Resources

Fears related to limited resources of time and money are universal among faculties and deans considering assessment. Faculty members, when first attending the AAHE assessment conferences, often admit to feeling overwhelmed by the potential work involved in developing an assessment program.[367] Administrators, such as deans, are more likely to feel overwhelmed by what they perceive as the required costs in terms of time, resources, and personnel. However, a comprehensive assessment program affords a school accountability and credibility with its constituencies that can be used to gain financial support, be it in the legislature or among the members of the bar and bench. An assessment program can be the answer to the concern of taxpayers, university presidents, legislators, attorneys, and judges that there is no relation between what the law school is doing and what the constituencies need.

Time Concerns

Every faculty member who ponders assessment worries about time, at least until he appreciates the fact that using multiple and varied smaller forms of assessment for student learning can replace part or all of the reliance on traditional bluebook essay exams. Collaborative student work makes for fewer papers or demonstrations of competence. Many forms of assessment lend themselves to assistance by external or adjunct assessors as is often seen in professional skills courses. No one can say that a good program of classroom assessment or a faculty-wide program of institutional assessment will not take more time, because we are comparing it to a system in which assessment is almost nonexistent. The point is that the benefits and satisfaction will drive the effort in spite of any additional time involved.

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[367] Personal observation by the author.

Cost Concerns

The fears about money bring up an interesting observation. The assessment movement at universities and colleges did not arise in the most well-healed "prestige" schools. The leaders of the movement have been schools that do not have the financial luxury or benefactors to make their reputation on new buildings, grounds, and events. Instead they tend to be struggling institutions who became earnest in seeking to make themselves quality schools during times of difficulty. One does not hear anecdotes of schools that have implemented assessment programs with gifts from major donors.

There is a core problem in traditional legal education that may dictate increased cost in changing to student-centered, ability-based education. With the possible exception of business programs, it is likely that no other graduate professional program teaches students in classes of 100 or 200 students and has student-to-teacher ratios as high as law schools. Assessment will probably expose the learning problems in such economic "efficiency." An academic plan that conforms to assessment principles will involve some increased costs by reason of lowering the student-to-teacher ratios. However, an assessment program for law school can be inherently cost efficient. Closer scrutiny of those costs can at least ensure that they do not appear larger than they actually are. Costs associated with a program of assessment are likely to occur in the areas of library, education of teachers and deans, facilities, and personnel.

It is beneficial to acquire basic books for teacher education and guidance in developing the program of assessment. Nevertheless, an assessment library need not be large and should not cost more than a few hundred dollars at the start. See Appendix H for a list of important resources for an assessment library to have.

Education of teachers and deans can occur at conferences such as the annual AAHE conference on assessment or by bringing assessment experts to the law school. Either of these formats can immerse teachers in the principles of assessment while exciting them about the potential for assessment in their schools and classrooms.[368] To form a community of faculty members committed to assessment, deans should plan for costs of about $1,000 per faculty member for travel expenses and tuition for off-campus education. To provide the faculty the same number of hours of learning about assessment by bringing experts to the law school, deans should allocate the same amount, about $1,000 per faculty member. This will provide for honoraria, travel expenses, and audio-visual expenses for several visits by assessment experts.

It is possible to implement an assessment program without investing in facilities on the assumption that the best assessment occurs in the same context and arena in which the teaching is done. The existing classrooms will be home to most assessment. In many cases, however, existing law classrooms are not appropriate for learning the range of abilities involved in a complete legal education.[369] Many schools have amphitheater and other fixed-seating classrooms designed to accommodate lecture to relatively large classes and not conducive to small-group and collaborative work. Yet, it may be years before the next round of law schools is built.[370] Nevertheless, if a law school has an adequate number of classrooms to accommodate smaller classes conducive to assessment[371] and an adequate

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[368] See *supra* notes 217 & 218 for the list of organizations holding annual assessment conferences.

[369] Strong, *supra* note 162, at 237.

[370] *Id.*

[371] At the University of Montana School of Law, faculty members teach required first-year classes in three class sizes: Whole classes of 80 students (generally using single end-of-semester final exams), half sections of 40 (generally using multiple and varied assessment), and small sections of 25 that allow heavy use of formative assessment and contact with the student. There is no question which option is best for student learning as anyone who has taught a small seminar section of an elective knows.

number of small conference rooms for student collaborative work,[372] implementation of an assessment program need not include costs for facilities.

Most of the cost of assessment will be personnel expense because assessment is a faculty function and will be developed and performed primarily by members of the faculty.[373] Evaluating personnel costs will be difficult for two reasons. First, assessment is not necessarily an additional cost. Much of assessment consists of such things as design, administration, and evaluation of student performances for learning, functions that will be done by existing teachers and staff in place of traditional examinations. For example, in one course, the author calculated the number of hours he traditionally invested in the design, administration, and grading of a bluebook exam and devoted that time to multiple short forms of assessment. Such assessment imposes no additional cost. Second, law schools do not know the cost of their present assessment. Although an undergraduate school such as Alverno College[374] or Grove City College[375] may identify and budget the costs of assessment, law schools generally do not calculate the personnel or instrument cost of the bluebook exam system or any assessment of institutional effectiveness that may exist.

[372] Collaborative work at the University of Montana School of Law, especially that involved in the first-year Law Firm Program, requires about 12 conference room spaces available for the approximately 240 students. This accommodates group collaborative work and student-assessed performances of such things as negotiations, counseling, and interviewing.

[373] ALVERNO COLLEGE, ASSESSMENT/EVALUATION AND COSTS 2 (Alverno Occasional Paper No. 3, 1985).

[374] *Id.* at 1.

[375] Grove City College, Grove City, Pennsylvania, estimates its annual budget at $15,000 for using a comprehensive assessment system of standardized testing and questionnaires. Grove City College, *supra* note 245.

A cost that is more easily identifiable is for the additional people involved in student performances and assessment of those performances. These people fall into three categories: (1) lay persons from the community who are trained as client/instructors for interviews and counseling or who are used as jurors, (2) practicing lawyers who judge the students in action and assess student performance, and (3) faculty instructors/assessors who may be under annual or longer-term contract to provide assessment services to the law school.

The cost of using such persons in assessment can be modest. The most competent members of the practicing bar find it an honor and a rewarding experience to assess and provide feedback to students in professional performances. Consequently, most assessment time invested by members of the bar is contributed without compensation.[376] When a law school needs practicing attorneys to assess performances of an entire class and the assessment project will require many hours of work, it is appropriate and necessary to compensate the attorneys. In the author's experience, such compensation will be far less than the attorney's standard hourly rates.[377] However, it is critical that a law school use excellent lawyers who are fine role models for students. Doing so fosters within the legal community awareness that being asked to assess on behalf of the law school is an honor and an affirmation of an attorney's competence. An additional cost of using outside assessors is the cost of publicity, gifts, or banquets to honor and recognize the assessors.

[376] Practicing lawyers and judges contribute time to many law schools to assess and provide feedback on such student performances as jury trials, judge trials, appellate arguments, negotiations, and client counseling.

[377] At the University of Montana School of Law, practicing specialists in the bar are compensated to assess and provide feedback to students in estate planning, probate, legal opinion letters, client counseling, oral argument of motions, and summary judgment briefs. They are compensated at rates far below standard billing rates for lawyers.

