

How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation

Gregory S. Munro¹

To determine whether curricular innovation is effective in achieving our goals, we must design and implement an effective assessment program. What is an effective assessment program? To answer, we need first to define assessment, and then to examine some conditions that are prerequisites to such a program.

I. Meaning of Assessment

In higher education today, assessment means much more than testing. Assessment is the means by which a law school measures its effectiveness in meeting its mission and in achieving its student and institutional outcomes. An “assessment program” consists of an established and coordinated system for determining success in meeting mission and outcomes. A comprehensive assessment program includes both institutional assessment and student assessment. Institutional or program assessment refers to processes by which faculty, administrators, and others secure meaningful feedback about student, faculty, and alumni performance on a range of institutional outcomes. Student assessment is the process by which we observe and evaluate student performance and provide feedback to the student. Institutional assessment and student assessment will necessarily overlap because student performance is a major factor in institutional assessment. Institutional and student assessment are not coextensive. The institution will have several major outcomes that are not directly related to student learning. An assessment program will thus have many dimensions.

For example, an “assessment program” might include among its component parts (1) research and writing exercises designed to measure student learning of substantive law and professional skills in legal reasoning, research, and writing; (2) mock legal counseling sessions designed to measure skills in communication, interviewing, and counseling, as well as substantive knowledge; and (3) a survey of law firm alumni for perceptions about the preparedness of the school’s graduates to practice law.

1. © Gregory S. Munro 2002. All rights reserved. Gregory S. Munro is a Professor of Law and Director of Professional Skills at the University of Montana School of Law.

II. Preconditions to an Effective Assessment Program

An effective assessment program designed to determine success of curricular innovations assumes important preconditions. First, the institution must adopt a mission. Second, the school must identify desired student and institutional goals and objectives or “outcomes.” Third, faculty must develop a curriculum and teaching methods for attaining those outcomes. If the school lacks a mission, explicit outcomes, and appropriate curriculum and teaching methods, any assessment “program” will be fragmented and lack cohesiveness.

A. Mission as a Precondition to Effective Assessment

Over sixty-five years ago, Karl Llewellyn said of law schools, “[N]o faculty, and, I believe, not one percent of instructors, knows what it or they are really trying to educate for.”² In discussing the effective program of assessment, let us assume that the law school has an explicit written mission statement that is not just a statement of platitudes, but is the product of a thoughtful dialogue between the faculty and representatives of the law school’s constituencies. As the foundational underpinning for the school, the mission statement should reflect a consensus among the school’s primary constituencies regarding the school’s purposes and what it seeks to accomplish with regard to its constituencies.

Formulation of a mission statement first requires the identification of the school’s primary constituencies. In the most liberal interpretation, Mixon and Otto³ have identified the following groups as potential constituencies:

1. The public that is served by the social order process
2. Students
3. Employers of law graduates
4. Law faculty
5. Applicants for admission
6. Potential clients of graduates
7. Taxpayers (state supported institutions)
8. Alumni
9. Courts
10. All licensed attorneys
11. The university to which the law school is attached

The breadth of this list will probably surprise most law faculty, especially those who believe the constituencies of a law school are only faculty and students. Of the eleven groups Mixon and Otto identified, we might identify four or five as “stakeholders” who have so direct an interest in the school’s mission that they should be involved in creating the mission statement. Imagine, for instance, inviting

2. Karl Llewellyn, *On What is Wrong with So-Called Legal Education*, 35 Colum. L. Rev. 651, 653 (1935).

3. John Mixon & Gordon Otto, *Continuous Quality Improvement, Law, and Legal Education*, 43 Emory L. J. 393 (1994).

alumni, judges, university officials, and political leaders into a common meeting with law faculty and administrators to participate in a facilitated dialogue for the purpose of arriving at consensus on the mission of the law school as it enters the new millennium.

Once the primary constituents are identified, the framework for the dialogue on mission should be established. That dialogue should involve important questions such as:

- With what knowledge and skills and values will a lawyer have to be equipped to serve society during the next ten and twenty years?
- For what technology will graduates have to be prepared?
- Which parts of the *MacCrate Report's*⁴ life-long learning continuum will the law school serve?
- Should students be equipped with a broad base of knowledge and a wide range of skills, or should they be trained as specialists?
- What is the role of faculty scholarship, and what emphasis will be placed upon scholarship?
- How will teaching, research, and service be prioritized?
- Will the law school hold itself out as featuring any legal specialties?
- Should the law school's focus be global, national, regional, state or local?
- What will be the law school's niche in the admissions market?
- Is the law school's teaching mission to teach students to "think like lawyers"? Pass the bar exam? Practice law? Be legal policy makers?
- Should the law school aspire to be a center for legal policy for the geographic or political region such as the state?
- What will society's need for lawyers be in the future, both in terms of numbers and specialties?
- What role, if any, should the law school assume in the continuing education of lawyers? Of the public?
- Should the law school train lawyers for multi-disciplinary practice?

