
ARTICLES

A BLUEPRINT FOR USING ASSESSMENTS TO ACHIEVE LEARNING OUTCOMES AND IMPROVE STUDENTS' LEARNING

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For over a decade, there has been agreement among legal educators that assessments are a critical tool to improve students' learning. We are beginning to understand that the types of assessments we use have the greatest influence on how and what students learn. As a result of recent ABA accreditation requirements, there is now a scramble in law schools to adopt assessments that improve students' learning and bar passage rates as to satisfy these new requirements. Nevertheless, there remains no clear methodology to assist doctrinal faculty in creating an effective assessment program. After twenty-seven years of developing assessment programs that have improved students' learning and bar passage rates, this article is an attempt to provide faculty and administrators a blueprint for incorporating an effective assessment program.

I. INTRODUCTION	4
II. ONE INSTRUCTOR'S ASSESSMENT JOURNEY	5
III. LEARNING OUTCOMES AND ASSESSMENTS: BACKGROUND.....	17
A. <i>The New-Found Enthusiasm for Assessments in Law School</i>	17
B. <i>Relationship Between Student Learning Outcomes and Assessments</i>	20
1. What Are Student Learning Outcomes?.....	20
2. What Are Student Assessments?.....	21

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- (a) *Assessments and Transfer of Learning*.....21
 - 3. Types of Student Assessments23
 - (a) *Summative Assessments*.....23
 - (b) *Formative Assessments*.....24
 - (c) *Summative/Formative Assessments*.....24
 - C. *Kinds of Formative (or Summative/Formative) Assessments*.....25
 - 1. Assessments of Case Analysis Skills.....25
 - 2. Assessments of Cognitive Skills.....26
 - (a) *Assessments of Knowledge and Understanding*.....26
 - (b) *Assessments of Analytical Skills*.....28

IV. INDIVIDUAL FEEDBACK: THE CRITICAL FEATURE OF AN EFFECTIVE ASSESSMENT PROGRAM.....29

- A. *Individualized Feedback Is Most Effective*.....30
 - 1. General Feedback Is Good.....30
 - 2. Individual Feedback Is Better.....31
- B. *Effective Feedback Makes it Clear What Is the Standard for the Assessment*.....33
- C. *Effective Feedback Facilitates the Development of Self-Learning Skills*.....34
 - 1. Using Multiple-Choice Questions to Develop Self-Learning Skills.....36
- D. *Effective Assessment Feedback Should Be Administered Frequently*.....39
 - 1. Using Teaching Assistants to Provide Feedback on Multiple Assessments.....41

V. BLUEPRINT FOR USING ASSESSMENTS TO ACHIEVE LEARNING OUTCOMES AND IMPROVE STUDENT LEARNING44

- A. *General Recommendations to Faculty Regarding Assessing Student Learning Outcomes*.....44
 - 1. Explain the Learning Process and the Role of Assessments in Learning.....44
 - (a) *Dispel Misconceptions*.....44
 - (b) *Help Students See Testing as a Learning Tool*.....45
 - 2. Provide Diagnostic Assessments Throughout the Semester.....46
 - 3. Provide More than One Summative Assessment During the Semester.....47
 - 4. Use the Midterm as a Learning Tool.....48

- 5. Provide at Least Two Significant Formative Assessment Per Semester.....49
- B. Other Recommendations to Faculty to Improve Student Learning.....51*
 - 1. Guide Students’ Reading Prior to Class.....51
 - 2. Encourage Student-Faculty Contact: Office Hours.....52
- C. The Constituents of the Assessment Program Must Work Together.....53*
 - 1. The Role of the Administration53
 - 2. The Role of the Faculty.....55
 - 3. The Role of the Academic Success Office56
 - 4. The Role of Students.....57
- VI. CONCLUSION.....60

I. INTRODUCTION

For a number of reasons, law schools across the country are seeking ways to better prepare students for the practice of law.¹ There is a consensus that a program of multiple assessments in doctrinal and legal writing courses can help develop students' analytical and self-learning (self-regulated learning) skills.² There is significant scholarship on what assessments are and how they work,³ and there is scholarship on programs to assess institutional⁴ and program learning outcomes.⁵ However, although a coordinated outcome assessment program for doctrinal courses is a critical component of an institutional learning outcomes assessment program, there is little scholarship on

¹ The high cost of a legal education, declining enrollment, lower bar passage rates, poor employment prospects, and the new ABA accreditation requirements are pressuring law schools to confront the ways in which they educate students to become competent lawyers. See Anthony Niedwiecki, *Law Schools and Learning Outcomes: Developing a Coherent, Cohesive, and Comprehensive Law School Curriculum*, 64 CLEV. ST. L. REV. 661 (2016) [hereinafter *Comprehensive Law School Curriculum*]; Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 U. SOUTH FLA. L. REV. 245 (2016) [hereinafter *Comprehensive Assessment Plan*]; Julie M. Spanbauer, *Using a Cultural Lens in the Law School Classroom to Stimulate Self-Assessment*, 48 GONZ. L. REV. 365, 366–68 (2013).

² Self-learning (also known as self-directed, self-regulated learning, or expert learning) refers to a students' ability to manage their learning skills. Expert self-learners are able to actively engage with the materials they are learning, take responsibility for their own learning, and practice identifiable self-learning techniques. MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* (2005). Most entering students are novice learners, with poor self-learning skills. See Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 91–93 (2010) [hereinafter *Using Assessments*].

³ *E.g.*, Karen McDonald Henning & Julia Belian, *If You Give a Mouse a Cookie: Increasing Assessments and Individualized Feedback in Law School Classes*, 95 U. DET. MERCY L. REV. 35 (2017); Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-section Doctrinal Course*, 19 WIDENER L.J. 159 (2009); GREGORY S. MUNRO, *OUTCOME ASSESSMENT FOR LAW SCHOOLS* (2000).

⁴ *E.g.*, Andrea A. Curcio, *A Simple Low-Cost Institutional Learning-Outcomes Assessment Process*, 67 J. LEGAL EDUC. 489, 490–91 (2018); *Comprehensive Law School Curriculum*, *supra* note 1; ANDREA SUSNIR FUNK, *THE ART OF ASSESSMENT: MAKING OUTCOMES ASSESSMENT ACCESSIBLE, SUSTAINABLE, AND MEANINGFUL* 40–43 (2017).

⁵ *E.g.*, *Comprehensive Law School Curriculum*, *supra* note 1.

how to create an outcome assessment program for doctrinal courses.⁶ The focus of this article is on how doctrinal faculty can develop an assessment program for their courses and how instructors (professors), academic support professionals, and administrations can work together to develop a coordinated assessment program.

Part I of the article describes the author's twenty-seven-year assessment evolution, depicting how cognitive science and his observations about students' learning influenced his use of assessments to improve students' analytical and self-learning skills. Part II notes that recent A.B.A. requirements will likely force law schools to incorporate assessments into their classes. This section also provides background on learning outcomes and assessments and describes how assessments should relate to course learning outcomes. Part III focuses on the importance of feedback in the assessment process. Specifically, this section describes the differences between general and individual feedback, explains why individual feedback is more effective to develop students' self-learning skills, and explores what makes feedback effective. Part IV is a blueprint for how to use assessments to achieve learning outcomes and improve students' learning, including recommendations to faculty regarding how to use formative and summative assessments to improve students self-learning skills. This section also describes how the administration, faculty, the Academic Success Office (ASO), and students must work together to ensure a successful assessment program.

II. ONE INSTRUCTOR'S ASSESSMENT JOURNEY

I was not thinking about bar passage or learning outcomes when I started using assessments in my first-year classes about 27 years ago.⁷ I began using formative assessments simply to help students learn the legal concepts we studied in class and to better prepare students for the midterm and final exams.⁸ Every week or two, I

⁶ See Curcio, *supra* note 3.

⁷ After six years practicing law, I started my teaching career in 1991 at Washburn Law School in Topeka, Kansas. That same year, I started using some form of assessments in my teaching curriculum.

⁸ I discovered first-hand the value of multiple assessments while in graduate school and working on a post-graduate degree in Chemistry. In some of the most challenging

would ask my first-year torts and civil procedure students to anonymously describe, on paper, any concept they found unclear. This was an easy and effective way to determine which basic concepts students were failing to fully understand. Then, in subsequent classes, I would spend extra time clarifying the topics that challenged most students.

I also gave students two or three short essay assessments to determine if they understood complex concepts that would later be tested on the midterm and final exams. I reviewed their answers, and, within a couple of days, provided generalized oral feedback to the entire class describing common mistakes and misunderstandings and clarifying concepts that tripped-up most students.⁹ Two or three formative assessments with generalized feedback helped students develop important learning skills and improved their performance from the midterm to the final exam. This improvement was evidenced by the fact that most students showed at least modest improvement from the midterm to the final exam although the final exam of my first semester torts class covered more complex negligence concepts than the intentional torts concepts covered on the midterm.¹⁰ This improvement was encouraging.

These early assessments also demonstrated that many students were not grasping simple legal concepts. As a result, I began to randomly ask students to send me their case briefs prior to class.

courses—like thermodynamics, quantum mechanics, and physical chemistry—we had quizzes at least once a week. The goal of these quizzes was to incrementally help us learn complex concepts. The quizzes counted little toward the course grade, but they helped us understand the materials and to be better prepared for the final exams. My experience in graduate school taught me the value of repeated assessments as tools to learn complex materials. As a result, when I started teaching in law school, I decided to provide some assessments prior to the final exam to help my students better learn the concepts studied in class.

⁹ I would have liked to administer weekly graded quizzes, but my law school classes were too large compared to the size of my classes in graduate school—around 80 students in Torts and Civil Procedure versus 10 to 12 students in most graduate school classes. I settled for two or three short-answer quizzes, the answers to which I would read and note issues, but logistically could not grade within a short window of time.

¹⁰ Generally, most students showed improvement in their final exam performance compared to their performance on the midterm. Many of these students had sought help after their midterm scores and most seemed to understand why they performed poorly on the midterm and what they needed to do differently on the final exam.

Reviewing these briefs revealed that, on their own, most entering students could not consistently identify key concepts within cases. Many students labeled all the concepts discussed by the court as critical, including those that were not at all relevant to the issues we were studying. Some students were consistently unable to identify key concepts, often completely ignoring them in favor of irrelevant ones. Reading students' case briefs helped me recognize that one of the obstacles students face early on in the first semester of law school is the ability to identify and understand legal concepts in the casebook prior to class discussion.¹¹ During class discussions, students seemed lost when asked to explain the cases and were often unable to even identify the primary issue of the case. It became clear that, without guidance, most entering students found it difficult to ascertain key legal concepts in the cases they read.¹²

A colleague teaching at another law school suggested that I read the work of educational and reading expert Peter Dewitz, who writes about how to help students read complex text, like cases and law school case-books.¹³ Students' inability to comprehend the complex legal text in the case book is also an obstacle to their performance on assessments.¹⁴ Dewitz suggested that in order to help students make sense of the readings in the textbook prior to class, law professors should provide students with foundational knowledge and context.¹⁵ After reading Dewitz's articles, I began to provide handouts to guide students' casebook readings by posting the handouts on the course web page and instructed students to use the handouts as guides to

¹¹ To say that most entering law students find reading legal text difficult is an understatement. Scott Turow, author and lawyer, describes this difficulty perfectly. In his book "One L," Turow compared reading cases as a first-year student to "something like stirring concrete with my eyelashes." SCOTT TUROW, *ONE L: THE TURBULENT TRUE STORY OF A FIRST YEAR AT HARVARD LAW SCHOOL* 16 (Warner Books) (1977).

¹² As novice readers of legal text, entering law students lack the background knowledge necessary to prioritize the concepts they read in casebooks. See Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 28–29 (2002).

¹³ Peter Dewitz, *Legal Education: A Problem of Learning from Text*, 23 N.Y.U. REV. L. & SOC. CHANGE 225 (1997).

¹⁴ See generally *id.* at 230–35.

¹⁵ *Id.* at 236–37.

reading the case book. The handouts were bare-bone guides containing little more than the case names followed by a question or two designed to help students focus on the concepts that would be discussed in class.¹⁶ I noticed an immediate improvement in classroom discussions. Since the handouts help students focus their analysis on the key legal concepts, their reading of the cases become more efficient. The result is not only that they arrive to class better prepared, they are also more confident and willing to participate in the class discussion. The handouts have the added benefit of reducing students' frustration stemming from not knowing what they are expected to glean from the cases and readings.

The handouts also improved students' performance on assessments, both in and outside the classroom.¹⁷ Nevertheless, the consistent poor performance of some of my students was concerning.¹⁸ In 1994, I began providing individual feedback to students on two formative assessments—one prior to the midterm and one prior to the final exam.¹⁹ These assessments called for short answers, and I quickly

¹⁶ Today, the handouts are more comprehensive; containing a short introduction to key legal concepts to be studied in a given section of the casebook, followed by the name of the cases that discuss and develop the concept and the pages in the casebook where the cases are located. Following each named case, the handout instructs students to brief the case and to answer a few questions designed to help them focus their reading of that particular case. The handouts also include short hypotheticals intended to help students self-assess their knowledge of the legal concept and their ability to apply the previously studied legal concept to new sets of facts. To help students organize the concepts they read in the casebook, the handouts generally follow the syllabus and arrange materials in an outline that track the organization of the materials in the Syllabus.

¹⁷ The handouts and class discussion help students understand the important issues in the cases, along with the rules and the reasoning courts have used to resolve the issue. This, in turn, helps students recognize how an IRAC can be used to resolve new legal problems.

¹⁸ When I first started using assessments, I noticed that some students dismissed assessments as just annoying busywork. These students showed little or no improvement on their performance from the midterm to the final exam. Most frustratingly, it became apparent after just a couple of years using assessments that some of the students who could have benefitted the most from these assessments were the least likely to take them seriously. These students performed worse on the final than on the midterm. My experience was similar in my Civil Procedure class, which I taught during the second semester of the first year.

¹⁹ These quizzes were scored but the score did not count toward the course grade.

scored and returned them to the students with a sample answer/grading rubric. I suggested that students use the rubrics to self-evaluate their work to determine what they were missing and why, and, what steps they should take to perform better on the midterm and final exams.²⁰ I also urged all students to attend office hours to discuss the assessments. Most of the students who showed up during office hours seemed to have an adequate understanding of why they did not perform to their potential while welcoming my help to develop strategies to improve their self-learning skills and, as a result, their performance on subsequent assessments. A few of the students who sought to meet with me worked hard to determine why they failed to perform as well as they expected. These students also wanted my help in developing strategies to improve their performance. Unfortunately, many students who performed poorly on the formative assessments never sought out my help.

