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Assessment and Legal Education: What Is Assessment, and What the *# Does It Have to Do with the Challenges Facing Legal Education?

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Assessment and Legal Education: What Is Assessment, and What the *# Does It Have to Do with the Challenges Facing Legal Education?

Ruth Jones*

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ABSTRACT

Legal education is changing. In response to critiques that law schools do not adequately prepare students for the practice of law, law schools are reconsidering the entire law school curriculum. Law schools are seeking the answers to questions, such as: What should we teach law students? Which teaching methods best ensure student learning of the substantive law, doctrines, skills, and values that are necessary to the successful practice of law? These are not new questions, but now law schools must find answers during a time of crisis.

In this Article, Professor Ruth Jones discusses how assessment, the systematic collection, review, and use of information about educational programs undertaken for the purpose of improving student learning and development, can be employed to assist law schools in developing programs and courses to respond to changes within the profession. During this Article, Professor Jones describes the history of assessment, why it is being adopted by educational accreditation groups, and how law schools can employ assessment not only in response to accreditation demands but to better analyze student learning, courses, and programs.

I. INTRODUCTION

Legal education faces a number of daunting challenges, including: reduced applications, high tuition resulting in high student debt, lack of employment for graduates, and reduced fiscal resources. However, the critique that will potentially have the most impact on legal education is the assertion that law schools are not properly educating students for the practice of law.¹ In meeting these and other challenges, law schools will need to determine the programs and teaching methods that are the most effective for preparing students for the practice of law. Legal education has historically evolved slowly, rarely moving

1. Ethan Bronner, *A Call for Drastic Changes in Educating Lawyers*, N.Y. TIMES, Feb. 10, 2013, at A11 [hereinafter *Drastic Changes*]; Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012, at SR10.

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far afield of the three-year, large-class Socratic method model of education.² But now law schools are being challenged to discern whether that model is still viable, whether it must be refined, or whether it is the time for a fundamental change in the manner that law schools prepare students for the legal profession.³ This reconsideration of legal education must take place quickly and during a time of crisis as many law schools struggle to survive.⁴

In the midst of these challenges, the Council of the American Bar Association (ABA), Section on Legal Education and Admissions to the Bar (the law school accrediting organization), has proposed changes to the accreditation standards that would require law schools to adopt assessment measures.⁵ These proposed changes have been perceived by some law school administrators and faculty as imposing unnecessary administrative and fiscal burdens on law schools,⁶ but employed properly, assessment can be a valuable tool for evaluating and reforming legal education.⁷ “Assessment is the systematic collection, review, and use of information about educational programs undertaken for the purpose of improving student learning and development.”⁸ It is a formal method of evaluation that encourages greater clarity in the educational process through the identification of learning objectives and communication of those objectives to students and institutional stakeholders.⁹ The focus on specific objectives also encourages a greater nexus between student learning, teaching methods, and student evaluation. For educational reform, it can help institutions identify the most effective programs and teaching methods for preparing students to become effective entry-level attorneys.¹⁰

2. See Christie A. Linskens Christie, *What Critiques Have Been Made of the Socratic Method in Legal Education? The Socratic Method in Legal Education: Uses, Abuses and Beyond*, 12 EUR. J.L. REFORM 340 (2010).

3. See *id.* at 347–50 (2010).

4. See *Drastic Changes*, *supra* note 1.

5. ABA, SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS REVIEW COMM., STUDENT LEARNING OUTCOMES SUBCOMM., CHAPTER 3: PROGRAM OF LEGAL EDUCATION, Standard 304 (drft. May 5, 2010) [hereinafter PROPOSED STANDARDS].

6. See Katherine Mangan, *Law Schools Resist Proposal to Assess Them Based on What Students Learn*, CHRON. OF HIGHER EDUC. (Jan. 10, 2010), <http://chronicle.com/article/Law-Schools-Resist-Proposal-to/63494/> (on file with the *McGeorge Law Review*).

7. THOMAS F. GUERNSY, ET. AL., STATEMENT BY NEW ENGLAND DEANS CONCERNING THE PROPOSED REVISION OF THE ABA STANDARDS REGARDING OUTCOME ASSESSMENT 3, available at <http://apps.americanbar.org/legaled/committees/Standards%20Review%20documents/Commnet%20-%20Outcome%20Assessment%20-%20New%20England%20Deans%20Statement.doc> (on file with the *McGeorge Law Review*); see also LORI SHAW, ET AL., OUTCOME ASSESSMENT ROCKS!! SHIFTING FROM AND INPUT TO AN OUTPUT APPROACH IN LEGAL EDUCATION 4–5, available at http://www.nyls.edu/user_files/1/3/4/30/58/1053/Shaw&Denning&Strickland&Walthall.pdf (on file with the *McGeorge Law Review*).

8. TRUDY W. BANTA & CATHERINE A. PALOMBA, ASSESSMENT ESSENTIALS: PLANNING, IMPLEMENTING, AND IMPROVING ASSESSMENT IN HIGHER EDUCATION 4 (1999).

9. See SHAW, *supra* note 7, at 4.

10. *Id.* at 4–5.

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In this Article, I will explain what assessment is and describe how it can be used to rethink legal education. After reviewing the promise that assessment holds for educational program planning, I will describe some of the impediments to its integration into legal education.

II. WHAT IS ASSESSMENT?

The term assessment, or outcomes-based education, is used to convey a variety of concepts and principles. It has been described as “a research model about instruction”¹¹ and a method for identifying the most effective teaching methods and program elements,¹² but essentially it is a process for employing systematically collected information to improve the learning experience of students.¹³

Institutions and faculty can use assessment to evaluate various levels of the educational process. Course assessment is employed to ensure that students meet the student learning objectives in a single course and to assist instructors with course planning.¹⁴ By integrating a formal process of evaluation of student learning, individual faculty can gain specific knowledge about what concepts the students have mastered and which teaching methods have proven to be the most effective. Faculty can use that knowledge both during the semester and in future course planning. Similarly, program assessment is useful to assure that the students meet learning objectives in multiple courses with cohesive program learning objectives, such as specialization programs and skills training.¹⁵ Institutional assessment focuses on the institutional effectiveness in its entirety, including curricular and co-curricular programs e.g., the success of a law school in preparing graduates for legal practice.¹⁶

The process of assessment has three on-going stages: identification of student learning objectives, collection of information, and application of information to institutional decision-making.¹⁷ These stages are applicable to individual courses, programs, and institutional assessment. Although assessment is a process, its greatest utility to educational reform is the different perspective it provides when

11. T. DARY ERWIN, *ASSESSING STUDENT LEARNING AND DEVELOPMENT: A GUIDE TO THE PRINCIPLES, GOALS, AND METHODS OF DETERMINING COLLEGE OUTCOMES* 154 (1991).