The statement of mission should be honed until it can fit on a single page. If the statement is too long, it risks being overbroad and containing conflicts in competing values. If too short, it may not address the important questions above. Once determined, the school's mission is the keystone and will be reflected in the subsequent student and institutional outcomes, curriculum, teaching methods, and assessment.

B. Adopting Student and Institutional Outcomes

Student outcomes are the stated abilities, knowledge base, skills, personal attributes, and perspectives on the role of law and lawyers in society that the school

4. ABA Sec. Leg. Educ. & Admis. to the Bar, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992) [hereinafter *MacCrate Report*].

desires the students to exhibit on graduation. What is it we want our students to be able to do when they graduate? Should they be able to write persuasively? Should they be able to negotiate contracts or resolutions to legal disputes? Should they be able to counsel clients, prepare an estate plan, or cross-examine witnesses? If these questions are not answered, the curriculum and teaching methods are likely to lack focus. It goes without saying that the outcomes should be explicit and public. It is not enough for the faculty as a whole to have a vague outline of outcomes in their heads or for individual faculty members to have detailed sets of outcomes to which they as teachers aspire. Outcomes should be explicit and known to those who will strive to meet them.

Ideally, outcomes are the product of consensus of the faculty and the school's primary constituencies, e.g., the bench and the bar. In 1981, the faculty at the University of Montana School of Law surveyed the bench and bar in the States of Montana and Idaho as part of its effort to identify the student and institutional outcomes for the school. Sadly, most schools have given little thought to identifying outcomes and making them explicit. Based on what they experience at most law schools today, students logically and rightly may conclude that it is what they know (as demonstrated by bluebook exam), not what they can do that is important. For them, the primary skill they must demonstrate is the ability to write an exam or a paper. In view of this understanding, it is not surprising that the most commonly asked question in law schools is: Will that be on the exam?

The *MacCrate Report*⁵ merits consideration as a statement of outcomes for law schools. Its statements of Fundamental Lawyering Skills and Fundamental Professional Values were intended to be outcomes of the "educational continuum," but would easily serve as explicit outcomes for any law school. Indeed, Robert MacCrate called them the "outputs of legal education."⁶ Consider the *MacCrate Report's* list of Fundamental Lawyering Skills:

- Skill 1: Problem Solving
- Skill 2: Legal Analysis and Reasoning
- Skill 3: Legal Research
- Skill 4: Factual Investigation
- Skill 5: Communication
- Skill 6: Counseling
- Skill 7: Negotiation
- Skill 8: Litigation and Alternative Dispute Resolution Procedures
- Skill 9: Organization and Management of Legal Work
- Skill 10: Recognizing and Resolving Ethical Dilemmas⁷

A school whose students, upon graduation, can demonstrate basic proficiency in those ten fundamental professional skills can justify its claim to have prepared students for the practice of law. By contrast, legal education consisting primarily of

5. *Id.*

6. Robert MacCrate, *Lecture on Legal Education*, Wake Forest School of Law, 30 Wake Forest L. Rev. 261, 263 (1995).

7. *MacCrate Report*, *supra* n. 4, at 138-40.

doctrinal studies and based on the somewhat fuzzy outcome of “learning to think like a lawyer”⁸ is becoming increasingly irrelevant.

In addition to the Fundamental Lawyering Skills, the *MacCrate Report* identifies the following Fundamental Values of the Profession:

- Value 1: Provision of Competent Representation
- Value 2: Striving to Promote Justice, Fairness, and Morality
- Value 3: Striving to Improve the Profession
- Value 4: Professional Self Development⁹

A school that adopts both the *MacCrate Report*'s Skills and Values has a set of outcomes for which it can be proudly accountable to its constituencies.

C. Developing a Curriculum for Meeting Student Outcomes

A curriculum that serves the school's mission and outcomes must have certain characteristics:

(1) Focus: The curriculum must be focused on the mission and outcomes. It must be designed to accomplish the law school's purpose and to provide students with the abilities, knowledge base, skills, and perspective essential to the outcomes that have been adopted.