The assessment process exposed some characteristics common among low-performing students: a lack of self-learning skills and a lack of awareness about their shortcomings. Many students who scored below average on assessments never sought to meet with me to get assistance in figuring out why they performed poorly and what they needed to do to improve their performance.²¹ Even more concerning was that, when asked, most of these students would assure me that they had not sought to meet with me because they independently figured out what they did wrong and what they needed to do to improve. Their subsequent poor performance on the final exam indicated that their confidence had been misplaced. Some students who performed poorly would come to see me, not to seek clarification or guidance to improve their performance, but to argue that I had erroneously scored their quiz since, as they saw it, their answer was essentially the same as the sample answer. These students did not see the assessments as an opportunity to develop strategies to improve.

²⁰ The grading rubrics were themselves very simple, noting the issues, rules, facts and arguments that I was looking for, but assigning only a few "points" to the entire assessment.

²¹ I suspect many colleagues have noticed this disturbing phenomenon that students who are performing poorly in class, and would therefore benefit the most from feedback, are the least likely to seek it. See, e.g., Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N. U. L. REV. 227, 238 (2015) (referencing a study that found that students with the lowest grades are often the least likely to seek assistance).

Instead, they seemed to perceive the assessment scores as personal attacks on their competence.

While formative assessments were clearly helping most students improve their performance on graded exams, I noticed that there were some students for whom assessments seemed to be of little help. As a result, I switched the focus of my research from trying to figure out how to improve students' performance to figuring out why some students resisted proven approaches to improving performance in law school.²² I confessed my frustrations with these low-performing students to a colleague who taught in the psychology department at Washburn University.²³ "Why," I asked, "do some of the students who would benefit most from assessments not view these as helpful learning tools?" My colleague suggested I read the work of Justin Kruger and David Dunning, educational psychologists who have researched the disconnect between students' perception of their competence and instructors' assessment of their competence.²⁴ Dunning and Kruger describe this disconnect as a cognitive dissonance condition, which has come to be known as the "Dunning-Kruger Effect" (or the "Dunning-Kruger Syndrome").²⁵

Dunning, Kruger, and others have also shown that it is possible to disrupt this flaw in cognitive skills by providing students several opportunities to self-assess their work at the same time that they are assessed and advised by their instructors.²⁶ In other words, the best

²² Perhaps because I started teaching at a fourth-tier law school, I believe that regardless of a student's credentials, the administration and faculty have a duty to make sure students admitted to the school are in turn provided with the tools to develop their analytical and self-learning skills to do well in law school, the bar, and beyond.

²³ I had not yet read Carol Dweck's work about "fixed" versus "growth" mind set, so I did not understand why some students saw the quizzes as opportunities to learn while others saw it as attacks on their intelligence. See CAROL S. DWECK, *MINDSET: THE NEW PSYCHOLOGY OF SUCCESS* 47 (2005).

²⁴ Justin Kruger & David Dunning, *Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self-Assessments*, 77 J. PERSONALITY & SOC. PSYCHOL. 1121, 1121-34 (1999).

²⁵ *Id.* See also David Dunning et al., *Flawed Self-Assessment: Implications for Health, Education, and the Workplace*, 5 PSYCHOL. SCI. PUB. INT. 69, 78 (2004).

²⁶ See Kruger & Dunning, *supra* note 24, at 1127-31; see also Greg Sergienko, *New Modes of Assessment*, 38 SAN DIEGO L. REV. 463, 483-87 (2001); Henry Kang, *When*

way to improve the analytical skills of low performing students is to have them engage in multiple assessments, complete self-evaluations, and receive individualized feedback. This was all well and good, but it was logistically impossible for me to provide multiple assessments with the kind of one-on-one feedback necessary to help all students improve their analytical skills. As a result, I decided to rethink how I used teaching assistants in my class. I had been using former students at Washburn University as teaching assistants (TAs) but they mostly helped me write quizzes and hold a couple of review sessions during the semester. Around 2001, I began to use TAs in my Torts class primarily to provide one-on-one feedback to incoming students on three or four formative assessments during the semester. Whether administered in or outside the classroom, the assessments were voluntary. TAs were assigned to at least a dozen students, but it was entirely up to the students whether to complete the assessments or to seek feedback from the TAs or from me. As an incentive to seek feedback, students would only have access to the sample answer/grading rubric for an assessment after they had turned in their assessment answer to their TA.

The revised TA program was mostly successful. A significantly higher percentage of students completed assessments and sought feedback from the TAs than they had ever done with me. Only a few students complained that the assessments were too much work and, most importantly, most students' performance on the final exam improved.²⁷ A familiar pattern, however, soon emerged. TAs bemoaned the fact that a few students did not take the assessment process seriously. Some students did not turn in any assessments or seek feedback from their TAs. Some spent their time with the TA complaining that their answer was scored unfairly, and some did not

Ignorance Begets Confidence: The Classic Dunning-Kruger Effect, TYPE ZEN: A COMMUNITY ZEN (July 3, 2014) (citing the full article by Daniel R. Hawes et al., published on June 6, 2010 on Psychology Today), <http://www.typezen.com/when-ignorance-begets-confidence-the-classic-dunning-kruger/2969>.

²⁷ To determine whether the assessment program was improving students' analytical skills, I decided to administer the same exam I had given some years prior. I made some minor changes to the final exams I had used in 1995 and 1996 and administered these in 2002 and 2003. The average score for the class was several points higher, but more importantly, the substance of the students' answers was better.

seem fully engaged with the program, turning in answers that showed minimal effort just so they could receive the sample answer.

A year after I started teaching at John Marshall Law School ("JMLS") in 2004, I approached the Dean with a plan to use former students as TAs, specifically to provide students in my Torts class individual written and oral feedback on assessments prior to the midterm and final exams. I called the TA program the Multiple Assessment Teaching Assistant (MATA) program. The Dean supported the program and agreed to compensate my TAs at the same rate Research Assistants were compensated. I trained a dozen TAs to provide individualized feedback to incoming students on six essay assessments given throughout the semester. The assessments were mandatory and students had a deadline by which to submit their answers to the TAs. TAs reported that a high percentage of students embraced the assessment program almost from the start and that most were engaged with the program after the midterm.²⁸ The improvement in student performance in class and on final exams was noticeable.²⁹ Additionally, students who participated in the MATA program passed the bar at higher rates than those of the law school in general.³⁰

²⁸ A few TAs reported having a student or two assigned to them who did not feel they needed the assessments. Early in the semester, these students would submit their assessment answer late and/or turn in very poor work. Most of these students started to take the program seriously around the time of the midterm, either because they started to recognize the value of the assessments or because of peer pressure since most of the students found the assessments valuable. Of course, out of a class of around 80, there were a handful of students who never did embrace the assessment program. They all did poorly in the course.

²⁹ In 2005, I administered virtually the same Torts exam at John Marshall that I had given to my Torts students at Washburn during the fall of 2002. In 2006, I administered the same final I had given to my UMKC students in 2003. The top exams in 2005 and 2006 were two and three points higher than in 2002 and 2003 and the average exam score was several points higher than in 2002 and 2003. A side by side comparison of a random sampling of exam answers also demonstrated noticeable better analysis in 2005 and 2006 than in 2002 and 2003.

³⁰ For example, the July 2007 Illinois bar passage rate for all JMLS students was 90%. Students in my 2004 Torts class, who had several formative assessments as well as a midterm and final exam during the semester, passed the July 2007 bar exam at a rate of 97%. The July 2008 Illinois bar passage rate at JMLS was 90% while the bar passage rate for my Torts students was 94%.

The publication of two books in 2007 lead me to consider, for the first time, the relationship between the learning outcomes of my courses and the assessments I was using in those courses. Soon after reading the Carnegie Foundation's "Educating Lawyers"³¹ and the Clinical Legal Education Association's "Best Practices for Legal Education" books,³² I amended my course learning objectives to be clearer and more concrete and revised the assessments to more explicitly measure whether specific course objectives were being met.

In 2009, I developed a more formalized MATA program with different types of assessments meant to reach students with a broader range of learning styles. This MATA program increased the number and kinds of assessments, added additional training of TAs to score and provide assessment feedback, regular monitoring of student progress, and early intervention to help struggling students. Being more explicit about the relationship between learning outcomes and assessments improved students' participation in the MATA program. Most students seemed fully engaged with the multiple assessment program, finding that the individual written and oral feedback provided by their TAs helped them develop their analytical and writing skills.³³ Still, TAs reported that a few students resisted the MATA program at the beginning of the semester, considering the assessments to be little more than busywork. These students put in very little effort and often complained that they understood the materials and did not need the assessments. After performing poorly on the midterm, some of these students engaged with the program for the rest of the semester, significantly improving their performance on the final exam and doing well in the class. A handful of students improved their performance from the midterm to the final exam. However, it was

³¹ SULLIVAN ET. AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 22 (2007).

³² ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 175 (2007).

³³ I believe one of the reasons most entering students embraced the MATA program is that their TAs as well as other former Torts students shared with them how they had found the MATA program valuable. As a matter of fact, I would regularly hear from students that their classmates in other sections were unhappy they did not have multiple assessments in their first semester classes.

not enough to overcome their poor showing on the midterm, and they received Ds and Fs in the class.

Another feature of the 2009 MATA program was to provide entering students with a "How to Succeed in Law School" handout prior to orientation. The handout described some of the challenges of the first year of law school, provided tutorials on case reading and briefing, outlining, and exam taking, and explained how the MATA program was designed to help them succeed in law school. The MATA program provided the tools to develop students' analytical and writing skills, which resulted in improved performance in Torts as well as in other courses.³⁴

A number of years ago, some of us teaching first-year courses at JMLS noticed that we were encountering more low-performing students. These lower credentialed students arrived in law school with poor time-management, poor reading and writing skills, almost no self-learning or professional skills, and a remarkable inability to recognize their shortcomings.³⁵ Since most students had not developed these skills prior to law school, we felt the need to help them develop these skills in law school. As a result, I significantly expanded the "How to

³⁴ Learning experts believe an important aspect of deep learning is "transfer," which they define as the ability to extend what they have learned in one context to a new context. See, e.g., NATIONAL RESEARCH COUNCIL, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 51 (John D. Bransford et al. eds., 2000) [hereinafter HOW PEOPLE LEARN]. An added benefit of the MATA program is that it improved students' "transfer" skills. Students regularly told me that the learning skills they developed in the Torts MATA program helped them figure out what they needed to do to perform better in other courses. A colleague who was teaching Civil Procedure to two sections of second semester 1Ls told me that the students in the section that had been in my Torts class the previous semester were better prepared and participated more in class. Although she gave the two classes different final exams, she believed the answers of my former students were better organized and clearer.

³⁵ Conversations with colleagues at other schools confirmed the increase in low performing students and the new challenges this posed. We were particularly vexed at the number of students whose level of confidence at their competence was inversely proportional to their actual competence. As one of my colleagues observed, what these students lacked in competence, they made up for in confidence. See also Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 VAL. U. L. REV. 41, 41 (2013); Henning & Belian, *supra* note 3, at 36–37.

Succeed in Law School" handout, adding tutorials on time-management, attitude adjustment, and self-learning skill development. I also trained the TAs to provide entering students extra help with time-management, self-learning skills, and resiliency. Finally, I asked the directors of the ASO and the Writing Resource Center to provide extra assistance to students who were performing poorly on essay assessments.

In the fall of 2011, Professors Julie Spanbauer and Maureen Kordesh, colleagues at JMLS, adopted a MATA program in their first-year Contracts and Property classes. They selected several of their former students, who I trained to provide individual feedback to their students on a number of essay and multiple-choice assessments. My colleagues were happy with the results, so, in 2012, Julie, Maureen and I ran an experimental MATA program. The students in one of the four entering first-year sections were assigned just to us for Torts, Property, and Contracts, the doctrinal courses our full-time students are required to take during their first semester. We agreed that in each of our courses we would provide weekly formative assessments throughout the semester in addition to a midterm and a final exam. Our students took at least two, sometimes three, formative assessments each week. The assessments were mandatory and students were required to submit their answers to their TAs by a strict deadline. The TAs scored the assessments with rubrics my colleagues and I prepared, but the scores did not count toward the course grade. To receive written and oral feedback, students had to meet with their TAs to discuss their performance and, most importantly, develop strategies to improve.³⁶ Early in the semester, students in our intensive MATA program complained that they were working much harder than the rest of the entering class. As the semester progressed, however, our students confided (mostly to their TAs) that they appreciated being assigned to the MATA program because the multiple assessment-individual feedback process was helping them feel more in control of their learning. By the end of the semester, students in the other

³⁶ For a more detailed description of the coordinated multiple assessment program at John Marshall, see Julie M. Spanbauer, Rogelio Lasso & Maureen Kordesh, *Presentation for the JMLS Faculty Works in Progress Series (CLE): Institutionalizing the Multiple Assessment Teaching Assistant Program*, (May 2014) (on file with author).

sections who were not part of the MATA experiment complained to the administration that they had not been assigned to a section with multiple assessments.

There were two tangible outcomes of this experiment. First, the bar passage rate of the students who were in our section ended up being significantly higher than the overall law school rate.³⁷ Second, most of our experimental section's students with LSAT scores lower than 149 passed the bar.³⁸

As JMLS admitted more students with lower credentials, the school's bar passage rate continued to decline.³⁹ In August of 2017, the law school brought in Professor Laurie Zimet, a bar-passage consultant, to help the law school determine ways to improve our bar passage rate. Professor Zimet noted that the JMLS ASO had developed strong bar-passage courses but suggested that the issue of bar passage cannot be left primarily to a few bar-passage courses in the last year of law school. She stated that efforts to help our students develop their analytical skills to pass the bar required the involvement of all faculty in general, and particularly of the first-year faculty. Professor Zimet urged that, among other things, all faculty should start providing multiple assessments with both general and individual feedback.

³⁷ The students who were involved in the experiment took the bar in July of 2015 and the results demonstrated a positive correlation between our MATA program and bar passage. The overall state bar passage rate was 80% and the overall bar passage rate for John Marshall law school was 73%. By contrast, 83% of the students who were in our coordinated MATA program passed the bar exam that July.

³⁸ The multiple assessments and individualized feedback of the MATA program have a particularly positive effect on students with lower LSAT scores. *See, e.g.*, Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139, 139 (2017) ("[T]he positive impact of feedback is stronger among students whose combined LSAT score and undergraduate GPA fall below the median at the University of Minnesota Law School."). This makes sense because entering students with high credentials tend to arrive to law school with better self-learning skills than students with lower credentials, so, the improvement in self-learning skills is more pronounced in lower credential students.

³⁹ For example, students who had been in the bottom quartile in the 2008 entering class were, by 2016, our top quartile entering students. Our first-time bar passage rate in 2011 was 85% but by 2016 it was down to 65%. We had a brief upswing in 2017, with a bar passage rate of 72% but it dipped again in 2018, to 62%.

Providing further motivation for using assessments in our courses are A.B.A. standards 301 to 314, which require, among other things, that law school classes should include multiple assessments as well as A.B.A. Standard 316, which requires that law schools attain a 75% bar passage rate after two years.⁴⁰ As a result, faculty adopted a policy urging professors to incorporate assessments in all courses. Today, many JMLS colleagues teaching first-year and some upper level courses, provide some assessments in each class, offering at least generalized feedback to the class. This was an important step to helping our students develop the analytical and writing skills needed to succeed in law school, on the bar exam, and in law practice.

