

ASSESSING OURSELVES: CONFIRMING ASSUMPTIONS AND IMPROVING STUDENT LEARNING BY EFFICIENTLY AND FEARLESSLY ASSESSING STUDENT LEARNING OUTCOMES

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INTRODUCTION

The American Bar Association (ABA) is considering new accreditation standards for law schools that would require the faculty at each law school to not only assess individual student performance, but also to assess themselves as legal educators to ensure they are meeting their institutions' goals of student learning.¹ This type of assessment is a relatively new concept in legal education because the ABA's current accreditation standards, unlike those of other professional educational programs,² are based on inputs, rather than evidence demonstrating actual student learning.³ The ABA's proposed accreditation standards would require a law school to identify institutional learning outcomes, offer a curriculum that affords each

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1. Steve Bahls, *The ABA's Shift to an Outcome Measures Approach for Accreditation Standards, Presentation at the Conference on Assessment*, STURM C. LAW (Sept. 13, 2009), <http://law.du.edu/index.php/assessment-conference/program> (click on video link for lecture); Susan Hanley Duncan, *The New Accreditation Standards Are Coming to a Law School Near You – What You Need to Know About Learning Outcomes & Assessment*, 16 J. LEGAL WRITING INST. 605, 629 (2010).

2. See generally Heidi M. Anderson et al., *A Review of Educational Assessment*, 69 AM. J. PHARMACEUTICAL EDUC. 84 (2005) (discussing the rationale for the emergence of assessment in pharmaceutical education); Robert M. Jarvis et al., *Can One Portfolio Measure the Six ACGME General Competencies?*, 28 ACAD. PSYCHIATRY 190 (2004) (discussing the assessment requirements of the Accreditation Council for Graduate Medical Education); Eric J. Romero, *AACSB Accreditation: Addressing Faculty Concerns*, 7 ACAD. OF MGMT. LEARNING & EDUC. 245 (2008) (discussing accreditation issues that impact business faculty and the value of AACSB accreditation to management education); R.M. Taylor, *Defining, Constructing and Assessing Learning Outcomes*, 28 REV. SCI. TECH. 779 (2009) (discussing assessment in veterinary curriculum).

3. Mary Crossley & Lu-in Wang, *Learning by Doing: An Experience with Outcomes Assessment*, 41 U. TOL. L. REV. 269, 271 (2010).

student the opportunity to achieve those learning outcomes, assess its students' achievement in those areas, and assess itself as an institution by measuring the effectiveness of its programs in preparing students to become entry-level legal practitioners.⁴ These proposed accreditation standards have stirred a debate among legal educators regarding the justification for assessment and a scramble to determine how to comply.

This Article contends that assessment of student learning outcomes is justified as an ABA accreditation standard given the history of questionable quality and unaccountability in post-secondary education and the increasing reliance on accreditation as a form of consumer protection, particularly given the recent proliferation of online diploma mills. Furthermore, cognitive psychology and learning theory support intentional assessment as a means to improve student learning. Once legal educators understand the purpose, value, and use of assessment results—and how easily they can embed assessment into their courses—they will be eager to engage in the process. Indeed, regardless of the justification, assessment in legal education is appealing to educators because with evidence of student progress toward identified outcomes, educators can celebrate their accomplishments and confidently maintain their practices. When, however, evidence reveals that students are not reaching acceptable levels of competence in the identified learning outcomes, educators can take the opportunity to modify a course or program, re-tool teaching methods, or alter the institution's curriculum. An initial assessment provides baseline information, enabling future comparative assessments to show whether curricular or pedagogical innovations are improving student learning. Educators can then base decisions on evidence of student learning, not individual professorial perceptions or unverified assumptions.

This Article first discusses the critical relationships and distinctions between grading, assessment of student learning outcomes, and the bar examination. It then provides an overview of the historical justification for assessment and some of the factors motivating assessment at law schools right now, including regional and programmatic accreditation standards and the ABA's proposed standards. This Article next addresses several obstacles that faculty must overcome before implementing effective assessment, including

4. See Am. Bar Ass'n Learning Outcomes Subcomm., Section of Legal Educ. and Admission to the Bar, Draft Standards (May 5, 2010) [hereinafter ABA Draft Standards].

fear of the results, time and resource constraints, and the perception that imperfect assessment is not valuable. It also discusses appropriate means of reflection and reaction to the results, known as “closing the loop.” Finally, this Article summarizes two embedded assessment projects conducted at Western State University (WSU) College of Law to assess two learning outcomes in its first-year legal writing course, and how professors used the results of those assessment projects to improve student learning and the overall effectiveness of the course. The purpose in sharing these assessment projects is not to provide a blueprint for perfect assessment strategies but rather to continue the much-needed dialogue of shared experiences and methodologies of assessing student learning outcomes and to show how simple, efficient, and valuable the process can be.

II. THE RELATIONSHIPS BETWEEN GRADING, ASSESSMENT, AND THE BAR

A common misconception involves the relationships between grading student work, assessment of student learning outcomes, and the bar examination.⁵ While they are related and sometimes reliant on each other, they are not the same. Grading students’ work is not an assessment of student learning outcomes, nor is the bar a complete assessment of a law school’s learning outcomes.

Student assessment is the evaluation of individual students’ capabilities in a course.⁶ Assessment might be accomplished by grading final examinations, papers, oral performances, simulations, or other exercises.⁷ This type of student assessment is valuable as a report to the individual student on their overall achievement in a course.⁸ Students’ grades may also serve as a tool for law schools to determine which students receive invitations to join law review or receive scholarship awards and to identify students that need additional academic support or should be dismissed from the law school.⁹ Potential employers often review an applicant’s law school

5. Crossley & Wang, *supra* note 3, at 270.

6. *Id.*

7. *Id.*; see also Gregory S. Munro, *How Do We Know if We Are Reaching Our Goals? Strategies for Assessing the Outcome of Curricular Innovation*, 1 J. ASS’N LEGAL WRITING DIRECTORS 229 (2002) (providing an overview of various student assessment techniques).

8. ROY STUCKEY, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* 175 (2007).

9. *Id.*

transcript as part of the hiring process, and high grades indicate achievement in certain courses that the employer may deem important. Indeed, student assessment is valuable to the law school, the students, and the community of future employers.¹⁰ Accordingly, important scholarship has evolved regarding methods to assess law students' work to determine which students have achieved mastery of the material.¹¹

Assessment of student learning outcomes is a set of practices by which an educator can measure the effectiveness of a course, program, or institution.¹² Grading, or student assessment, is often the starting point for assessment of student outcomes,¹³ but without intentional assessment of student learning outcomes, students' grades do not always accurately reflect the effectiveness of a course, program, or institution since a final grade often reflects student learning of several concepts.¹⁴ For example, if a professor gave forty-five students a legal citation quiz that tested the application of dozens of Association of Legal Writing Directors (ALWD) citation rules, the professor might look at scores and determine that, on average, students got 85% of the questions correct. Based on this, the professor would likely be pleased with the students' learning of citations. If, however, the professor knew that the students performed at a 90% accuracy rate when writing a full case citation, but only a 10% accuracy rate on the questions involving the use of signals, the professor might consider maintaining the status quo next year when teaching full citations but might re-tool the teaching of signals. In this example, the students' overall high grades on a citation quiz did not accurately reflect student learning of the proper use of signals because the citation quiz tested many concepts involved in legal citations. Only through a deliberate process of assessing student performance in each concept of legal citations could the professor real-

10. Crossley & Wang, *supra* note 3, at 270.

11. See, e.g., Andrea A. Curcio, *Assessing Differently and Using Empirical Studies to See if It Makes a Difference: Can Law Schools Do It Better?*, 27 QUINNIPIAC L. REV. 899 (2009); Ellie Margolis & Susan L. DeJarnatt, *Moving Beyond Product to Process: Building a Better LRW Program*, 46 SANTA CLARA L. REV. 93 (2005); John D. Schunk, *Can Legal Writing Programs Benefit from Evaluating Student Writing Using Single-Submission, Semester-Ending, Standardized, Performance-Type Assignments?*, 29 HAMLIN L. REV. 308 (2006).

12. Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 LEGAL WRITING 313, 319 (2010).

13. Jerry Foxhoven, *Beyond Grading: Assessing Student Readiness to Practice Law*, 16 CLINICAL L. REV. 335, 346 (2009).

14. MARY J. ALLEN, *ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION* 11-12 (2004).

ize that students were not learning certain concepts at an adequate level.

Finally, using bar passage rates as the sole outcome measure for determining the effectiveness of a law school is akin to using the final score on a citation quiz as a reflection of the effectiveness of a course in teaching citations. Knowledge of doctrine and professional responsibility are valid learning goals for law schools, and therefore bar passage is legitimate direct evidence of these student learning outcomes.¹⁵ However, the bar exam does not test many of the skills necessary to become a practicing member of the bar, even though law schools have an obligation to teach them.¹⁶ These skills might include making policy-based arguments, oral advocacy, negotiation tactics, use of legal citations, or effective trial advocacy. Without strategies to evaluate the effectiveness of a certain course, program, or law school in teaching these skills, and without a standardized test at the conclusion of law school to evaluate these skills, law schools are flying blind as they teach skills with no direct evidence regarding their effectiveness.¹⁷

III. THE JUSTIFICATION FOR REQUIRING OUTCOMES-BASED ASSESSMENT AS AN ACCREDITATION STANDARD

The ABA appears poised to make a law school's accreditation reliant, in part, on evidence of student learning. This is justified and based largely on concepts of consumer protection in post-secondary education that stem from the history of questionable quality control and the more recent troubles with online diploma mills. Furthermore, cognitive psychology and learning theory support the intentional process of self-assessment as a means to improved delivery of education.

In the early 1980s, some scholars regarded student learning in higher education as inadequate and unaccountable.¹⁸ In 1988, in response to political concerns regarding the integrity of higher education and whether federal support of such educational programs was justified, the Secretary of Education promulgated regulations requiring federally approved accrediting organizations to evaluate

15. Munro, *supra* note 7, at 245.

16. STUCKEY, *supra* note 8, at 11-13.

17. Munro, *supra* note 7, at 229.

18. Anderson et al., *supra* note 2, at 84, 84 (2005) (discussing the rationale for the emergence of assessment in pharmaceutical education).

institutional outcomes for accreditation.¹⁹ The intent was to “place greater emphasis upon assessment of educational effectiveness by accrediting bodies [and] highlight the responsibilities of accrediting agencies for encouraging the truthfulness of institutional claims”²⁰ The new regulation required that “an accrediting agency, in making its accrediting decisions, systematically obtain[] and consider[] substantial and accurate information on the educational effectiveness of postsecondary educational institutions or programs, especially as measured by student achievement”²¹ Amendments to the Higher Education Act followed,²² and assessment in higher education was born.

While accreditation by an agency recognized by the Department of Education is technically voluntary, on a practical level such accreditation is critical to a post-secondary school because it allows students to be eligible to apply to participate in various federal financial aid programs.²³ While most universities seek regional accreditation, their affiliated law schools often remain uninvolved in the regional accreditation process. Rather, their primary interest is programmatic by the ABA.

A school’s accreditation by a regional accrediting agency or the ABA also has a consumer protection component. Accreditation assures academic quality and accountability to the students spending their time and money at that institution.²⁴ This concept of consumer protection in higher education has become even more important with the recent proliferation of online educational programs and ac-

19. See Secretary’s Procedures and Criteria for Recognition of Accrediting Agencies, 53 Fed. Reg. 25,088, 25,088 (July 1, 1988) (“To help ensure that Federal money devoted to postsecondary education is spent wisely, the Secretary is using the Secretary’s legal authority for recognition of accrediting agencies to improve the quality of postsecondary education. . . . [T]he Secretary has a stewardship responsibility to ensure that Federal monies are used at institutions or in programs that meet certain standards with regard to quality.”).

20. *Id.*

21. *Id.* at 25,098.

22. See Higher Education Amendments of 1992, Pub. L. No. 102-325, 106 Stat. 448, 624–47 (1992).

23. See 34 C.F.R. § 602.1(a) (2010) (explaining the purpose of Department of Education recognition of an accrediting agency).

24. See *id.* (“The Secretary recognizes accrediting agencies to ensure that these agencies are, for the purpose of the Higher Education Act of 1965, as amended (HEA), or for other Federal purposes, reliable authorities regarding the quality of education or training offered by the institutions or programs they accredit.”); WILLIAM K. SELDEN, ACCREDITATION: A STRUGGLE OVER STANDARDS IN HIGHER EDUCATION 30–31 (1960).

companying problems with diploma mills.²⁵ Diploma mills often indicate accreditation by agencies not recognized by the Department of Education. The Federal Trade Commission cautions prospective students on this practice:

Diploma mills may claim to be “accredited.” Colleges and universities accredited by legitimate organizations undergo a rigorous review of the quality of their educational programs. Although many diploma mills claim to be “accredited,” their accreditation is from a bogus, but official-sounding agency that they created. You can use the Internet to check if a school is accredited by a legitimate organization at the database of accredited academic institutions posted by the U.S. Department of Education at www.ope.ed.gov/accreditation or at the Council for Higher Education Accreditation database at www.chea.org/search.²⁶

Given this reliance on accreditation, it makes sense that the Department of Education ensures that the accrediting agency requires the institutions that it accredits to validate claims of student learning before the department will recognize the agency as a “reliable authorit[y] regarding the quality of education or training”²⁷

The Department of Education requires all accrediting agencies that it approves to periodically reevaluate their accreditation policies and procedures.²⁸ In accordance with this mandate, the ABA began a review of the Standards for Approval of Law Schools in 2008 and for the first time articulated “assessment of program quality and student learning” as one of the fundamental principles

25. The Higher Education Opportunity Act defines a diploma mill as follows:

an entity that—(A)(i) offers, for a fee, degrees, diplomas, or certificates, that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or training; and (ii) requires such individual to complete little or no education or coursework to obtain such degree, diploma, or certificate; and (B) lacks accreditation by an accrediting agency or association that is recognized as an accrediting agency or association of institutions of higher education (as such term is defined in section 1002 of [20 U.S.C.]) by—(i) the Secretary [of Education] pursuant to subpart 2 of part G of subchapter IV of this chapter; or (ii) a Federal agency, State government, or other organization or association that recognizes accrediting agencies or associations.