(2) Coherence and coordination: It must be coherent or logically connected so that each course and the skills and values taught in the course are coordinated component parts of a curriculum that addresses mission and outcomes. Faculty must take responsibility for coordinating the curriculum, not just their individual, discrete courses.¹⁰ A school should avoid having too many elective courses that are faculty “hobby horses”¹¹ or are instituted at the

8. MacCrate, *supra* n. 6, at 264.

9. *MacCrate Report*, *supra* n. 4, at 140-41.

10. The Consortium for Improvement of Teaching, Learning and Assessment, which has developed “Shared Educational Assumptions,” includes among its members such diverse institutions as the University of Wisconsin School of Medicine, Purdue University School of Pharmacy and Pharmacal Sciences, Alverno College in Milwaukee, and Bloomfield Hills Model High School in Bloomfield Hills, Michigan. Among the “Shared Educational Assumptions” is this one: “A coherent curriculum calls for faculty investment in a community of learning and judgment.” Alverno College, *Consortium for the Improvement of Teaching, Learning and Assessment: Shared Educational Assumptions 2* (June 1992) (on file with the author) [hereinafter *Shared Educational Assumptions*]. If each faculty member operates independently in designing and teaching his or her discrete course, a coherent curriculum cannot result. Identifying the ways to coordinate a curriculum, making it incremental and developmental, and assessing the success of the curriculum requires the collective wisdom of the faculty involved. Faculty members who expend time and energy in working collaboratively to design such a curriculum and assessment program will be invested in it and support it. If the design is the result of faculty cooperation, the curriculum will endure and not be subject to arbitrary change by a single faculty member. Simply put, the curriculum and assessment program that results from the collective and collaborative work of the faculty will best insure its stability.

11. Irwin C. Rutter, *Designing and Teaching the First-Degree Law Curriculum*, 37 U. Cin. L.

whim of a handful of students.

(3) Incremental and developmental: The curriculum must provide for incremental and developmental formation of student abilities. Tasks should be broken down in parts and then built one upon the other in increasing complexity. For example, skills of interviewing and counseling might be taught in a sequence that would include lecture and demonstration, followed by an exercise in which students interview fellow students. Next, students would interview trained “client/instructors” or lay people who play the role of client and then assess student performance. This would be followed by lecture and demonstration of client counseling, in turn followed by a session in which the student provides legal counseling to a mock client while being assessed by a lawyer trained in such assessment and using assessment instruments prepared by the school. The legal counseling would be based in substantive law from one or more required courses the student has completed. Finally, the student would engage in live client interviewing and legal counseling under the supervision of clinical instructors. Such sequential and incremental development of skills obviously demands organization and coordination by faculty who take responsibility for the whole.

(4) Required aspect: Those elements of the curriculum specifically designed to address the outcomes should be required for all students. A curriculum that is too heavily elective provides no vehicle for assuring that each student will learn what is demanded. Skills and values, however, can be addressed in elective courses, if the faculty coordinate to insure that each student must elect an option in which the skill or value is addressed. For example, students might be required to elect one of a number of commercial law course options, each of which requires contract negotiation and drafting. Again, one can see the necessity for faculty coordination and collaboration in structuring and sequencing the curriculum so that each student can demonstrate competency. Without careful coordination and design, an elective-heavy curriculum is unlikely to meet the school’s mission and serve its outcomes.

(5) Integral assessment: As will be explained later, valid assessment and continual feedback must be an integral part of the curriculum.

D. Teaching Method

The last prerequisite to an effective assessment program is that the school utilize teaching methods effective in promoting learning of the knowledge, skills, and abilities embodied in the outcomes. The Association of American Law Schools recently held a conference in Calgary entitled *New Ideas for Experienced Teachers: We Teach, But Do They Learn?* The conference focused on three ideas reported by the National Research Council:

- (1) "Students come to the classroom with preconceptions about how the world works. If their initial understanding is not engaged, they may fail to grasp the new concepts and information that are taught, or they may learn them for purposes of a test but revert to their preconceptions outside the classroom."¹²
- (2) "To develop competence in an area of inquiry, students must: (a) have a deep foundation of factual knowledge, (b) understand facts and ideas in the context of a conceptual framework, and (c) organize knowledge in ways that facilitate its retrieval and application."¹³
- (3) Students can monitor their own learning by maintaining an internal dialogue in which they note additional information required, whether new information is consistent with that already known, and what analogies they could draw to advance their understanding. "This 'metacognitive' approach to instruction can help students learn to take control of their own learning by defining learning goals and monitoring their progress in achieving them."¹⁴

Add to these three ideas the following two assumptions from the Consortium for the Improvement of Teaching:¹⁵

- (1) *Education goes beyond knowing to being able to do what one knows.*¹⁶

This principle is key to knowing if we are achieving our goals. If we want a student to be able to do what she knows, then the answer to the assessment question is clear: Judge the student in action doing what she knows. If we expect the student to demonstrate competency in a fundamental skill, then assess her ability to perform that skill.