In my Torts class, I currently provide two summative/formative assessments and over a dozen formative essay and multiple-choice assessments prior to the final exam. The formative assessments range from short, in-class quizzes and self-scored online multiple-choice quizzes to essay and multiple-choice quizzes that are scored by TAs who also provide students with one-on-one oral and written feedback.⁴¹ Summative/formative assessments include a graded exam during week four or five of the semester and a midterm during week six or seven.

III. LEARNING OUTCOMES AND ASSESSMENTS: BACKGROUND

A. *The New-Found Enthusiasm for Assessments in Law School*

Over the past dozen years, an increasing number of faculty have incorporated some form of assessments into their classes, possibly as a result of reading the Carnegie report and Best Practices in Legal Education.⁴² Nevertheless, the A.B.A.'s new assessment requirements appear to have influenced professors to consider incorporating

⁴⁰ Jeffrey E. Lewis, *Revised Standards for Approval of Law Schools: Standard 316: Bar Passage*, 105 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO B. 1, 1 (Jan. 2019), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/feb19/1-resolution-105.pdf.

⁴¹ For the fall of 2017, I had twenty TAs whose primary goal was to provide individual feedback on assessments and to administer assessments throughout the semester to around 115 Torts students.

⁴² SULLIVAN ET AL., *supra* note 31, at 188–89; STUCKEY ET AL., *supra* note 32, at 194.

assessments into their courses.⁴³ In addition to requiring faculty to incorporate assessments into their classes,⁴⁴ the new A.B.A. standards also provide that law schools should develop and publish learning outcomes that clearly state what each school believes their students should know and be able to do upon graduation.⁴⁵ Further, the new A.B.A. standards require that schools "conduct ongoing evaluation of the law school's program of legal education, learning outcomes and assessment methods" and "use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum."⁴⁶ Although the A.B.A. has yet to enforce the new outcome assessment standards, their adoption has resulted in more law schools urging professors to articulate clear learning outcomes in their courses

⁴³ Over the past decade, I have made presentations on assessments at several law schools. At every school, a few faculty members had already incorporated some form of assessments into their courses, often citing the Carnegie report and the Best Practices book as motivation. Most faculty, however, still administered only a final exam, usually claiming that time constraints and lack of support from the administration were the reasons they did not adopt a multiple assessment program. Last year, for the first time, I encountered faculty and administrators who expressed a serious interest in assessments, often admitting they were prompted by the recent ABA standards on assessments.

⁴⁴ *Managing Director's Guidance Memo*, A.B.A.: SEC. LEGAL EDUC. & ADMISSIONS TO B. 1, 2 (June 2015), <https://www.aals.org/wp-content/uploads/2015/06/ABA-Guidance-Stds-301-302-314-315-June-2015.pdf> ("Standard 314: Assessment of Student Learning: A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.").

⁴⁵ As outlined by the American Bar Association:

Standard 302: Learning Outcomes: A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Id. at 1.

⁴⁶ *Id.* at 2 ("Standard 315: Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods.").

and to incorporate assessments to measure whether students are achieving those learning goals.⁴⁷

The A.B.A.'s recent approval of revisions to Standard 316 will also likely motivate law school faculty to incorporate a multiple assessment program into their courses. On May 17, 2019, after years of discussions and rejections from its House of Delegates, the council of the A.B.A.'s Section of Legal Education and Admissions to the Bar adopted a revision to Standard 316 that significantly tightens the accreditation standard regarding bar passage.⁴⁸ Under the old version of Standard 316, law schools had five years to attain a 75% bar passage rate, while the revised Standard 316 now requires that law schools attain a 75% bar passage rate after only two years.⁴⁹ Although no law school had been found to be out of compliance with the old version of Standard 316,⁵⁰ several schools are considered to be out of compliance with the new Standard 316.⁵¹ The Deans of some of the law schools that are out of compliance with Standard 316 have stated that, in order to improve their bar passage rate to comply with the new standard, faculty are now incorporating multiple assessments into their classes.⁵²

⁴⁷ At JMLS, for example, faculty is evaluated on, among other things, whether we have articulated learning outcomes in our courses and whether we administer assessments that align with the course learning outcomes.

⁴⁸ See, e.g., Stephanie Francis Ward, *ABA Legal Ed Section's Council Adopts Tighter Bar Pass Standard; Clock for Compliance Starts Now*, A.B.A. J. (May 17, 2019, 4:29 PM), <http://www.abajournal.com/news/article/council-of-legal-ed-adopts-tighter-bar-pass-standard-and-clock-for-compliance-starts-now>.

⁴⁹ *Id.* ("Under the previous rule, there were various ways to meet the standard . . . includ[ing] [h]aving a 75% pass rate for all graduates over the five most recent calendar years [or] having a 75% pass rate for at least three of those five years . . .").

⁵⁰ *Id.*

⁵¹ *Revisions to Standard 316: Bar Passage*, A.B.A. LEGAL EDUC. & ADMISSIONS TO B. 1, 2, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may19/may-7-19-316-memo.pdf (last updated May 6, 2019) (stating that the schools out of compliance with new Standard 316 include "Appalachian, Arizona Summit, Atlanta's John Marshall, Barry, Dayton, University of the District of Columbia, Golden Gate, New England/Boston, San Francisco, Thomas Jefferson, La Verne, Valparaiso, Cooley, and Whittier.").

⁵² For interviews with Andrew Strauss, Dean at the University of Dayton School of Law and Susan Freiwald, the Interim Dean at the University of San Francisco's law school, see Stephanie Francis Ward, *How Will Deans Improve Bar Passage Rates to Meet New*

B. Relationship Between Student Learning Outcomes and Assessments

1. What Are Student Learning Outcomes?

The first step to developing effective assessments for any given course is to have well-articulated course student learning objectives or outcomes.⁵³ Student Learning Outcomes (SLOs) are statements that articulate what students should know and be able to demonstrate after they complete a course.⁵⁴ Student learning outcomes "are usually expressed as knowledge, skills, attitudes or values."⁵⁵ For each course, the SLOs should be concrete, and clearly articulated.⁵⁶ Because SLOs are critical to an effective assessment program, they must be shared with students early in the semester.⁵⁷ SLOs should be clearly articulated

Standard?, A.B.A. J. (May 23, 2019, 3:54 PM), <http://www.abajournal.com/web/article/weve-changed-say-law-schools-listed-in-memo-about-revision-to-bar-pass-standard>. Both Deans state that an important part of their plans to improve their school's bar passage rate is to incorporate assessments into law school classes. *Id.* Dean Freiwald is quoted as stating that the school has "increased [its] use of assessments, which has been shown to improve performance." *Id.*

⁵³ See, e.g., STUCKEY ET AL., *supra* note 32, at 2; Herbert N. Ramy, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 842 (2013).

⁵⁴ See, e.g., MICHAEL H. SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 136 (Carolina Acad. Press, 1st ed. 2009); Ramy, *supra* note 53; *A Guide to Developing Measurable Student Learning Outcomes*, CAÑADA C.: OFF. PLAN., RES. & STUDENT SERVS. 1, <https://downloads.smccd.edu/file/STUDENT%20SERVICES%20SLO%20GUIDE%20BOOK.pdf?s=/sites/downloads/canada&edu=/sites/downloads/canada/Shared%20Documents/Ca%C3%Blada%20College%20Inside/research/slos/documents/STUDENT%20SERVICES%20SLO%20GUIDE%20BOOK.pdf> [hereinafter *Student Learning Outcomes*].

⁵⁵ See, e.g., *Student Learning Outcomes*, *supra* note 54.

⁵⁶ Ramy, *supra* note 53. Ramy suggests that course learning outcomes should be limited to three or four, but I have at least five in each of my classes. *Id.* One way to identify the learning objectives of a given course is to review some of the final examinations for that class. *Id.* ("A well-done final examination is a 'product of your beliefs as to what your students should be learning in your class,' and it is an excellent first step in identifying course goals.")

⁵⁷ See, e.g., Cassandra L. Hill, *The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating our Students to Learn*, 56 HOW. L.J. 447, 489–90 (2013).

in the course syllabus and discussed during the first day of class to ensure students understand what is expected of them.⁵⁸

2. What Are Student Assessments?

Assessments are tools for instructors to measure whether students are achieving the SLOs we have set for our course.⁵⁹ There is consensus that assessments with feedback have a greater influence on how and what students learn than any other single factor.⁶⁰ Assessments are also the best tool for students to self-monitor their learning to determine whether they are achieving the course learning outcomes described in the syllabi.⁶¹

(a) *Assessments and Transfer of Learning*

Educational experts refer to the cornerstone of deep learning as the "transfer of learning," defined as the ability to extend what a student has learned in one context to a new context.⁶² At the most basic level, transfer of learning takes place when students are able to apply the skills they learned while resolving problems regarding a legal concept to resolving a new problem regarding a different legal

⁵⁸ It is important that students know early in the semester the learning goals their professor expects to accomplish in a course and how the professor intends to accomplish them. During the first day of class, professors should go over the course learning objectives and advise the students that they will be tested on these objectives during the semester. See Lasso, app. A, *Syllabi*. Professor Mundy's and my syllabi are divided into modules, which we discuss during the first day of class and repeat before we start discussion of the materials in each module. *Id.* Our Syllabi for the first module include the course student learning outcomes (SLOs) for the entire semester and the SLOs for each module are repeated in memorandums to our students at the end of each module and before students are tested on these. *Id.* With this approach, we make sure students are reminded throughout the semester of the skills they will be tested on.

⁵⁹ See, e.g., MUNRO, *supra* note 3, at 9–11; Lasso, *supra* note 2, at 78.

⁶⁰ See, e.g., PETER C. BROWN ET AL., MAKE IT STICK: THE SCIENCE OF SUCCESSFUL LEARNING 39 (2014); Curcio, *supra* note 3, at 171; STUCKEY ET AL., *supra* note 32; Carol S. Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 67 J. LEGAL EDUC. 139 (2017); Schwarcz & Farganis, *supra* note 38, at 140.

⁶¹ See, e.g., BROWN ET AL., *supra* note 60, at 151; STUCKEY ET AL., *supra* note 32, at 40; Lasso, *supra* note 2, at 76.

⁶² HOW PEOPLE LEARN, *supra* note 34.

concept.⁶³ As legal educators, one goal should be to help students develop the ability to transfer the knowledge and skills they acquire in one course to other courses, to the bar exam, and to their practice as lawyers.

For most students, however, transfer of learning does not come easily. Assessments are critical to helping students with each step of the transfer process. The first step necessary to achieve transfer is for students to develop an adequate level of mastery of the initial legal concept.⁶⁴ In order to achieve an adequate level of mastery of the initial legal concept, students must understand the concept rather than simply memorize the rules related to the concept.⁶⁵ Most students find it difficult to fully understand the rules when they first encounter them.⁶⁶ They must explore the underlying concepts of a rule and try to make connections to information they already possess as well as to new information regarding the concept.⁶⁷

Assessments that include individualized feedback provide students with the opportunity to engage with the rules until they know what the rules are and, most importantly, have learned what the rules mean.⁶⁸ Transfer of learning also requires students to actively monitor their learning experience to gain insight into their learning.

⁶³ *Id.*

⁶⁴ *Id.* at 53.

⁶⁵ *Id.* at 55.

⁶⁶ *Id.* at 58.

⁶⁷ *See, e.g., id.* For example, one of the earliest concepts we study in my Torts class is what constitutes intent in a battery action. The rule for intent in a battery seems simple enough: that the defendant must have intended to cause plaintiff a harmful or offensive contact. This rule, however, requires that students understand not only the concept of intent but also what constitutes a harmful or offensive contact. Based on their previous knowledge, most entering students know what constitutes a harmful contact, but, their understanding of what constitutes an offensive contact and what constitutes intent is incomplete.

⁶⁸ *Id.* For example, in order to fully comprehend the rule for intent, students need to understand that a contact is offensive when it offends a reasonable person and that there can be intent to harm or offend even when the actor has no deliberate desire to harm or offend another person. Instructors must provide students with rules regarding what constitutes an offensive contact as well as what constitutes "substantial certainty" intent. These ideas themselves require that students grapple with the elusive "reasonable person" standard.

Assessments are essential to this step of the transfer process. Frequent assessments with feedback allow students to determine the degree to which they are understanding the rules, a critical step in transferring learning from one legal concept to another.⁶⁹ It is important that students understand early in their legal education that, in order to affect transfer, they must spend time developing a deep understanding of rules. This time expenditure is critical because before knowledge and understanding can be transferred to new contexts, students must understand the concept inside and out.⁷⁰ The assessments we provide students must be designed to allow for the gradual development of the skills needed to achieve transfer of learning.⁷¹

3. Types of Student Assessments

There are generally three types of assessments: summative, formative, and summative/formative.

(a) *Summative Assessments*

Summative assessments assign grades or otherwise indicate the extent to which students have achieved the course goals.⁷² Summative assessments usually take place once—at the end of the semester.⁷³ The final exam is the traditional summative assessment.

⁶⁹ *Id.* at 59. To better understand the rules regarding intent in a battery claim, I provide students with four short quizzes that test students' understanding of these rules and sub-rules.

⁷⁰ Before students can fully understand the concept of intent for battery, instructors must provide them with assessments that allow students to wrestle with these new ideas until they become proficient enough to transfer their understanding of intent for battery to intent for other intentional torts.

⁷¹ For a more detailed discussion of why assessments with feedback improve students' ability to transfer learning from one context to another, see discussion *infra* Section IV.C.

⁷² See, e.g., *The Value of Formative Assessment*, FAIRTEST: NAT'L CTR. FOR FAIR & OPEN TESTING (Aug. 27, 2007, 3:29 PM), http://www.fairtest.org/sites/default/files/FormativeAssessment_0.pdf. See also Sergienko, *supra* note 26, at 465.

⁷³ *The Value of Formative Assessment*, *supra* note 72; Sergienko, *supra* note 26, at 465.

(b) *Formative Assessments*

Formative assessments provide feedback to students and faculty; they are not directly used to assign grades or rank students.⁷⁴ Their purpose is, instead, to promote learning. Formative assessments help instructors determine whether students are learning and help students develop analytical and learning skills.⁷⁵ They can be given in or outside the classroom. For example, instructors can assign self-graded practice problems and quizzes for students to complete once the class discussion on a given concept is finished.⁷⁶ Formative assessments can also take place in class, by evaluating students' oral or written class performance.⁷⁷ Formative assessments provide feedback on student learning and can be used by instructors, TAs, and students.