12. See BANTA & PALOMBA, *supra* note 8, at 3–4.

13. See *id.* at 4.

14. See STACI PROVEZIS, *REGIONAL ACCREDITATION AND STUDENT LEARNING OUTCOMES: MAPPING THE TERRITORY*, NAT’L INST. FOR LEARNING OUTCOMES ASSESSMENT 8–9 (2010), available at <http://www.learningoutcomeassessment.org/documents/provezis.pdf> (on file with the *McGeorge Law Review*).

15. See MARY E. HUBA & JANN E. FREED, *LEARNER-CENTERED ASSESSMENT ON COLLEGE CAMPUSES: SHIFTING THE FOCUS FROM TEACHING TO LEARNING* 16 (Allyn & Bacon 2000); BANTA & PALOMBA, *supra* note 8, at 5–6. See PROVEZIS, *supra* note 14, at 7.

16. See STACI PROVEZIS, *supra* note 14, at 7.

17. See *id.* at 10; ERWIN, *supra* note 11, at 154.

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examining legal education.¹⁸ Assessment views education through the prism of student learning.¹⁹ Student learning is the core mission of every law school, but evaluation of that mission is typically done indirectly through bar passage, placement, and other criteria. Assessment, on the other hand, requires that educators collect direct evidence of student learning and constantly strive to improve the educational experience for students.²⁰ The collection of direct evidence also permits educators to identify methods and programs that are working well, and to retain or expand successful initiatives.²¹ In considering the reform of legal education, educators must not only consider what needs to change, but what teaching methods and programs have been, and can continue to be, effective in educating students.²² This latter objective is even more important in the midst of calls for wholesale structural change.²³

A. The Elements of Assessment: Shifting the Emphasis from Educational Inputs to Outputs

Traditionally, educational quality has been measured by inputs, such as student and faculty credentials and physical facilities.²⁴ The inference was that institutions that met or exceeded expectations for inputs provided a quality educational experience for students. However, there has been increasing recognition from higher-education accreditation bodies, legislators responsible for state public institutions, and educators themselves that inputs are an insufficient measure of educational quality.²⁵ Increasingly, the focus has shifted to outputs, examining evidence of whether students, at the conclusion of the educational process, have met the learning objectives identified by the institution.²⁶

By focusing on outcomes, institutions are required to provide direct evidence that their educational program has resulted in student learning.²⁷ Evaluation of

18. See PETER T. EWELL, ASSESSMENT, ACCOUNTABILITY, AND IMPROVEMENT: REVISITING THE TENSION, NAT'L INST. FOR LEARNING OUTCOMES ASSESSMENT, 16–17 (2009), available at http://www.learningoutcomeassessment.org/documents/PeterEwell_005.pdf (on file with the *McGeorge Law Review*).

19. See Richard Johnstone et al., *Improving Criteria and Feedback in Student Assessment in Law*, 7 LEGAL EDUC. REV. 267, 269 (1996).

20. See Andrew P. Morriss, William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings*, 83 IND. L.J. 791, 820–21 (2008); Johnstone, *supra* note 19, at 271–72.

21. See SHAW, *supra* note 7, at 3.

22. See Christie, *supra* note 2, at 345–46 (discussing various criticisms of the Socratic method).

23. See CATHERINE L. CARPENTER, ET AL., REPORT OF THE OUTCOMES MEASURES COMMITTEE 8 (2008), available at http://www.albanylaw.edu/media/user/celt/outcome_measures_final_report.pdf (on file with the *McGeorge Law Review*).

24. *Id.* at 19.

25. See EWELL, *supra* note 18, at 9–14.

26. See PROVEZIS, *supra* note 14, at 14.

27. EWELL, *supra* note 18, at 4.

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direct evidence of student learning is an improvement in ascertaining educational quality, but an exclusive focus on results—that is, whether a sufficient number of students have mastered the learning objectives—can result in imprecise conclusions about educational attainment.²⁸ The purpose of assessment is to evaluate the impact of the educational process on students. To fully analyze the educational program, educators must examine both inputs and outcomes.²⁹ To properly identify whether students have learned during the educational process, institutions must examine students' level of skills upon entry and compare that to their achievement at the conclusion of the program.³⁰

An exclusive focus on outcomes does not prove whether, or to what degree, a student has learned during a course or program; it only reveals whether the students' learning has met a certain standard of achievement.³¹ This phenomenon is present in the use of outcomes assessment in elementary and secondary education.³² As a result of the federal No Child Left Behind Act and state initiatives, schools must meet testing performance standards.³³ Performance on standardized tests are used as outcomes measures; those schools meeting standards are rewarded with additional fiscal resources and bonuses to administrators, while administrators at schools failing to meet outcomes standards can be fired, and the state can assert more control over local schools.³⁴ However, for those schools with a higher percentage of students with lower academic achievement, failure to meet the outcome standards does not mean that students are not learning, only that they have not learned enough to meet the standard.³⁵ A comparison of outcomes between institutions does not always capture the progress of institutions where students present lower entering credentials and substantial progress has been made in student learning, but that progress has been insufficient to meet outcome goals.³⁶ This is a slightly different issue for law schools and other disciplines that set their own admissions standards. But the experience of elementary and secondary schools illustrates the

28. See Regina R. Umpstead & Elizabeth Kirby, *Reauthorization Revisited: Framing the Recommendations for the Elementary and Secondary Education Act's Reauthorization in Light of No Child Left Behind's Implementation Challenges*, 276 ED. LAW REP. 1 (2012).

29. See Pauline Collins, Toni Brackin, and Caroline Hart, *Rocky Rhetoric and Hard Reality: The Academic's Dilemma Surround Assessment*, 20 LEGAL EDUC. REV. 157, 191 (2010); CARPENTER, *supra* note 23, at 58.

30. See Collins, *supra* note 29, at 189.

31. See Christina Payne-Tsoupros, *No Child Left Behind: Disincentives to Focus Instruction on Students Above the Passing Threshold*, 39 J.L. & EDUC. 471, 485 (2010).

32. See *id.*

33. No Child Left Behind Act (NCLBA) of 2001, 20 U.S.C. 6301 et. seq; see also Payne-Tsoupros, *supra* note 31.

34. MARY E. HUBA & JANN E. FREED, LEARNER-CENTERED ASSESSMENT ON COLLEGE CAMPUSES: SHIFTING THE FOCUS FROM TEACHING TO LEARNING 17–18 (2000); Payne-Tsoupros, *supra* note 31, at 474.