A law school can also hire an instructor or visiting faculty person whose primary responsibilities are in assessment of student performance. Such a master assessor can coordinate with the teachers to articulate performance criteria and meet with the class to discuss the criteria. The assessor can meet with individual students preparing for performances, assess the student performance, and provide feedback to the students. Finally, the assessor can provide feedback to teachers on the success of the learning or the effectiveness of the assessment exercise or instrument. This master assessor can work with more than one faculty member at a time and can assess major student performances, performances in several classes, or institutional effectiveness.[378] Contracts for this type of assessor may impose costs similar to adjunct teachers for similar time commitments.

Although personnel costs of assessment can be significant, there is a corresponding benefit. Use of lay and professional members of the community in assessment programs builds bridges with the community, increases the bar support for the law school, heightens student interest, and makes assessment a reality that would otherwise be impossible.[379]

[378] The University of Montana School of Law has on contract a half-time lawyer adjunct assessor, approximately ten paid lawyer adjuncts judging student performances in the lawyer's area of specialty, many volunteer law practitioners assessing professional skills performances, and 12 lay assessors for interviews.

[379] For information on costs in assessment, see ALVERNO COLLEGE, *supra* note 374; DARRELL R. LEWIS & ANNA M. WASESCHA, COSTS AND BENEFITS OF ASSESSMENT IN POST-SECONDARY EDUCATION (1987) (providing a conceptual framework and techniques for cost analysis of assessment in education); MARCIA MENTKOWSKI ET AL., UNDERSTANDING ABILITIES, LEARNING AND DEVELOPMENT THROUGH COLLEGE OUTCOMES STUDIES: WHAT CAN WE EXPECT FROM HIGHER EDUCATION ASSESSMENT? (1991) (regarding the benefits of education research growing out of the school's mission and outcomes as a benefit to the educational research community).

Lack of Faculty Motivation and Participation

Lack of motivation and participation by faculty members can have several sources. First, there is the issue of priority among teaching, scholarship, and service. Faculty members may view assessment first and foremost as teaching and may perceive that teaching is not valued or rewarded sufficiently to merit attention to assessment. Second, the assessment concept is generally new to law teachers; most have not heard of assessment and are not comfortable with any commitment to develop a program. Third, absent incentives from the dean, there may be no motivation for a faculty to develop an assessment program. Fourth, teachers may cling to ineffective teaching and testing patterns simply because they are most convenient, least time consuming, and easiest.

Administrative leadership, teacher education, and a system of incentives all will be necessary to motivate some members of the faculty to commit themselves to developing an assessment program. If the dean makes a public commitment to assessment and signals that it will be a core part of the program, then faculty members can give it value and invest time and effort in it. The dean can lead by insuring that faculty members are educated in assessment. The dean's office must coordinate the assessment program, express philosophical support for the effort, and provide the resources necessary to it.

Assessment leader Peter Ewell notes the structural obstacles to assessment: lack of clear priorities, fragmented responsibilities, lack of incentives for improvement, and lack of information about effectiveness.[380] These are problems whose solutions lie primarily with the dean. If a dean makes assessment a priority of the administration and provides the education and incentive to the faculty, then the structural obstacles can be hurdled. A committed group of faculty members attempting to implement assessment without the dean's commitment to assessment as a priority, without education of the rest

[380] EWELL, *supra* note 48, at 4-5.

of the faculty, and without incentives to motivate individuals will fight an uphill battle. It will likely end in Shaffer's and Robert Redmount's lament that "[i]nnovation in legal education comes hard, is limited in scope and permission, and generally dies young."[381] Without commitment and incentives from the dean, why would a junior faculty member at a school that requires strong scholarship for tenure invest time and effort in an assessment program?

The problem of lack of faculty motivation and participation in developing assessment should not surprise law teachers. Law schools operate on some implicit arrangements. For example, Cramton states, "The Lone Ranger theory of legal education, almost universally observed in the United States, involves an implicit compact (some would call it a conspiracy) among faculty members: 'You do your thing in your courses as long as I am permitted to do my thing in mine'."[382] David Andrews at Keene State College in New Hampshire cites an implicit agreement he calls "pernicious autonomy" meaning doing whatever a faculty member wants to do so long as it does not cost money.[383]

Lack of Student Motivation and Participation

Students too may have an implicit arrangement with faculty members who teach traditionally. They may find it most efficient and convenient to be assured that they never need demonstrate any mastery or competence except during a single final week each semester. The routine of studying appellate court decisions in each

[381] THOMAS L. SHAFFER & ROBERT S. REDMOUNT, LAWYERS, LAW STUDENTS AND PEOPLE 24 (1977).

[382] Cramton, *supra* note 69, at 327.

[383] David B. Andrews, Address at the Sixth American Association for Higher Education Conference (June 12, 1991).

class for three years may be ineffective and unchallenging but acceptable to students who are, in essence, saying to faculty, "You do your thing, and I'll do mine." Simply put, students may have concluded that this is a convenient, if unrewarding, method of obtaining a law degree. Hence, students may balk when first presented with participatory forms of learning and performance-based assessment of that learning. Many students have become accustomed to nonparticipation by years of education that consisted of passive learning and standardized exams. The solution is to forge ahead with learning that involves the student, encouraging student performance which demonstrates what they know judged according to explicit criteria. Students learn quickly to like and appreciate active, effective education.

Availability of Valid Assessment Tools

Because there is virtually no market for standardized law school assessment, it is a given that assessment methods will be developed by an individual law school or through sharing of assessment techniques between law schools. The design of assessment exercises which meet legal education's pedagogical purposes and the development of assessment instruments for law courses that are valid, reliable, and fair are intellectually stimulating, creative, and demanding tasks. Developing valid assessment methods will hone our thinking about student learning just as scholarship hones our knowledge of substantive law. Assessment methods for law schools will come from development of a community of assessment leaders in the law schools. Availability of valid assessment techniques depends on our ability to share those techniques.[384]

[384] The ABA Section on Legal Education now has a Professional Skills Clearinghouse that collects and stores, for sharing, information on professional skills programs in law schools, including "assessment information." Contributing schools are

(continued...)

Assessing Values

Faculties and students may become uneasy with the suggestion that we can measure values. Yet, the ABA has proffered to the law schools and the bar a Statement of the Fundamental Professional Values with a recommendation that we address the values in law school.[385] The fundamental values are: (1) "[p]rovision of [c]ompetent [r]epresentation"; (2) "[s]triving to [p]romote [j]ustice, [f]airness, and [m]orality"; (3) "[s]triving to [i]mprove the [p]rofession"; and (4) "[p]rofessional [s]elf-[d]evelopment."[386] Each of these values is stated in terms of an action, such as striving or providing, and we should be able to observe and measure the action.

The assessment of values is not new in education. One of the eight outcomes of liberal education at Alverno College is "valuing" which Alverno describes as the "abilities to discern values, to resolve value conflicts and moral dilemmas through a decision-making process, to evolve and articulate a personal framework for committed living, and to carry that value framework into effective action."[387] Alverno also has an outcome for "aesthetic response," which it defines as "develop[ing] an understanding of the difference the aesthetic dimension makes in those forms of thought and expression which seek

[384] (...continued)
asked to "[d]escribe any special assessment mechanism which will measure the success of this course in achieving its educational objectives." Memorandum D9394-74 from the ABA Section of Legal Education and Admissions to the Bar to Deans of ABA Approved Law Schools 2 (Mar. 28, 1994).

[385] MACCRATE REPORT, *supra* note 29, at 330-34.

[386] *Id.* at 140-41.