(c) *Summative/Formative Assessments*

Summative assessments can also be formative.⁷⁸ In other words, instructors can use graded assessments to provide feedback to students regarding their progress and help them improve their self-learning skills. They are administered prior to the end of the semester in order to provide information to instructors regarding students' progress toward achieving course learning goals. In addition to a grade, however, these assessments provide students with crucial feedback to help them develop their analytical and learning skills and to improve their performance on the final exam.⁷⁹ Summative/formative assessments

⁷⁴ *The Value of Formative Assessment*, *supra* note 72; Sergienko, *supra* note 26, at 465; Lasso, *supra* note 2, at 77.

⁷⁵ *The Value of Formative Assessment*, *supra* note 72; Sergienko, *supra* note 26, at 465; Lasso, *supra* note 2, at 77.

⁷⁶ For a description of various types of formative assessments, see discussion *infra* Section III.C.

⁷⁷ Lasso, *supra* note 2, at 98.

⁷⁸ *Id.* at 78.

⁷⁹ One of the disadvantages of purely formative assessments is that students do not take them seriously because they know they do not count toward the course grade. Even if faculty seek to motivate students to take formative assessments seriously by giving a "grade bump" to students who complete all of them during the semester, many students will put in only as much effort as needed to turn something in but not enough effort to learn much from the assessment. On the other hand, students work harder to prepare for summative/formative assessments like the midterm because these do count toward the

should take place two or more times during the semester prior to the final exam. These assessments should consist of graded quizzes and midterms with detailed rubrics designed to provide feedback to help students ascertain strengths and weaknesses to better develop their self-learning skills.

C. Kinds of Formative (or Summative/Formative) Assessments

Because student assessments should relate to the stated class learning outcomes, instructors should design different forms of assessments to address the different learning objectives of the course.

1. Assessments of Case Analysis Skills

Developing case analysis skills is a basic course learning objective in most classes. As such, students should be assessed on their ability to break down cases into component parts and extract black-letter rules. There are a number of ways to assess whether students are developing the critical competence of case analysis. However, because this is a completely new skill for entering students, instructors should train students to read and brief cases.⁸⁰

course grade. If these summative/formative assessments provide students individual feedback on their performance, they will be better learning tools than purely formative assessments.

⁸⁰In many law schools, students are provided some instruction on briefing cases, often as part of the orientation process. Case briefing, however, is not a skill that comes naturally to incoming law students, so, it is helpful to expose them to this skill more than once and in various ways. Prior to orientation, I provide students a tutorial on case reading and briefing. This tutorial is part of the "How to Succeed in Law School" handout that I send students two weeks before the start of their first semester. See Lasso, app. B, *Introduction to the Study of Law & Process to Law School Success*. Prior to the start of the semester, I also urge my incoming students to do some online briefing exercises available from LearnLeo, a startup website that provides easy to follow instructions on how to break-down cases into their component parts. See <https://learnleo.com/>. I suggest students review the few simple assessments in LearnLeo prior to the start of class so they can familiarize themselves with the terminology of case analysis and case briefing. Because they can access the exercises whenever they choose to do so, students can learn to differentiate the various parts of case briefs at their own pace. Although I have only used LearnLeo for two semesters, students report that the site helped them better develop their case analysis skills. If law schools would like to have its students use LearnLeo, they may contact Wilson Tsu, the site's founder and he will create a custom landing page specific for that law school (Wilson may be contacted by email at wilson@powernotes.com).

Instructors should assess case analysis skills early in the semester to ensure students develop this critical skill. One way to assess this is for students to turn in completed case briefs and for instructors to provide them with individualized feedback. To provide students feedback on their case analysis and briefing skills, the case briefs should be scored using a grading rubric.⁸¹ Students should also be provided the brief grading rubric and asked to self-evaluate their brief and seek feedback.⁸²

2. Assessments of Cognitive Skills

(a) Assessments of Knowledge and Understanding

An important course learning objective for students, prior to developing analytical skills, is the ability to know and understand the black-letter rules of the areas of law being covered in the class. As stated above, this requires assessments that help instructors and students evaluate whether students are learning the elements of the rules and understanding the operative language of the rules.⁸³ These assessments should include simple in-class questionnaires asking students to list the elements of a claim or list the factors that determine whether an element has been fulfilled. Questions can also be about the operative language of the rules, which require a more in-depth

⁸¹ Professors should provide at least two case briefing assessments. Both of these can be formative, or one can be formative and the other formative/summative. For example, in my Torts class, I provide students one formative briefing assessment and one graded briefing assessment. I provide a rubric and feedback on both and students must self-evaluate their briefs. The formative/summative assessment counts toward 5% of their course grade.

⁸² The *Garratt v. Dailey* briefing assessment (with the sample rubric and the self-evaluation), is attached as Lasso, app. C, *Formative Assessment I*. This assessment is used to discuss two of the tests for intent in torts. Prior to this assessment, students in my Torts class have completed a formative briefing assessment of *Cohen v. Smith* and have received individualized feedback on their performance so that they know what is expected of them in the graded assignment. Both of these can also be formative assessments where students receive feedback on them, but the scores do not count for the course grade.

⁸³ To achieve mastery of a new concept, students must be given opportunities to extract the key ideas from new rules and to organize them into a mental model. Assessments with rubrics are the natural tools to help students achieve mastery of new materials.

understanding of the rules. Fill-in outlines or fill-in answers can also be used to evaluate existing knowledge.⁸⁴

Multiple-choice questions that help students assess their knowledge of rules are relatively easy to craft and can be administered in class, by tutors or TAs outside class, or online. Regardless of how they are administered, these multiple-choice questions and explanatory answers should be provided to the students so they can self-test their knowledge of the rules as often as needed.⁸⁵ A simple knowledge multiple-choice question will ask, for example, what the elements of a claim are, providing options that include all the elements of the claim (the best option) as well as options that include some, but not all, of the elements and options that contain all the elements of the claim but also an element of another claim. Multiple-choice questions that test both knowledge of the rules and comprehension of the rules' meanings are also relatively easy to write. Regardless of the type, assessments of knowledge can be created by faculty, by TAs or tutors working with faculty. They can be administered in or outside of class time.⁸⁶

⁸⁴ These consist of providing students a partially completed outline of previously discussed material, or a partially completed answer to a previously assigned hypothetical, requiring that students fill in the blank spaces. For more details on the fill-in outlines or answers, see Lasso, *supra* note 2, at 103.

⁸⁵ See Lasso, app. D, *Knowledge and Understanding Multiple Choice Practice Quiz*.

⁸⁶ One of the learning objectives of my Torts class is that by the end of the semester, students should know the general principles of intentional torts, negligence and strict products liability. To determine whether students are achieving this goal, I give students a number of assessments throughout the semester designed to incrementally determine whether they are learning the elements of the rules of the various tort concepts. Some are simple in-class questionnaires requiring students to list the elements of a claim or list the factors that determine whether an element has been fulfilled. On the other hand, some questions ask students to state the operative language of a rule, which requires a more in-depth understanding of the rules. See Lasso, app. E, *Torts Knowledge & Understanding Assessment 1*. This first assessment should be administered during the first week of class, after-class discussions of these concepts is complete. The answers are discussed in class and the sample answer posted on the course web page. See also Lasso, app. E, *Torts Knowledge & Understanding Assessment 2*. This second assessment is usually administered by TAs to a small group of students after the concepts have been discussed in class. After students complete the assessment, they evaluate each other's answers, using the sample answer while a TA guides them.

However, multiple-choice questions assess students in different ways than essay questions do. Additionally, law school multiple-choice questions, like bar exam questions, are different than any multiple-choice questions students are likely to have encountered in college. For this reason, before administering multiple-choice assessments, professors should instruct students how to answer these types of questions.⁸⁷

(b) Assessments of Analytical Skills

One the most important objectives of first-year law school courses is to develop students' analytical skills. To accomplish this, professors should provide formative assessments designed to measure whether students are developing the ability to (a) identify issues; (b) identify and understand the black-letter rules necessary to resolve these issues; (c) distinguish between relevant and irrelevant facts, and (d) apply black-letter rules to relevant facts to resolve new essay and multiple-choice questions. In other words, professors should provide a number of essay and multiple-choice assessments designed to develop students' ability to use an IRAC approach to resolve legal problems.⁸⁸

Multiple-choice questions lend themselves well to assessing and helping students develop analytical skills.⁸⁹ Although writing multiple-choice questions is time consuming, there are ways to lessen the burden. For example, instructors can use the facts of cases, hypotheticals, or problems discussed in class and adapt them to the format and style of practice multiple-choice questions from commercial bar

⁸⁷ The "Introduction to the Study of Law & The Process to Law School Success" handout described above includes a very thorough tutorial on how to answer multiple-choice questions. See, e.g., Lasso, app. B, *How to Answer Multiple Choice Questions: A Tutorial*. This tutorial is based on my own research on multiple-choice questions, as well as on MICHAEL JOSEPHSON, EVALUATION AND GRADING IN LAW SCHOOL (1984), and the work of Vernellia Randall. I urge students to read the tutorial prior to orientation and I also provide a short tutorial in class using slides.

⁸⁸ Of course, an assessment of analytical skills likely also assesses knowledge and understanding because students cannot solve a problem by applying rules to facts unless they know and understand the rules; they must apply in order to solve a problem.

⁸⁹ Elizabeth M. Bloom, *Creating Desirable Difficulties: Strategies for Reshaping Teaching and Learning in the Law School Classroom*, 95 U. DET. MERCY L. REV. 115, 136–38 (2018).

preparation companies like Barbri, Kaplan, or Themis.⁹⁰ Students and TAs can also be enlisted to draft formative multiple-choice questions that assess students' analytical skills. These questions can be used for many years without any further expenditure of time. Writing multiple-choice questions for summative (graded) assessments is more time consuming, but instructors must write a number of new questions each year.⁹¹

IV. INDIVIDUAL FEEDBACK: THE CRITICAL FEATURE OF AN EFFECTIVE ASSESSMENT PROGRAM

Learning is a loop in which the instructor facilitates learning, students perform what they have learned, the instructor assesses students' performance, the instructor provides students feedback on their performance, and students self-assess their performance and use their self-assessment and the instructor's feedback to develop strategies to improve performance on the next learning task.⁹² The instructors providing feedback in the learning loop can be the professors, tutors, academic achievement professionals, or TAs.⁹³

⁹⁰ I have purchased the bar preparation materials from former students after they took and passed the bar exam. Over the years I have acquired bar preparation materials from Barbri and PmBr (now Kaplan). My secretary has scanned all the Torts related materials and converted them into Word documents so I can access them electronically. When I want to write a multiple-choice question on a particular concept, I simply search for a term related to the concept in the Barbri or PmBr materials. When I find a question that deals with the concept I want to test, I use cases, hypotheticals, or problems we have discussed in class to write an assessment that is roughly modeled on that question. I am thankful to Barbri, PmBr, and Themis, who, through their representatives at JMLS have given me permission to use their multiple-choice questions as models to write questions for my Torts class. Using commercially prepared questions as models allows me to write multiple-choice questions in less time than writing them from scratch. Nevertheless, writing complex questions that test students' analytical skills takes me between thirty minutes to a couple of hours to complete, per question.

⁹¹ While about one-third of the questions I use for my summative assessments are recycled from old exams, I write a good number of new questions every year, usually during the summer.

⁹² See e.g., MUNRO, *supra* note 3, at 72.

⁹³ In my Torts class, I provide general feedback to the class on a number of small stakes quizzes as well as on the three summative/formative assessments I administer prior to the final exam. My TAs provide individualized feedback on several significant formative assessments, where students must not only turn in their answer, but also a self-evaluation

The most important step in the learning loop is feedback.⁹⁴ Feedback is the instructor's response regarding students' performance in an assessment. Prompt feedback allows students to develop self-learning skills by identifying inadequacies in understanding so they may adjust their approach on future learning tasks.⁹⁵ Knowing what they know and do not know focuses students' learning. There are four characteristics of effective feedback.⁹⁶ Effective feedback is (a) individualized; (b) makes clear what the standard is for the assessment; (c) facilitates the development of self-learning skills; and (d) is provided several times during the semester.⁹⁷

A. Individualized Feedback Is Most Effective

Feedback can be general or individualized. Professors should provide general feedback to the class but, for best results, should also provide feedback to each student individually.⁹⁸

1. General Feedback Is Good

General feedback can be delivered to the class in a number of ways. A simple way is to ask the class questions immediately after covering specific concepts. The questions should be designed to determine whether students understand the recently completed legal concepts. Students can be asked to work alone or in small groups to answer a few questions or analyze hypotheticals. Usually, it takes only a few answers from students to determine whether the class

of their answers. The TAs then discuss these with the students, allowing the TA to assist each student in developing strategies to improve their performance on subsequent assessments.

⁹⁴ See, e.g., Bloom, *supra* note 21, at 233 (stating that feedback is believed to be "one of the more instructionally powerful" elements of formative assessments).

⁹⁵ Lasso, *supra* note 2, at 75.

⁹⁶ See *id.* (citing MUNRO, *supra* note 3, at 72).

⁹⁷ See *id.*

⁹⁸ See generally Henning & Belian, *supra* note 3, at 52 (describing two studies involving generalized and individualized feedback). The first study showed "that students in the section that received individualized feedback outperformed the students from the section that did not in every single class." *Id.* The second study also showed that "students who took advantage of [individualized feedback] performed better not only on [the] final exam, but on exams in other classes as well." *Id.*

understands a concept. Then, the professor should choose two or three student answers as the basis for clarifying the concept in class discussion.⁹⁹ Written formative assessments can also be used to provide general feedback to the class. Students can complete the assessments in or outside of class and submit their answers to the professor or TA. The professor reviews students' answers and clarify any unclear concepts during the following class.¹⁰⁰ To further help students understand the legal concepts tested in formative assessments, the professor can post a sample answer with a grading rubric that students can use to self-assess their answers.

2. Individual Feedback Is Better

General feedback is not effective to help most students determine whether they are grasping the concepts being discussed in class.¹⁰¹ While students who enter law school with good self-learning skills will use the professor's feedback to bridge the gap between their answers and the professor's answers to assessments, a growing number of students will not (or cannot) use general feedback to improve their analytical skills.¹⁰²

⁹⁹ See, e.g., Bloom, *supra* note 21, at 253 (citing Naomi Winstone & Lynne Millward, *Reframing Perceptions of the Lecture from Challenges to Opportunities: Embedding Active Learning and Formative Assessment into the Teaching of Large Classes*, 18 PSYCHOL. TEACHING REV. 31, 34–35 (2012)).

¹⁰⁰ After reading the answers to the knowledge and background assessment regarding intentional torts, I advise the class specifically of any concepts that seemed unclear. See Lasso, app. E, *Torts Knowledge and Understanding Assessment*. For example, it is common for the answers on this assessment to demonstrate that students are unclear about what it takes to establish a prima facie case versus what it takes to be able to recover damages for a claim. Answers usually show that students believe that establishing a prima facie case is enough to recover damages. My feedback amounts to discussing these two concepts in class and posting the sample answer to the assessments on the course web page.