35. See Payne-Tsoupros, *supra* note 31, at 494.

36. *Id.*

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necessity of constructing an assessment program that measures what students learned because of the program and not what they learned before entering the program. It is the only former assessment that provides insights into the efficacy of the educational program.³⁷

The experience of elementary and secondary education with outcomes assessment is a cautionary tale for legal education. An exclusive focus on outcomes does not provide a completely accurate appraisal of whether students are learning. A proper evaluation of educational achievement must examine both inputs, such as entering student credentials, as well as outcomes for appropriate evaluation of educational achievement.³⁸ Failing to meet relevant outcomes is unacceptable and may represent an educational experience that is fundamentally flawed, but that decision must be based on an accurate evaluation of the educational process.

B. The Purpose of Assessment: Accountability and Improvement

Assessment has been employed for two related and sometimes conflicting purposes: accountability and improvement.³⁹ When external groups, such as accrediting organizations, require institutions to employ assessment, its primary purpose is institutional accountability. In this instance, assessment is imposed upon, rather than initiated by, institutions.⁴⁰ Assessment for this purpose requires institutions to collect evidence to prove that they are meeting their program objectives and attaining sufficient educational quality.⁴¹ When assessment is conducted primarily to satisfy accreditation or other external requirements, it encourages schools to collect data to prove effectiveness, rather than to engage in a rigorous evaluation process.⁴² In the absence of any intrinsic, internal value for the information collected for accreditation, the assessment process is a burdensome, expensive activity for an institution.⁴³ Legal educators have

37. Regina R. Upstead & Elizabeth Kirby, *Reauthorization Revisited: Framing the Recommendations for the Elementary and Secondary Education Act's Reauthorization in Light of No Child Left Behind's Implementation Challenges*, 276 ED. LAW REP. 1 (2012). The use of high stakes testing has resulted in allegations of widespread cheating in various cities. Motoko Rich, *Scandal in Atlanta Reignites Debate Over Test's Role*, N.Y. TIMES, April 2, 2013, at A13. Another critique of outcomes assessment at the elementary and secondary level is that the performance tests do not adequately test more advanced cognitive skills and that the pressure to focus on those skills tested has left teachers with insufficient time to teach those necessary cognitive skills.

38. See Collins, *supra* note 29, at 189–91.

39. Trudy W. Banta, *Can Assessment for Accountability Complement Assessment for Improvement?*, PEER REVIEW 9 (2007), available at http://www.aacu.org/peerreview/pr-sp07/pr-sp07_analysis2.cfm (on file with the *McGeorge Law Review*).

40. See PROVEZIS, *supra* note 14, at 9.

41. *Id.*

42. *Id.*

43. See MANGAN, *supra* note 6.

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consistently expressed concerns about the cost and the process of using outcomes assessment during accreditation.⁴⁴

The other purpose of assessment is improvement.⁴⁵ When outcomes assessment is used for improvement, it becomes an integral component of institutional decision-making.⁴⁶ In contrast to assessment for accountability, assessment for improvement is employed to identify ineffective programs so that those programs can be improved or eliminated.⁴⁷

There are law schools that have adopted assessment for improvement, believing that it is a valuable method for institutional decision-making.⁴⁸ Higher education has a longer history of educators employing assessment to improve the educational process, but even leaders of the higher education assessment movement have expressed concern that assessment for accountability is perhaps inconsistent with assessment for improvement.⁴⁹ Trudy W. Banta, a leader in the higher education assessment movement, writes about using standardized testing for assessment:

Just as weighing a pig will not make it fatter, spending millions to test college students is not likely to help them learn more. Equally important, faculty who are just beginning to use assessment aimed at improvement may ask why they should continue to do so if the quality of their institution is going to be judged on the basis of standardized test scores achieved by a small sample of students.⁵⁰

As discussed in Section II.D, the ABA proposal seeks to employ assessment for accountability and improvement,⁵¹ but in its implementation the ABA must ensure that using assessment for accountability does not compromise its use for improvement.⁵² As described in this Article, it is assessment for improvement that is most useful for legal education reform.⁵³

44. GUERNSY, *supra* note 7 (supporting the principle of outcome assessment, but discussing concerns about use of outcomes assessment for accreditation).

45. Banta, *supra* note 39.

46. ERWIN, *supra* note 1, at 153.

47. Ewell, *supra* note 18, at 7.

48. Brenda D. Gibson, *Why Many Law Schools are Better Prepared than Anticipated for the Proposed ABA Standards* 302–05, 43 SYLLABUS (discussing NCCU School of Law’s adoption of assessment).

49. Banta, *supra* note 39, at 9–12.

50. *Id.* at 10.

51. See PROPOSED STANDARDS, *supra* note 5, at Standard 304–06.

52. *Id.*

53. Banta, *supra* note 39, at 9.

C. *Incorporating Assessment into Legal Education*

As the result of several forces, assessment has been increasingly integrated into higher education.⁵⁴ Professors at various colleges and universities have embraced assessment as a method of improving student performance.⁵⁵ But the most critical impetus for assessment has come from external sources: legislators and accrediting organizations.⁵⁶ Legislators have employed assessment measures to ensure educational quality and increase institutional accountability for public funding for education. Every higher education regional accreditation group has adopted criteria that require institutions to have learning objectives that are “defined, articulated, assessed, and used to guide institutional improvement.”⁵⁷ The higher education accreditation requirements involve all divisions of the university, thus law schools that are a part of a university have been required to adopt assessment measures to satisfy this accreditation process.⁵⁸ Outside of external requirements for assessment, some law schools and individual faculty members have adopted practices consistent with assessment.⁵⁹ It was against this backdrop that the ABA considered the inclusion of outcomes assessment into the law school accreditation process.⁶⁰

D. *The ABA Assessment Proposal*

The proposal to incorporate assessment into the accreditation standards was the result of a recommendation by the ABA Outcome Measures Committee, which was charged with “determin[ing] whether and how [to] . . . use output measures, other than bar passage and job placement, in the accreditation process.”⁶¹ In considering whether assessment could strengthen the law school accreditation process, the committee reviewed literature from other disciplines, conducted its own research, and relied heavily on two reports critiquing legal education, *Educating Lawyers: Preparation for the Profession of Law*⁶² and *Best Practices for Legal Education*.⁶³ In recommending the inclusion of assessment into the law school accreditation process, the committee’s report identified several potential ultimate student learning outcomes for law schools, such as

54. EWELL, *supra* note 18, at 5; HUBA & FREED, *supra* note 34, at 17.

55. HUBA & FREED, *supra* note 34, at 17.

56. *See* EWELL, *supra* note 18, at 9–14.

57. PROVEZIS, *supra* note 14, at 7.

58. *See* EWELL, *supra* note 18, at 12–13.

59. *See* ERWIN, *supra* note 1, at 153.