20 U.S.C. § 1003(5) (Supp. 2009).

26. U.S. Fed. Trade Comm’n, *Diploma Mills: Degrees of Deception*, FTC CONSUMER ALERT (Oct. 2006), <http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt149.shtm>.

27. 34 C.F.R. § 602.1 (2010).

28. See 20 U.S.C. § 1099b (2006) (requiring accrediting agencies to apply for continued recognition).

served by the ABA's accreditation of law schools.²⁹ Acknowledging consumers' reliance on the ABA's accreditation as a stamp of quality legal education, the Standards Review Committee published the *Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education*, noting that

the core function of accreditation review is the notion that there are constituencies that rely on the accreditation process for accurate information about accredited programs and institutions, and that, from a consumer protection perspective, the results of accreditation review permit informed judgments to be made about the quality of the accredited institutions.³⁰

Several ABA draft standards have circulated that would require a law school to gather evidence of student learning outcomes, analyze the evidence to determine if "students are prepared to participate effectively, ethically, and responsibly as entry level practitioners in the legal profession," and use the results of assessment "to improve its curriculum and its delivery with the goal that all students attain competency in the learning outcomes."³¹ These accrediting stan-

29. Donald J. Polden, ABA Standards Rev. Comm., *Statement of Principles of Accreditation and Fundamental Goals of a Sound Program of Legal Education* (May 6, 2009), available at <http://apps.americanbar.org/legaled/committees/Standards%20Review%20documents/Principles%20and%20Goals%20Accreditation%205%206%2009.pdf>. This statement provides that

[a]pplying the lessons learned and practiced in other disciplines' accreditation review processes, legal education programs and institutions should be measured both by essential program quality indicators (e.g., sufficiency of faculty and adequacy of facilities in light of mission and student body) and by the learning achieved by their students. In the past, most accreditation measurements have been on "input" factors and very little attention has been given to "output" factors. Accreditation review in law, like other disciplines, must move law schools toward articulation and assessment of student learning goals and achievement levels.

Id.

30. *Id.*

31. ABA Draft Standards, *supra* note 4. Standard 305 on Institutional Effectiveness provides that

In measuring its institutional effectiveness . . . the dean and faculty of a law school shall:

(a) gather a variety of types of qualitative and/or quantitative evidence, as appropriate, to measure the degree to which its students, by the time of graduation, have attained competency in its learning outcomes;

(b) periodically review whether its learning outcomes, curriculum and delivery, assessment methods and the degree of student attainment of competency in the learning outcomes are sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly as entry level practitioners in the legal profession; and

dards would align the ABA with other programmatic accrediting agencies³² and the regional accrediting agencies recognized by the Department of Education, including (1) the Middle State Association of Colleges and Schools, Middle State Commission on Higher Education;³³ (2) the New England Association of Schools and Colleges, Commission on Institutions of Higher Education;³⁴ (3) the North Central Association of Colleges and Schools, the Higher Learning Commission;³⁵ (4) the Northwest Commission on Colleges and Universities;³⁶ (5) the Southern Association of Colleges and Schools, Commission on Colleges;³⁷ and (6) the Western Association

(c) use the results of the review in subsection (b) to improve its curriculum and its delivery with the goal that all students attain competency in the learning outcomes.

Id.

32. See *supra* note 2 and accompanying text (comparing the ABA's current accreditation standards to those of other educational programs).

33. MIDDLE STATES COMM'N ON HIGHER EDUC., CHARACTERISTICS OF EXCELLENCE IN HIGHER EDUCATION: REQUIREMENTS OF AFFILIATION AND STANDARDS FOR ACCREDITATION xi (12th ed. 2006), available at http://www.msche.org/publications/CHX06_Aug08REVMarch09.pdf (asserting that accreditation encompasses assessment of student learning and provides that "[a]ssessment of student learning demonstrates that, at graduation, or other appropriate points, the institution's students have knowledge, skills, and competencies consistent with institutional and appropriate higher education goals").

34. COMM'N ON INSTS. OF HIGHER EDUC., NEW ENGLAND ASS'N OF SCH. AND COLLS., STANDARDS FOR ACCREDITATION 12-13 (2006), available at http://cihe.neasc.org/downloads/Standards/Standards_for_Accreditation_2006.pdf (explaining that, to obtain accreditation, the institution needs to implement and support a "systematic and broad-based approach to the assessment of student learning" that will provide useful information in understanding how and what the students are learning, improving student experiences, and assuring that the students achieve the appropriate level of competency).

35. HIGHER LEARNING COMM'N, N. CENT. ASS'N, HANDBOOK ON ACCREDITATION, 3.1-1 to 3.4-4 (3d ed. 2003), available at <http://www.ncahlc.org/information-for-institutions/publications.html> (providing five criteria that must be met in order to achieve and maintain accreditation, each of which encompasses assessment; criterion three specifically addresses student learning and effective teaching and requires that an educational institution demonstrate that it is fulfilling its mission by providing evidence of student learning and teaching effectiveness).

36. NW. COMM'N ON COLLS. & UNIVS., STANDARDS FOR ACCREDITATION 4.B.1-.2 (2010), available at [http://www.nwccu.org/Standards%20Review/Pages/Accreditation%20Standards%20\(Revised%202010\).pdf](http://www.nwccu.org/Standards%20Review/Pages/Accreditation%20Standards%20(Revised%202010).pdf) (requiring that educational institutions utilize assessment results to determine the institutions' effectiveness and to implement improvement; further providing that assessments be based on "meaningful" indicators of achievement).

37. S. ASS'N OF COLLS. & SCH., COMM'N ON COLLS., THE PRINCIPLES OF ACCREDITATION: FOUNDATIONS FOR QUALITY ENHANCEMENT (4th ed. 2010), available at <http://www.sacscoc.org/pdf/2010principlesofaccreditation.pdf>. This accreditation body requires that educational institutions satisfy both the core requirements and comprehensive standards, as well as maintain compliance with the federal standards, in order to obtain and maintain accreditation. *Id.* at 6. While neither the core requirements nor the comprehensive standards expressly include assessments as a requirement for accreditation, the Quality Enhancement Plan (QEP) is addressed in both and is a component of the accreditation process that demonstrates the

of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.³⁸

A cookie-cutter regime for assessment would not make sense given the varying missions of each institution.³⁹ Therefore, while most regional accreditors provide support for schools seeking compliance with the assessment process, such as optional conferences and information on websites, none prescribe a specific methodology or approach to assessment. As in the ABA's proposal, the responsibility lies with the institution to identify student learning outcomes, an assessment plan, and the criteria and standards that will demonstrate the effectiveness of the institution.⁴⁰

Finally, cognitive psychology suggests that metacognition, where students are aware of what they are trying to accomplish, enables students to learn more effectively because their focus is directed at

commission's commitment to the enhancement of the quality of higher education and student learning. *Id.* at 15, 25. The QEP must include a process for assessing learning outcomes. *Id.* at 19, 25.