¹⁰¹ See, e.g., Bloom, *supra* note 21, at 255 (describing how students have little incentive to use generalized feedback to improve their performance when there is no requirement that they act on the feedback); see also Henning & Belian, *supra* note 3, at 36 (describing how the lack of effectiveness of generalized feedback leads them to provide their students with individualized feedback to improve their learning).

¹⁰² In my experience at several medium and lower-tiered law schools, the number of students who benefit from general feedback has been steadily decreasing over the past decade. In every one of these schools, I have found that most entering students do not have the self-learning skills to be able to use general feedback to bridge the gap between

For assessments to be effective self-learning tools for all students, feedback must help each student determine the strategies to improve performance on subsequent assessments.¹⁰³ Instructors (professors, tutors, or TAs) must provide individualized feedback to each student so students can use it to determine why they underperformed in an assessment and what they need to do to improve their performance in subsequent assessments.¹⁰⁴ As Professor Sophie Sparrow has stated, while assessments that provide general feedback are helpful, there is wide consensus that one-on-one, individualized oral and written feedback on multiple assessments is the gold standard.¹⁰⁵

what they know and what they ought to know. Moreover, in the past few years I have seen a drop in the number of entering students at JMLS whose self-learning skills permit them to use generalized feedback as an effective learning tool. Currently, I believe less than a third of incoming students are able to effectively develop their self-learning skills if I provide only general feedback to the class—even if all students are provided a self-evaluation rubric.

¹⁰³ See Lasso, *supra* note 2, at 92.

¹⁰⁴ See, e.g., Henning & Belian, *supra* note 3, at 42; see, e.g., Lasso, app. G., *Torts Assessment I*. First, Professor Ford administers the attached Practice Question on Personal Jurisdiction in his first-year Civil Procedure class, then he goes over the answer in class, and finally, Professor Ford provides the class with a detailed answer rubric which highlights, in different colors, the Issues, Rules, Analysis, and Conclusion. This is an example of excellent generalized feedback. By contrast, my Torts assessment is administered online, but students turn in their answers to their TAs at a specific date and time. The TA then provides each student with the answer/self-evaluation which the student must complete and turn in to the TA prior to a scheduled meeting with the TA. The TA also scores the assessment and the student meets with the TA to discuss the assessment. A critical part of this discussion is that the TA helps the student develop strategies to improve the student's performance on the next assessment.

¹⁰⁵ Professor Sparrow teaches Torts, Remedies, and Legal Writing at the University of New Hampshire School of Law and is the author and co-author of several articles and books on assessments, including *TEACHING LAW BY DESIGN*, see SCHWARTZ ET AL., *supra* note 54. She has conducted more than 50 workshops and presentations on assessment, teaching, professionalism and writing to professors, judges, and lawyers. During both of her presentations at JMLS, Professor Sparrow stated that it is undisputed that the most effective form of assessment feedback is one-on-one individual feedback to each student.

B. Effective Feedback Makes it Clear What Is the Standard for the Assessment

Effective feedback helps students know the standard against which the performance of all students is measured.¹⁰⁶ Assessments that students can use to develop their analytical and problem solving skills require criterion-based feedback.¹⁰⁷ Criterion-based feedback lets students know how they have performed in relation to explicit criteria that identifies the skills all students should be able to demonstrate by the time the assessment is given.¹⁰⁸ Instructors should provide students formative (and summative/formative) assessments with criterion-based feedback throughout the semester. The value of criterion-based feedback is that a detailed sample answer with corresponding value allocation allows students to determine how well their analytical and problem-solving skills are developing.¹⁰⁹

The score on a student's answer allows the student to know exactly how her or his answer measures against the standard. The score helps students determine whether they have met a specific level of performance in relation to the absolute expectations about the level of knowledge (or skill development) all students should demonstrate at the time the assessment is given.¹¹⁰

If the final exam includes multiple-choice questions, instructors should provide students multiple-choice formative and summative/formative assessments with detailed sample answers that provide clear and thorough explanations for why each option of each question was correct or not.¹¹¹

¹⁰⁶ See, e.g., Bloom, *supra* note 21, at 241–43; David J. Nicol & Debra Macfarlane-Dick, *Formative Assessment and Self-Regulated Learning: A Model and Seven Principles of Good Feedback Practice*, 31 *STUD. HIGHER EDUC.* 199, 206 (2006).

¹⁰⁷ See Lasso, *supra* note 2, at 97.

¹⁰⁸ See, e.g., STUCKEY ET AL., *supra* note 32, at 244 (citing Sophie Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 *MICH. ST. L. REV.* 1, 6–15 (2004)).

¹⁰⁹ See Lasso, *supra* note 2, at 76–77.

¹¹⁰ See *id.* at 85; Sparrow, *supra* note 108. For an example of an assessment sample answer with a detailed grading rubric, see Lasso, app. G, *Sample Answer/Evaluation Rubric*.

¹¹¹ Appendix H contains four assessments with sample answers. Notice that Professor Mundy's multiple-choice quiz requires not only that students pick the correct option, but,

C. Effective Feedback Facilitates the Development of Self-Learning Skills

One of the most important steps of effective learning is for students to be able to monitor their progress and make changes as needed to improve performance.¹¹² This self-learning (or self-regulated learning) skill requires that students (a) understand that they can affect their ability to learn; (b) develop planning and goal-setting skills; and (c) find multiple opportunities to monitor their learning and develop strategies to make changes to improve performance.¹¹³ Some students arrive at law school with good self-learning skills, however most students need guidance to develop self-learning skills.

Helping students develop good self-learning skills is a two-step process. First, students must self-evaluate their answers to assessments. Second, students should be encouraged to seek individual feedback on their answer to assessments and the self-evaluation of their answer.¹¹⁴ The self-evaluation requires that students compare their answer with the sample answer and articulate how their answer is similar to and different from the sample answer.¹¹⁵ This side-by-side comparison allows the students to determine whether, and how well, their IRAC analysis is developing.¹¹⁶ Students will see how well they articulated the issue and rule, whether their analysis included weaving the operative

they must also explain why they selected the answer. Professor Ford's Civil Procedure assessment also requires that students write a multiple-choice question with explanations. See Lasso, app. H, *QUIZ 1* (my Torts multiple-choice quiz with its sample answer); Lasso, app. H, *QUIZ 2, QUIZ 2 – ANSWERS* (Professor Cummings' Contracts II Quiz with its sample answer); Lasso, app. H, *QUIZ 3* (Professor Mundy's short Evidence multiple-choice assessment and answer); Lasso, app. H, *QUIZ 4, QUIZ 4 – ANSWERS* (Professor Ford's Civil Procedure I Assessment 1 with explanations and self-evaluation).

¹¹² See, e.g., HOW PEOPLE LEARN, *supra* note 34, at 59. See discussion *supra* Section III.B.2.a.

¹¹³ This definition of self-learning is based on the work of Marsha Lovett, PhD, Director of the Eberly Center for Teaching Excellence & Educational Innovation at Carnegie Mellon University and an expert on student learning. See, e.g., Carol Ormand, *Teaching Metacognition*, CARLETON U., https://serc.carleton.edu/NAGTWorkshops/metacognition/teaching_metacognition.html (last visited Nov. 16, 2019).

¹¹⁴ Most of my essay assessments require extensive self-evaluations. See, e.g., Lasso, app. G, *Assessment 1, Sample Answer/Evaluation Rubric, Sample Answer/Self-Evaluation Rubric*.

¹¹⁵ See Lasso, *supra* note 2, at 94; Lasso, app. G, *Sample Answer/Self-Evaluation Rubric*.

¹¹⁶ See Lasso, app. G, *Sample Answer/Self-Evaluation Rubric*.

language of the rule and the relevant facts into persuasive arguments for the parties, and whether their conclusion followed logically from their arguments.

The instructor (professor or TA) should score students' answers and set up a time to meet with the student to give oral and written feedback on their answers. Prior to the meeting, students should provide the instructor with their self-evaluation. During the meeting, the instructor should ask students questions designed to help them understand why their performance was lacking and offer ways to improve. If the analysis in a student's answer is poor, it is usually because of one or more the following: the student is unable to (a) ascertain the issue, (b) determine what rule to apply, (c) determine the operative language of the applicable rule, (d) recognize relevant facts, and/or (e) apply the operative language of the rule to the relevant facts.¹¹⁷ To assist students during an assessment meeting, instructors should ask students to identify the issue and rule, what the rule means, and what the relevant facts are of the problem. This exchange gives instructors clues regarding the underlying reasons for students' performance. Instructors can prompt students toward the correct analysis using questions to help students identify the issue, rule, the operative language of the rule, and the relevant facts. Instructors can then guide students through the application of the rules to the relevant facts, having them use the operative language of the rule to determine which facts are relevant to the plaintiff's (or defendant's) argument. A student should be asked to list all the facts the student believes are relevant and then weave those facts into the operative language of the rule. Combining the self-evaluation and individualized written and oral feedback will, over several assessments, improve most students' self-learning skills.¹¹⁸ If there is no improvement after two or three formative assessments, there may be problems that go beyond academic shortcomings. These students should be referred to the ASO office for further one-on-one counseling.

¹¹⁷ *Id.*

¹¹⁸ See Lasso, *supra* note 2, at 91–92.

1. Using Multiple-Choice Questions to Develop Self-Learning Skills

Multiple-choice questions can also be used to develop students' self-learning skills. Prior to administering multiple-choice assessments to students, it is important to consider their lack of familiarity with law school multiple-choice questions. Many incoming students believe that performing well on multiple-choice exams is an innate talent that they either have or lack.¹¹⁹ They must be made to understand that performing well on multiple-choice questions is not pre-determined by Darwinian natural selection but rather it is a skill that can be developed with practice.¹²⁰ Doing well on multiple-choice exams depends on two factors: (1) preparation, and (2) approach.¹²¹

By far the most significant reasons students perform poorly on multiple-choice questions are that they are not as well prepared as they believe they are, and they fail to use an IRAC approach to answering multiple-choice questions.¹²² They read the fact pattern, the call of the question and then read the options with little more than a vague idea of what issue the question wants them to resolve.¹²³ Without performing a rigorous analysis, they often choose an option that "sounds" correct but is based on an incorrect or incomplete statement of the law. For these reasons, students should receive

¹¹⁹ A common refrain I hear from students after their first multiple-choice assessment is that they are "naturally good" or "naturally bad" at taking multiple-choice exams.

¹²⁰ See, e.g., *Multiple Choice Exams*, LEARNING CTR.: U. N.C. CHAPEL HILL, <https://learningcenter.unc.edu/tips-and-tools/multiple-choice-exams/> (last visited Nov. 16, 2019).

¹²¹ After years of debriefing students who perform well and those who perform poorly on multiple-choice exams, I have observed a number of factors relating to preparation and approach that affect student performance on multiple-choice exams.

¹²² Another reason for poor performance on multiple-choice exams is reading the questions too fast, leading students to overlook important facts. Also, perhaps because, unlike essay answers, multiple-choice answers are an all-or-none proposition, anxiety is not uncommon during multiple-choice exams.

¹²³ A common mistake by entering students is to attempt to answer questions without doing the following: (1) figuring out what issue is raised by the call of the question, (2) identifying and applying the relevant rule to the facts, and (3) answering the issue. For example, if the call of the question asks whether the plaintiff will prevail in a claim for battery, students will look at the options without having applied the rules for battery to the fact pattern to determine whether there was a battery or not.

training on how to answer multiple-choice questions and must be provided with sample answers designed to help students develop self-learning skills. These sample answer/self-evaluations should include more than explanations stating why each option was correct or not. For each question, there should be a two-part sample answer/self-assessment. The first part of the self-evaluation should provide an IRAC analysis that asks the student to state (in writing) (a) the issue raised by the call of the question, (b) the rules used to resolve the issue, (c) the application of the rules to the facts and, finally, (d) a conclusion that flows from this analysis.¹²⁴ The second part of the answer/self-evaluation should take the students through each of the options, asking them to compare each option to the conclusion they reached.¹²⁵ The sample answer/self-evaluation should provide space for students to answer a number of questions to help them determine why they got questions right or wrong.¹²⁶ First, they should be asked whether their answer was correct, and, if so, whether their reasoning for choosing that option as the best option was similar to the reasoning in the sample answer. If their reasoning is different than the sample answer, students should explain how they arrived at their reasoning and how their reasoning differs from the reasoning given in the answer.¹²⁷

If students answer the question incorrectly, they should also be asked to evaluate (in writing) the quality of their articulated issue, analysis and conclusion as well as an explanation as to why their reasoning is similar to or different from the reasoning in the sample answer. It is critical that students figure out their reasoning for their answer choices. Did the student not know the law? Did they misread the fact pattern, the call of the question, the answer choices? As for the application of the rules to the facts, students should be asked to articulate why their analysis was flawed.¹²⁸ This process helps students

¹²⁴ See Lasso, app. I, *Part I – Sample Answer/Self-Evaluation*.

¹²⁵ See Lasso, app. I, *Part II – Answer/Self-Eval*.

¹²⁶ *Id.*

¹²⁷ Providing the reasoning for why each option is correct or incorrect is valuable because it often provides information on how students applied the rule to the facts of the question. The best way for students to develop a deeper understanding of the rules is by comparing their reasoning with that of the sample answer.

¹²⁸ See Lasso, app. I, *Part II – Answer/Self-Eval*.

understand that engaging in an IRAC analysis prior to looking at the options in a multiple-choice question helps the process of choosing the best option by quickly eliminating options that are inconsistent with the conclusion. Focusing on the two better options helps them zero in on the best one. Figuring out that a good IRAC analysis significantly improves their chances of picking the best option helps students develop the skills needed to perform well on subsequent multiple-choice assessments.¹²⁹

In addition to completing the self-evaluation, students should be urged to meet with their instructor for feedback. This feedback from the instructor, together with the self-evaluation, helps students figure out the reasons why they got a question wrong but, most importantly, helps them develop strategies to improve their performance going forward. During the meeting, instructors should review students' answers to the self-evaluation questions, guiding them to analyze their mistakes and what they need to do to correct them in the next assessment.¹³⁰ The goal of the meeting is to help students develop individual self-learning skills in order to perform better on subsequent multiple-choice assessments.

Because student performance on exams depends not only on what they do or fail to do while taking exams, but how they prepare for exams, helping students develop self-learning skills requires that they also self-assess how they prepared for exams.¹³¹ Self-evaluation of significant summative/formative multiple-choice assessments (like

¹²⁹ After completing a number of these multiple-choice exercises, most students recognize the value of undertaking an IRAC analysis prior to choosing the best option. Invariably, students who identify the correct issue and reach the correct conclusion after an IRAC analysis are 90-95% likely to pick the correct option while students whose IRAC analysis leads to an incorrect conclusion are 90-95% likely to pick an incorrect option.