- (2) *Learning must be active and collaborative.*¹⁷

Some law students have spent their entire lifetime of education watching teachers and professors lecture or engage them in some form of Socratic dialogue. It is said that the person who learns the most in the classroom is the teacher. Law students should be active participants in their education. They should collaborate in teams in their learning,¹⁸ and they can even be involved in the planning and

12. National Research Council, *How People Learn: Brain, Mind, Experience, and School* 10 (John D. Bransford et al. eds., Natl. Acad. Press 1999).

13. *Id.* at 12.

14. *Id.* at 13-15.

15. See *supra* n. 10 (describing the Consortium).

16. *Shared Educational Assumptions*, *supra* n. 10, at 2.

17. *Id.* at 2.

18. For compelling arguments for collaboration, see Thomas L. Shaffer, *Collaboration in Studying Law*, 25 J. Leg. Educ. 239 (1973); Karl A. Smith, *The Craft of Teaching Cooperative Learning: An Active Learning Strategy*, in 1989 *Frontiers in Education Conference Proceedings* 188 (Inst. of

management of that learning. For example, Professor Gerald Hess at Gonzaga University Law School meets weekly with student representatives from his classes who provide feedback and help plan and manage his classes.¹⁹

These ideas and assumptions call for teaching methods that require students to be more active and participatory. Schools are unlikely to implement these ideas strictly through traditional methods of lecture and Socratic dialogue. Lectures, Socratic dialogue, professional skills simulations, cooperative learning, clinical experience, and problem-based exercises all must play a role in student learning of knowledge and fundamental skills and values.

III. Assessment

Having discussed the preconditions for an effective assessment program, I turn now to the nature and content of assessment programs. At this point, the following shared educational assumptions of the Consortium for the Improvement of Teaching, Learning and Assessment should both serve as guiding principles in assessment and build on the foundation established by the preconditions discussed above.

(1) *Student learning is a primary purpose of an educational institution.*²⁰

This seemingly basic tenet has been lost at some law schools and among some faculty who assert that scholarship is the primary purpose of the law school. There are also faculty who purportedly subscribe to this principle, but who conduct themselves as though student learning were not a primary purpose.

(2) *Assessment is integral to learning*²¹

The law professor's lament is that teaching would be fun if it were not for grading. If a law faculty member administers a three-hour essay exam to 100 students, and each student writes twenty pages in a bluebook, then that faculty member must read, evaluate, and grade 2,000 handwritten pages after the semester has ended and the student has completed the course. Any feedback value is lost or useless, and the process is excruciating for students and faculty alike. Assessment itself should be formative; that is, it should be a learning tool in and of itself. For example, in my insurance course, students are required throughout the semester to engage in insurance issues, analyzing in writing policies in context of fact situations

Electrical & Electronic Engrs. 1989). For a variety of ideas and techniques for collaborative learning, see Gerald F. Hess & Steven Friedland, *Techniques for Teaching Law*, 131-48 (Carolina Academic Press 1999) (collecting material by Hess and Friedland, as well as other authors).

19. Gerald F. Hess, *Student Involvement in Improving Law Teaching and Learning*, 67 UMKC L. Rev. 343 (1998).

20. *Shared Educational Assumptions*, *supra* n. 10, at 2.

21. *Id.* at 3.

in which they apply legislative codes and case law, writing legal advice letters about insurance issues, arguing insurance appellate cases, collaborating with other students in drafting an insurance policy, and arguing in mock legislative hearings on matters of public policy and insurance. Each of these tasks is an integral part of the learning and can be assessed to provide feedback during the course. Appropriate assessment can be at the core of the course and need not be a summative experience tagged on at the end.

(3) *Abilities must be developed and assessed in multiple modes and contexts.*²²

Effective assessment exhibits qualities of validity, reliability, and fairness.²³ Validity means it must effect or accomplish that for which it was designed or intended. Reliability means the test or measuring procedure will yield the same results on repeated trials. A single do-or-die final essay exam given under time pressure at the end of the semester likely fails all three criteria. In 1924, Ben Wood damned

the spectacle of a student trying to record an adequate sampling of his gains from a four-hour course of several months' duration in the English prose which he can produce in three hours under the conditions and circumstances of college examination week, and the correlative spectacle of the college professor passing judgment on that student on the sole basis of the product of those three hours of writing, [which] seem, on *a priori* grounds alone, quite incompatible with current ideals of educational measurement and administration.²⁴

Douglas Henderson has declared the law school essay exam as "psychometrically unsound,"²⁵ lacking in the precision and accuracy for the function it purports to perform,²⁶ inconsistently scored, and unreliable.²⁷ Janet Motley, in 1985²⁸, and Phillip Kissam, in 1989,²⁹ raised serious questions about the fairness of bluebook examinations. 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.