60. CARPENTER, *supra* note 23, at 16.

61. PROPOSED STANDARDS, *supra* note 5, at Standard 302.

62. WILLIAM M. SULLIVAN, ET. AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

63. ABA SECTION LEGAL EDUC. & ADMISSIONS TO THE BAR, *REPORT OF THE OUTCOME MEASURES COMMITTEE 6* (July 2008).

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preparing students to become legal professionals by ensuring that they possess the necessary cognitive knowledge, skills, and values.⁶⁴ In addition to providing the rationale for a more outcomes-based accreditation process, the committee's report identified current critiques about legal education that could be addressed by shifting to an outcomes-based legal educational model.⁶⁵ The committee's report focused on three aspects of legal education that could be improved by outcomes assessment: the use of formative assessment, the evaluation of skills and values in addition to cognitive skills and substantive knowledge, and the development of "a cohesive and unified set of teaching goals, rather than rel[iance] on *ad hoc* goal setting by individual faculty."⁶⁶

The ABA committee incorporated those considerations into the proposed changes to the accreditation standards.⁶⁷ The standards under consideration would require institutions to adopt, "identify, define, and disseminate . . . learning outcomes" for its program of legal education. Schools would also have to demonstrate the effectiveness of the educational program in meeting those objectives by qualitative and/or quantitative evidence of student competency in learning outcomes and periodic review and use of that evidence to improve curriculum and its delivery with the goal that all students attain competence in the learning objectives.

The requirements that law schools demonstrate the effectiveness of the educational program and the evidence of student competency in curricular planning incorporates both accountability and improvement purposes into the ABA proposal.⁶⁸

The other proposed change in the accreditation standards requires law schools to adopt formative and summative assessment measures as a means of ensuring that students receive meaningful feedback.⁶⁹

The consideration of the ABA proposed standards has caused many law schools to start the process of adopting assessment measures, but if the primary motivation for the use of assessment remains external accreditation, the process will be of limited value to legal education reform.⁷⁰ If assessment is employed primarily to meet accreditation requirements, it will have far less utility for legal education reform, but if it is fully integrated into institutional planning, it can be a valuable method to assist legal educators in rethinking legal education.⁷¹ By clearly identifying course and program learning objectives, law schools can provide more transparency to students and external stakeholders about both

64. *Id.* at 7.

65. *Id.* at 3–4.

66. *Id.* at 6.

67. PROPOSED STANDARDS, *supra* note 5, at Standard 302.

68. *Id.* at Standard 304–06.

69. *Id.* at Standard 304.

70. See EWELL, *supra* note 18, at 8.

71. See Banta, *supra* note 39, at 12.

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successful programs and those that require improvement.⁷² Assessment also encourages experimentation by requiring new initiatives to undergo formal and systemic evaluation and by reframing the discussion and questions about legal education in a way that challenges the traditions and presumptions that are the underpinning of much of legal education.⁷³

III. THE ELEMENTS OF ASSESSMENT FOR IMPROVEMENT

A. *Learning Objectives*

Learning objectives are the foundation of the assessment process.⁷⁴ They identify what students should be able to do upon course or program completion and provide transparency of the purposes of the educational program to students, instructors, accreditation organizations, and external stakeholders (such as alumni and community partners).⁷⁵ Learning objectives enable faculty to view courses and the curriculum as a series of skills and values necessary to prepare students for the legal profession in addition to substantive course offerings.⁷⁶

Modern law school courses and programs identify goals and objectives, but in general terms that are not conducive to planning and/or specific measurement.⁷⁷ In contrast, learning objectives are drafted to describe the specific skills that students must demonstrate to successfully complete a course or program.⁷⁸ Assessment learning objectives are stated in measurable terms and incorporate the substantive course objectives, along with cognitive knowledge, skills, and values that students need to master throughout the educational process.⁷⁹ Identifying all of the elements in a course and program facilitates the correlation between program objectives and course objectives.⁸⁰ Properly crafted learning objectives provide a different prism for viewing students' legal education. Comparing the course goals for a criminal procedure course with course-learning objectives illustrates how learning objectives provide more information and transparency.

72. See PROVEZIS, *supra* note 14, at 7.

73. See *id.*

74. See BANTA & PALOMBA, *supra* note 8, at 26.

75. PROVEZIS, *supra* note 14, at 12; see generally BANTA & PALOMBA, *supra* note 8.

76. See BANTA & PALOMBA, *supra* note 8, at 26.

77. *Id.*

78. *Id.*

79. *Id.* at 27.

80. *Id.* at 26.

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B. Criminal Procedure Course Goals

The course goals for a criminal procedure course would be stated as follows:

Criminal procedure is designed to acquaint students with the fundamental constitutional rules that govern the criminal justice process. During this course, we will examine the Fourth Amendment's protection against unreasonable searches and seizures; the Fifth Amendment's protections against coerced confessions and its guarantee of due process; and the Sixth Amendment's guarantee of assistance of counsel and the exclusionary rule.

The above course goals provide an overview of the substantive law that students learn. But as with most law courses, the substantive law is only one element of what students are expected to learn. Students are also expected to learn, and will be evaluated on, their comprehension of basic doctrinal principles, their ability to apply those principles, and their writing ability. These other skills are not specifically included in the course goals; they remain invisible to the students and to other institutional stakeholders. In contrast, the learning objectives provided in the example below provide both the substantive law and the other skills students are expected to demonstrate upon successful completion of the course.

C. Criminal Procedure Learning Objectives

1. Substantive Law

1. This course requires you to demonstrate comprehension of the legal doctrines developed under the Fourth, Fifth, and Sixth Amendments and the Exclusionary Rule.
2. This course requires you to demonstrate the development of general analytical skills:
 - a) Analyze appellate opinions, specifically Supreme Court opinions, in order to extract relevant principles and rules, draw analogies and distinctions, and develop legal arguments;
 - b) Articulate important doctrinal rules, standards, and principles from memory;
 - c) Apply known principles of law to given facts to determine/predict likely results;
 - d) Demonstrate an ability to analogize the facts or circumstances in a problem to known cases or

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- principles and apply precedent in solving the legal problem;
- e) Demonstrate an ability to evaluate factual and legal arguments and predict a reasonable conclusion that solves the problem; and
 - f) Communicate in writing appropriate legal and factual arguments in support of each side of legal controversies.