[387] ALVERNO COLLEGE FACULTY, LIBERAL LEARNING AT ALVERNO COLLEGE 22 (4th ed. 1989).

to illuminate the human condition."[388] Alverno has a comprehensive program to bring students to six progressive levels in each of these outcomes, requiring the student to demonstrate valuing and aesthetic responsiveness, and assessing the student's performance.[389]

The more difficult problem of assessing the extent to which students inculcate values is familiar to undergraduate religious institutions which have long included religious values in their outcomes and must assess to measure whether their students demonstrate those values.[390] Law schools also face the same challenge. As Raymond C. O'Brien of Catholic University of America School of Law notes:

> Legal education faces a unique challenge today. Law schools with no religious perspective, secular in nature, are challenged to provide integrity and values to students about to become attorneys. Also, law schools professing a religious perspective are challenged to articulate the definition of that religious perspective and how it affects the legal education they are providing students. For both schools it is an awesome challenge.[391]

Although most law schools do not profess a religious perspective, all are challenged to inculcate professional values in their students. The

[388] *Id.* at 38.

[389] *Id.* at 22-25, 38-41. *See also* MARGARET EARLEY ET AL., VALUING AT ALVERNO: THE VALUING PROCESS IN LIBERAL EDUCATION (1980) (discussing efforts to teach valuing in an undergraduate curriculum).

[390] *See* George Elford, *New Directions in Religious Education Assessment*, MOMEMTUM, Nov. 1989, at 53, 53-57. Elford discusses the features of the National Catholic Educational Association's newest instruments for assessing students' faith, attitudes about religious and social questions, and religious practices.

[391] RAYMOND C. O'BRIEN, LEGAL EDUCATION & RELIGIOUS PERSPECTIVE 9 (1985).

public perceives a need to address ethical and moral values in law schools, and the MacCrate Committee calls for teaching the "fundamental values of the profession."[392] In meeting the challenge of assessing values such as those set forth in the *MacCrate Report*, we must ask how students would learn the value, how they would demonstrate the value, and how we would determine from the demonstration whether the student can act on that value.

[392] MACCRATE REPORT, *supra* note 29, at 207-221, 235, 332.

Chapter 13. Conclusion

Since legal education in America became part of university education more than a century ago, it has been beset by controversy that arises from fundamental problems that have become institutionalized. In the twentieth century, respected legal scholars and educators have identified flaws in legal education and proposed various cures, few of which law schools have incorporated.

Law schools can develop a solid structure as a basis for legal education by borrowing a set of principles from the undergraduate assessment movement. It is time that the constituencies of each law school (the students, consumers, bar, bench, community leaders, faculty, and deans) enter into a dialogue to arrive at a consensus on how the law school will serve society. On the basis of the resulting mission statement, the faculty, in consultation with appropriate constituencies, needs to develop student outcomes and outcomes for the law school itself. Law faculties, then, can design curricula to achieve the goals of serving the student and institutional outcomes. Faculty members can explore diverse and creative teaching methods for accomplishing these goals and objectives.

A comprehensive program by which law schools ask the right questions about student learning and law school effectiveness, and validly measure success or need for improvement, will provide a basis for opinions about legal education. When law schools know how they are doing, they have the opportunity to improve. The current debates over legal education need not continue during the next century. If American legal education adopts the principles of the assessment

movement, the schools can know who they are, what they are supposed to do, and how to do it well. Instead of patchwork solutions, assessment can provide legal education a sound structure on a solid foundation that promotes a dynamic, self-assessing, and evolving institution. Making the necessary changes in legal education will require additional resources. Dealing with the class size issue alone imposes resource considerations. Student assessment-as-learning is an appropriate approach to legal education, but it will entail assessing the adequacy of the resources we expend in this graduate professional endeavor.

Consider some of the benefits of instituting an assessment program. Law schools can have a clear sense of mission and can graduate students who have learned what they need to know for society and not just what they need to know to pass exams. Faculties will have the satisfaction of knowing that the curriculum is relevant to that mission. Students will have the confidence of knowing that they participated in their learning, that they assessed and provided feedback on the efficacy of that learning, and that they are competent to continue professional learning on their own and to assess their own performance as lawyers.

The atmosphere in law schools will reflect the clarity of mission and the desired outcomes, goals, and objectives. Students and teachers will benefit from explicit criteria and timely feedback. Students and teachers will relate as collaborators in learning and not as antagonists working under the unnecessary anxiety and stress of the present testing system. Above all, teachers and students can find reinvigoration in effective efforts to improve curricula, instructional strategies, and educational quality.

Teaching will improve, will make more sense, and will be more enjoyable. Retention rates should improve as law schools switch from a system that simply labels students with a grade that often does not change for three years to one in which faculty members ensure that each student reaches a desired competency level.

Law schools will have an ongoing system for assessing the institution and student learning, so that they can keep improving. Teachers will not have to suffer from the nagging feeling that standards are dropping and that students are not learning like they used to.

Law schools will not need to fear calls for accountability, but instead will welcome them. Law schools will gain credibility with the bench, bar, legislature, alumni, students, professional groups, trustees, accrediting bodies, and the community of law schools.

Four final points about assessment are in order.

- First, with regard to student assessment-as-learning, the best assessment of the curriculum, law school, teacher, and student is assessment of student performance. When we assess student performance, the measure is not what the student knows, but what she can do with what she knows.

- Second, the best assessment is done in the same context and arena in which the teaching was done. Hence, assessment should be primarily class-embedded; that is, it should be an integral and formative part of the students' learning in the classroom.

- Third, individual teachers acting in isolation cannot develop appropriate assessment. The best solution is for a community of faculty members to become experts for the institution. Nevertheless, assessment in law schools is unlikely to progress unless individual teachers take the responsibility to immerse themselves in the practices and principles of assessment.

- Fourth, the responsibility for setting instructional standards and academic policy for American law schools rests in the law schools. In the end, law schools must design the system of assessment by which they will determine whether they meet student outcomes and goals of the institution. It will be regrettable if law schools cannot adapt to demands for change or accountability to the point that the profession, legislatures, or other entities feel compelled to mandate some form of accountability or assessment. This can be avoided and law schools can maintain autonomy over their curricula by assuming the necessary role as leaders in assessment.[393]

It is time for a new era in law schools. Legal education is ready for a program that provides a sound process by which diverse law schools can each enunciate their particular reason for existence and then succeed in meeting that mission. From the assessment movement that has developed in undergraduate education since the 1980s, we can synthesize principles that form an excellent framework that we will call student assessment-as-learning,[394] which will accommodate the necessary change in legal education. Student assessment-as-learning can move law schools toward excellence in student learning and effectiveness as centers of legal scholarship, policy making, and law leadership.

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[393] See GREGORY R. ANRIG, A MESSAGE FOR GOVERNORS AND STATE LEGISLATORS: THE MINIMUM COMPETENCY APPROACH CAN BE BAD FOR THE HEALTH OF HIGHER EDUCATION (1986).

[394] Again, I acknowledge the faculty and deans at Alverno College as the creator of the student assessment-as-learning tradition in the assessment movement. We owe them a debt of gratitude.

APPENDICES

APPENDIX A

SAMPLE MISSION STATEMENTS

MISSION STATEMENT
THE UNIVERSITY OF MONTANA SCHOOL OF LAW

The University of Montana School of Law prepares students for the people-oriented practice of law by integrating theory and practice in a competency-based curriculum; serves as the academic legal center in Montana; and contributes to the development of national, state, and tribal law and legal institutions through teaching, scholarship, and service.