38. ACCREDITING COMM'N FOR SENIOR COLLS. & UNIVS., W. ASS'N OF SCH. & COLLS., HANDBOOK OF ACCREDITATION (2008), available at <http://www.wascsenior.org/findit/files/forms/Handbook%20of%20Accreditation%202008%20with%20hyperlinks.pdf>. For an institution to be granted initial accreditation by the Western Association of Schools and Colleges (WASC), the institution must demonstrate that it has established strategies and a methodology for assessment that include statements of how learning outcomes will be assessed, and that it actively engages in, or has a plan to systematically engage in, an assessment of its student learning and education effectiveness. *Id.* at 14-15. Additionally, in order to obtain and maintain WASC accreditation, the institution must employ a process of review that both assesses whether the institution's course and program design, faculty support, and program design are effectively linked to evidence of student learning and specifically identifies assessment of student learning as part of the criteria for review. *Id.* at 23-29.

39. See Richard A. Matasar, *Perspectives on the Accreditation Process: Views From a Nontraditional School*, 45 J. LEGAL EDUC. 426 (1995) (supporting the notion that in the accreditation process an institution should be evaluated in relation to the educational mission it established for itself).

40. Draft ABA Interpretation 305-1 provides as follows:

The following methods, when properly applied and given proper weight, are among the acceptable methods to measure the degree to which students have attained competency in the school's student learning outcomes: review of the records the law school maintains to measure individual student achievement pursuant to Standard 304, evaluation of student learning portfolios, student evaluation of the sufficiency of their education, student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge, bar exam passage rates, placement rates, surveys of attorneys, judges, and alumni, and assessment of student performance by judges, attorneys or law professors from other schools. *The methods to measure the degree of student achievement of learning outcomes are likely to be different from school to school and law schools are not required by this standard to use any particular methods.*

ABA Draft Standards, *supra* note 4 (emphasis added).

the learning objective.⁴¹ Accordingly, educational practices have developed that encourage teachers to “make learning goals explicit” and coach students toward these goals so that they can focus their efforts as learners.⁴² This concept applies to assessment planning by faculty to improve the effectiveness of a course or institution as well; teachers should be cognizant of educational objectives and consider student assessment as part of course assessment, aligning these objectives and assessments with the mission of the law school. In this manner, both students and educators obtain information that allows them to rethink their approaches, practices, and goals.⁴³

IV. LEAPING THE HURDLES TO ASSESSMENT

Three cardinal rules for evaluation or assessment: “Nobody wants to be evaluated, nobody wants to be evaluated, and finally, nobody wants to be evaluated.”⁴⁴

Assessment in legal education is justified, and there is no question that faculty and students will benefit from consideration of the effectiveness of pedagogy and curriculum in law school.⁴⁵ Unfortunately, because educators are understandably resistant and defensive when it comes to assessing themselves, such assessment often does not occur. Fear in realizing the results of assessment, time and resource constraints, and the perception that imperfect assessment is not valuable can interfere with legal educators’ internal motivations to improve student learning, as well as the external motivations of law schools’ accrediting agencies. These realities prevent legal educators from buying into assessment and enhance resistance to the process.

“Bright people have real anxieties with regard to why they are being asked to engage in student outcomes assessment. The culture of the faculty on most campuses would find the call to student outcomes assessment threatening, insulting, intrusive, and wrong-

41. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS 179-80 (2007).

42. *Id.* at 180.

43. *Id.* at 180-81.

44. Mary J. Allen, Professor Emeritus, Cal. State Univ., Presentation for the Western Association of Schools and Colleges Educational Seminar: Assessment in Learning-Centered Institutions (Sept. 2009). Allen attributes this quotation to Frank Newman, though the source for the original publication is unknown.

45. SULLIVAN ET AL., *supra* note 41, at 180.

headed.”⁴⁶ Indeed, it is terrifying to suspect that assessment is really a witch hunt by the administration or that faculty are being asked to dig their own graves by producing evidence that might reveal that students are not achieving acceptable levels of competence. These fears stem from a misunderstanding of the purpose and use of assessment and will necessarily undermine the integrity of the assessment process if professors do not address them.

Administrators should emphasize that assessment is not a process by which the administration assesses the faculty, but rather is assessment by the faculty of the institution’s mission to ensure that students reach the institution’s identified learning outcomes. That is, the goal is not just to assess a particular faculty member, course, or program, but to assess an institution’s curriculum.⁴⁷ Accordingly, faculty must be involved in identifying learning outcomes and developing the processes by which they measure those outcomes throughout the curriculum.⁴⁸ Ideally, assessment should be wholly in the hands of faculty rather than administrators so that faculty are the ones who gather data, analyze and interpret results, and act in response.⁴⁹

For effective assessment to occur, the administration must believe in the purpose and value of assessment. Scholars have found that one factor predominates in determining why some institutions engage in assessment and others do not:

If campus leaders are committed to assessment, assessment gets done and it gets done well. If campus leaders—especially the chief academic officer (vice president for academic affairs, provost, or dean) and the chief executive officer (president or chancellor)—aren’t onboard, there may be pockets of assessment efforts across campus but assessment doesn’t permeate campus culture.⁵⁰

Assessment results do not necessarily reflect the teaching competence of specific faculty, and administrators should never use the

46. ALLEN, *supra* note 14, at 13 (citing PETER A. FACIONE & NOREEN C. FACIONE, STUDENT OUTCOMES ASSESSMENT: OPPORTUNITIES AND STRATEGIES ¶ 8 (1996)).

47. *See id.* at 16; Munro, *supra* note 7, at 230 (noting that a law school must adopt a mission as a precondition to establishing an effective assessment program).

48. ALLEN, *supra* note 14, at 15–16.

49. AMY DRISCOLL & SWARUP WOOD, DEVELOPING OUTCOMES-BASED ASSESSMENT FOR LEARNER-CENTERED EDUCATION 23–27 (2007).

50. LINDA SUSKIE, ASSESSING STUDENT LEARNING 35–36 (2004).

results as the basis for faculty evaluations.⁵¹ For example, evidence that students are not learning an identified outcome in a particular course may reflect an opportunity for the instructors in that course to reevaluate their curriculum and teaching methods. However, it might also signal the need for changes outside of that course, including additional support services for students such as tutoring or self-study material, or might be evidence that the students need further opportunities in subsequent courses to practice those skills. For example, an assessment project on students' research skills in a first-year legal writing course might produce evidence that students achieve only a level of emerging competence in this skill. Faculty teaching the course should consider these results as evidence of the need for additional instruction or in-class exercises on legal research in the course. However, faculty should also consider that these results demonstrate that students cannot achieve competence in legal research in a single year, but rather need to practice and develop these skills in upper-level writing courses, clinics, and externships, and that those courses need to emphasize research skills. The results might also provide support for additional budgeting from the administration for additional student support services in the library to assist students with their research skills as they are applied. Contributions to assessment planning and execution should be rewarded,⁵² and improvements in student learning should be celebrated by the entire program or institution.

