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Bridging the Divide Between Assessment and Accreditation

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Bridging the Divide Between Assessment and Accreditation

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BRIDGING THE DIVIDE BETWEEN ASSESSMENT AND ACCREDITATION

As law professors and educators, we often bear witness to the transformative power of a legal education.¹ We are continually engaging with our students in ways that fundamentally change how they look at the world.² At the end of three years, our aim is to graduate law school students who can meet the rigors of a modern legal profession. We want our students to be competent, capable practitioners, counselors, policy makers, and legal advocates.

While many of us understand our own part in this transformation—our subject matter, our intuitive sense of what works best in our individual courses—the precise alchemy of law professor, law student, and institution that produces such powerful change remains a bit of a mystery. We know, for instance, that we want our students to think analytically,³ research and write well,⁴ elicit relevant facts,⁵ demonstrate complex problem-solving skills,⁶ and have character and integrity,⁷ among a myriad of other traits and abilities.⁸ What we do not yet fully understand, however, is the entire process by which students acquire these skills.⁹

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1. See WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUND. FOR THE ADV. OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47–86 (2007) (describing the transformation of students through use of the legal case method, and commenting on the legal case method’s use in preparing students to “think like a lawyer”).
 2. *Statement on the Value of a Legal Education*, ASS’N AM. L. SCHS., <http://www.aals.org/wp-content/uploads/2014/09/Statement-on-the-Value-of-a-Legal-Education.pdf> (last visited Jan. 31, 2018).
 3. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT 138 (1992) [hereinafter MACCRATE REPORT] (noting fundamental skills and values for the legal profession, including legal analysis and reasoning).
 4. *Id.*; see Neil Hamilton, *Empirical Research on the Core Competencies Needed to Practice Law: What Do Clients, New Lawyers, and Legal Employers Tell Us?*, 83 B. EXAMINER 6 (2014) (discussing major empirical research on lawyering competencies, in which all surveys presented list effective written communication and writing among the most important skills); see also Am. Ass’n of Law Libraries, *AALL Legal Research Competencies and Standards for Law Student Information Literacy*, AALL (July 2012), <https://www.aallnet.org/Archived/Leadership-Governance/policies/PublicPolicies/policy-lawstu.html> (providing an in-depth description of the research competency skills law students need).
 5. MACCRATE REPORT, *supra* note 3, at 163–72 (discussing the importance of fact-finding skills).
 6. See, e.g., William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 493 (2013) (discussing traits, such as complex problem-solving, that lawyers will need to be effective in a highly complex, global economy).
 7. See ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADV. OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 1, 3, 5 (2016), http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf. An Educating Tomorrow’s Lawyers survey of over 24,000 lawyers found character to be among the most important traits that new lawyers need right out of law school. *Id.* at 1, 5.
 8. See Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 629–30 (2011) (identifying twenty-six lawyer effectiveness factors derived from extensive lawyer interviews and focus groups); see also ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 302 (2017) [hereinafter ABA STANDARDS] (describing a range of learning outcomes for law school programs).
 9. See COMM. ON DEVS. IN THE SCI. OF LEARNING, NAT’L RESEARCH COUNCIL, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 3–4 (John D. Bransford et al. eds., 2d ed. 2000) (noting that the understanding of how people learn is rapidly evolving, spurred in part by an extraordinary increase

At this point in our careers, we probably take for granted our own expertise in these matters, yet when and under what circumstances we became experts is often hard to say. Understanding the process is important because much of what we do in law school involves taking students who are relative novices and moving them along the continuum to becoming experts.¹⁰

Unraveling the mystery of how our students develop—what helps them to reach their “aha” moments—may require us to think in more nuanced ways about the process of teaching and learning. And it turns out that the use of outcomes assessment could figure prominently in those efforts.¹¹ Assessment helps us understand how well our students are developing the skills and abilities that are so important to the practice of law.¹² It does this, for example, by stressing the importance of setting goals for the program of instruction—goals that are based on a clearly defined law school mission,¹³ articulating learning outcomes, and evaluating them regularly.¹⁴ At the institutional or program level, assessment allows us to systematically collect information about our educational programs to discover the strengths and weaknesses of students as a group.¹⁵

in scientific work on the mind and brain, the processes of thinking and learning, and the development of competence). This research, which involves many different branches of science, while not complete, is converging to create a more vivid portrait of the factors that contribute to learning. *Id.*