Including learning objectives makes the analytical, doctrinal, and writing skills taught in the course explicit. This refocus can facilitate student preparation and course and curricular planning.⁸¹

For students, learning objectives not only inform them about the substantive law they will study, but also how they will be expected to demonstrate comprehension of those principles.⁸² It also helps focus them on transferable legal principles and skills in addition to the substantive law,⁸³ allowing students to clearly see the underlying analytical skills and doctrines that are present in different substantive courses across the curriculum.⁸⁴

Employing explicit learning objectives not only creates transparency with students, it creates transparency about courses that can be invaluable in making curricular and other institutional decisions.⁸⁵ With more explicit learning objectives, faculty can better identify whether the full range of cognitive and other legal skills are being taught in individual courses, whether courses are sequenced properly for the best skill development, and whether certain courses, e.g. large required courses, are the best course type to teach certain skills.⁸⁶ It allows faculties to view individual courses and other student experiences as part of a more cohesive process of preparing students to practice law.⁸⁷

D. Categories of Learning Objectives

Learning objectives are generally categorized as cognitive knowledge, skills, or values.⁸⁸ For legal education, cognitive knowledge includes substantive law, doctrinal principles, and analytical skills. Legal skills include writing and oral communication.⁸⁹ Values are the ethical and professional standards that are

81. See generally SULLIVAN, *supra* note 62.

82. See BANTA & PALOMBA, *supra* note 8, at 26.

83. See generally SULLIVAN, *supra* note 62.

84. See BANTA & PALOMBA, *supra* note 8, at 26.

85. See EWELL, *supra* note 18, at 12–13.

86. SULLIVAN, *supra* note 62.

87. See BANTA & PALOMBA, *supra* note 8, at 4.

88. See *id.* at 27.

89. See generally BANTA & PALOMBA, *supra* note 8.

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required of legal professionals, such as service to the community. The ABA proposal includes examples of learning objectives relevant to legal education, but a proper application of assessment requires an institution to consider its unique contribution to creating legal professionals in drafting institutional learning objectives.⁹⁰ Additionally, institutional learning objectives should incorporate the unique values and mission of an institution, e.g., public service or international focus.⁹¹ This requirement has the potential to encourage diversity in legal education reform rather than the drive toward uniformity engendered by the U.S. News & World Reports ranking system.

E. Using Learning Objectives and Bloom's Taxonomy to Rethink the Curriculum

Strong analytical skills are critical to practicing law, and legal education has focused primarily on developing these skills.⁹² The primary objective of every law school doctrinal course and most co-curricular activities is to teach analytical skills, but there is often a lack of specificity on exactly what those skills are and which specific skills are taught in various courses.⁹³ In assessment literature, cognitive skills are described using Bloom's taxonomy.⁹⁴ Bloom's taxonomy provides a hierarchy of cognitive skills applicable to course and program learning objectives.⁹⁵

1. Bloom's Cognitive Skills

1. Knowledge: Recall data or information.⁹⁶
2. Comprehension: Understand the meaning, translation, interpolation, and interpretation of instructions and problems. State a problem in one's own words.⁹⁷
3. Application: Use a concept in a new situation or unprompted use of an abstraction. Apply what was learned to novel situations.⁹⁸
4. Analysis: Separate materials or concepts into component parts so that its organizational structure may be understood. Distinguish between facts and inferences.⁹⁹

90. PROPOSED STANDARDS, *supra* note 5, at Standard 305.

91. BANTA & PALOMBA, *supra* note 8, at 3.

92. See SULLIVAN, *supra* note 62, at 9.

93. *Id.*

94. BANTA & PALOMBA, *supra* note 8, at 27.

95. *Id.* at 27–28.

96. *Id.* at 28.

97. *Id.*

98. *Id.*

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5. Synthesis: Build a structure or pattern from diverse elements. Put parts together to form a whole, with emphasis on creating a new meaning or structure.¹⁰⁰
6. Evaluation: Make judgments about the value of ideas or materials.¹⁰¹

2. *Using Learning Objectives to Think About Skills Training*

An on-going critique of legal education is that law schools fail to adequately teach students practice skills.¹⁰² As law schools seek to include more skills training into the curriculum, learning objectives can be a valuable tool for constructing and evaluating such programs. There are several ways that clear learning objectives can contribute to the design and evaluation of a skills program.¹⁰³

In an assessment-based approach, the institution would start by identifying the program goal, such as preparing students with the skills necessary for legal practice generally and those necessary for specific practice areas.¹⁰⁴ The next step would be to identify the skills that the students need to learn to become proficient.¹⁰⁵ If the plan includes alternative courses, the alternatives must teach similar skills. By identifying the skills taught in every course, the institution can ensure that students are learning a range of skills in the appropriate sequence.¹⁰⁶ If the program is designed and described with nothing more than a list of skills courses, students can take courses that teach the same skills and thus not gain the appropriate breadth of skills training. In the absence of specific course and program skills, it is more difficult for administrators to determine whether there are sufficient courses to meet program objectives. Learning objectives can assist in decisions about the appropriate number of instructional hours and assigned units necessary for students to have sufficient command of necessary legal skills.¹⁰⁷ Providing specific skills also enables students to select courses that are most consistent with their professional objectives.

Learning objectives can contribute to constructing a skills program but, as described below, identifying objectives is only one part of the assessment process. More than creating clarity and transparency about the educational

99. *Id.*

100. *Id.*

101. *Id.*

102. *See* Bronner, *supra* note 1.

103. *See generally* BANTA & PALOMBA, *supra* note 8, at 25–28.

104. *Id.* at 27.

105. *See id.*

106. *Id.*

107. *See id.* at 25–28.

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process, learning objectives are key to the other components of assessment—evaluating the effectiveness of programs and courses and implementing changes to improve student learning.¹⁰⁸

F. The Process of Assessment

Law schools are constantly engaged in curricular review and improvement.¹⁰⁹ Assessment contributes to this process by providing a more cohesive and on-going approach centered on learning objectives.¹¹⁰ Incorporating assessment into decision-making requires law schools to consider how to gather quantitative and qualitative information to evaluate whether students are meeting learning objectives. The challenge is to identify the relevant information for collection and to adopt a system that is not unduly expensive or time-consuming.

Law schools currently employ a variety of methods to measure the effectiveness of the education program. Those methods include student course evaluations, bar examination results, and placement. Each of those practices contributes to an understanding of the quality of the educational program, but they are insufficient as measures of the quality of student learning.¹¹¹ Student course evaluations measure students' perceptions of the course and the instructor,¹¹² they do not measure what and how students learn.

The bar examination is an important external and internal outcome measure for legal education,¹¹³ but it is insufficient to measure the range of skills and values that are necessary for legal practice.¹¹⁴ It is a prerequisite to practice law and it measures many of the cognitive skills included in institutional learning objectives. However, it does not test performance skills and leadership or other professional skills that are recognized by law schools and bar associations as essential to the successful practice of law.¹¹⁵ In particular, the bar examination does not test performance skills.¹¹⁶ Performance skills typically involve psychomotor and oral skills, such as witness interviews and oral arguments. The bar examination practice component does not test performance skills directly, but instead tests analytical skills and document-drafting skills. Even when the exam calls for students to draft an opening statement, the questions do not test the critical psychomotor aspect of the skill.