Costs and limited resources may stall assessment as well, so strategies to measure outcomes efficiently and cost effectively are necessary.⁵³ An institution might have dozens of identified student learning outcomes, and the nature of a first-year legal writing course is that many of them are at least introduced at some point in the year. "Assessment is important, but it is not all that faculty do."⁵⁴ It would be impracticable to assess every student learning outcome in a legal writing course each year. "It is better to develop a realistic plan that takes foreseeable constraints into account than to try to do too much . . . [and] result in the trivialization or abandonment of assessment

51. ALLEN, *supra* note 14, at 15-16.

52. *Id.*

53. See Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, CHRON. HIGHER EDUC. (Jan. 10, 2010), <http://chronicle.com/article/law-schools-resist-proposal-to/63494> (noting the possibility of expense increases associated with "additional staff members to collect data and develop testing metrics").

54. ALLEN, *supra* note 14, at 10.

efforts.”⁵⁵ Therefore, an educator may pick just one or two outcomes to assess each year, or even on alternate years. To start, faculty should pick outcomes that are educationally important and interesting, are easily measurable, and that the faculty is willing to act upon.⁵⁶ Mary J. Allen suggests that “[a] good way to begin is by assessing one or two objectives that faculty are fairly confident their students are mastering. Results that confirm faculty beliefs will be good news and will help the department begin their assessment program by demonstrating some important successes.”⁵⁷

Professors can embed the data collection process into the course so that there is little extra effort involved in this step.⁵⁸ Embedded assessment is the analysis of student work that is part of regular course work but used for overall program assessment. For example, quizzes or multiple choice exams provide data on the substance being tested, and questions relating to the identified outcomes can be extracted to determine student learning related to particular skills. Grading rubrics for written assignments or oral presentations can serve dual purposes as devices to provide feedback to students as well as to capture data for course assessment purposes. Faculty must only retain copies of the assessment rubrics for later compilation. If an assignment does not have a grading rubric, a professor can develop an assessment rubric, noting each student’s achievement level of defined skills. By identifying the outcome being assessed and defining the various competency levels, the professor can keep track of how many students reach each level of competency.

In terms of making assessment practical, educators should use small samples if a large amount of material would be overly burdensome. It might be ideal to review one hundred student memoranda with a uniform rubric to determine how many students were able to master the development of a synthesized rule at a level of “excellence,” “competence,” “emerging competence,” and “not competent.” However, if the thought of reviewing one hundred memoranda makes an educator abandon the idea all together, then she can review just ten memoranda selected at random.

Depending on the support an institution provides to faculty working on assessment, a student research assistant is helpful to

55. *Id.*

56. *Id.* at 11.

57. *Id.* at 56.

58. *Id.* at 13–14.

compile data. For example, a student research assistant can count how many students got a certain question on a quiz correct, partially correct, or wrong. Faculty should also receive credit for service to the school for their assessment efforts, and possibly be relieved of another faculty committee assignment to engage in the process, thus making the time commitment to assessment more practical.⁵⁹

Finally, technical experience in assessment is not necessary to create and implement a valuable assessment project. Many legal educators who are charged with creating and implementing assessments in their classes might not have the technical expertise to perform wholly scientific assessment projects, and the costs involved in hiring a staff with this experience may be prohibitive. Validity and reliability should be intentional goals in assessment because biased conclusions are not valuable.⁶⁰ However, no testing process is perfect. While assessment should not be “sloppy or deliberately imprecise,” unlike student assessment or grading, assessment done to form broad conclusions regarding student learning may be valuable even if imperfect because “[d]ata are aggregated across students, and measurement errors due to measurement imprecision cancel out unless there is a systematic bias to overestimate or underestimate achievement.”⁶¹ Accordingly, using sufficiently large random samples and ensuring anonymity when reviewing student work are important.

Furthermore, triangulation of evidence gathered from direct assessment with evidence gathered from indirect assessment should be used to confirm conclusions regarding results. That is, where direct evidence demonstrates student learning of a certain outcome, evidence from student, alumni, or employer surveys that also support this conclusion will strengthen a decision to maintain the status quo regarding teaching methods and curriculum. Particularly when an assessment is done with a small sample or when some other variable may interfere with the validity or reliability of the results, major

59. Barbara Wright, Lecture on Administrators' Role in Assessment of Student Learning (Sept. 24, 2009).

60. ALLEN, *supra* note 14, at 62-64 (explaining that an assessment tool is valid when it assesses the outcome it is designed to assess and that assessment design is reliable when the measuring procedure yields the same results on repeated trials).

61. *Id.* at 12.

changes to pedagogy or curriculum should be made only where supported by evidence from multiple methods of assessment.⁶²

V. CLOSING THE LOOP

Reflection on results to affirm the status quo or determine the need for change is often referred to as “clos[ing] the loop.”⁶³ The process is the goal of assessment, with the hope that faculty will act upon assessment results to refine teaching methods and make curricular decisions based on evidence of student learning rather than professorial preferences and subjective perceptions. Accordingly, neither the ABA’s proposed standards nor any of the regional accreditors set any mandatory minimum standards for student learning. For example, there are no set standards for what percentage correct on a citation quiz or level of competency in oral advocacy skills is acceptable in all first-year legal writing courses. Instead, the standard of competency for each student learning outcome is somewhat arbitrary and left to the individual institution to determine based on its mission and goals.⁶⁴

As discussed above, assessment results do not necessarily reflect on the faculty teaching the course.⁶⁵ Therefore, when assessment results suggest the need for change, consideration should be given to adjustments outside the class in which the outcome was assessed. Assignments and in-class teaching methods should be reconsidered, but the law school should also consider its curriculum, including addressing whether to require additional courses to provide students the opportunity to further practice and develop the skill before graduation, or change prerequisites so that students enter the course with a better foundation for learning.⁶⁶ Student support services might also be part of the solution when data suggests the need

62. See STUCKEY, *supra* note 8, at 190; Munro, *supra* note 7, at 238 (“A valid, reliable, and fair picture of the student’s ability is much more likely to exist if the measures are done several times using different modes of evaluation.”).

63. ALLEN, *supra* note 14, at 11.

64. ABA Draft Standard 302(a) provides some general parameters for developing student learning outcomes but gives no minimum threshold regarding whether a law school should expect every law student to master every outcome by graduation, nor what level of competence is appropriate for an entry-level practitioner. *Id.* at 42–46; ABA Draft Standards, *supra* note 4, at 19. “Faculty generally set their own standards when they do program assessment. The standards allow them to decide if assessment results are satisfactory or if they suggest a problem that requires their attention.” ALLEN, *supra* note 14, at 158.

65. See ALLEN, *supra* note 14, at 15–16.

66. Allen, *supra* note 44.

for change, such as tutoring services, online or self-study material, or improved student advising. Faculty support such as workshops, teaching assistants, or smaller class sizes may also lead to better learning by the students.⁶⁷

A law school should periodically reevaluate its identified student learning outcomes to ensure those outcomes align with the mission of the school. Moreover, after assessment, reflection, and action, the assessment project itself should be examined and refined if necessary.⁶⁸ Even if the project design is changed, the same outcomes should be assessed over several semesters or years to verify that the status quo continues to work or that appropriate adjustments were made based on the reactions to the previous assessment.