10. See, e.g., SULLIVAN ET AL., *supra* note 1, at 116–18 (discussing the progression of law students from novice to expert and educational models that describe how expertise is developed); see also Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315, 326–28 (1997) (citing John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 J. LEGAL EDUC. 275, 283 (1989)) (noting that “the transition from novice to expert is an evolutionary process in which students acquire sufficient substantive knowledge, develop elaborate schemata, and exercise judgment in problem solving through experience”).
11. In this article, I use the term “assessment” to refer to institutional or program assessment, which I define as “the systematic collection, review, and use of information about educational programs” to discover group strengths and weaknesses to improve student learning and development. TRUDY W. BANTA & CATHERINE A. PALOMBA, *ASSESSMENT ESSENTIALS: PLANNING, IMPLEMENTING, AND IMPROVING ASSESSMENT IN HIGHER EDUCATION* 1–2 (2d ed. 2015). Here, the focus is on the performance of students as a group rather than individual students.
12. See SULLIVAN ET AL., *supra* note 1, at 171 (describing assessment as “a coordinated set of formative practices that, by providing important information about the students’ progress in learning to both students and faculty, can strengthen law schools’ capacity to develop competent and responsible lawyers”).
13. See Vanessa Merton & Irene Scharf, *Mission Statements that Accurately Define, Distinguish, and Reflect the Law School’s Praxis*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 12, 12–23 (Deborah Maranville et al. eds., 2015) (discussing the importance of law school mission statements in providing a focal point for a multitude of law school activities, including outcome measured instruction).
14. See ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* 39–45 (2007) (discussing the importance of establishing goals and learning outcomes for the law school’s program of instruction as a best educational practice).
15. See BANTA & PALOMBA, *supra* note 11.

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For many legal educators and, in particular, those involved in experiential education, assessment is not new. The underpinnings of the assessment movement have been building for years,¹⁶ and assessment has been an important part of the pedagogy in clinical education and legal writing programs.¹⁷ How do we train the whole student to be an effective lawyer? What competencies must a student possess? How can we ensure that the students demonstrate these competencies, skills, or values? These questions go to the heart of experiential education and are central to understanding how we train twenty-first century lawyers.¹⁸

For the legal academy in general, however, the focus on institutional assessment is a relatively recent development.¹⁹ The promulgation of new American Bar Association (ABA) accreditation standards requiring law schools to adopt learning outcomes and assess those outcomes at the institutional level has now placed