In pursuit of this mission, the School of Law strives to:

- develop in its students the demonstrated ability to serve society as lawyers, to represent clients generally and in particular transactions, and to seek resolution of conflicts in appropriate forums;
- foster intellectual inquiry, knowledge of the law, fundamental professional skills, perspective on the role of law and lawyers in society, and the character and values necessary to serve society;
- support scholarship and provide professional service to Montana, tribal governments and communities, and the nation;
- emphasize those areas of law significant to the Rocky Mountain West, including natural resources, environmental, and Indian law; and
- promote among students, faculty, and the profession a sense of community enriched by a diverse group of people devoted to freedom of inquiry and freedom of expression.

Adopted by faculty May 13, 1996

EMORY LAW SCHOOL
Mission Statement
[Downloaded from www.law.emory.edu]

An Emory legal education trains lawyers to meet the challenges of today and the opportunities of tomorrow. Developing mature, sensitive judgment in persons who will be among this country's decision makers requires more than a knowledge of rules of law and an ability to analyze problems. At Emory Law, six hundred students from almost every state, several foreign countries, and nearly two hundred undergraduate institutions work together with an experienced faculty to learn how to use law in dealing with the changing problems of an increasingly complex society. The study of law at Emory is a process of continuing intellectual development.

The Emory University School of Law has a long and valued tradition in the use of the honor system. Clients place confidence and trust in their lawyers, and society entrusts lawyers with the care of its laws. Thus, an integral part of a law student's education is adherence to the honor system.

Mission Statement

The law school's mission lies in two essential interwoven purposes: through teaching to help intellectually gifted men and women fully develop their technical and theoretical knowledge and moral capabilities for leadership roles in the profession of law, business, and industry and/or government service; and through the quest for new knowledge and public service, to improve human well being. These purposes rest upon the premises that a quality legal education is one of the more powerful resources of the preservation and illumination of what is in society's best interest and that the privilege of this education entails an obligation to use this knowledge for the common good.

To support this mission, the law school strives to bring together outstanding faculty and students in a nurturing and challenging environment. Diversity of ethnic, cultural, socioeconomic, religious, national and international background, and experience of its faculty, students, and staff add greatly to the intellectual ferment and is actively sought. To that end, the law school actively seeks to maximize the diversity of the pool of qualified candidates for both admission and employment.

The law school aspires to create a climate in which equality of all persons and openness to critical consideration of all ideas are encouraged and sustained. To that end, the law school intends that each person and every scholarly activity be valued and that the whole fabric of scholarship and community be regarded as greater than the sum of individual parts.

Beyond the demand that teaching, learning, research and service be measured by high standards of integrity and excellence, the law school aims to imbue the academic experience with certain qualities, including:

- commitment to humane teaching and mentorship and collegial interaction among faculty, students, and staff;
- permeable disciplinary boundaries that encourage integrative teaching, research and service;
- commitment to use knowledge to improve human well-being; and
- global perspective on the role of law in improving the human condition.

The law school was established by the university eight decades ago. Its original mission was to educate men and women so that they could provide the region with lawyers of the highest intellectual and moral character. While the law school programs and community now operate on the national and international levels, it has derived from its

heritage the conviction that society continues to need the services of law trained individuals of the highest intellectual and moral character who have the commitment to use these skills for the well being of society.

UNIVERSITY OF AKRON SCHOOL OF LAW
Mission Statement
[Downloaded from www.uakron.edu/law]

Our Mission:
The University of Akron School of Law promotes justice, the protection of individual liberty and the rule of law through our commitment to excellence in teaching, scholarship and service. We also are committed to expanded opportunities for legal education.

We have identified the following central elements in our mission as a law school:

1. Teaching
We are, above all, committed to excellence in teaching. Our students expect and deserve it. We have, as a faculty, determined that this is the most important way that we can serve our students, and ultimately, our great responsibilities. Our commitment includes both the determination to assure a high quality of teaching in all areas and the recognition that we must address the particular needs of our students and the profession in these times. We must be careful to instill in our students an understanding of the professionalism and high ethical standards that lawyers must achieve. We also must assure that they leave the school with a firm grounding in the essential skills they will need to practice law.

2. Scholarship
We believe that engaging in scholarship is important to our achieving excellence as teachers and to meeting our responsibilities to the legal profession and the rule of law. We define scholarship for this purpose as creative intellectual endeavor intended to develop and disseminate new knowledge or new insights into existing knowledge. We recognize as legitimate scholarship not only traditional law review

articles, but also other writings and law reform efforts that involve a comparable degree of research, analysis and original thought.

3. Service to the Bench, the Bar and the Broader Community
We also recognize a responsibility to serve the greater community, especially the bench and bar. As legal professionals, faculty and administrators are a source of expertise and independent judgment for individuals, the courts, professional organizations and governmental entities. Where appropriate, we strive to serve the local, national and international communities through a wide range of volunteer leadership and consultation.

4. Providing Access to Legal Education
One of the most important roles we have played in our region since the school was founded in 1921 has been to provide access to legal education for working people and others who otherwise would not be able to enter the legal profession. We have accomplished, and continue to accomplish, this aspect of our mission through the operation of our evening program. More recently, we have recognized the need and pursued the effort to increase opportunities for legal education among members of minority groups and others who have historically been underrepresented in the legal profession.

DUKE UNIVERSITY LAW SCHOOL

Mission Statement

[Downloaded from www. law.duke.edu]

- **Mission Statement of Duke University Law School**

The Law School was established as a graduate professional school in 1930. Its mission is to prepare students for responsible and productive lives in the legal profession. As a community of scholars, the Law School also provides leadership at national and international levels in efforts to improve the law and legal institutions through teaching, research, and other forms of public service.

- **Mission Statement of Duke University, Division of Student Affairs**

The Office of University Life is committed to excellence in education though programming, advising, and services in the arts, entertainment, and recreation, which are integral to university and community life.

UNIVERSITY OF FLORIDA COLLEGE OF LAW

Mission Statement

[Downloaded from www.law.ufl.edu]

Our Vision & Mission Statement

Vision

A law school dedicated to advancing human dignity, social welfare and justice through knowledge of the law.

Mission

Excellence in:

- Educating professionals
- Advancing legal scholarship
- Serving the public
- Fostering justice

APPENDIX B

SAMPLE OUTCOMES FOR LEGAL EDUCATION

OVERVIEW OF THE FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES

(From the "MacCrate Report")

American Bar Association Section on Legal Education and Admissions to the Bar

Fundamental Lawyering Skills

Skill § 1 : *Problem Solving*

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

1.1 Identifying and Diagnosing the Problem;

1.2 Generating Alternative Solutions and Strategies;

1.3 Developing a Plan of Action;

1.4 Implementing the Plan;

1.5 Keeping the Planning Process Open to New Information and New Ideas.

Skill § 2: *Legal Analysis and Reasoning*

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

2.1 Identifying and Formulating Legal Issues;

2.2 Formulating Relevant Legal Theories;

2.3 Elaborating Legal Theory;

2.4 Evaluating Legal Theory;

2.5 Criticizing and Synthesizing Legal Argumentation.

Skill § 3: *Legal Research*

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

3.1 Knowledge of the Nature of Legal Rules and Institutions;

3.2 Knowledge of and Ability to Use the Most Fundamental tools of Legal Research;

3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design.