108. See generally SULLIVAN, *supra* note 62.

109. EWELL, *supra* note 18, at 16–17.

110. See PROVEZIS, *supra* note 14, at 8.

111. See PALOMBA & BANTA, *supra* note 8, at 26.

112. *Id.* at 26.

113. See *id.*

114. See *id.*

115. See generally SULLIVAN, *supra* note 62.

116. See Morriss, *supra* note 21, at 824.

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Student placement is the ultimate, immediate goal of graduates, but it is not direct evidence of student learning.¹¹⁷ In the employment process, prospective employers rely on the institution's reputation, grades, the student's interview skills, and references to make hiring decisions.¹¹⁸ Institutions have a responsibility to assist students in securing employment, but that would be a separate objective rather than evidence of student learning.

G. Best Practices for Collecting Evidence of Student Learning

Assessment literature has identified best practices for collecting information on student learning.¹¹⁹ Those practices include using evidence from multiple methods and sources of information.¹²⁰ The use of multiple methods and sources is more likely to result in an accurate portrayal of student learning.¹²¹ The most effective measures of institutional effectiveness on student learning are those that are taken at various points throughout the curriculum. This permits analysis of the development of skills through the progression of the program.¹²² Since law schools are preparing students for legal practice, information collected from students after graduation (when they are in practice) provides information on the effectiveness of the educational program while they are engaged in applying those skills.¹²³ It is at that time that graduates are most aware of the substantive knowledge and skills that are most useful, or that they did not learn as a part of their education.

There are a number of methods suggested in the literature to collect information, such as surveys, the use of rubrics, and electronic portfolios. However, a cost-effective system could at least partly embed collection of information into existing systems. Perhaps survey questions about student learning can be included in student evaluation forms, or uniform rubrics can be employed in courses across the curriculum so that the process of providing feedback to students can also be used to collect valuable information about the learning process. Law schools can also adapt methods successfully employed by other professional disciplines and other units of higher education.¹²⁴ Colleges and universities have been engaged in the process of assessment for many years, and

117. Morriss, *supra* note 20, at 792.

118. *See id.* at 816–18.

119. *See generally* Banta, *supra* note 39.

120. *See* BARBARA E. WALVOORD, ASSESSMENT CLEAR AND SIMPLE 15–22 (2010).

121. *See generally* Banta, *supra* note 39.

122. *See* Leslie Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Reference Grading Is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 J. OF THE LEGAL WRITING INSTITUTE 123, 124–25 (2011).

123. *Id.*

124. *See id.*

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their experiences and the resulting literature can provide a wealth of suggestions for law schools new to the process of assessment.¹²⁵

H. Incorporating Information into Decision-Making to Improve Inputs and/or Teaching

The final stage of an on-going assessment process is analyzing and employing information in institutional decision-making. As discussed in this Article, identifying learning objectives and information on whether students are meeting those objectives is useful in curricular planning, but there are other institutional matters where information collected during the assessment process can be helpful.¹²⁶ The information can inform decisions about resource allocations and faculty development, and other matters that impact the student-learning environment.¹²⁷ Reconsidering admissions standards is one critical use of the assessment process in higher education and professional programs that establish their own entering student credentials.¹²⁸ A fundamental principle of assessment is that it is a continuous process to improve the ability of students to achieve the learning objectives.¹²⁹ However, that principle must be balanced with an obligation to assess the necessary entering skill level for students to be successful in that institutional environment. An institution with a significant number of students unable to achieve the learning objectives should engage in attempts to improve the educational program and consideration of whether the institution is employing proper standards to select students.¹³⁰ Setting admissions standards is a complex process that requires balancing a variety of institutional objectives and values, but information gleaned during assessment can be utilized to ensure a sufficient nexus between students admitted and those who successfully complete the program.¹³¹

Even though assessment provides quantifiable information, it does not remove the necessity of making institutional decisions consistent with the institutional mission and values.¹³²

125. *Id.* at 125.

126. *See* BANTA & PALOMBA, *supra* note 8, at 27.

127. *See* HUBA & FREED, *supra* note 34, at 15.

128. *See* BANTA & PALOMBA, *supra* note 8, at 27.

129. *See id.* at 26.

130. *See generally* PROPOSED STANDARDS, *supra* note 5.

131. *See* BANTA & PALOMBA, *supra* note 8, at 27.

132. *See* Rose, *supra* note 122, at 123 (2011).

Those values will direct decisions such as:

1. What is sufficient mastery of learning objectives?
2. When should a program/course be adjusted to ensure student success?
3. How to balance the primary mission of student learning with other institutional priorities?

IV. ASSESSMENT AND TEACHING

The principles of assessment do not require a particular teaching method, but it offers a different perspective on teaching than is commonly employed in legal education. Traditionally, legal education is designed to teach students and identify those incapable of meeting the demands of the teaching methods employed.¹³³ This philosophy is represented dramatically in the film the *Paper Chase*, in which Professor Kingsfield famously tells a student to call his mother when he is not prepared for the day's lesson.¹³⁴ Implicit in that scene and the film is that law professors employ the Socratic method, and only students that can achieve under that method are suited for the demands of law practice.¹³⁵ That extreme position is perhaps no longer the norm, as law schools have adopted academic support programs and individual professors have incorporated a greater range of teaching methods, but assessment still represents a fundamental shift in educational philosophy.¹³⁶ It relies on the identification, and if necessary, changing teaching methods and inputs to ensure student success in meeting learning objectives.¹³⁷ It replaces the mystique of Kingsfield's approach with transparency about learning objectives and teaching methods.¹³⁸

While assessment represents a shift from several traditions in legal education, there are many principles and practices in legal education that are consistent with assessment practices.¹³⁹ One such aspect is assessment's learning-centered approach. A learning-centered approach makes students responsible for their learning. The objective of this approach is to teach students how to teach themselves. This approach emphasizes teaching methods that encourage critical thinking and student responsibility rather than lectures and course requirements that test memorization of material instead of application of principles. These principles are consistent with legal education that emphasizes the application,

133. See Rose, *supra* note 122, at 135.

134. THE PAPER CHASE (20th Century Fox 1973).

135. SULLIVAN, *supra* note 62, at 2.

136. *Id.*

137. See Rose, *supra* note 122, at 135.

138. See PROVEZIS, *supra* note 14, at 8.

139. See Rose, *supra* note 122, at 135–45.

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rather than the mere acquisition, of knowledge by employing the Socratic method and issue spotting/analysis-based examinations.¹⁴⁰

While the philosophy and many traditions of legal education are consistent with assessment best practices, there are other elements of assessment that challenge traditional law school teaching.