¹³⁰ If a student did not correctly identify the issue, the instructor can ask the student to read the call of the question out loud and explain what they believe the question is asking them of them. The instructor will then try to have the student put that question into the form of an issue and identify the applicable rule. If the student identifies the issue correctly, but identifies the wrong rule, the instructor can guide the student to try to figure out why. This guidance can be asking questions such as, is it because the student did not correctly articulate the applicable rule in their outline, or, is it because the student does not understand what the applicable rule means?

¹³¹ See, e.g., Lasso, app. J, *Self-Eval – MID-TERM EXAM – Fall 2017*.

midterms) should push the self-assessment process further by requiring that students evaluate not only their overall performance, but also their preparation as well as their approach to answering the assessments' questions, whether the assessment is essay or multiple-choice.¹³² Effective self-evaluation, therefore, requires students to self-assess their preparation for and approach to exams, and attempt to develop strategies for improving their performance.¹³³ The preparation portion of the self-evaluation requires students to answer questions about their (a) time management prior to the exam, (b) class notes, (c) outline, (d) formative assessments completed prior to the exam, and (e) the feedback they received on their outline and assessments.¹³⁴ Students are also asked to rate how well they prepared for the exam and state what they intend to do differently to improve their performance on the upcoming summative assessments.¹³⁵

D. Effective Assessment Feedback Should Be Administered Frequently

There is little doubt that a single, end-of-the-semester final examination is a poor learning tool and is an inadequate tool for determining which students have learned the course materials.¹³⁶ A single assessment has significant potential for error because

¹³² *Id.*

¹³³ *See, e.g., id.* For the multiple-choice portions of all summative formative assessments, including the midterm, students must turn in the self-evaluation to me or a TA at least twenty-four hours before a scheduled meeting. This allows me, or the TA, to review the evaluation and help the student develop strategies for improving their performance on multiple-choice assessments. Students who score below average on these exams must meet with me to determine why they performed poorly and what strategies they can develop to improve their performance. The students who did not score below average can meet with a TA. Again, the focus of the feedback to students is to help them not only figure out why they did not perform well, but, more importantly, figure out what they need to do to improve their performance.

¹³⁴ *See id.*

¹³⁵ *Id.*

¹³⁶ STUCKEY ET AL., *supra* note 32, at 194–95. *See, e.g.,* Steven Friedland, *A Critical Inquiry into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147, 177 (2002) (stating that there is no evidence to support the law school community's belief that final examinations accurately assess a student's potential competence); Christopher T. Mathews, *Sketches for a New Law School*, 40 HASTINGS L.J. 1095, 1104 (1989).

performance depends not only on exam preparation but on the unpredictability of how students feel on a given day.¹³⁷ The validity, reliability, and fairness of a single exam is further affected by unduly high levels of stress associated with a do-or-die exam.¹³⁸

Assessments should be done at the moment learning is taking place so that they "provide meaningful feedback to improve student learning."¹³⁹ For the learning loop to work optimally, students need several chances during the semester to reflect on what they have learned, what they still need to know, and how to improve their learning.¹⁴⁰ While there is some evidence that individualized feedback is effective even if given only once prior to a final exam,¹⁴¹ learning is optimized if individualized corrective feedback is provided several times during the semester.¹⁴² Moreover, law professors should strive to provide students with formative feedback on their progress before administering summative evaluations. This requires professors to

¹³⁷ STUCKEY ET AL., *supra* note 32, at 194 ("A single assessment has significant potential for error because a student might be ill or have other personal issues that can distort the accuracy of the evaluation."). *See also* Sergienko, *supra* note 26, at 470.

¹³⁸ STUCKEY ET AL., *supra* note 32, at 194 ("The potential for distortion is exacerbated by the fact that a single assessment produces higher levels of stress because of its significance to the student's grade in the course and future.").

¹³⁹ ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2018–2019, 23 (2018), *available at* https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-rules-approval-law-schools-final.pdf ("Formative assessment methods are measurements at different points during a particular course . . . that provide meaningful feedback to improve student learning.").

¹⁴⁰ *See, e.g.*, LES ADLER ET AL., *THE SEVEN PRINCIPLES IN ACTION: IMPROVING UNDERGRADUATE EDUCATION* 50 (Susan Rickey Hatfield ed., 1995).

¹⁴¹ Schwarcz & Farganis, *supra* note 38, at 139–40. Schwarcz and Farganis's experiment demonstrated that, for several years, students who had received feedback in as few as one quiz during the semester did better on the final exam than students who had received no feedback during the semester.

¹⁴² *See, e.g.*, Henning & Belian, *supra* note 3, at 52; *see also* STUCKEY ET AL., *supra* note 32, at 253–61 (stating that for assessments to be valid, reliable, and fair, they should be carried out several times during the semester using various modes of assessment: formative, summative/formative, and summative assessments); Lasso, *supra* note 2, at 91 ("Multiple evaluations of student learning increase the accuracy of the conclusions about student performance, improve student performance on the final examination, and increase the range of skills, values, and knowledge that the instructor may evaluate.").

provide several formative assessments (hypotheticals with sample answers and practice essay and multiple-choice practice exams) and summative/formative assessments such as graded quizzes and a mid-term, prior to the end-of-the course summative exam.

According to the 2006 report of the Law School Survey of Student Engagement (LSSSE), "[s]tudents who have more opportunities to assess their own progress and refocus their studying in light of feedback tend to gain more in higher level thinking skills."¹⁴³ And, students whose professors provide frequent assessments "reported greater gains in their ability to synthesize and apply concepts and ideas, spent more time preparing for class, and were more likely to say they worked harder than they thought they could to meet the expectations of faculty members."¹⁴⁴ Frequent formative assessments also help to humanize the law school experience. The 2005 LSSSE report, for example, concluded that students whose professors provide frequent formative assessments are "more positive about their overall law school experience."¹⁴⁵

1. Using Teaching Assistants to Provide Feedback on Multiple Assessments

Because feedback is a critical step to learning, professors should provide students with multiple assessments with prompt criterion-based feedback throughout the semester. However, providing individualized feedback on multiple assessments is very time consuming, particularly in large first-year courses. One person cannot provide the necessary number of prompt and detailed feedback opportunities needed for the learning loop to result in a significant improvement in student learning. Properly trained TAs, however, can help provide criterion-

¹⁴³ LAW SCH. SURVEY STUDENT ENGAGEMENT, *Engaging Legal Education: Moving Beyond the Status Quo* 1, 13 (2006), http://lsse.indiana.edu/wp-content/uploads/2016/01/LSSSE_2006_Annual_Report.pdf [hereinafter 2006 LSSSE].

¹⁴⁴ STUCKEY ET AL., *supra* note 32, at 126 (citing 2006 LSSSE, *supra* note 143).

¹⁴⁵ LAW SCH. SURVEY STUDENT ENGAGEMENT, *The Law School Years: Probing Questions, Actionable Data* 1, 7 (2005), http://lsse.indiana.edu/wp-content/uploads/2016/01/LSSSE_2005_Annual_Report.pdf [hereinafter 2005 LSSSE].

based feedback on a number of formative assessments throughout the semester.¹⁴⁶

To ensure TAs can provide effective feedback to students, professors must select them carefully and train them thoroughly. The most effective TAs are those who not only have demonstrated competence but, just as importantly, are good communicators and have the right temperament. TAs must have performed well when they were students in that class. TAs should have good written and oral communication skills in order to provide clear and useful feedback that allows students to understand how to improve their self-learning skills. TAs should also be patient to manage recurrent questions without being dismissive of students' concerns. Lastly, TAs must be empathetic in order to develop rapport with their students and gain their trust.¹⁴⁷

The TAs must be trained to provide effective individualized feedback to students.¹⁴⁸ Assessment feedback must be clear and

¹⁴⁶ See Lasso, *supra* note 2, at 77 (stating a number of law schools are providing professors teaching first-year classes with TAs to provide feedback on assessments). For example, DePaul, Northwestern, Loyola, and John Marshall Law schools provide TAs to first-year professors. See also Susan Hanley Duncan, *They're Back! The New Accreditation Standards Coming to a Law School Near You—A 2018 Update, Guide to Compliance, and Dean's Role in Implementing*, 67 J. LEGAL EDUC. 462, 466 (2018) (suggesting that Deans allocate resources to their faculty by hiring TAs to help them do more skills training in their classes).

¹⁴⁷ Choosing TAs for the first time requires that professors carefully observe students throughout the semester to determine those who possess the qualities to be effective TAs. Professors should keep a list of the students whose class participation demonstrates above average understanding of the materials and who also seem even-tempered and thoughtful. After the first-year, professors can enlist the TAs to suggest students they too believe will make good TAs. Personally, I choose the number of TAs based on the size of the class. Over the years, I have found that the most effective student-to-TA ratio is between six to eight students per TA. This ratio allows the TAs to be able to spend around ten and twelve hours a week providing individual feedback to the students, an amount of time that does not interfere with the TA's other obligations. I often have TAs who are on law review or moot court or are working so I try to make sure that being a TA is a positive experience.

¹⁴⁸ TAs can be assigned multiple tasks, including monitoring students' outlines, keeping track of students' progress, conducting course reviews, tutoring students on time-management, note taking and exam taking, and conducting course reviews and exam taking tutorials prior to the midterm and final exam. TAs also become peer mentors, guiding

thorough so the student understands what they need to improve in a given assessment and, most importantly, how they can improve their performance. The feedback must also be consistent from assessment to assessment so that students can trust that the feedback their TA provides them with will result in an improvement of their analytical and problem-solving skills. In other words, it is not necessary that all TAs score assessments with the same level of rigorousness, but it is critical that each TA provide all her or his students the same level of rigorousness from one assessment to the next. Finally, TAs must provide constructive feedback, designed not simply to grade, but rather to ensure students' success in the course. For students to accept and utilize the TAs' feedback, they must feel confident that their TA is committed to ensuring their success in the course. It is critical that students believe that their TA's success is derived from the students' success. The goal of the TA training program is to help the TAs provide clear, thorough, consistent, and constructive feedback to their students.

TAs can also assist with multiple-choice assessments by assisting in the writing process and also by administering multiple-choice quizzes to students individually or in groups. Although self-graded multiple-choice formative assessments are easily administered online,¹⁴⁹ instructors should provide detailed sample answers to help students develop self-learning skills. Professors or TAs should administer some multiple-choice quizzes in a classroom to acclimate students to taking multiple-choice questions in the classroom prior to the final exam.¹⁵⁰

students through the difficult transition from undergraduate to law school. Their primary responsibility, however, should be to provide one-on-one feedback to students on a number of formative assessments throughout the semester.

¹⁴⁹ Lasso *supra* note 2, at 96–97. Instructors and TAs can create computerized, automatically scored multiple-choice assessments that can be loaded onto the class web page prior to the start of the semester. Instructors can make those assessments available as the semester progresses. I use the Lexis Web course page to post several automatically scored multiple-choice assessments for my Torts class. Westlaw's TWEN web course system also has a feature that permits faculty (or TAs) to post multiple-choice quizzes. The Center for Computer-Assisted Legal Instruction (CALI) also provides online multiple-choice assessments for most law school courses.

¹⁵⁰ *Id.* at 91–92.

V. BLUEPRINT FOR USING ASSESSMENTS TO ACHIEVE LEARNING
OUTCOMES AND IMPROVE STUDENT LEARNING

*A. General Recommendations to Faculty Regarding Assessing
Student Learning Outcomes*

1. Explain the Learning Process and the Role of Assessments
in Learning

Students arrive at law school with misconceptions about how to best learn in law school and the role of assessment in the process of learning.¹⁵¹ Perhaps the most common misconception is that their approach to succeed in undergraduate school will result in law school success. Success in undergraduate school involved the acquisition of knowledge. Success in law school, however, depends on not only in acquiring knowledge, but also being able to develop deep knowledge and using that knowledge to resolve new legal problems.

(a) Dispel Misconceptions.

Most people are poor judges of when they are learning well and when they are not.¹⁵² Many students arrive in law school believing that their success is assured if they complete the readings, attend class, take notes, and organize their notes in an outline. A pervasive—and incorrect—assumption students make is that reading and rereading materials until they can recite them verbatim means they have "learned" the materials.¹⁵³ However, studies show that this approach provides only negligible permanent learning. Mastering the words in the textbook does not mean mastering the underlying concepts. Instead, it provides the illusion of mastery of underlying ideas. Cognitive psychologists call this phenomenon the "illusion of mastery"¹⁵⁴ or the

¹⁵¹ Jennifer M. Cooper & Regan A. R. Gurung, *Smarter Law Study Habits: An Empirical Analysis of Law Learning Strategies and Relationship with Law GPA*, 62 ST. LOUIS L.J. 361, 389 (2018); Bloom, *supra* note 21, at 237–38.

¹⁵² BROWN ET AL., *supra* note 60, at 3.

¹⁵³ *Id.* at 12–13, 89–90.

¹⁵⁴ *Id.* at 15–17; *see also* Cooper & Gurung, *supra* note 151, at 390 (showing that students who relied on reading, rereading, and briefing cases without retrieval or practice application

"fluency illusion."¹⁵⁵ Law students often mistakenly believe that if they spend long hours rereading the rules so that they can recite them, they will perform well in law school exams. Entering students need to understand early in the semester that law school success depends not only on learning what the rules say but on understanding what the rules mean in order to apply the rules to resolve new problems.

(b) Help Students See Testing as a Learning Tool

After many years of academic success, it is often difficult for entering law students to comprehend why they should approach law school differently. Simply telling students that their ideas about learning and proficiency are inaccurate is not enough.¹⁵⁶ Instead, instructors should provide students opportunities to confront their misconceptions about mastery versus fluency to develop different learning strategies. Helping students overcome this "illusion of knowing" is perhaps one of the most important reasons to provide multiple assessments. A multiple assessment program is an effective tool to help students overcome misconceptions and master new legal concepts.¹⁵⁷ Each time students answer a question incorrectly in an assessment, they are confronted with the reality that they have not yet mastered the tested concept. Sample answers and feedback provided by the instructors can help students understand what they have not yet mastered and can help students figure out what they need to do in order to achieve mastery. Each time this process is repeated, students increase their mastery of the concepts and their ability to answer a similar question correctly on later assessments.¹⁵⁸

A particular challenge for faculty is that a number of entering students do not believe that assessments are learning tools but rather

of the law performed poorly in law school exams). Of course, a number of students will expect to perform well without completing even these basic tasks.

¹⁵⁵ See, e.g., BENEDICT CAREY, *HOW WE LEARN: THE SURPRISING TRUTH ABOUT WHEN, WHERE, AND WHY IT HAPPENS* 82 (2014).

¹⁵⁶ See, e.g., Jennifer E. Spreng, *Spirals and Schemas: How Integrated Courses in Law Schools Create Higher-order Thinkers and Problem Solvers*, 37 U. LA VERNE L. REV. 37, 61 (2015).

¹⁵⁷ See, e.g., CAREY, *supra* note 155, at 145–46.