Skill § 4: *Factual Investigation*

In order to plan, direct, and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

4.1 Determining the Need for Factual Investigation;

4.2 Planning a Factual Investigation;

4.3 Implementing the Investigative Strategy;

4.4 Memorializing and Organizing Information in an Accessible Form;

4.5 Deciding Whether to Conclude the Process of Fact-Gathering;

4.6 Evaluating the Information That Has Been Gathered.

Skill § 5 : *Communication*

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

5.1 Assessing the Perspective of the Recipient of the Communication;

5.2 Using Effective Methods of Communication.

Skill § 6: *Counseling*

In order to counsel clients about decisions or courses of action, a lawyer should be familiar with the skills and concepts involved in:

6.1 Establishing a Counseling Relationship That Respects the Nature and Bounds of a Lawyer's Role;

6.2 Gathering Information Relevant to the Decision to Be Made;

6.3 Analyzing the Decision to Be Made;

6.4 Counseling the Client About the Decision to Be Made;

6.5 Ascertaining and Implementing the Client's Decision.

Skill § 7: *Negotiation*

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

7.1 Preparing for Negotiation;

7.2 Conducting a Negotiation Session;

7.3 Counseling the Client About the Terms Obtained From the Other Side in the Negotiation and Implementing the Client's Decision.

Skill § 8: *Litigation and Alternative Dispute Resolution Procedures*

In order to employ-or to advise a client about-the options of litigation and alternative dispute resolution, a lawyer should understand the potential functions and consequences of these processes and should have a working knowledge of the fundamentals of :

8.1 Litigation at the Trial-Court Level;

8.2 Litigation at the Appellate Level;

8.3 Advocacy in Administrative and Executive Forums;

8.4 Proceedings in Other Dispute-Resolution Forums.

Skill § 9 : *Organization and Management of Legal Work*

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

9.1 Formulating Goals and Principles for Effective Practice Management;

9.2 Developing Systems and Procedures to Ensure that Time, Effort, and Resources Are Allocated Efficiently;

9.3 Developing Systems and Procedures to Ensure that Work is Performed and Completed at the Appropriate Time;

9.4 Developing Systems and Procedures for Effectively Working with Other People;

9.5 Developing Systems and Procedures for Efficiently Administering a Law Office.

Skill § 10 : *Recognizing and Resolving Ethical Dilemmas*

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

10.1 The Nature and Sources of Ethical Standards;

10.2 The Means by Which Ethical Standards are Enforced;

10.3 The Processes for Recognizing and Resolving Ethical Dilemmas.

Fundamental Values of the Profession

Value § 1 : *Provision of Competent Representation*

As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:

1.1 Attaining a Level of Competence in One's Own Field of Practice;

1.2 Maintaining a Level of Competence in One's Own Field of Practice;

1.3 Representing Clients in a Competent Manner.

Value § 2: *Striving to Promote Justice, Fairness, and Morality*

As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the values of:

2.1 Promoting Justice, Fairness, and Morality in One's Own Daily Practice;

2.2 Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them;

2.3 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.

Value § 3: *Striving to Improve the Profession*

As a member of a self-governing profession, a lawyer should be committed to the values of:

3.1 Participating in Activities Designed to Improve the Profession;

3.2 Assisting in the Training and Preparation of New Lawyers;

3.3 Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases,

Value § 4: *Professional Self-Development*

As a member of a learned profession, a lawyer should be committed to the values of:

4.1 Seeking Out and Taking Advantage of Opportunities to Increase His or Her Knowledge and Improve His or Her Skills;

4.2 Selecting and Maintaining Employment That Will Allow the Lawyer to Develop As a Professional and to Pursue His or Her Professional and Personal Goals.

APPENDIX C

SAMPLE EXPLICIT CRITERIA FOR STUDENT PERFORMANCE AND INSTRUCTIONS TO STUDENT

ASSESSMENT CRITERIA FOR ORAL ARGUMENT OF MOTIONS

The following criteria will be used to grade the oral argument of your summary judgment motion:

1. APPROPRIATE DRESS: The advocate is dressed to project a professional and credible image to the court.

2. SELF INTRODUCTION: The advocate introduces herself/ himself to the court in a comfortable and confident manner.

3. IDENTIFICATION OF CLIENT: The advocate identifies the party he/she represents.

4. ATTORNEY'S POSITION (I.E., MOVANT OR RESPONDENT): The advocate identifies for the court the legal position his/her client occupies in the litigation, i.e., defendant, movant, respondent.

5. EXPLANATION OF THE MOTION: The advocate provides the court with any procedural background necessary to understand the argument, including identification of the motion that is the subject.

6. STATEMENT OF RELIEF SOUGHT: The advocate, both at the beginning and at the end, makes clear to the court exactly what relief the client seeks.

7. OUTLINE OF CONTENT OF ARGUMENT: In the beginning, the advocate gives a brief synopsis or summary of the main points that will be argued or the main subjects that will be covered.

8. PREPARATION: The presentation reflects that the advocate is well-prepared and that the argument is thorough and reasoned.

9. ORGANIZATION AND STRUCTURE: The argument is organized in a logical progression to persuade. It contains an introduction, the body of the argument and a conclusion.

10. USE OF AUTHORITY: The advocate relies on relevant and current case law and statutory authority and uses the authority in a meaningful way to persuade the court of his/her position.

11. LEGAL REASONING: The advocate's interpretations, conclusions, inferences and deductions drawn from cited law and from the facts are fair, reasonable and otherwise appropriate. The argument reflects direct and forceful logic.

12. ANALYTICAL QUALITY: The advocate demonstrates that he/she has accurately and thoroughly analyzed the facts of the case and the law and can present the analysis persuasively to the court.

13. RESPONDS APPROPRIATELY TO JUDGE'S QUESTIONS: The advocate listens to the judge's questions, responds appropriately and is flexible enough in argument to accommodate the questions.

14. EYE CONTACT: The advocate maintains appropriate eye contact with the judge.

15. POSTURE: The advocate's posture enhances his/her credibility and projects an appropriate image to the court.

16. RESPECTFULNESS: The advocate's demeanor and conduct reflect respect for the court.

17. DICTION AND DELIVERY: The advocate's diction and delivery are clear and distinct and demonstrate a deliberate and formal choice of words and phrases calculated to persuade the court.

18. PACE, TIMING AND PAUSES: The advocate employs a proper pace to the argument, using rapidity or slowness of speech to make certain points, and employs pauses to his/her advantage.

19. VOICE TONE, PITCH AND VOLUME: The advocate speaks in a clear, modulated voice with varying pitch and volume as necessary to persuade the court.

20. AVOIDING VERBAL CLICHES: The advocate avoids distracting verbal glitches such as "uh," "ah," and "you know."

21. SPEAKING STYLE: The advocate adopts a forensic style of speech that is appropriately formal for addressing the court and is not colloquial.

22. GESTURES: The advocate's gestures are not distracting or artificial, but appear natural and eloquent.

23. CONFIDENT AND COMFORTABLE: The advocate's demeanor displays that he/she is comfortable before the court and confident of his/her position.

24. CONCLUSION: The advocate makes a short synopsis or summary of what he/she has established and brings the argument to closure with an appropriate conclusion and request for relief.

STUDENT INSTRUCTIONS FOR ARGUING SUMMARY JUDGMENT MOTIONS

In this exercise each of you will argue orally to a judge the plaintiff's motion for summary judgment which you have briefed. The purpose of the exercise is threefold:

1. To develop general skills in oral advocacy;

2. To develop specific skills in oral advocacy for use in motion practice;

3. To further your understanding of the purpose and function of summary judgment.

The judge will hear each of your arguments in Courtroom 202 of the Law School at prearranged times during the period between April 11 and the end of school. The court will schedule 15 minutes for your argument, and each argument will be followed by a 15 minute critique session in which the judge will discuss your performance, and provide suggestions for improvement.