(4) *Performance assessment—with explicit criteria, feedback, and self-assessment—is an effective strategy for ability-based, student-centered education.*³⁰

22. *Id.* at 3.

23. Michael Josephson, *Learning and Evaluation in Law School* 7 (M. Josephson 1984).

24. Ben D. Wood, *The Measurement of Law School Work*, 24 Colum. L. Rev. 224, 226 (1924).

25. Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. Mich. J.L. Reform 399, 407 (1994).

26. *Id.*

27. *Id.* at 409-11.

28. Janet Motley, *A Foolish Inconsistency: The Law School Exam*, 10 Nova L. Rev. 723 (1985).

29. Philip C. Kissam, *Law School Examinations*, 42 Vand. L. Rev. 433 (1989).

30. *Shared Educational Assumptions*, *supra* n. 10, at 3.

Consider the scenario in which faculty develop written criteria for competent performance of a fundamental professional skill.³¹ Faculty provide the student with the criteria and ask the student to perform the skill while they evaluate the performance, whether written or oral. They also ask the student to self assess the performance and then provide feedback by sharing with the student the faculty evaluation using the criteria. This is an effective strategy for student learning that is ability-based. It also reflects how assessment can be integral to student learning.

A. Individual Methods for Assessing Student Learning

In view of the above principles, I will here discuss expanding the available methods of assessment. I begin with a disclaimer. My experience is that faculty, when first presented with assessment alternatives, feel overwhelmed and think any change in assessment necessarily involves a substantially increased time demand. This is a misconception. What I propose are alternatives to the present methods of assessment, not additions to them. If a faculty member realistically accounts for the massive time she spends designing, administering, and assessing bluebook exams for two courses each semester, she will find the same time could accommodate several other assessment techniques. In my three-credit insurance course, I use five forms of assessment, some individual, others collaborative, one oral, and give no final exam. I use multiple and varied assessments and believe I invest no more time than if I were engaging in the tedious endurance exercise of grading bluebook exams. In essence, I simply spread the assessment out with very positive results.

That being said, the bluebook essay exam on hypothetical facts and the objective examination (multiple choice, fill in blanks, matching) obviously both have their place in a program of multiple and varied forms of assessment. Many faculty also make use of the take-home exam, which allows use of materials outside the exam room. Some additional assessment techniques that I urge faculty to consider follow.

1. Videotape presentations

If the person who learns the most is the instructor, then we should make students instructors by asking them to turn in short (five or ten minute) presentations on videotapes as an effective means of promoting student learning and oral communication skills. A videotape presentation is a formative method of assessment that requires the student to master any subject well enough to synthesize and organize it into a structured oral presentation. The videotape exercise can be used to assess student understanding of virtually any substantive legal topic, as well as to assess skills in analysis, research, and communication.

31. Professors Sophie Sparrow and Kimberly Kirkland of Franklin Pierce Law School have developed "rubrics" or elaborate criteria for professional skills performances, which they presented in *Describing the Ball: Enhancing Learning and Fair Grading With Rubrics* at the Eighth Annual Conference of the Institute for Law School Teaching at Gonzaga University School of Law in Spokane, Washington, July 13-14, 2001 (material on file with the author). For examples of criteria, see Gregory S. Munro, *Outcomes Assessment for Law Schools* Appendix C (Inst. for L. Sch. Teaching 2000).

Provide the students with instructions and criteria for a good presentation, defense, or argument, and let them analyze their material and synthesize it into an effective presentation. The performance criteria should cover the substance expected, as well as any professional skills involved. Grading the tapes can be enjoyable and a pleasant change from the tedium of grading handwritten bluebook exams. Most important, faculty will discover that some students who do poorly on written work excel in demonstrating their knowledge and understanding in an oral presentation. That discovery will illustrate the wisdom of assessing in varied modes.

2. Live oral presentations

In substantive classes, I ask students to present short appellate arguments of cases from the casebook while assigning other students to serve as appellate court judges. The student who must explain and argue a litigant's position that resulted in an appellate court decision must, of necessity, learn the case. In addition to increased understanding of the law, the student can practice oral communication skills. Students serving as appellate court judges must likewise learn the case to be able to articulate appropriate questions. The teacher who sits as chief justice can facilitate the questioning and steer the discussion to social, economic, or political issues that were important in the decision.