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16. For instances of law school conferences that have been devoted to the topic of assessment over the last ten years, see *Assessment Conference*, U. DEN. STURM C.L., <http://www.law.du.edu/conferences/past-conferences/assessment-conference> (last visited Jan. 31, 2018); Kevin Ramakrishna, *The Center for Excellence in Law Teaching's Inaugural Conference*, BEST PRACTS. FOR LEGAL EDUC. (Oct. 4, 2011), <https://bestpracticeslegaled.albanylawblogs.org/2011/10/04/the-center-for-excellence-in-law-teachings-inaugural-conference/>; *Summer 2011: Engaging and Assessing Our Students*, INST. FOR L. TEACHING & LEARNING, <http://lawteaching.org/conferences/summer-2011-engaging-and-assessing-our-students/> (last visited Jan. 31, 2018); *April 2014: Assessment Across the Curriculum*, INST. FOR L. TEACHING & LEARNING, <http://lawteaching.org/conferences/april-2014-assessment-across-the-curriculum/> (last visited Jan. 31, 2018); *Workshop on Measuring Learning Gains: Institutional Effectiveness for the New Era*, ASS'N AM. L. SCHS., <https://memberaccess.aals.org/eweb/DynamicPage.aspx?WebKey=EC4821F4-2FF5-4D7D-8751-4253D9E4F921&> (last visited Jan. 31, 2018); *Law School Assessment Conference 2015*, WHITTIER L. SCH., <https://www.law.whittier.edu/index/build/centers-programs/institute-for-writing-and-professional-skills/assessment-conference-2015/> (last visited Jan. 31, 2018); *April 2016: Responding to the New ABA Standards: Best Practices in Outcomes Assessment*, INST. FOR L. TEACHING & LEARNING, <http://lawteaching.org/conferences/responding-to-the-new-aba-standards-best-practices-in-outcomes-assessment/> (last visited Jan. 31, 2018); *2017 Symposium: The Impact of Formative Assessment: Emphasizing Outcome Measures in Legal Education*, U. DET. MERCY L. REV., <http://www.udetmercyrev.com/symposium/outcome-measure-legal-education-symposium/> (last visited Jan. 31, 2018).
 17. See SULLIVAN ET AL., *supra* note 1, at 174 (describing use of assessment in clinical education—for example, attention to students' written work product and narrative reports on their performance—and use of student portfolios containing videotapes of students performing a variety of lawyering skills); see also STUCKEY ET AL., *supra* note 14, at 168 (describing the importance of assessment in experiential learning courses). See generally Legal Writing Inst., *Assessment*, 24 SECOND DRAFT, no. 3, 2010 (presenting articles on use of outcome measures and assessments in teaching legal analysis, writing, research, and other lawyering skills).
 18. See Henderson, *supra* note 6, at 495–502 (discussing the need for law schools to adopt competency-based educational models that address a broader range of skills, behaviors, and attributes that students need in today's market economy); see also Barbara Glesner Fines, *An Institutional Culture of Assessment for Student Learning*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 415, 415 (Deborah Maranville et al. eds., 2015) (describing changes in the profession that are placing an increasing number and range of learning demands on students, requiring a more coordinated education, and including additional and different learning outcomes).
 19. See LORI E. SHAW & VICTORIA L. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT* 25 (2015) (noting that law schools are the last of the professional schools to adopt standards for outcomes assessment).

outcomes assessment at the forefront of the agendas for most law schools.²⁰ An important issue for many law schools will be how to implement these standards while ensuring that assessment lives up to its promise as a process that can support the educational development of students and improve student learning.²¹

Often, there is a tension, or disconnect, between externally imposed requirements for institutional assessment, like accreditation, and use of assessment as a tool to improve student learning.²² Assessment experts tell us that it takes time to design effective assessment, gather and make meaning of assessment results through collective group dialogue, and decide what actions to take in response to those results.²³ The disconnect can occur when the need to do assessment to satisfy externally imposed mandates takes priority over the assessment process aimed at improving student learning.²⁴ For example, we may want to know, rightfully so, what we are expected to do to satisfy accreditation standards or what documentation we

20. See ABA STANDARDS, *supra* note 8. ABA Standard 301 requires every law school to establish and publish learning outcomes. *Id.* § 301. Standard 302 requires learning outcomes to address specific competencies, including:

- a) [k]nowledge and understanding of substantive and procedural law; b) [l]egal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context; c) [e]xercise of proper professional and ethical responsibilities to clients and the legal system; and d) [o]ther professional skills needed for competent and ethical participation as a member of the legal profession.

Id. § 302. Standard 314 requires law schools to “utilize both formative and summative assessment in [their] curriculum[s] to measure and improve student learning and provide meaningful feedback to students.” *Id.* § 314. Standard 315 requires the dean and faculty of a law school to “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.” *Id.* § 315.

21. See PETER T. EWELL, NAT’L INST. FOR LEARNING OUTCOMES ASSESSMENT, ASSESSMENT, ACCOUNTABILITY, AND IMPROVEMENT 16 (2009), http://learningoutcomesassessment.org/documents/PeterEwell_006.pdf (discussing ways to manage the tensions between two competing assessment paradigms, one of which is based on accountability, while the other is based on conducting assessment to improve student learning).
22. *Id.* (“Far too many institutions, dominated by the need to respond to external actors like states or accreditors, approach the task of assessment as an act of compliance, with the objective being simply to measure something and the exercise ending as soon as the data are reported.”).
23. See TRUDY W. BANTA ET AL., DESIGNING EFFECTIVE ASSESSMENT 3 (2009) (“Effective assessment doesn’t just happen. It emerges over time as an outcome of thoughtful planning, and in the spirit of continuous improvement, it evolves as reflection on the processes of implementing and sustaining assessment suggests modifications.”).
24. GEORGE D. KUH ET AL., NAT’L INST. FOR LEARNING OUTCOMES ASSESSMENT, USING EVIDENCE OF STUDENT LEARNING TO IMPROVE HIGHER EDUCATION 4–6 (2015). “[T]he purposes and process of assessment—collecting and reporting data to external audiences—continue to take primacy over the institution’s consequential use of the results of outcomes assessment.” *Id.* at 6. “[T]hese same influences unintentionally nurtured the unfortunate side effect of casting student learning outcomes assessment as an act of compliance rather than a volitional faculty and institutional responsibility.” *Id.* at 4.