You should schedule with the court the time for oral argument of your motion by contacting the clerk of court, Marylor Wilson, at the Student Services Counter in the Law School. She will provide you available times when the court will sit for "Law and Motion" sessions and will note your date and time on the court calendar. Because of the problems associated with the scheduling of 80 oral arguments, you should arrange the scheduling of your argument prior to Spring Break.

Faculty will provide you assessment criteria by which the judge will evaluate your oral argument for grading. You should use your class notes and reading material in preparing for the argument. You are also free to use any library resources on oral advocacy.

This is a graded exercise which will be part of your semester grade. Your work is governed by the Honor Code. While you may discuss and practice the argument with each other before you make your argument, you should not discuss the exercise or practice with those who have already appeared before the judge for assessment. Accordingly, once you have made your argument to the judge, please don't discuss the exercise with or coach those who have not.

You should identify yourself by name in the oral argument and not student number.

CRITERIA FOR DRAFTING PLEADINGS

The following are basic criteria by which pleadings should be drafted under rules 7 through 15 of the Rules of Civil Procedure as they apply to Montana courts, Federal courts and some tribal courts.

1. FORMAT: The format for the pleading complies with the "uniform" or "local" rules of the particular state, federal or tribal court in which the pleading is to be filed.

2. GRAMMAR, PUNCTUATION AND SPELLING: The pleading is free from errors in grammar, punctuation and spelling.

3. STYLE: The writing style is plain English, concise, simple, and in a tone appropriately formal for court documents.

4. TYPE AND PAPER: The print style and paper are appropriate in quality for court-filed legal documents.

5. JURISDICTION: The pleading is drafted to invoke the jurisdiction of the appropriate court, whether federal, state or tribal by addressing necessary jurisdictional elements for courts of limited jurisdiction and not making jurisdictional allegations where not necessary.

6. COURT HEADING: The pleading states the official court heading including the correct and specific number or name designation of the district or court in which the pleading is being filed.

7. CASE CAPTION: The case caption:

   a. Identifies by correct legal name, each party to the lawsuit at the time the pleading is filed;

   b. Identifies as parties only legal entities with capacity to sue and be sued, such as persons, corporations and partnerships.

c. Identifies the representative capacity of parties suing or being sued in a representative capacity, i.e., personal representatives and guardians.

8. TITLE: Identifies the pleading by a clear name recognized in Rule 7 of the Rules of Civil Procedure. Where a pleading is not being filed on behalf of all co-plaintiffs or on behalf of all co-defendants, the title designates the party or parties on whose behalf it is being filed.

9. COUNTS, DEFENSES AND PARAGRAPHS: Claims for relief are stated and designated in separate counts; defenses are stated and designated separately, and all averments of claim or defense are made in numbered paragraphs, all as set forth in rule 10 of the Rules of Civil Procedure.

10. ELEMENTS OF CLAIMS FOR RELIEF OR DEFENSES: Claims for relief incorporate and include the legal elements of the specific claim for relief being stated. Defenses include the legal elements that constitute the defense. The pleading admits or denies the averments of the adverse pleading in compliance with Rule 8 of the Rules of Civil Procedure.

11. BASIS: The pleading is well grounded in fact and warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and is not interposed for any improper purpose such as harassment or delay.

12. CLIENT'S INTEREST: The pleading will advance the client's interest in the dispute over the client's legal rights.

13. PRAYER FOR RELIEF: The pleading should contain a statement of the relief requested by the party drafting the pleading. Customarily the prayer for relief is designated by the capitalized and indented word "WHEREFORE" followed by a request for relief which includes a statement of separate items of relief listed numerically. It is also customary that the prayer for relief appears after all of the claims for relief or defenses have been stated.

14. JURY DEMANDS: The party drafting a pleading has considered whether a jury trial is sought, and, in cases where it is, expressly requests it in the pleading pursuant to Rule 38 of the Rules of Civil Procedure and notes the jury demand in the title of the pleading.

15. DATE OF PLEADING: The pleading is dated, the date being customarily shown above the signature of the attorney drafting and filing the pleading.

16. SIGNATURE: The pleading is signed in accordance with Rule 11 of the Rules of Civil Procedure, the signature by custom being part of a law firm signature block.

17. CERTIFICATE OF MAILING: A pleading other than the original complaint bears a certificate certifying that a copy of the document was mailed or delivered to counsel of record.

APPENDIX D

SAMPLE ASSESSMENT INSTRUMENTS

ASSESSMENT SHEET FOR ARGUMENT OF SUMMARY JUDGMENT MOTION

Judge_____Student_____Date_____

INITIAL OBSERVATIONS

(MARK "OK" OR CHECK)

_____DRESSES APPROPRIATELY
_____INTRODUCES SELF
_____IDENTIFIES CLIENT
_____EXPLAINS THE MOTION AND PROCEDURE
_____OUTLINES OR PREVIEWS THE ARGUMENT
_____STATES RELIEF SOUGHT

SCALE:

(5)Highly effective (4)Effective (3)Somewhat effective
(2) Somewhat ineffective (1) Ineffective

ESTABLISHES RESPECTFUL RAPPORT WITH COURT
(5) (4) (3) (2) (1)

IS CLEAR AND DIRECT IN ARGUMENT
(5) (4) (3) (2) (1)

DEALS EFFECTIVELY WITH JUDGE'S QUESTIONS

(5) (4) (3) (2) (1)

ARGUMENT REFLECTS PREPARATION

(5) (4) (3) (2) (1)

ARGUMENT REFLECTS ORGANIZATION AND STRUCTURE

(5) (4) (3) (2) (1)

USES AUTHORITY APPROPRIATELY

(5) (4) (3) (2) (1)

ARGUMENT REFLECTS GOOD LEGAL REASONING AND ANALYSIS

(5) (4) (3) (2) (1)

ARGUMENT IS COMPLETE

(5) (4) (3) (2) (1)

MAKES AN APPROPRIATE CONCLUSION

(5) (4) (3) (2) (1)

FINAL OBSERVATIONS

_____MAKES EYE CONTACT

_____MAINTAINS APPROPRIATE POSTURE

_____MODULATES VOICE TONE, PITCH AND VOLUME

_____AVOIDS VERBAL GLITCHES (i.e., "uh," "ah," and "you know")

_____ADOPTS APPROPRIATE SPEAKING STYLE

_____USES GESTURES NATURALLY AND ELOQUENTLY

_____APPEARS CONFIDENT AND COMFORTABLE

_____USES CLEAR AND DISTINCT DICTION AND DELIVERY

_____USES PACE, TIMING AND PAUSES EFFECTIVELY

OVERALL ASSESSMENT

☐ SUPERIOR ☐ GOOD ☐ SATISFACTORY

☐ MARGINAL ☐ UNSATISFACTORY

CLIENT COUNSELING ASSESSMENT SHEET

Judge	Student	Date

SCALE:

(5) Highly effective (4) Effective (3) Somewhat effective
(2) Somewhat ineffective (1) Ineffective

A. Attorney arranges meeting satisfactorily and timely.
(5) (4) (3) (2) (1)

B. Attorney dresses appropriately for a counseling session with a client.
(5) (4) (3) (2) (1)

C. Attorney explains the purpose and process involved in the session.
(5) (4) (3) (2) (1)

D. Attorney uses a client-centered approach that affords the client an opportunity to make appropriate decisions.
(5) (4) (3) (2) (1)