VI. ASSESSMENT IN A LEGAL WRITING COURSE

Direct evidence of student learning is regularly produced in first-year legal writing courses. Therefore, it is a logical place to gather and analyze data to measure identified student learning outcomes and the overall effectiveness of a legal writing program. Indirect assessment of a legal writing program, such as peer evaluations, can provide valuable information of a legal writing program's effectiveness.⁶⁹ Similarly, student or alumni interviews or surveys may

67. *Id.*

68. ALLEN, *supra* note 14, at 11 ("Faculty should think of each assessment study as a pilot project and examine the study itself. The assessment plan should not be set in concrete. If faculty find flaws in an assessment plan, they should change it.").

69. Peer evaluations are currently the most publicized means to evaluate legal writing programs, though not necessarily the most accurate. See *USNWR's Methodology for Ranking Legal Writing Programs—Your Comments Welcomed*, LEGAL WRITING PROF. BLOG (Apr. 23, 2009), <http://lawprofessors.typepad.com/legalwriting/2009/04/usnwrs-methodology-for-ranking-legal-writing-programs-your-comments-welcomed.html>.

Here is the criteria, copied from the password-protected USNWR website, for ranking legal writing programs.

These specialty rankings are based solely on votes by legal educators, who nominated up to 15 schools in each field. Legal educators chosen were a selection of those listed in the Association of American Law Schools Directory of Law Teachers 2007-2008 as currently teaching in that field. In the case of clinical and legal writing, the nominations were made by directors or members of the clinical and legal writing programs at each law school. Those programs that received the most top 15 nominations appear in descending order.

Id.; see also Comment to *USNWR's Methodology for Ranking Legal Writing Programs—Your Comments Welcomed*, LEGAL WRITING PROF. BLOG (Apr. 23, 2009, 7:09 pm), <http://lawprofessors.typepad.com/legalwriting/2009/04/usnwrs-methodology-for-ranking-legal-writing-programs-your-comments-welcomed.html> (noting that unlike the USNWR overall rankings of law schools, "[t]he legal writing rankings, however, take into account only one factor—the opin-

report on student's or alumni's perceived abilities to research and prepare legal documents or advocate orally. Post-graduation employer surveys can provide data on alumni's ability to perform these skills from an employer's perspective.⁷⁰ Focus groups and interviews with these contingencies can also provide valuable information regarding the effectiveness of a legal writing program. But only data comprised of actual student work product provides the direct evidence of student learning. Therefore, it should be part of the assessment of a legal writing program. The assessment results can then be used to make informed decisions about curriculum and pedagogy and to improve student learning and the overall effectiveness of a legal writing course. Furthermore, with evidence of the level of students' learning in a first-year legal writing course, a law school can more accurately map the overall curriculum of legal education, identifying student learning outcomes in need of further development and practice to achieve competence by graduation.

The process of planning for assessment is itself important. An educator's awareness of the educational objectives in a course, as aligned with the mission of the law school, will deliberately focus the educator's attention toward reaching those student learning goals. Accordingly, the first step in assessment planning for a law school is to identify the institution's student learning outcomes, or what the institution expects its students to learn by graduation.⁷¹ The law school must then identify where in the law school's curriculum students are introduced to each outcome, where it is developed or practiced, and where they are expected to achieve mastery. Not every student will master every institutional student learning outcome by the time of graduation, but this process of curriculum

ions of a small group of people, assessing their friends and familiars. . . . They do not sit in on classes. They do not review student work. They do not know the kinds of experience the faculty members (outside the 'famous' ones) bring to the table. They do not count the number of assignments or page counts, the number of credits, or the amount of time spent in conference. It is obvious why they don't—they can't. But *those* are the variables that seem meaningful in the assessment of a legal writing program. It is not the availability of a 'name,' but the skills, interest, and achievement of the teachers, and the work they do speaking in the classroom and commenting on the papers. Without those factors being considered, the rankings are, in essence, a popularity contest.”)

70. See Munro, *supra* note 7, at 245 (outlining various techniques for institutional assessment).

71. Identifying methods to determine learning outcomes for an institution is outside the scope of this Article. For an excellent overview of this process, see *id.* at 232–33. See also Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 J. LEGAL WRITING INST. 313 (2010).

mapping is critical to see where skills are being taught.⁷² Reaching a law school's goal of preparing students to be practicing members of the Bar upon graduation should be a target of every course throughout the curriculum. Faculty involvement in this process of identifying the learning outcomes is essential.

A legal writing course can then be extracted from the larger curriculum, and course goals can be aligned with the law school's curriculum. Some of the identified student learning outcomes for a first-year legal writing course are introduced only in the first semester, some are introduced only in the second semester, and some are practiced and developed throughout the year. Few (if any) are mastered to the level of excellence in just one year.

Once the educators have identified which of the institution's learning outcomes the first-year legal writing course teaches, consideration should be given to what class activities and assignments are directed at teaching those skills. In-class lectures, discussions, and exercises, as well as independent reading and other assignments, can be utilized. While this process might seem intuitive, faculty must deliberately focus on identifying the teaching tools appropriate for outcomes; this will be useful when the faculty later reflect on assessment results and consider whether refinement of these teaching methods is necessary. The next step is to identify how individual student learning is assessed for each outcome. Assessment of students' learning of each skill may be accomplished through various graded memoranda, briefs, outlines, and professional letters throughout the semester, as well as quizzes and oral presentations.

The final step is a deliberate process for reflection on the data, viewed holistically, to determine whether students achieved the previously identified learning goals. This step requires that faculty make sense of the collected data and "summarize it in a way that provides feedback on student mastery of learning objectives or that responds to questions that faculty want answered."⁷³ This process takes time because faculty must define what level of student performance would demonstrate excellence, competence, emerging competence, and lack of competence for each learning outcome, and then analyze the data to determine how many students achieve each level. To demonstrate this process of gathering and analyzing direct evidence of student outcomes, I have summarized two assessment

72. See ALLEN, *supra* note 14, at 42-46.

73. *Id.* at 131.

projects being conducted at WSU Law, where legal writing faculty have compiled data to formulate meaningful insights into student learning of legal citations and oral advocacy in a first-year legal writing course.

VII. A CASE STUDY: WSU COLLEGE OF LAW'S APPROACH TO ASSESSING STUDENT LEARNING OF CITATIONS AND ORAL ADVOCACY IN A FIRST-YEAR LEGAL WRITING COURSE

The faculty at WSU drafted an Educational Purposes Outline in 2003 that identified and defined the institution's student learning outcomes, including the areas in the curriculum that provided evidence of student learning for each outcome. A curriculum mapping exercise⁷⁴ for the law school's curriculum revealed that some of the institutional learning outcomes introduced in the first-year legal writing course were never practiced or mastered by students who chose not to take certain upper-level courses or participate in certain programs. Accordingly, assessment was essential to ensure student learning of the relevant skills.

The faculty chose to assess two institutional learning outcomes—legal citations and oral advocacy—that were taught in the first-year legal writing course. Each was covered in class through lectures and exercises and practiced independently through various assignments. In addition, each learning outcome had a discrete graded assignment that assessed student achievement in each outcome; thus an embedded assessment would be possible. Furthermore, these are particularly important learning outcomes to assess because they are not tested on the California Bar exam, and depending on what upper-level courses a student takes, some students will have limited opportunity to practice or develop these skills beyond the first-year legal writing course.