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need to produce. Before long, however, process and compliance have taken center stage, and the real value of assessment has slipped into the background.²⁵

Most of us have experienced this in one way or another when facing an imminent review by the ABA or a regional accreditor. In both instances, there is the imperative to collect data, make and document findings, write reports, and meet deadlines.²⁶ Afterwards, we experience welcome relief when the review is complete and we learn we have passed. Then begins the process of collecting more data in preparation for the next visit, and the cycle repeats itself. With assessment, the preoccupation with the accreditation process often occurs even when the accrediting bodies themselves have clearly communicated the importance of the underlying reasons for the assessment—namely that it is ultimately meant to help improve student learning, not simply to collect data for its own sake.²⁷

In this article, I suggest that perhaps we can leverage the new ABA regulatory (or any) assessment requirements in ways that help us make assessment a part of our own law school agendas to support goals that are important to our institutions. First, I discuss how examining the value of assessment independent of its regulatory context might allow us to avoid succumbing to the pressure of approaching assessment as a “must do.” I then turn to ways in which we can engage in institutional assessment to make it more likely that we will experience all of its benefits.

I. DISCOVERING THE VALUE OF ASSESSMENT

There are a number of ways in which assessment is valuable in furthering the mission and purpose of an institution. First, assessment as a process serves as an organizing principle around which all of our best ideas coalesce. Through various forms of assessment, we are able to integrate our plans for student learning in ways that ensure our vision for student success is clearly expressed, monitored, and documented from the first year of law school to graduation and beyond.²⁸ When

25. EWELL, *supra* note 21, at 8 (“The central conclusion of this dynamic [between assessment and accreditation], then as now, is that when institutions are presented with an intervention that is claimed to embody both accountability and improvement, accountability wins.”).

26. *See, e.g.*, SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, AM. BAR ASS’N, THE LAW SCHOOL ACCREDITATION PROCESS (2016), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2016_accrreditation_brochure_final.authcheckdam.pdf (describing the role of the Section of Legal Education and Admission to the Bar in the law school accreditation, approval, and site evaluation processes); *see also* COMM’N ON COLLS., S. ASS’N OF COLLS. & SCHS., REAFFIRMATION OF ACCREDITATION AND SUBSEQUENT REPORTS (2014), <http://www.sacscoc.org/pdf/081705/ReaffirmationPolicy.pdf> (describing a ten-year accreditation review process).

27. COUNCIL OF REG’L ACCREDITING COMM’NS, REGIONAL ACCREDITATION AND STUDENT LEARNING: PREPARING TEAMS FOR EFFECTIVE DELIBERATION 7–8, [http://www.sacscoc.org/pdf/handbooks/PreparingTeams\(blue\).pdf](http://www.sacscoc.org/pdf/handbooks/PreparingTeams(blue).pdf) (last visited Jan. 31, 2018) (“Important as it is for the institution to define learning outcomes and to collect evidence that these outcomes have been achieved, doing so without then taking action to improve the quality of teaching and learning is simply insufficient.”).