E. Attorney elicits from the client the client's objectives.
(5) (4) (3) (2) (1)

F. Attorney works with client to identify and consider pivotal or pertinent alternatives.
(5) (4) (3) (2) (1)

G. Attorney elicits from the client potential solutions.
(5) (4) (3) (2) (1)

H. Attorney proposes solutions not identified by client.
(5) (4) (3) (2) (1)

I. Attorney lets client choose the starting place in considering alternatives.
(5) (4) (3) (2) (1)

J. Attorney reviews each option separately.
(5) (4) (3) (2) (1)

K. Attorney works with client to identify consequences of each option.
(5) (4) (3) (2) (1)

L. Attorney adopts the role of information seeker.
(5) (4) (3) (2) (1)

M. Attorney elicits from the client the predicted consequences of each solution.
(5) (4) (3) (2) (1)

N. Attorney advises the client of legal and nonlegal consequences of each solution.
(5) (4) (3) (2) (1)

O. If necessary, attorney intervenes appropriately in client decision.
(5) (4) (3) (2) (1)

P. Attorney assists the client in making a decision.
(5) (4) (3) (2) (1)

Q. Attorney works with client to develop a plan of action.
(5) (4) (3) (2) (1)

IV. Overall Assessment

☐Mastered ☐Good ☐Satisfactory ☐Marginal ☐Unsatisfactory

APPENDIX E

SAMPLE MULTIPLE AND VARIED FORMS OF ASSESSMENT

PRETRIAL ADVOCACY--ELEMENTS OF GRADE

FALL SEMESTER 1997

I. Graded performances

15 %	Client interview
25 %	Drafting pleading
15 %	Videotape oral presentation
40 %	Final examination
95 %	

II. Process points for collaborative work

1%	Law firm attendance (must attend all three "Pretrial" firms)
1%	Interview of class mate
1%	Law firm work: Investigation Planning (1st firm)
1%	Law firm work: Drafting answer (2d firm)
1%	Law firm work: Problem Solving (3d firm)
5%	(directly added into total %)

SPRING SEMESTER 1998

I. Graded performances

10%	Technical library database research
20%	Drafting legal opinion letter
20%	Client counseling
20%	Arguing motion for summary judgment
20%	Spring objective exam
90%	

II. Process points

2%	Law firm work: Attorney engagement agreements
2%	Law firm work: Practice legal counseling
4%	Law firm work: Negotiation
2%	Law firm work: Practice oral arguments
10%	(directly added into total %)

This is the percentage weight assigned the work in this course. Final criterion-referenced grade will be computed using weighted averages of these grades which are based on your performance. There is no grade curve.

APPENDIX F

SAMPLE STUDENT COLLABORATIVE PROJECTS

Pretrial Advocacy

Spring 1997

Problem Solving

PROBLEM SOLVING SMALL GROUP CLASS EXERCISE

Max Millen is a third-year law student at the University of Montana School of Law. He seeks the professional services of your law firm because he has just been arrested and charged with driving while intoxicated. He was found passed out on the front seat of his pickup truck in a parking lot with the engine running and the headlights on. He says a friend had been driving but chose to walk home leaving the pickup running with Millen in it.

Max does not want the law school to learn of the arrest, because he is afraid it will prevent him from being admitted to the Bar. When you talked about the law school requirement to disclose DUI convictions, he became agitated and angry stating that a person's personal life was none of the school's business. On further questioning, he told you that he had two DUIs before law school that he did not disclose in the application process and has never disclosed. He asserts that since he initially failed to disclose the convictions, it would be a mistake to do so now.

He denies having any drinking problem. He says that the police in his hometown had it out for him on the two previous DUIs and that he is innocent of this one, since he was asleep in his parked and running vehicle when the police arrested him. He wants to defend on the ground that he was not operating a motor vehicle at the time he was arrested. You know that the test of cases in which an intoxicated person is asleep in a running vehicle involves the

question of whether the person is in control of the vehicle. Your tentative opinion is that the case may be defendable.

You are aware that the law school application process requires disclosure if the applicant has ever been found guilty of or pleaded guilty to a crime other than a minor traffic violation. You also know that the law school requires annual completion of a "Succeeding Certificate" that requires the same disclosure. Finally, you know that the bar admission process requires disclosure of misdemeanor convictions and dependency on alcohol or drugs. Interview on Max's background is unremarkable except for his mention of being fired for hitting his boss in a bar while on a summer work crew and of having charges against him for assault in another bar fight dropped in 1994.

He wants your law firm to defend him on the DUI charge and to keep it from interfering with his graduation and admission to the bar. Your firm should, in a sequence of clearly defined stages, engage in a legal problem solving process in an attempt to resolve this client's problem. Before doing so, choose a reporter for your group who will record your work on each step and insist that you complete each step in order before moving to the next step. Follow this process religiously:

(1) You should begin by identifying and defining the problem presented by the client and by identifying the goals.

(2) Next, you should identify the relevant facts, relevant issues and the relationships between the facts.

(3) Identify the legal issues raised by the facts and assess the issues in relation to their influence on the decision to be made.

(4) Next you should generate and identify options from which you may select one.

(5) Then, you should evaluate the options according to certain criteria in order to decide which option is best.

(6) Next, choose an option while being aware of whether your decision making process is client-centered or lawyer-governed.

(In this exercise, assume this is your choice, since you do not have a client to talk with.)

(7) Finally, make a plan for implementation.

Do not advance to the next step, until you are satisfied that you have completed the previous step. When the groups have completed their work, we will discuss the process with the class as a whole group.

Insurance Course Student Nos: _____ and

Auto Insurance Exercise _____

Spring 1998

INTRODUCTION

This is a formative learning exercise designed to help you learn auto casualty insurance and to assess your learning. This is a collaborative take-home exercise to be completed by you and a partner under the Honor Code. The negotiated date and time for turning this exercise in at the Student Services Desk is:

_____ by 5:00 p.m..

FACTS

Jason Kelt was walking north across the Madison Street Bridge in Missoula on September 30, 1997. He walked on the east sidewalk next to the Doubletree Motor Inn headed towards his home on Pine Street.

Melissa Allison was driving an automobile north across the bridge at the same time. A can of Pepsi she had been drinking sat on the dashboard in front of her as she drove. Suddenly, the Pepsi can fell from the dash and onto the floor. She attempted to retrieve it while driving. While she was distracted, her car left the pavement and jumped the sidewalk striking the unaware Jason Kelt from the

rear, so that the impact propelled his body down the embankment in front of the Doubletree.

Kelt was taken to St. Patrick Hospital where he underwent extensive surgery for multiple fractures of both legs, hips and ankles. As a result of the injuries suffered in the accident, he is permanently disabled and unable to return to his job as a maintenance person for the University of Montana Physical Plant. His medical expense to date is $107,565. He has lost over $9,000 in wages so far. Given his disability, disfigurement, wage loss, medical expense, future medical expense, and pain and suffering, you, his attorney, value his case against Melissa Allison in excess of $1,000,000.

At the time of the accident, Melissa Allison was driving a 1990 Chrysler LeBaron that was owned by her boyfriend, Leonard Leotus. Leotus permitted her to use it on that day. Leotus carried no insurance on the car, having canceled the insurance shortly after he licensed the car. Melissa Allison carried a United States Fidelity and Guarantee (USF&G)Insurance Company policy on her 1983 Datsun pickup truck that she owned. Melissa Allison lives in an apartment with her sister Anna who also insures her own Volkswagen van with USF&G under a separate policy identical in coverage declarations and terms to Melissa's. A copy of those policies have been provided you for this exercise.