¹⁵⁸ *Id.* at 165.

are judgments of their competence.¹⁵⁹ While many entering law students see assessments as opportunities to learn, others see them as an attack on their learning skills.¹⁶⁰ These students do not immediately see the value of formative assessments so they put all their efforts into summative assessments like the midterm and final exams. As a result, they are unlikely to put much effort preparing for assessments that do not count toward the final course grade.¹⁶¹ Faculty must make sure that entering students understand that their effort (or lack thereof) on formative assessments will affect their performance on the midterm and final exams. Early in the semester, faculty should educate students not only about case briefing, time management, note taking, and outlining, but also about the role of assessments as learning tools designed to improve their performance on the midterm and final exams.¹⁶² Students who put little effort into formative assessments should be referred to ASO professionals who are trained to help students improve their learning mindset.

2. Provide Diagnostic Assessments Throughout the Semester

The first formative assessment should be conducted early in the semester, soon after the first legal concepts are discussed in class.¹⁶³

¹⁵⁹ See, e.g., DWECK, *supra* note 23, at 16–26 (explaining that students' mindset determines how they view the role of assessments in learning and that mindsets are students' beliefs about learning and school; students with a growth mindset see assessments as opportunities for learning and readily take on challenging work, persist in the face of setbacks, and achieve at higher levels of mastery; students with a fixed mindset are weary of assessments because they may demonstrate that they are not competent—these students do not put effort into challenging formative assessments because, when they perform poorly on them, they can rationalize their scores as being due to their lack of effort and not their lack of mastery).

¹⁶⁰ See CAREY, *supra* note 155, at 83; BROWN ET AL., *supra* note 60, at 19.

¹⁶¹ See Bloom, *supra* note 21, at 237 (citing GRAHAM GIBBS, HOW ASSESSMENT FRAMES STUDENT LEARNING, in INNOVATIVE ASSESSMENT IN HIGHER EDUCATION 23 (Cordelia Bryan & Karen Clegg eds., 2006)), (arguing that students allocate their time and focus their efforts on what they believe will directly affect their grades).

¹⁶² See BROWN ET AL., *supra* note 60, at 226; see also Lasso, app. B, *Process to Law School Success Handout*, (illustrating the information I provide my entering students regarding the challenges to learning in law school as well as the process to overcome these challenges, including the role of assessments as learning tools).

¹⁶³ See, e.g., Lasso, *supra* note 12, at 84.

This assessment should be used as a diagnostic tool for faculty and students to determine students' strengths and weaknesses in the beginning of the course. If students do not know and understand the rules being discussed in class, they cannot develop their analytical skills. For this reason, it is important to evaluate how well they are learning the rules early in the semester.¹⁶⁴ Thus, the first formative assessment should be an assessment of knowledge and understanding, rather than of analytical skills.¹⁶⁵ If professors see that a large number of students are unclear about a legal concept, they can take steps to address this in class.¹⁶⁶ If only a small number of students are unclear, their shortcomings can be addressed during one-on-one meetings.

Diagnostic assessments of knowledge and understanding can also be conducted throughout the semester as particularly difficult concepts are discussed. At the very least, the first assessment should be a purely diagnostic one, conducted within the first two weeks of class.

3. Provide More than One Summative Assessment During the Semester

Studies show that while formative assessments are important learning tools, students learn better when they take quizzes that count

¹⁶⁴ See Lasso, app. E, *Knowledge & Understanding Assessment 1* (demonstrating that the first diagnostic assessment I give is a short questionnaire designed to determine whether students are understanding (a) what is a prima facie case, (b) what are the elements of battery, and (c) what are the elements of assault. Understanding these basic legal concepts of tort law is critical to effective analysis in tort so, any flaw in students' understanding early in the semester can affect students' ability to resolve a number of legal problems throughout the semester. I administer this assessment the day after we conclude discussions of these concepts—usually on Week 1. If I ask the class if someone does not understand these concepts, few, if any, hands will raise. Nevertheless, the assessment demonstrates that a remarkably high number of students (between 25% and 30%) do not understand one or more of these concepts).

¹⁶⁵ For assessments to help students' learning skills, they should be incremental, starting with assessments of knowledge and understanding before proceeding to assessments of analytical skills. For examples of assessments of knowledge and understanding, see discussion *supra* Section III.C.2.

¹⁶⁶ Year in and year out, after the first two weeks of class, between one-third and one-half of my torts class does not understand the difference between an objective and a subjective standard, so, I now spend extra time on this concept in class and provide students with out-of-class materials and assessments to help clarify the concept.

toward the course grade.¹⁶⁷ Many students do not take quizzes seriously that are purely learning tools because they do not count toward the course grade. In addition to a final exam, all law school classes, including upper level courses, should provide a number of assessments during the semester that count toward a grade.¹⁶⁸ These should include the midterm and a graded quiz before the final exam. Moreover, studies also show that students will find these quizzes more acceptable if they do not count heavily toward the course grade.¹⁶⁹ For these reasons, the midterm should count 25% or less and the quiz prior to the final should count no more than 10%.¹⁷⁰

4. Use the Midterm as a Learning Tool

The midterm is the traditional summative/formative assessment. In addition to providing students with a sense of how they are doing in the course, the midterm can be a critical learning tool. For the midterm to serve as a learning tool, however, it should count enough to motivate students to work hard to prepare for it but not so much that if students perform poorly it dooms their course grade. In my experience, the midterm should comprise between 20-30% of the final grade. This way students who perform poorly on the midterm can take steps to improve their performance on the final, since it counts significantly more than the midterm. If the midterm is worth more than 20 - 30% of the course grade, students who perform poorly may feel too discouraged to put in the effort to perform well on the final exam.

The midterm should also provide students the opportunity to learn. Faculty should not only review the midterm in class, they should provide an opportunity for students to review their answers

¹⁶⁷ See BROWN ET AL., *supra* note 60, at 227.

¹⁶⁸ See *id.* at 226–27.

¹⁶⁹ *Id.* at 227.

¹⁷⁰ The midterm in my Torts class is worth 20% and the quiz I administer a few weeks prior to the final counts as 10% of the course grade. This quiz tests primarily analytical skills and its level of difficulty is similar to what students can expect on the final exam. In my upper level courses, I administer five quizzes prior to the final exam. Each of the quizzes counts as 10% of the course grade, but only the top four quiz scores count toward the course grade.

and compare them with either a grading rubric, or with the best answer from a classmate. Students who perform below average on the midterm should also be given individual feedback on their performance either by the professor or a TA.

Ideally, faculty who teach first-year core courses to the same cohort of students should coordinate the scheduling of midterms, so that students are not overwhelmed with too many assessments during a given time period. Faculty teaching core courses should also communicate with the Lawyering Skills faculty who are teaching the same students so that students' midterms and major legal writing assignments are not all administered during the same time period.

5. Provide at Least Two Significant Formative Assessment Per Semester

In addition to providing a number of low stakes assessments,¹⁷¹ as well as a midterm and a final exam, professors should include some assessments that, even if they do not count toward the course grade, are more demanding and provide students with significant individualized feedback.¹⁷² I refer to these assessments as significant

¹⁷¹ I provide short, small-stakes assessments during most classes and also post formative assessments students can take outside class. For example, I use computerized, automatically scored quizzes that my TAs and I have prepared during the summer and loaded onto the Lexis course web page. These quizzes include answers that not only identify the legal concepts being tested in each question but also provide extensive explanations as to why each option is correct or incorrect. Students can take these quizzes any time after the concepts are discussed in class and can re-take them as often as they need. The Lexis' Web Course and Westlaw's TWEN web course systems have features that allow faculty (or TAs) to post automatically scored quizzes on the faculty member's course materials web site. Often law school's web sites permit faculty to create and post quizzes that students can access. At JMLS, we use a program called Moodle to post class materials, including quizzes. I also suggest students use the automatically scored exercises provided by CALI, which allows students to engage in self-evaluation without input from the professor.

¹⁷² See, e.g., Lasso, app. G, *Assessment I, Assessment I Evaluation, and Assessment I Self-Evaluation* (providing an example of a formative assessment that requires students to apply the rules for one of the elements of the defense of self-defense). Although relatively straightforward, the assessment requires that students engage in IRAC analysis to resolve a legal question. Students are provided with a sample answer/self-evaluation rubric, which they must complete and provide their TA with prior to meeting. The TAs score students'

formative assessments, and they can be created by professors with or without the help of TAs or the ASO. The minimum number of significant formative assessments I recommend is two; the first about three weeks prior to the midterm and another about three weeks prior to the final exam. These assessments should be similar enough to the midterm and final exams so that students understand what they can expect on those summative exams. If the midterm will be comprised of both essay and multiple-choice questions covering the elements of one or more claims or defenses, the significant formative assessment should comprise of both essay and multiple-choice questions covering the elements of one or more claims or defenses, although they need not be the same claims or defenses.¹⁷³

It is critical that the assessments include extensive feedback to each student.¹⁷⁴ Students' answers to these significant formative assessments should be scored by faculty or teaching assistants. Students should be provided with detailed sample answer/self-evaluation rubrics and required to self-assess their answers and send the completed self-assessment to their professor or their TA prior to meeting with them to discuss the assessment. All students will benefit from individual

answers using a sample answer/evaluation rubric and the students meet with their TA, who provides not only written feedback but also helps the student figure out how to improve their performance.

¹⁷³ See, e.g., Bloom, *supra* note 21, at 233 (suggesting that formative assessments that are similar to subsequent summative assessments are particularly helpful to students if they receive feedback and strategies to improve their performance). My Torts midterm is usually a combination of essay and multiple-choice questions. The essay question is a problem that requires that students not only thoroughly know and understand rules but also that they engage in deep analysis of one or more legal concepts. At least two weeks prior to the midterm, I provide students a practice midterm essay question that requires students to know and understand the rules and to also allow an ability to engage in deep analysis of the same or similar legal concepts as those tested on the midterm. Students are required to submit to their TAs an answer to the practice essay question. Students must also self-evaluate their answer and must meet with their TA to go get individual written and oral feedback on their answer. Because the multiple-choice portion of the midterm covers all the concepts studied to date and includes questions that test knowledge and understanding of rules as well as deep analysis of legal concepts, within a week of the midterm, I post practice multiple-choice questions that test knowledge and understanding of rules as well as deep analysis of legal concepts.

¹⁷⁴ See, e.g., Dewitz, *supra* note 13, at 244 (describing how, without assessment, students may be "led in the wrong direction").

feedback on significant assessments so professors or TAs should discuss each significant assessment with every student. If the size of the class makes it difficult to provide individual feedback to all students, an effort should be made to meet with and provide individual feedback to students who score average or below on these assessments.

B. Other Recommendations to Faculty to Improve Student Learning

1. Guide Students' Reading Prior to Class

Casebooks comprise most of the reading students do during the first-year of law school. Casebooks contain mostly complex legal text, which students find difficult to read and comprehend. For novice readers of legal text, comprehension does not occur until they can mentally reconstruct key concepts of the text.¹⁷⁵ To facilitate this construction, law professors should provide students with foundational knowledge, or context, necessary to reconstruct previously read complex legal text.¹⁷⁶ Because casebooks exemplify legal text, providing students with foundational knowledge helps them to "read in a problem-seeking manner, asking questions and making predictions."¹⁷⁷ Foundational knowledge is information that provides students with a base from which they can begin to make inferences that build coherence and understanding about the complex text they are reading.¹⁷⁸ As professors, we can provide students with foundation knowledge orally or in writing.¹⁷⁹ An oral preview of the assigned reading materials may be enough to facilitate students' subsequent reading of the casebook.¹⁸⁰ However, because law students today tend to be visual learners, providing students with foundational knowledge in writing by way of handouts is a more effective way to preview the readings.¹⁸¹

¹⁷⁵ *Id.* at 236.

¹⁷⁶ *Id.*

¹⁷⁷ Lasso, *supra* note 12, at 29.

¹⁷⁸ Dewitz, *supra* note 13, at 236.

¹⁷⁹ Lasso, *supra* note 12, at 29.

¹⁸⁰ Dewitz, *supra* note 13, at 237.

¹⁸¹ Whether orally or in writing, the foundational knowledge provided by the professor should guide the students' reading of the casebook and better prepare them for class

Handouts that provide foundational knowledge and context for the assigned readings help students focus their reading of the casebook and increase their analytical skills.¹⁸² Because handouts focus students' reading and develop their ability to engage in legal analysis, students come to class better prepared, which results in better classroom discussions.¹⁸³ Providing students with handouts that guide their reading of legal text will significantly improve their comprehension of the assigned cases and the problems that will be discussed in class.¹⁸⁴ This will result not only in better class discussions but also in improved performance on exams.

2. Encourage Student-Faculty Contact: Office Hours

Student-faculty contact outside the classroom is an important factor in student success because it helps students remain motivated and involved in learning throughout the semester.¹⁸⁵ Faculty should advertise regular office hours and encourage students to visit, to ask questions about assessments or materials being covered in the course, or just to chat. It is of particular importance to contact students whose performance on formative assessments demonstrates that they are not developing the analytical and self-learning skills that will result in success in the class.¹⁸⁶

discussion. For a more detailed description of why and how handouts can help our students' comprehension of legal text and for sample handouts, see discussion *infra* Section V.B.1.

¹⁸² Dewitz, *supra* note 13, at 241.

¹⁸³ Lasso, *supra* note 12, at 39. Since handouts help students answer basic questions about key factual and legal concepts prior to class, they come to class better prepared, which frees up class time to engage in more sophisticated case analysis and problem solving. The result is a higher level of class discussion. *Id.*

¹⁸⁴ Dewitz, *supra* note 13, at 241. For a more detailed description of why and how handouts can help our students' comprehension of legal texts, see Lasso, *supra* note 12, at 28–30. See also the first two handouts I provide students in my Torts class, attached as, Lasso, app. K, *Handouts*.

¹⁸⁵ Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 J. LEGAL EDUC. 371, 371 (1999) ("Many faculty and students believe, strongly and intuitively, that contact outside of the classroom is important to education and essential to the roles of both student and teacher:").

¹⁸⁶ Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, WASH. CTR. NEWS (1987),

C. The Constituents of the Assessment Program Must Work Together

An effective assessment program requires that everyone in the law school be committed to this enterprise. The law school administration, faculty, and the ASO should work together with the students to create an assessment program that results in significantly improved student self-learning skills and bar passage rates.

1. The Role of the Administration

Buy-in from the administration, faculty, and the ASO is critical. The administration must recognize and support the time-commitment faculty must make in order to create and maintain an effective classroom assessment program. Writing and incorporating assessments requires a significant time expenditure,¹⁸⁷ reducing the time faculty can spend on scholarship. In order to motivate faculty to embrace an assessment program, administrators must make sure that faculty compensation and promotion is not negatively affected by the time required to create and provide assessments to their students.¹⁸⁸

<http://www.lonestar.edu/multimedia/SevenPrinciples.pdf> ("Faculty concern helps students get through rough times and keep on working. Knowing a few faculty members well enhances students' intellectual commitment and encourages them to think about their own values and future plans."). The effect of a single e-mail suggesting that a student sign-up for office hours can be dramatic. Although concerns about students' autonomy prevented me from doing so for many years, about five years ago I started to contact poorly performing students who had not sought help from me or the TAs. I send them one email suggesting they send me their outline and sign-up to meet with me to discuss the outline and their strategies for improving their performance. Of the six or eight students I normally contact in this manner, usually all but one respond, and send me their outline and subsequently meet with me. The reason for their poor performance is usually that they are not spending enough time in school-related work and they feel overwhelmed leading them to do little to determine what steps they need to take to fix their performance. Often simply talking about why they have not spent the time needed to do well is enough to help them figure out steps to take. The results have been remarkable; most of the students I contact become regular visitors during office hours and their performance in assessments improve.