28. *See* SULLIVAN ET AL., *supra* note 1, at 180–81 (“When these two kinds of assessment—of student learning and of course effectiveness—are aligned and supported through the practices of the law school as a whole, the result is that the institution provides a coherent educational experience with many of the

implemented systematically, assessment allows us to see the themes and connections between the various aspects of our work.²⁹ Assessment as a process is particularly useful, for example, in helping to comprehensively administer a strategic plan;³⁰ change the curriculum;³¹ link our work in the classroom with student services, academic support, and other such administrative offices;³² and ensure that our plans have the necessary financial resources.³³ In other words, assessment allows us to create a framework, or lens, through which we view our work as a collective.³⁴

features of a well-designed course writ large. Such institution-wide efforts extend the idea of formative assessment beyond the individual student to the faculty and administration. At all levels, people get information that allows them to rethink their approach, practices, and goals.”).

29. *Id.* at 181–82 (noting that effective assessment requires clarity about the institution’s purpose and mission so that teaching methods, outcomes, and assessment procedures can be aligned in light of key functions, and further asserting that effective assessment might also include taking into consideration the views outside of the institution, including influential alumni and representatives of the law school’s constituencies in the bar and bench); *see also* BANTA ET AL., *supra* note 23, at 5 (“Assessment will become relevant in the eyes of faculty and administrators when it becomes part of the following: strategic planning for programs and the institution; implementation of new academic and student affairs programs; making decisions about the competence of students; comprehensive program (peer) review; faculty and professional staff development; and/or faculty and staff reward and recognition systems.”).
30. DAVID HOLLOWELL ET AL., *INTEGRATING HIGHER EDUCATION PLANNING AND ASSESSMENT* (2006), <http://www.suagm.edu/uagmcv/docs/academia/assessment/integrating-higher-education-planning-assessment.pdf> (discussing the role of assessment in planning and evaluating institutional effectiveness); *see also* BANTA & PALOMBA, *supra* note 11, at 259–62 (discussing how assessment is linked to other processes, including strategic planning and self-study); Marilee J. Bresciani, *Data-Driven Planning: Using Assessment in Strategic Planning*, *NEW DIRECTIONS FOR STUDENT SERVS.*, Winter 2010, at 39, 39–49, <http://www.utsa.edu/Students/sanews/2014/issue05/files/Bresciani2010SAStrPlanAsmnt.pdf> (describing use of assessment to operationalize a strategic plan).
31. *See* Judith Welch Wegner, *Curriculum Mapping as a Tool for Improvement*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 37, 37–42 (Deborah Maranville et al. eds., 2015) (discussing curriculum mapping, integrating, and sequencing); *see also* BANTA & PALOMBA, *supra* note 11, at 260–61 (discussing institutions that link assessment to the curriculum review process to address new course proposals).
32. *See* JOHN H. SCHUH & ANN M. GANSEMER-TOPF, *NAT’L INST. FOR LEARNING OUTCOMES ASSESSMENT, THE ROLE OF STUDENT AFFAIRS IN STUDENT LEARNING ASSESSMENT* (2010), <http://www.learningoutcomesassessment.org/documents/StudentAffairsRole.pdf> (discussing the value of linking the student affairs office to campus-wide student learning outcomes assessment through the institutional assessment process).
33. *See* HOLLOWELL ET AL., *supra* note 30, at 71–73 (describing use of assessment information in program review, and linking assessment results to the internal budget cycle).
34. CHARLES LUSTHAUS ET AL., *ORGANIZATIONAL ASSESSMENT* 136 (2002) (discussing the value of assessment as a tool for enhancing the efficacy of an organization as a whole).
The organizational assessment framework provides a useful structure to examine the questions that need to be asked. It also indicates the scope of concerns, and provides the reviewers with a reference that ensures that all relevant facets of the assessment were addressed. While the emphasis of an assessment may vary from situation to situation, having a framework provides an overall map that serves as a useful starting point.

Id.