A. Student Mastery

A teaching objective under assessment is for most, if not all students, to achieve mastery of the course-learning objectives. This is done by a combination of identifying appropriate student inputs at the institutional level, by appropriate course prerequisites, and effective teaching techniques.¹⁴¹ When assessment is employed, the lack of success of a substantial number of students is an indication that an instructor should employ additional or alternative teaching methods or identify other ways to help more students achieve mastery of the material.¹⁴² Of course, law professors engage in this type of analysis informally, but traditionally a lack of student success in a course is likely to be viewed as an indication that the professor is properly serving as a gatekeeper, keeping those students who lack the proper skills out of the profession.¹⁴³ Certainly, law schools and law professors have a duty to society and the profession to properly evaluate students so that law graduates can properly represent clients, but that responsibility must be balanced with their duty to educate students. Balancing these responsibilities means evaluating students against a standard, giving appropriate grades of unsatisfactory when students do not meet the standard, and making changes when a sufficient number of students do not meet the standard.¹⁴⁴

B. Course-learning objectives and Course Design

Similar to institutional and program assessment, learning objectives are the key to course design.¹⁴⁵ Learning objectives are related to what is taught in a course, how it is taught and when, and how it is evaluated. In course planning, the following questions are considered:

1. What will students to learn from this course? What are the course-learning objectives? How are the course objectives related to the program/institutional learning objectives?

140. See SULLIVAN, *supra* note 62, at 2.

141. See Johnstone, *supra* note 19, at 276–78.

142. See *id.* at 278–79.

143. See *id.*

144. *Id.* at 279.

145. See generally ERWIN, *supra* note 1, at 152–53.

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2. What are the most effective teaching methods to assist students in meeting learning objectives?
3. What are the best methods for ascertaining whether students are properly progressing toward course-learning objectives?
4. What are the methods and standards for evaluating whether students have met the learning objectives?

As described earlier in this Article, clear course-learning objectives provide students with a description of the substantive knowledge, cognitive skills, and values they need to demonstrate mastery of course-learning objectives. However, course-learning objectives can also help an instructor ensure that he or she is using effective teaching methods, teaching what he or she will test and testing what he or she taught.¹⁴⁶

Course-learning objectives can be employed not just for identifying the materials and skills that will be taught in a course, but also for identifying the types of teaching methods that might be most effective for teaching that skill.¹⁴⁷

Examining a course through the prism of assessment allows a professor to reconsider an existing common practice. For example, some law seminars include a graded presentation requirement. Having students give a presentation is a method of assessing their oral communication skills. Yet if the professor does not teach students how to give a presentation, the grades do not reflect what students learned in the course, but rather knowledge that they gained before taking the course. Providing grading criteria of the presentation does not solve this problem because such criteria informs students of the manner that they will be evaluated but does not teach them how to give a presentation. The solution is either to teach them oral presentation skills or to grade other skills from the presentation, e.g., the cognitive skills used in the presentation. However, if the presentation is not graded, what is the purpose of having the students give a presentation rather than evaluating their cognitive skills using other methods taught in the course?

How to resolve this situation depends on a consideration of the course-learning objectives and whether students learned those objectives by completing a presentation. Assessment does not provide a single solution to this issue, but it provides an alternative way to think about teaching and evaluating students.

146. See Johnstone, *supra* note 19, at 279.

147. See *id.*

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C. Teaching Methods

In legal education, the Socratic method is the traditional method for teaching substantive law and analytical skills.¹⁴⁸ There is an increasing number of voices in the legal academy suggesting that alternative teaching methods might be more, or at least as effective, as the Socratic method.¹⁴⁹ A principle of assessment is that one teaching method is not intrinsically superior to another; therefore, instructors should use a variety of teaching methods.¹⁵⁰ Various methods have their strengths and limitations.¹⁵¹ Lecturing is an excellent method for the transfer of information from instructor to student, but its greatest limitation is that it does not facilitate active listening, nor does it require students to apply the information that they learned.¹⁵² The Socratic method is an excellent method for teaching application of knowledge and analysis skills, but having students engage in independent research is better than the Socratic method for teaching synthesis and evaluation.¹⁵³ The core assessment teaching principle is that an instructor should employ the teaching method that is the most effective for the students to master the learning objectives. The assessment literature for higher education stresses the limitations of lecture for teaching cognitive skills and encourages instructors to use other methods.¹⁵⁴ For legal education, assessment reinforces the strengths of the Socratic method, but challenges professors to consider other teaching methods that would be more effective for teaching the range of cognitive and other necessary legal skills.¹⁵⁵

D. Assessment and Student Evaluation

An important element of the educational process is evaluating students, or student assessment.¹⁵⁶ The best practices of assessment suggest using multiple and differing types of assessment.¹⁵⁷

1. Diagnostic Assessment

Diagnostic assessment establishes a baseline of a student's skills and knowledge, allowing an institution or instructor to provide remedial instruction

148. See SULLIVAN, *supra* note 62, at 2–3.

149. Christie, *supra* note 2, at 347–50.

150. *Id.* at 348.

151. *Id.* at 347–50 (discussing the strengths and weaknesses of the Socratic method).

152. *Id.* at 348.

153. See *id.* at 349–50.

154. See generally *id.*

155. See *id.* at 346–50.

156. See Johnstone, *supra* note 19, at 278–79.

157. See *id.*

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or adjust the curriculum.¹⁵⁸ It is not consistently included in the literature as a form of assessment, but information about the skills that students possess at the beginning of the educational program would be useful, along with the other assessments, for evaluating the impact of the educational process on students. Such information would be particularly useful for academic support programs, where it could be employed to design a program that focuses on the needs of students at a particular institution rather than law students generally.¹⁵⁹

2. *Formative Assessment*

Formative assessment is a process that provides feedback to students and the instructor on students' progress in meeting learning objectives during a course.¹⁶⁰ For the instructor, the information from formative assessment provides an opportunity to reinforce or alter future lessons to help students meet learning objectives prior to the final evaluation.¹⁶¹ For students, it informs them of their progress in meeting course objectives. A critical component of the formative assessment process is that the instructor provides guidance on what the students can do to improve their performance in the future.¹⁶² Formative assessment can be ungraded or graded, with both presenting challenges. An ungraded assessment allows students to view the assignment as a process for improvement rather than evaluation, but some students will not prioritize and prepare sufficiently for an ungraded assignment.¹⁶³ In contrast, a graded assignment might induce students to prepare, but the permanent consequences of a grade make it less helpful as an instrument for improvement.¹⁶⁴ Balancing these concerns has resulted in faculty employing a mix of graded and ungraded assignments.¹⁶⁵

There is research that formative assessment is a critical element of educational achievement.¹⁶⁶ If the ABA assessment standards are adopted, law schools will be required to provide students with numerous opportunities for formative assessment.¹⁶⁷ Providing students with formative assessment is contrary to the traditions of legal education in which students are evaluated based solely

158. Brenda D. Gibson, *Why Many Law Schools Are Better Prepared Than Anticipated for the Proposed ABA Standards* 302–05, SYLLABUS, Winter 2011, at 4 (discussing NCCU School of Law's adoption of assessment).