At the University of Montana School of Law, all upper-class students must make an advanced oral presentation in the form of an appellate argument, the presentation and defense of a legal academic paper such as a law review article, or the presentation and defense of a public policy paper. Even short presentations with questions are effective in demonstrating student learning levels. Ideas for student oral performances include motion arguments, appellate arguments, class presentations, and colloquia.

3. Drafting legal documents

Students who are asked to do what they know can draft pleadings, contracts, jury instructions, estate and business plans, and other documents that require research, analysis, problem solving, and communication. Such documents can be used to measure student mastery of knowledge of a course's substantive law, as well as fundamental professional skills. Legal advice letters, legal office memoranda, and legal briefs are additional examples of written performances that can be used as formative assessment exercises. Faculty can prepare written criteria for students by which each type of writing will be assessed.

Technology can be used in assessment of written professional skills exercises. Because legal documents follow conventions in format and content, faculty can predict the errors students are likely to make and prepare in advance of assessment computerized comments, criticisms, and tips, each of which can be stored on computer disc. For example, in an exercise involving the drafting of pleadings in a state court of general jurisdiction, past experience indicates students may mistakenly plead jurisdictional allegations that are only required in courts of limited jurisdiction

such as federal courts or worker's compensation courts. The criticism and comment for this expected error could be called "jurisdiction," and its content, which would appear on the student's assessment sheet, would be as follows:

Under state procedural rules, you are not required to plead jurisdiction when filing in a state court of general jurisdiction. Hence, you need not plead such things as citizenship or amounts in controversy. You are only required to expressly plead jurisdiction in courts of limited jurisdiction such as federal courts whose jurisdiction is limited to diversity cases and cases raising federal questions. Nevertheless, it is not wrong to do so, just unnecessary and not customary.

A comment on poor spelling could be called "spell" and would advise the student that the paper contains spelling errors that are unacceptable for legal documents.

This process of using computer-generated comments allows a faculty member to provide a student far more educational feedback than writing in margins does. Each comment or criticism can be stored under a "macro" or combination of keystrokes that will cause that comment or criticism to be printed on the student's evaluation sheet. If the faculty member dictates the assessment, she simply dictates "jurisdiction," and the secretary does the keystroke for the macro that prints the criticism, comment, and tips for resolving the problem. If the evaluator sees a problem not covered by a named macro, she simply dictates the specific comment, which the secretary will type. This method allows faculty to provide a great deal of feedback to the student, far more than could ever be written in the margins. I have even used this method on bluebook exams, which experience shows will exhibit common problems such as failure to identify the issues, state the law, apply the law to the facts, or draw conclusions, as well as poor spelling and grammar.

4. Student portfolios

Just as architecture and art students prepare portfolios of their work, law students also can demonstrate their competence by preparing a portfolio of work for assessment. For example, if the school follows a policy of keeping on file copies of all student exams, papers, written performances of any kind, and assessment instruments from oral performances, then the file constitutes a written record of the student's performance. Review of that file vividly reflects how the student is doing in law school and that student's strengths and weaknesses. It also reflects a great deal of information about the curriculum, individual courses, forms of assessment being used, and student performance in general. The portfolios can be most valuable for institutional assessment of the academic program. An instructor could require submission of a portfolio of work for a course to assess student performance in the course.

B. Classroom Assessment Techniques

"Classroom assessment" focuses on "small scale assessments conducted

continuously by . . . teachers to determine what students are learning in that class.”³² Classroom assessment is integral to learning and valuable because it is so proximate in time, providing immediate feedback to teacher and student. It consumes little time and can provide a rich and focused communication between the teacher and the student. The feedback in the classroom fits into two broad categories: (1) measures of student learning; and (2) student observations of and reactions to teaching.³³ The bible for classroom assessment techniques is Angelo and Cross’s book, *Classroom Assessment for Teachers: A Handbook for College Teachers*.³⁴ In it, Angelo and Cross published their Seven Basic Assumptions for Classroom Assessment:³⁵

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

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

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

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

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

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

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

In Angelo and Cross’s book, faculty can find a remarkable array of fifty effective techniques to assess student learning and faculty teaching in the classroom. These include techniques for assessing prior knowledge, recall, and

32. K. Patricia Cross, *Feedback in the Classroom: Making Assessment Matter* 5 (AAHE Assessment Forum, Am. Assn. for Higher Educ. 1988).