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Without that framework, our efforts to innovate tend to be unstructured, piecemeal, less precise, and less effective.³⁵

Second, assessment gives us the ability to capture and refine what lawyers actually do, so we are better able to instruct, guide, and prepare our students for entry into the legal profession. Through rubrics and other assessment tools that help define and deconstruct components of vital skills for our students,³⁶ assessment gives us a focal point from which to talk about lawyer competence and to understand how we might build models to develop and measure that competence.³⁷

Third, assessment allows us to measure how close or far we are from achieving our educational goals. Have our students learned what we hoped they would learn? Are they progressing? How do we know? Collecting and analyzing evidence becomes central to this endeavor. Well-constructed data allows us to communicate in ways that are coherent, what our students are able to do, what they have accomplished, and in what contexts. This is increasingly important as law schools seek to understand the strengths and weaknesses of academic programs,³⁸ market themselves to prospective students,³⁹ and seek contributions from donors.⁴⁰ Thoughtfully collected assessment data could send a signal to employers that our students—either collectively or individually—meet important competency-based hiring criteria.⁴¹

Fourth, through the framework of assessment, we can build meaningful, sustainable partnerships with legal practitioners and others whose expertise we can leverage to create more comprehensive systems of evaluation. In assessing competence, it helps not only to accurately identify and define the skills and abilities that are part

35. See GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS 3–4* (2000) (“A law school can best achieve excellence and have the most effective academic program when it possesses a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure. Absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence.” (footnote omitted)).

36. See Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics – Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 6 (2004) (discussing the usefulness of rubrics in identifying grading criteria to better evaluate student learning); see also SHAW & VANZANDT, *supra* note 19, at 118–19 (discussing use of rubrics as part of the assessment process); BANTA & PALOMBA, *supra* note 11, at 98–101 (discussing use of nationally available standardized instruments and locally developed instruments).

37. See SHAW & VANZANDT, *supra* note 19, at 62–64. After the law school adopts learning outcomes, the authors suggest refining those outcomes by establishing performance criteria, which are more specific characteristics students must demonstrate to establish a particular outcome has been satisfied. *Id.* at 62. According to the authors, this process of drilling down to deconstruct the skills that we are assessing is “where the rubber meets the road” because it requires faculty collaboration and the building of consensus about what is really required to perform a lawyering task or demonstrate a particular characteristic. *Id.* at 63–64.

38. KUH ET AL., *supra* note 24, at 1–3.

39. HOLLOWELL ET AL., *supra* note 30, at 123–24.

40. See, e.g., Jeffrey R. Young, *A Conversation with Bill Gates About the Future of Higher Education*, CHRON. HIGHER EDUC. (June 25, 2012), <http://www.chronicle.com/article/A-Conversation-With-Bill-Gates/132591/>.

41. See GERKMAN & CORNETT, *supra* note 7, at 23. In this follow up to the Foundations for Practice lead report, Gerkman and Cornett drill down further into the survey data to ask the question: How can employers hire new lawyers who have the foundations they desire? *Id.* at 1.

of effective lawyering but also to understand more about the contexts in which those skills will be used. Practitioners have something to offer here: they know how they are called upon to work and can offer those insights in the context of the structure created by our assessment efforts.⁴²

Finally, assessment fosters powerful collaborations among faculty, staff, and students. This is what I have personally found to be one of the real gems in assessment—the rich conversations that it sparks, from which ideas and solutions emerge simply by talking about student learning more purposefully. Interviews of faculty members involved in higher education assessment suggest that this experience is common.⁴³ Many commented on the power of assessment “to prompt collective faculty conversation about purposes, often for the first time; about discovering the need to be more explicit about goals for student learning; about finding better ways to know whether those goals are being met; and about shaping and sharing feedback that can strengthen student learning.”⁴⁴ An assessment expert, Pat Hutchings, notes that “such conversations are important in and of themselves, but they matter, too, because they set the stage for the larger cycle of assessment work,” which includes designing and selecting instruments, grappling with evidence, and using results to make change.⁴⁵

II. EXPERIENCING THE BENEFITS OF ASSESSMENT

How, then, do we engage in institutional assessment in ways that make it more likely that we experience all its benefits? In offering the following suggestions, I have drawn heavily on my own experience and the ideas of others, including my colleagues, Professors Lori Shaw and Vicky VanZandt.⁴⁶

A. Focus on the utility of the assessment activity

We can perform any number of assessments in response to accreditation requirements: administer standardized tests to all students, document pass rates on bar exams, conduct surveys, examine our students’ classroom work, and write reports

42. See *id.* at 36–38; see also Henderson, *supra* note 6, at 495–96 (discussing the need for greater collaboration between law schools and the profession to build competency-based curriculum in law schools). As reform efforts in legal education continue to accelerate, calls for more robust collaboration between practitioners and law schools increase. GERKMAN & CORNETT, *supra* note 7, at 38. The Foundations for Practice survey report includes a recommendation that law schools and the profession work together to ensure that students have the foundations needed for practice, by using the survey to “[w]ork with employers and the legal community to develop measurable learning outcomes and create and reward law school programs and courses that develop the requisite characteristics, competencies, and legal skills [and] [b]uild those courses into the curriculum.” *Id.* at 37.