Jason Kelt carried automobile insurance with State Farm Mutual Automobile Insurance Company covering his Corvette and his Fiat under two separate identical policies. A copy of those policies is also provided here.

DECLARATION PAGES OF THE POLICIES

Melissa Allison's declarations page for the USF&G policy on her Datsun provided the following coverage in these amounts:

Liability Coverage A (BI & PD)	$25,000 per person $50,000 per accident
Medical Expense Coverage B	$ 1,000
Uninsured Motorist Coverage C	$25,000 per person $50,000 per accident

Anna Allison's declarations page for her USF&G policy was identical to Melissa's.

Jason Kelt's declarations page for <u>each</u> of the State Farm policies provided for the following coverage in the amounts listed:

Liability Coverage A (BI)	$100,000 per person $300,000 per accident
Liability Coverage B (PD)	$100,000
Medical Payments Coverage C	$ 5,000

Uninsured Motorist Coverage U	$100,000 per person $300,000 per accident
Underinsured Motorist Coverage W	$100,000 per person $300,000 per accident

ANALYSIS EXERCISE

Instructions: **READ CAREFULLY BEFORE STARTING THE EXERCISE.**

Assume you have been retained by Jason Kelt to represent him in whatever action is necessary to recover adequate compensation for his injuries and disabilities. Write a preliminary analysis of each coverage under each policy to consider whether the coverage may be potentially available and in what amounts to satisfy claims of Jason Kelt. Consider, in your analysis, whether Jason Kelt can recover under each coverage in light of the insurance policy provisions and declarations as well as the applicable statutes and cases. In each case briefly explain why a coverage is or is not available under the language of the policy, making reference to policy provisions where appropriate. Your finished product will be a memo to me and not a legal advice letter to the client. Hence, you need not recite the case facts, disclaimers and other elements of an advice letter. Please make your work readable but short.

In doing this exercise, you should refer to:

(1) the State Farm Insurance Company policy handed out in class;

(2) the USF&G Insurance Company policy handed out in class;

(3) the cases and statutes referred to in the auto casualty insurance outline. You are not expected to do any other library research to find other cases or statutes, though it is not prohibited. You may use any other books or sources you wish.

(Do not include analysis of claims or coverages for auto damage or other property damage.) In doing this exercise, you should refer to:

--the copy of the USF&G policy you received last week;

--the copy of the State Farm policy you received last week;

--your class notes on auto casualty insurance;

--the auto insurance outline and any cases or statutes it references;

--any other cases and materials read for class.

You are not expected to use other authorities than those identified in the outline and need not do other library research.. Do not hesitate, where necessary, though, to review the cases and statutes referred to in the outline so that you have a full understanding of their import. Limit your analysis to six pages, double spaced. Keep your writing as concise as possible, but make sure that I can tell whether or not a coverage is available, in what amounts, and why. Use assigned student numbers instead of names for the assignment.

MEMO

TO: Insurance students

FROM: Greg Munro

RE: Reporting team contribution on policy drafting exercise

DATE: March 23, 2000

I need each of you individually to immediately assess the contribution of each member of your insurance policy drafting team. Do so by assigning percentage points to each person's contribution so that the points add up to 100%. Do not give any two people the same number of percentage points.

Name of reporting student:_____

Team members (including self)	Percent
_____	_____%
_____	_____%
_____	_____%
_____	_____%
TOTAL	100 %

Please turn this in to Marylor at the student services desk as soon as possible. Do this assessment even if you have already turned one in. (I only have two, so we might as well all be on the same form.) I must have the reporting from each of you.

Thanks.

Professor Munro

APPENDIX G

SAMPLE GUIDELINES ON USE OF EXTERNAL ASSESSORS

GUIDELINES FOR USE OF EXTERNAL ASSESSORS UNIVERSITY OF MONTANA SCHOOL OF LAW

In order to ensure the effective and appropriate use of external assessors in the competency-based curriculum, faculty involved in professional skills exercises should follow these guidelines:

1. External assessors should have substantial experience in the performance of the professional skills being assessed.

2. External assessors should have a reputation for competence and integrity.

3. External assessors should have adequate interpersonal skills to be effective mentors and guides for students.

4. Faculty should consider appropriate gender balance and other qualities of diversity in choosing external assessors.

5. Faculty should insure that assessors know the goals of the course for which they are assessing and how the student performance fits into the goals.

6. Faculty should only use external assessors where faculty and assessors have identified explicit criteria by which the student performance will be evaluated and have provided the criteria to the students sufficiently in advance of the student performance.

7. Faculty should only use external assessors where faculty have adopted and provided an appropriate assessment instrument to promote objectivity, reliability, and validity in the assessment of the specific student performance.

8. External assessors should not be used to perform the basic assessment implicit in faculty workload teaching contracts. External assessors should be used in the curriculum to increase faculty ability to evaluate students' active performance of fundamental professional skills.

9. Faculty should insure that external assessors receive sufficient training to promote fairness, reliability and validity in assessment of student performances.

10. Faculty should prepare external assessors to provide appropriate feedback including discussing the scoring on the assessment instrument and showing the completed instrument to the student.

11. Student performance evaluated by external assessors should constitute less than half of the work that is the basis of the grade awarded a student in any course.

12. Generally, faculty should determine the actual grades for student performances by relying on all information on the assessment instrument.

13. Faculty should insure that external assessors are timely in their work, respectful and cooperative with students in setting

times and places for performances, and punctual in meeting with students.

14. Faculty should regularly evaluate the performance of external assessors based on the above criteria and student evaluations.

15. Faculty should periodically assess the role and efficacy of assessors in the curriculum.

16. Faculty should insure that assessors receive appropriate consideration for their work through compensation where appropriate and gestures of appreciation.

APPENDIX H

RESOURCES FOR AN ASSESSMENT LIBRARY

RESOURCES FOR AN ASSESSMENT LIBRARY

ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS. REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY (1979)

ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT–AN EDUCATIONAL CONTINUUM. REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992)

ASSESSMENT IN AMERICAN HIGHER EDUCATION: ISSUES AND CONTEXTS (Clifford Adelman ed., 1986)

ALVERNO COLLEGE FACULTY, STUDENT ASSESSMENT-AS-LEARNING, AT ALVERNO COLLEGE (1994)

CONSORTIUM FOR THE IMPROVEMENT OF TEACHING, LEARNING AND ASSESSMENT, SHARED EDUCATIONAL ASSUMPTIONS (Alverno College 1992)

THOMAS A. ANGELO & K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS (2d ed. 1993)

A COMMITTEE OF COLLEGE AND UNIVERSITY EXAMINERS, TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS: HANDBOOK I: COGNITIVE DOMAIN (Benjamin S. Bloom ed., 1956)

K. PATRICIA CROSS, FEEDBACK IN THE CLASSROOM: MAKING ASSESSMENT MATTER (1988)

K. Patricia Cross, *Teaching to Improve Learning*, 1 J. EXCELLENCE C. TEACHING 9 (1990)

Gerald F. Hess, *The Legal Educator's Guide to Periodicals on Teaching and Learning*, 67 UMKC L. REV. 367 (1998)

GERALD HESS & STEVEN FRIEDLAND, TECHNIQUES FOR TEACHING LAW (1999)

MICHAEL JOSEPHSON, LEARNING AND EVALUATION IN LAW SCHOOL (1984)