33. Thomas A. Angelo & K. Patricia Cross, *Classroom Assessment Techniques: A Handbook for College Teachers* 6-7 (2d ed., Jossey-Bass 1993).

34. *Id.*

35. *Id.* at 7-11.

understanding. The following techniques can be employed successfully in virtually any class:

1. Misconception/preconception check:³⁶ This classroom assessment technique uncovers prior knowledge or beliefs that may hinder or block learning. For example, law students studying auto casualty insurance in an insurance class often believe that Uninsured Motorist coverage applies only when the insured is driving or riding as a passenger in a vehicle, when, in fact, the policy language covers the insured as a pedestrian hit by an uninsured motorist, which coverage accords with the legislative intent to protect the public from injury by uninsured motorists. Students also believe that Bodily Injury Liability coverage will provide benefits to a driver injured in a single-vehicle rollover, when, in fact, it covers the driver only for liability to others. These misconceptions can be revealed and dealt with by means of the misconception/preconception check before covering the material.

2. Minute papers:³⁷ The “one-minute paper” or “half-sheet response” asks students in a couple minutes or on a half sheet of paper some variation of the questions, “What is the most important thing you learned during this class?” and “What important question remains unanswered?” This allows the professor to assess whether students are getting the main theme around which the material is based or are meeting learning objectives. It also lets the professor know what students do not understand. This is especially important, since faculty often assume students have learned or have a base of knowledge when, in fact, they do not.

3. Empty outlines:³⁸ The professor gives the students a partially completed outline and asks them to fill in the outline for the material covered in the reading, lecture, or other materials.

4. Categorizing grids:³⁹ This technique requires students to sort information in appropriate conceptual categories.

5. Defining features matrix:⁴⁰ This assessment matrix requires students to categorize concepts according to the presence or absence of certain defining features. For example, students in a securities or business regulation course might be asked to categorize transactions on a matrix defining features that determine whether the transaction constitutes a security for purposes of regulation. Students in an insurance class might categorize on a matrix various forms of contract to determine whether they are “insurance” for purposes of insurance regulation.

6. Classroom opinion polls:⁴¹ This device helps students to be aware of

36. *Id.* at 132.

37. *Id.* at 148.

38. *Id.* at 138.

39. *Id.* at 160.

40. *Id.* at 164.

41. *Id.* at 258.

their own opinions, weigh them in light of those of their peers, and test them against evidence and expert opinion.

7. Course-related self-confidence surveys:⁴² The professor designs this survey with a few simple questions designed to determine the students' self-confidence in an ability or skill. This allows the professor to evaluate the best approach to student learning and the needs of the students. For example, a professor in a trial advocacy class might design a survey asking students their level of confidence that, in this class, they will gain the ability to speak publicly, conduct voir dire, make a prepared statement of what their evidence will show, perform cross-examination, or make a closing argument. The survey may reveal that students feel confident of their ability to learn to make an opening statement, but lack confidence in their ability to learn to cross-examine a witness or to carry on a voir dire dialogue with a jury. The professor can then work with students on strategies to overcome that lack of confidence.

8. Electronic mail feedback:⁴³ The professor asks a single question by e-mail to the class. Each student responds with a personal, anonymous message to the professor's electronic mailbox. This provides a fast method of receiving immediate feedback on an issue regarding teaching or teacher.

9. Group instructional feedback technique:⁴⁴ This method provides a peer reviewed but anonymous form of teaching evaluation.⁴⁵ Generally, a facilitator from outside the school visits the class, which has been divided into small groups. The facilitator asks the groups three questions regarding the course and instruction: (1) What works? (2) What does not work? (3) What can be done to improve the course or instruction? The facilitator then presides over reporting by the groups to help them arrive at consensus on the three questions. The facilitator reports the results to the professor, allowing the process to remain anonymous but providing valid, reliable, and fair feedback to the professor.

Angelo and Cross point out several positive characteristics of classroom assessment.⁴⁶ They note that, although it is teacher directed, "depending on the judgment, wisdom and experience of the teacher," it is simultaneously learner centered. Moreover, it is mutually beneficial to both teacher and students.⁴⁷ Classroom assessment is formative, not designed to be "evidence for grading," but part of the learning process.⁴⁸ It is ongoing and can become part of the "daily

42. *Id.* at 275.

43. *Id.* at 327.

44. *Id.* at 334.

45. For a description, see Gregory S. Munro, *More Effective Evaluation of the Course and Instructor*, in Gerald F. Hess & Steven Friedland, *Techniques for Teaching Law*, *supra* n. 18, at 281.

46. See Angelo & Cross, *supra* n. 33, at 4-7.

47. *Id.* at 4, 5.