The two assessment projects that are summarized below are intended solely as examples of project designs that produced valuable results at WSU Law and are not meant to be blueprints for perfect assessment strategies. The hope is that a dialogue of shared experiences will continue so that the process becomes even more efficient and valuable.

74. See Duncan, *supra* note 1, at 627-28 (2010) (providing an overview of curriculum mapping).

A. Assessment of Student Learning of ALWD Legal Citation Format

WSU's Educational Purposes Outline identifies legal citations as one of the outcomes that it expects students to master at the competency level by graduation. ALWD legal citation format is introduced and developed in the first-year legal writing course and covers broad categories of material including citation format for cases (full and short citation format), statutes and secondary material, and the use of signals and the options for citation placement. These categories of citations are tested on a citation quiz that all students take during their first semester of law school in the legal writing course.⁷⁵

To understand the course's effectiveness in teaching legal citations, the faculty needed to consider more than just the final grades on the quiz. In the fall of 2008, the faculty identified five main components of legal citations that were taught during the course: full case citations, short case citations, statutory citations, legal periodical citations, and the use of signals. The faculty then identified five questions from the quiz that most accurately tested each component of citations. For example, one question tested whether a student could properly draft a short case citation, while another tested whether a student could properly apply the rules related to signals. Copies of all student quizzes were retained by the faculty following grading, and at the conclusion of the school year, professors tallied the number of correct, partially correct, and completely incorrect answers to each of these questions.⁷⁶

Student answers to each question were then documented and placed under one of three categories: competent (completely correct answer); emerging competence (partially correct answer); and not competent (completely incorrect answer). A graph was created for each of the five questions on the citation quiz.

Overall, the results indicated that students learned all of the identified skills of legal citation at acceptable levels. There was no skill where a majority of students were unable to demonstrate at least emerging competence. However, professors identified the drafting of short case citations and the use of signals as the weakest of the

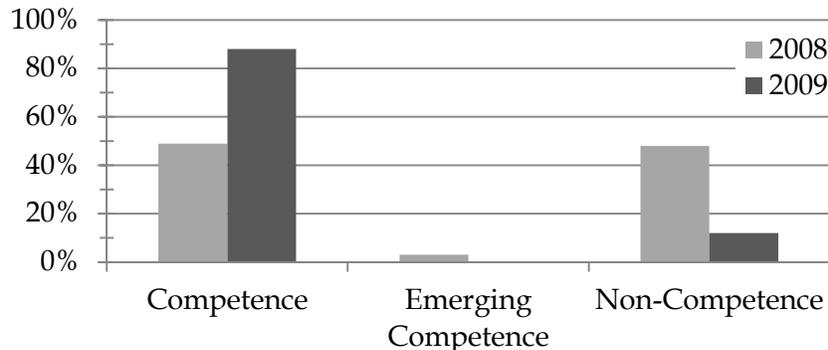
75. Students' mastery of legal citations is also measured by assigning a certain number of points on each memorandum to "writing mechanics" within the grading rubric used to grade memos and briefs. Analysis of the students' abilities to cite properly in their papers could provide data for another assessment project on this same skill.

76. In 2008, this author tallied results for 100 first year students. Alternatively, in the event of time or resource restraints, a small random sample of quizzes could be reviewed.

tested components of legal citations. For example, in 2008, while 48% of students demonstrated competence in drafting a short citation, an almost equal number of students demonstrated non-competence (50%). The results also indicated that while a majority of students demonstrated emerging competence in the use of signals, only 10% of students demonstrated competence, and 15% demonstrated non-competence. Reflecting upon these results, in 2009 the faculty included some additional time in class to review legal citations and also included an additional in-class exercise where students were able to practice and review each of the citation skills.

Professors repeated the assessment project in the fall of 2009 to evaluate whether student learning improved. Graphs and written analysis were created with the 2009 results as well as comparison graphs of the number and percentage of students who demonstrated the competence levels of each skill from 2008 and 2009. The results showed that student learning increased in citation skills. For example, in 2009, 88% of the students demonstrated competence in drafting a short case citation (48% in 2008) and only 12% demonstrated non-competence (50% in 2008).

FIGURE 1: Assessment Results for Short Case Citations, 2008–2009

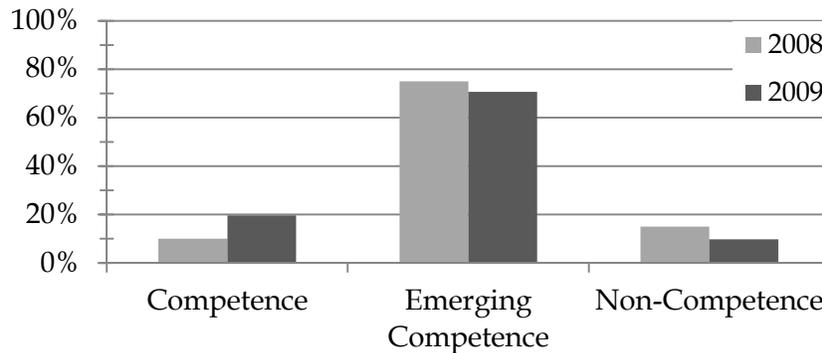


Graphs depicting the 2008 (light gray) and 2009 (dark gray) results for each of the five legal citation skills were created. As an example, this graph demonstrates the change in the results of the short case citation assessment between 2008 and 2009.

Student learning increased in the use of signals as well. In 2009, 20% of students demonstrated competence (10% in 2008), 70%

demonstrated emerging competence (75% in 2008), and only 10% demonstrated non-competence (15% in 2008).

FIGURE 2: Assessment Results for Signal Usage, 2008–2009



Graphs depicting the 2008 (light gray) and 2009 (dark gray) results for each of the five legal citation skills were created. As an example, this graph demonstrates the change in the results of the assessment of signals between 2008 and 2009.

The faculty is pleased with the incremental improvement in legal citations but strives for higher levels of competence by their students. The additional in-class exercises appeared to be beneficial to students, and therefore for 2010, the faculty added several practice exercises for students. The faculty also added an optional practice quiz and review session to the curriculum. This consists of a one-hour workshop, open to all students, approximately one week before the citation quiz. Students are given a practice citation quiz for thirty minutes that covers each of the skills tested on the citation quiz and then faculty review the quiz with the students as a group. The assessment project was repeated again after the citation quiz in the fall of 2010.

B. Assessment of Student Learning of Oral Advocacy

Oral advocacy is another student learning outcome that is identified on WSU's Educational Purposes Outline and is introduced to students during the spring semester of the first-year legal writing course. Several classes are dedicated to discussing the correct structure of an oral argument and answering questions from judges. Students practice oral arguments in class. At the conclusion of the course, all students participate in an internal moot court competition

where they present a nine-minute oral argument before a panel of three justices. In 2009, the same two professors graded all students' oral arguments.⁷⁷ As the professors graded each argument, they also completed an assessment rubric.⁷⁸ The rubric required the professors to identify the competency level of each student (excellence, competence, emerging competence, and not competent) in five skills: courtroom manner, application of law and facts, persuasiveness of argument, ability to answer questions effectively, and organization of presentation.