¹⁸⁷ Mary A. Lynch, *An Evaluation of Ten Concerns About Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976, 994 (2012).

¹⁸⁸ For a number of years, I have given presentations and workshops at many law schools regarding how to set up an effective multiple assessment program. In every single

To ensure a law school develops achievable institutional outcome assessments and faculty develop effective student learning assessment programs, administrators should involve faculty in the process and show tangible support for faculty's efforts. Law school administrators can support the faculty's efforts by providing stipends to develop multiple assessments for their classes. This stipend can be modest and need only be awarded every few years. Administrators might also support professors by providing economic support to hire TAs or tutors to assist them in writing and administering assessments.¹⁸⁹ Finally, faculty compensation should reflect the value of the faculty work to ensure students develop the skills they need to be successful students and lawyers.

Law school administrators can also make sure that every entering student is exposed to a multiple assessment program. Studies and personal experience suggest that multiple assessments with feedback in a single first semester class improves student performance in all law school courses.¹⁹⁰ The self-learning skills developed in a single first semester course have been shown to improve student performance in law school and the bar exam.¹⁹¹ When assigning entering students to different class sections, the administration should make sure that there

institution, I heard the same comments, which amount to that the assessment program seems to be a good way to improve students' analytical and learning skills but will interfere with the ability of professors to get tenure (or be promoted, or get a raise) because they cannot afford to take the time needed to create such a program.

¹⁸⁹ See, e.g., Lynch, *supra* note 187, at 995 (describing how at Albany Law School, the administration provides "teaching assistants to support faculty providing multiple and formative assessments and summer grants for course revision"). At JMLS, the administration pays a small stipend to TAs who help faculty provide multiple assessments with individual feedback. At Loyola and DePaul law schools, the administration provides one or two credits to TAs.

¹⁹⁰ See, e.g., Schwarcz & Farganis, *supra* note 38, at 143. One of the goals of a multiple assessment program is to help students develop their self-learning and metacognitive skills so they become aware of how they best learn. These self-learning skills are portable. In other words, if students develop their self-learning skills in one course, they can transfer these skills to perform better in other courses. Students in my first semester Torts class inform me each year that the multiple assessment program in Torts helped them perform better in all their first-year courses. These students tell me they used the approach they learned in Torts of systematically self-evaluating their progress in other courses, resulting in improved performance in other courses.

¹⁹¹ See *id.* at 143–44.

is a doctrinal course in each section that will provide students multiple assessments with individual feedback. This approach ensures that every entering student will reap the benefits of a multiple assessment program in at least one first-year course.

To make sure students are not overwhelmed with assessments, the administration should designate a "midterm period" so that midterms and legal writing papers administered to the same students are provided over a three or four-week period, giving students preparation time between their midterms and between their midterms and legal writing assignments.¹⁹²

Of course, not all assessment programs will be equally effective in developing students' self-learning skills. The administration should appoint a faculty committee that can determine, every three to five years, whether the first-year curriculum and accompanying assessment program is providing students the best opportunity to develop their self-learning skills.

2. The Role of the Faculty

For our part, faculty must recognize that while learning is primarily the responsibility of each student, we play a critical role in guiding students' efforts and providing them the tools needed to develop the skills to succeed in school, the bar, and practice. Ideally, all faculty teaching the same cohort of first semester students should incorporate assessments into their courses. However, if only one faculty member teaching a section of incoming students incorporates assessments into her or his course, all students in that section will benefit. Faculty teaching the same course should work together to determine

¹⁹² At JMLS, the administration encourages faculty to administer midterms during weeks five and eight. Students can handle two midterms the same week, as long as there is at least a day between exams. At JMLS, entering students usually have core courses on either Mondays and Wednesdays or Tuesdays and Thursdays. Often, we schedule midterms so that students have one on a Monday and the other on a Wednesday of the same week. Legal writing papers, however, are very demanding so we try not to schedule a midterm during the same week students have a major paper due. Whether formalized or not, having a three week "midterm" period allows for exams and papers to be spread out throughout that period of time.

some core student learning outcomes for that course¹⁹³ and can also collaborate in the creation of assessments to determine if their students are achieving those learning outcomes. Although there are ways to reduce the time commitment needed to create and maintain an effective course assessment program, faculty must understand that an assessment program requires a significant amount time—time we might otherwise be spending on scholarship.¹⁹⁴

3. The Role of the Academic Success Office¹⁹⁵

Faculty and ASO professionals can collaborate in developing assessments to determine whether students, particularly first semester students, are achieving the learning outcomes for each course.¹⁹⁶ Additionally, ASO professionals are trained to help students with academic (cognitive) factors that affect performance and non-academic and external factors like time management, psychological barriers, belonging, purpose, and resiliency. First-year faculty should work with ASO professionals to identify students who are performing poorly early in the semester so they can receive assistance outside of class to improve their performance on the midterm and final exams.¹⁹⁷ As such, faculty

¹⁹³ Ideally, faculty will agree on some core student learning outcomes for each course, like, for example, that students develop case analysis skills, know and understand the rules applicable to the course, and develop analytical skills. Of course, each faculty member should feel free to add learning outcomes they deem important. For my Torts class, for example, I have added that students should develop self-learning and professionalism skills.

¹⁹⁴ Many faculty members believe not only that scholarship is the most important requirement for advancement, but also that scholarship makes them better professors. These colleagues may push back against the idea of incorporating an effective assessment program because they fear that it will affect their compensation and promotion and also that producing less scholarship may even diminish the quality of their teaching. While spending less time in scholarship may be a side-effect of adopting a multiple assessment program, we must never forget our duty to the students whose tuition pays our salaries.

¹⁹⁵ The Academic Success Office is also called the Academic Support Office or the Academic Achievement Office. I also refer to it as the ASO in this article.

¹⁹⁶ Faculty should provide the ASO professionals with information about how each faculty member assesses his or her students so the ASO can more efficiently work with that faculty member's students.

¹⁹⁷ If students' answers to formative assessments are reviewed by ASO professionals or by TAs, they may provide faculty with information about students' performance prior to the midterm. Faculty (or ASO professionals) can then meet with students who are performing poorly to help them identify ways to improve their self-learning skills. However,

should identify early in the semester students who are performing poorly in assessments and refer them to the ASO. ASO professionals can meet with these students to determine the causes and help them develop strategies to improve their performance.¹⁹⁸ To better assist students, ASO professionals must be made aware of what faculty, particularly those who teach first-year classes, are covering in their classes.¹⁹⁹

4. The Role of Students

Of course, students are a critical component of any endeavor aimed to improve their analytical and learning skills.²⁰⁰ For an assessment program to succeed in helping students develop these skills, students must understand and accept responsibility for their success. The administration, faculty, and the ASO should inform entering students about the process of learning, explain how most students

because a number of students do not put in their best efforts unless the assessment counts toward the course grade, the best indicator of how well a student is doing is their performance on a summative/formative assessment. Having a summative/formative assessment prior to the midterm, then, is the best way to identify underperforming students with time to help them develop strategies to improve their self-learning skills, which will improve their performance on the midterm and beyond.

¹⁹⁸ Because ASO professionals have experience working one-on-one with students, they are aware of some of the reasons that students perform poorly. Moreover, ASO professionals can provide invaluable assistance to help students improve time management skills, resiliency, and growth mindset.

¹⁹⁹ One way for faculty and ASO professionals to work together to help students is for them to meet regularly so that the ASO professionals know what students are studying and how they are being assessed in each course, and faculty can, in turn, find out the many ways in which the ASO professionals can assist students during the first semester of law school. For example, the ASO professionals at JMLS know that I use multiple-choice assessments throughout the semester in my Torts course and I know that the ASO professionals are skilled at helping students improve their multiple-choice exam skills so when students are not improving their performance on multiple-choice quizzes, I advise them to meet with ASO professionals to get extra help. ASO professionals update me about the help they are providing these students and, from time to time, advise me when students who are performing poorly in my class are not seeking help from the ASO.

²⁰⁰ It is important that students understand that their performance in law school depends primarily on the type and amount of effort they put into each course. See, e.g., Hill, *supra* note 57, at 450–51 (citing Judith Wegner’s Speech at the Inaugural Conference at Albany Law Center for Excellence in Law Teaching (CELT) in 2012).

new to law school need improved self-learning skills, and that an assessment program will help them develop the self-learning skills needed to succeed in law school and beyond.²⁰¹ While it is important to let students know that achieving these self-learning skills is a shared endeavor, it is critical that students understand that they bear the ultimate responsibility for their learning.²⁰²

Regardless of how well coordinated this effort is, not all students will embrace a multiple assessment program. Even after providing a thorough introduction of the multiple assessment program and explaining how the program is designed to improve their performance in the class and beyond, not all students will be enthusiastically receptive about multiple assessments.²⁰³ Some students will have doubts

²⁰¹ During orientation, I provide my Torts students with a handout that describes the grueling demands of law school, the challenges of being a novice learner of legal text, and how different the learning skills needed to succeed in law school are from the learning skills that helped them succeed in undergraduate school. This "Process to Law School Success" handout is the result of my many years of observing successful (and unsuccessful) students, research about how adults learn, as well as input from former students and TAs. See Lasso, app. B, *Process to Law School Success*. One or two of my TAs help me update the handout every two to three years. The focus of this section of the handout, however, is an extensive description of the process that all students can follow to succeed in their first semester of law school. A critical step in this process is the assessment program. Assessments are depicted as learning tools to ensure students' success. During the first week of class, I review the Process to Law School Success Handout, emphasize the role of assessments in that process, and, again, remind students of their responsibility for their own learning.

²⁰² Hill, *supra* note 57, at 450–51.

²⁰³ For almost as long as I have instituted a formalized multiple assessment program, I have sought to get feedback from students on the program. Before the semester begins, I ask my TAs to question their students about how the assessment process is working and provide me with weekly feedback on what they are learning. Within the first three weeks of the semester I conduct a short, anonymous survey that asks students what they have found helpful about the assessments to date and how they think the assessments could be improved. I repeat the survey right before the midterm, and again in the last couple of weeks of class. My supervising TA will collate the results of the surveys. That, together with feedback from the TAs and my own debriefing of students, gives me a good idea of how well students are reacting to the assessment program. The TAs also keep me updated on how students are doing on the assessments as well as on why some students are falling through the cracks. By noting students' progress on the assessments, I also get a good idea about the effectiveness of assessment program generally, and for individual students. A decade ago, about 50% of the students would fully engage with

about the program, but these doubts will slowly ease as the semester progresses. About a third of the entering students, however, will initially resist the idea that they need assistance to perform well.²⁰⁴ A few of these students will accept the assessment program only after they perform poorly on the first graded assessment and more will reconsider only if they perform poorly on the midterm.²⁰⁵ For a number of these students, embracing the assessment process after the midterm will result in at least a passing grade,²⁰⁶ but for a few students, embracing the assessment process after the midterm will be too late.²⁰⁷ While it is possible that for some students the assessment

the assessment program almost from the first week, while another 25% would buy-in by the midterm, and another 10 to 20% would embrace the program after the midterm. Since then, the number of students who immediately embrace the program has steadily declined, the number of students who embrace the program only after the midterm has increased as has the number of students who never fully participate in the program.

²⁰⁴ Regardless of what I say or how hard I try to win them over, during the past few years, about a quarter of the entering students will not fully participate in the assessment process until after the first exam that counts toward their grade. For the first several weeks of the semester, these students put in minimal effort in answering mandatory assessments and simply fail to do any assessments that are purely voluntary.

²⁰⁵ All students who perform poorly (significantly less than average) on the first exam and/or the midterm must meet with me or one of the TAs. In order to meet with me or a TA to discuss the midterm, students must complete a highly detailed self-evaluation that requires them to assess their preparation for the midterm, their approach to answering the midterm questions, and to critique why they performed poorly on the exam. I (or a TA) will review each student's self-evaluation so that we can help the student develop a strategy for improving their performance going forward. For a number of students, only their poor performance on the midterm convinces them that they must alter their approach or risk doing poorly on the course.

²⁰⁶ Many students who perform poorly on the midterm readily admit that the self-evaluation led them to understand why they underperformed and are anxious to have me help them develop strategies for improving their performance going forward. Almost all these students embrace the assessment program and perform better on the final exam, although the final is significantly harder than the midterm—primarily because negligence and products liability concepts are much harder than intentional torts concepts. Some of these students will perform so well on the final that they end up with at least a B in the course. I consider the success of these students' good evidence that the assessment process achieves its goal of improving students' analytical and learning skills.

²⁰⁷ Unfortunately, a handful of these students will perform well on the final but not well enough to overcome their very poor midterm score. These students will get a D or an F in the course. Of course, this is partially the result of a rather strict mandatory curve that requires that I give Ds and Fs to about 10% of the class.

program will not affect their performance in the course, a thoughtful and coordinated assessment program will improve most students analytical and learning skills and result in better bar passage rates.

VI. CONCLUSION

Law schools owe a duty to every student to provide them with the learning tools needed to perform well in class, on the bar, and in practice. The overwhelming consensus is that multiple assessments with feedback are the best tools to improve our student learning. Law school professors should provide students with multiple assessments in all classes.

Not all assessments are created equal and some assessments are more effective than others. Although an increasing number of faculty are providing some formative assessments in their classes, in most cases, faculty still only provide general feedback to the entire class. Assessments with general feedback, however, are not effective to improve most students' learning skills. For assessments to be effective, they should relate to the learning outcomes we establish for our courses, and they should be designed not only to improve student performance in our class but also to help students transfer the knowledge and skills they acquire in one course to other courses, to the bar, and to their practice as lawyers. Formative assessments that provide written feedback to students individually are more effective than assessments that provide only general feedback to the class as a whole, and formative assessments with individual written and oral feedback are better yet. Cognitive science and my own observations demonstrate that the most effective assessments are graded assessments that include individual written and oral feedback. This is particularly effective to help low performing students develop the analytical and self-learning skills needed to perform well in law school, on the bar, and in practice.

Finally, it is clear that creating an effective assessment program cannot be done solely by the faculty, the ASO, or the administration. Each department has a role to play and the effective assessment programs require the administration, faculty, and Academic Success professionals to work together to optimize students' learning.

VARIOUS APPENDICES FOLLOW

Appendices A through K are available on the author's SSRN page:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3406301