48. *Id.* at 5.

feedback loop between students and teacher.”⁴⁹

C. Some Methods for Institutional Assessment

Finally, I will identify some methods to assess the success of the law school as an institution in meeting its mission and institutional outcomes. Some methods such as accreditation site visits and the prerequisite self-study are familiar to law schools. Unfortunately, those are often the only institutional assessment that law schools do.

1. Self-study: A law school's self-study done in preparation for an accreditation visit can be an excellent form of institutional self-assessment if it is a collaborative task performed by the faculty. If the self-study is window dressing performed by the deans or a small committee of the faculty, it will have less value. Also, the self-study can be effective if those conducting it make the right inquiries regarding the state of the school's mission, outcomes, teaching methods, curriculum, assessment program, strategies for achieving goals, and obstacles to those goals. It can be much less useful if it focuses only on such things as library size, staff size, level of funding, and faculty characteristics.

2. Accreditation and site visits: To a certain extent, accreditation teams constitute an outside objective source for institutional self-assessment. Site visits and accreditation reviews are the most intensive form of institutional assessment most law schools undergo. Nevertheless, accreditation will generally reveal whether the school meets minimum accreditation standards and is not necessarily focused on whether the school meets its own institutional mission and outcomes.

3. Interviews: Law schools can use interviews to ask specific questions of any of the school's constituencies to glean answers that will allow the school to evaluate its success in any area. For example, students, upon admission to the law school, might be interviewed to determine effectiveness in marketing the law school; likewise, students might be interviewed upon graduation to determine effectiveness in meeting institutional outcomes. Lawyers, judges, or virtually any constituency that has a chance to observe the school or its students, faculty, or alumni are appropriate candidates for carefully designed interviews.

4. Questionnaires and surveys: These can be sent to any constituency of the law school. Most commonly, schools survey their alumni or the bench and bar for perspectives or opinions about some aspect of the institutional mission. The student body can be surveyed quickly for feedback on many issues of institutional outcomes.

5. Statistical information: Those engaged in institutional assessment will find useful statistical data readily accessible in the school's own files. Admission files contain LSAT scores, information on prior occupation and education, reasons for

49. *Id.* at 6.

entering law school, bar exam results, and a host of other statistics that can be used for assessment. Student files can answer many questions about the nature of the school's students and the value added during their tenure in law school. Fund development has caused schools increasingly to develop and retain alumni records, which are a source of much information on institutional outcomes.

6. Bar exam results: Though bar exam results are a form of statistical information discussed above, such results merit separate mention. One of the most obvious measures of student and institutional outcomes in law schools is bar exam results and trends that may be reflected in such results over time. They are limited in their usefulness and valid only on particular questions, but they are an important measure of whether the school is providing students with that body of knowledge and skills deemed necessary by bar examiners. The bar exams are unique forms of institutional assessment, because they are administered and evaluated by a body outside the law school and require graduates to demonstrate a certain level of proficiency in those skills the exams address. Some bar exams now require demonstration of drafting and other professional skills.

7. Faculty portfolios: Faculty curriculum vitae are the prime source of data on the success of the institution in promoting faculty achievement in the area of teaching, public service, and scholarship. Faculty can also develop portfolios for purposes of promotion and tenure that would supplement a CV by addition of teaching videotapes, class syllabi, and other materials by which the faculty's performance and qualities can be assessed.

8. Placement records: One measure of success in student learning and institutional outcomes is the school's success in placing its graduates. Hence, review of placement records is a valuable assessment tool for the institution.

IV. Conclusion

I conclude by referring to the "Educational Assumptions Underlying Assessment," which were developed by the faculty of Alverno College in Milwaukee. Alverno is a national leader in the assessment movement. For our purposes, I adapt Alverno's four assumptions to legal education so that they read as follows:⁵⁰

- 1) Law students should not just know; they should be able to do what they know.
- 2) Law faculty must articulate and make known their student learning outcomes.

50. Adapted from educational assumptions described in Alverno College Faculty, *Student Assessment-as-Learning* 3-4 (Jo Ann Schmitz ed., Alverno College Inst. 1994).

- 3) Law students' abilities must relate to what their professional life in service to society will require.
- 4) Assessment is integral to law student learning.

If we have a clear sense of mission, state our student learning outcomes, develop effective teaching methods and curricula, and follow the principles that foster student learning, assessment will become a clear and integral part of legal education. We will find that the focus of student assessment in law school will be on enhancing student performance, providing multiple evaluations of student performance, and giving appropriate feedback to students. In the end, we will know whether our curricular innovation has been successful.