Unlike a citation quiz where there is a clear correct, partially correct, or completely incorrect answer, assessment of students' oral arguments necessarily entails some measure of subjective opinion. In an effort to account for this, the faculty developed a uniform set of guidelines for the assessment process.⁷⁹ The factors that the professors considered in assessing a particular skill were defined in advance. For example, professors considered the following factors in evaluating skill #4, the ability to answer questions effectively:

- Did the student understand questions and their relevance?
- Did the student answer questions directly and clearly (or did the student evade questions)?
- Was the student able to use the judges' questions to her advantage?
- Did the student transition back to her argument after each question?

The specific level of performance that would satisfy each particular competency level was also defined in advance.⁸⁰ For example, professors defined the competency levels for skill #4 as follows:

Excellence: A student who demonstrates "excellence" in answering questions is one who clearly understands the relevance of the questions and directly responds to each. This student

77. Even using a rubric, this type of content analysis necessarily requires some subjective judgments. To confirm the inter-rater reliability, the two professors worked independently but compared notes and resolved discrepancies. The professors kept track of how often they disagreed on a score on the rubric, and it was infrequently more than two points. This process provided a valuable discussion on student achievement. See ALLEN, *supra* note 14, at 147-48.

78. The assessment rubric for the oral argument assessment project was developed by Marc C. McAllister, the former Director of Professional Skills at WSU.

79. These guidelines were drafted by Marc C. McAllister, the former Director of Professional Skills at WSU.

80. The definitions of the competency levels for the oral argument assessment project were developed by Marc C. McAllister, the former Director of Professional Skills at WSU.

does not evade the court's concerns and is candid in every instance. This student often uses legal authority to support her answers and uses the question as an opportunity to explain the law to her advantage. This student answers the questions thoroughly and appropriately and promptly transitions back to her argument.

Competence: A student who demonstrates "competence" in answering questions may directly respond to questions from the court most of the time, but may not be candid with the court, thus requiring the court to follow up until it obtains the information sought. This student may not effectively use the questions to her advantage, and may have difficulty transitioning back to her argument in every instance.

Emerging Competence: A student who demonstrates "emerging competence" in answering questions is one who does not directly answer questions and persistently evades the concerns of the court. This student may not understand the relevance of the questions asked and does not use legal authority to support her answers. This student may also have difficulty transitioning back to her argument.

Not Competent: A student who is "not competent" in answering questions is one who either consistently does not understand the questions asked or is otherwise unable to respond to the questions. This student is evasive and makes no attempt to use the questions to her advantage. This student is awkward in transitioning between answering questions and her argument.

As professors observed the student's oral argument and assigned a grade, they also circled the competency level the student demonstrated in each of the five skills. The assessment rubrics were then compiled to determine how many students demonstrated each level of competence. The results from each skill were graphed to provide a comprehensive overview of the level of competence of each skill. Each professor had a separate graph depicting the results obtained from their respective assessment sheets as well as graphs depicting the joint results. The graphs were also accompanied by a written analysis that set forth the number and percentage of students who attained each respective level of competency.

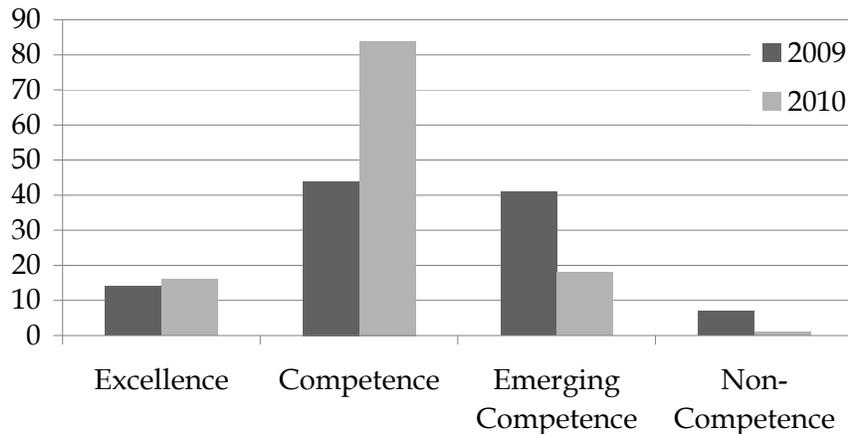
The analysis of the oral advocacy assessment project in 2009 indicated that the vast majority of students were able to demonstrate either emerging competence or competence in each of the five skills.

There were few students who fell into the not competent or excellence categories. The faculty was pleased with these overall results and decided to maintain the methodology for teaching and practicing oral advocacy.

In an effort to improve the already strong program, in 2010 the faculty conducted an oral argument workshop for all of the first-year students before the internal moot court competition. At the workshop, the faculty distributed the rubric used to evaluate the arguments and discussed general tips and specific examples of best practices for each skill, including anecdotal observations from the 2009 internal moot court competition.

The assessment project was conducted again during the 2010 internal moot court competition and the results indicated an overall increase in the percentage of students demonstrating competence in every skill. Fewer students demonstrated only emerging or non-competence in many skills, and the results also indicated a slight increase in the number of students demonstrating excellence. Graphs and written analysis were created with the 2010 results as well as ones showing a comparison of the number and percentage of student who demonstrated the competence levels of each skill from 2009 and 2010.

FIGURE 3: Number of Students Answering Questions Effectively, 2009–2010



Graphs depicting the 2009 (dark gray) and 2010 (light gray) results for each of the five legal citation skills were created. This graph shows the number of students who demonstrated the ability to an-

swer questions effectively, at each competency level. As an example, this graph demonstrates the change between 2009 and 2010.

At WSU, the faculty is satisfied with the competency levels that were demonstrated in oral advocacy, confirming the effectiveness of the current curriculum and pedagogy for these skills in the first-year legal writing course. The faculty plans to continue the assessment projects on alternating years to monitor and confirm the competence demonstrated by students in the area of oral advocacy.

C. The Future of Assessment of Student Learning Outcomes in the First-Year Legal Writing Course at WSU

Each assessment project took some time to create and implement since the competency levels had to be defined, and an appropriate methodology for compiling the data had to be established. Overall, however, the projects were efficient, cost effective, and provided valuable information regarding the effectiveness of the legal writing course in achieving student learning of these skills. They are sustainable now with minimal effort.

The faculty is now developing indirect assessment projects to supplement the results of these direct assessments with evidence from different perspectives. For example, the faculty has developed a survey of employers to evaluate their perception of WSU graduates' skills in citation and oral advocacy as well as other institutional learning outcomes. The faculty is also working to develop assessment projects to assess other learning outcomes in the first-year legal writing course, including writing mechanics and legal research. The goal is that a sustainable schedule of assessment projects evaluating all of the learning outcomes in the first-year legal writing course will be in place within a few years.

CONCLUSION

The ABA is aligning its law school accreditation standards with a model based on assessment of student learning outcomes that has long been employed in other educational programs and is justified in legal education. These new accreditation standards will likely ignite assessment of student learning outcomes in law schools, but the confidence that comes from making successful curricular and pedagogical decisions based on evidence of student learning is empowering and will sustain assessment in legal education. By sharing

experiences in designing and implementing assessment projects, legal educators can make this valuable process efficient and fearless, if not perfect.