159. See Richard Johnstone, Jenny Patterson & Kim Rubenstein, *Improving Criteria and Feedback in Student Assessment in Law*, 7 LEGAL EDUC. REV. 267, 268 (1996).

160. See Johnstone, *supra* note 19, at 268.

161. See *id.* at 269.

162. See *id.*

163. *Id.* at 277.

164. *Id.* at 276–77.

165. *Id.* at 277.

166. See PROPOSED STANDARDS, *supra* note 5.

167. See *id.* at Standard 304.

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on a mid-year and/or end-of-year examination.¹⁶⁸ Individual law faculty members have employed formative assessment measures for many years, but if the ABA standards are adopted, it will create an external inducement for most members of the faculty to integrate formative assessment into their courses.¹⁶⁹ More than a change in tradition, the expectation that faculty should include formative assessment exercises in their courses has the potential to impact the structure of legal education itself. Providing effective formative assessment to law students, particularly in large required courses, will necessarily increase the time faculty devote to teaching responsibilities.¹⁷⁰ There are methods, such as the use of rubrics and peer assessment, that could potentially reduce the time spent on assessment, but it is difficult to imagine how consistent and timely assessment can be provided in classes of eighty, ninety, or over a hundred students in the current system.¹⁷¹ This is an example of how the assessment challenges legal educators to rethink current methods and traditions. If legal education adopts the view that formative assessment is an important element of student learning, it will perhaps cause educators to reconsider whether and when large classes are appropriate. If faculty is expected to give prompt, meaningful feedback to students, will institutions have to reduce class sizes or alter expectations for faculty service or scholarship? Adopting formative assessment requirements will force faculty and administrators to consider these issues. Institutions will balance these concerns in different ways, but those solutions will have the potential to change current methods of legal education.

3. Summative Assessment

Summative assessment is an evaluation to test student's comprehension of course-learning objectives; in law schools, it is typically an examination. The primary purpose in providing feedback on summative assessments is to provide an explanation for the grade.¹⁷² Summative assessment instruments should be valid, reliable, and practical.¹⁷³ A valid summative assessment measures course-learning objectives. One that is reliable yields consistent results; it is practical if it is capable of being administered and scored within existing constraints.¹⁷⁴ The basic principles of summative assessment are consistent with legal education traditions but not the principles of grading.¹⁷⁵

168. *See id.*

169. *See* PROPOSED STANDARDS, *supra* note 5, at Interpretation 304.2.

170. *See* Johnstone, *supra* note 19, at 276.

171. *See* Banta, *supra* note 39, at 11.

172. *See* Johnstone, *supra* note 19, at 268.

173. *See generally* PROPOSED STANDARDS, *supra* note 5.

174. *Id.*

175. Johnstone, *supra* note 19, at 268

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Most law schools employ norm-reference grading.¹⁷⁶ Norm-reference grading assigns grades on the basis of a student's achievement relative to other students in the course.¹⁷⁷ Assessment grading is based on how well students demonstrate mastery of the learning objectives. Applying norm-referenced grading is contrary to the transparency produced by other elements of assessment. Providing learning objectives, employing formative assessment, active learning are based on the notion that learning and academic achievement can be attained by following individual performance rather than performance in comparison to other students.¹⁷⁸

VII. THE LIMITS OF APPLYING ASSESSMENT TO LEGAL EDUCATION

Assessment holds the promise of a different way of thinking about legal education, but there are barriers to it being fully utilized.

A. *Participation of Faculty*

Integrating assessment into educational institutions requires faculty to be actively engaged in the process.¹⁷⁹ Even if administrators take a leadership role in the process, faculty members must make decisions about program objectives and how they relate to institutional missions and values. In addition, faculty members must contribute to information gathering, and ultimately employing it in institutional decision-making.¹⁸⁰ At the course level, faculty must, at a minimum, employ and align their course-learning objectives with institutional or program objectives and participate in the information collection process. Getting sufficient faculty buy-in will not be an easy task.¹⁸¹ As described in Part II.D, if the institution is primarily adopting assessment to comply with external accreditation requirements, it is likely to induce only minimal compliance.¹⁸² Unless faculty members are convinced that there is a significant benefit to assessment, many will not fully participate.

176. See Rose, *supra* note 122, at 124.

177. *Id.*

178. *Id.*

179. ERWIN, *supra* note 18, at 152–61 (discussing suggestions for establishing University wide assessment program).

180. See PROVEZIS, *supra* note 14, at 17.

181. See ERWIN, *supra* note 1, at 154.

182. See PROVEZIS, *supra* note 14, at 17.

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B. *U.S. News & World Report*

Legal education has been greatly influenced by the U.S. News and World Reports (U.S. News) ranking system.¹⁸³ The rankings, which do not measure student learning, have created pressure on schools to employ time and resources on U.S. News criteria.¹⁸⁴ That pressure does not appear to be lessening in the near future, so in the midst of severe financial constraints, law schools will be challenged to compete in the U.S. News race while instituting assessment measures.¹⁸⁵ Even if schools are able to identify the resources to pursue both goals, it is not clear that qualitative and quantitative evidence of student learning will be sufficient to overcome U.S. News as the measure of educational quality.¹⁸⁶

C. *We Do Not Make Widgets*

A critical component of assessment is collecting, analyzing, and using quantitative evidence in legal education, but there are limits to how much that evidence will ensure educational success.¹⁸⁷ Education is a complex mix of effort from students and teachers. Although teachers can seek to inspire and otherwise encourage students, they cannot control all of the variables that limit student success. Conversely, assessment does not fully incorporate the most meaningful aspects of teaching. The highest form of education does more than transfer information and teach skills, it helps students to become lifelong learners and achieve their fullest potential. Adoption of assessment measures should be used as a tool to help students achieve the highest form of learning. It should not be used to engender a mechanical approach to teaching and learning.

VIII. CONCLUSION

Legal education faces many challenges, but this is also a time of opportunity—a chance to reimagine how we prepare students for legal practice. Whatever reforms are to come, student learning will remain the primary mission of law schools. Employing assessment principles assists educators in utilizing the most effective methods to accomplish that mission today and tomorrow.

183. Morriss, *supra* note 20, at 792

184. *Id.*

185. See Managan, *supra* note 6.

186. *Id.*

187. See BANTA & PALOMBA, *supra* note 8, at 4.