43. PAT HUTCHINGS, NAT’L INST. FOR LEARNING OUTCOMES ASSESSMENT, OPENING DOORS TO FACULTY INVOLVEMENT IN ASSESSMENT 7–8 (2010), http://learningoutcomesassessment.org/documents/PatHutchings_000.pdf.

44. *Id.* at 7.

45. *Id.* at 8.

46. Professors Shaw and VanZandt’s book, *Outcomes Assessment for Law Schools*, is a must-read for all. SHAW & VANZANDT, *supra* note 19.

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about the results. Before embarking on that process, however, it is important to ask key questions, such as: What do we hope to discover about our students by collecting this information? Who, besides an accrediting body, is the intended audience for this information? How and in what forms will we share it? Without these critical steps, the true value of assessment will be missed.⁴⁷

B. Assess what is genuinely important to our colleagues and to the institution

This is closely related to the first idea. Focusing assessment on broader ideas that faculty are deeply committed to—ideas and values reflected in a mission statement or strategic planning document, for example—is important. Thinking in terms of broad goals, such as preparing students for practice, preparing students to be advocates for social justice, and graduating students with a strong sense of professional identity help to engage faculty and generate more global conversations about results and next steps.⁴⁸

C. Create meaningful opportunities for faculty, staff, and students to comment on and make meaning of the information we gather

This is tied to focusing on utility, but differs slightly in that it stresses the importance of having multiple stakeholders involved in the process of interpreting data.⁴⁹ For example, many schools participate in the Law School Survey of Student Engagement.⁵⁰ If a school's survey data shows that students are self-reporting that the institution emphasizes professionalism and professional identity significantly less than students report at peer institutions, it might be worth exploring, through student focus groups, why students feel that way. Similarly, if a comprehensive writing assessment shows students consistently underperform on key measures associated with effective writing, it would be useful to drill down and explore the

47. KUH ET AL., *supra* note 24, at 9 (“[F]or assessment results to be relevant and actionable, student learning outcomes assessment must have a clear focus—an anticipated use—that will shape the methodology and set the stage for the eventual consequential use of results. The anticipated use of assessment work should be made explicit at the outset of an assessment effort; it may or may not materialize after the fact.”); *see also* HUTCHINGS, *supra* note 43, at 13 (“Assessment should grow out of faculty’s questions about their students’ learning and the regular, ongoing work of teaching: syllabus and curriculum design, the development of assignments and classroom activities, the construction of exams, and the provision of feedback to students.”).

48. *See* HUTCHINGS, *supra* note 43, at 13 (“When assessment reflects and respects disciplinary interests . . . it is more likely to lead to consequential faculty engagement. Assessment, one might say, must live where faculty live, in the classrooms where they teach the field they love.”).

49. KUH ET AL., *supra* note 24, at 157 (“Instead of being the purview of one office, multiple constituencies from across campus need to be involved including faculty, students, student affairs staff, institutional research, and external stakeholders.”); *see also* HUTCHINGS, *supra* note 43, at 16 (discussing the value of having students participate in the assessment process).

50. Law Sch. Survey of Student Engagement, *The LSSSE Survey Tool*, LSSSE, <http://lsse.indiana.edu/about-lsse-surveys/> (last visited Jan. 31, 2018).

meaning of that data. This could be done, for example, through meetings with faculty members who are asked what they believe the data suggests.⁵¹

D. When possible, use assessment that is already embedded in the curriculum to ensure that students are invested in their performance and that the results are genuinely of interest to them and to faculty members

There are many ways to measure how well we are achieving our goals for student learning. Some assessments measure learning indirectly, through student surveys or focus groups, for example. Others measure learning more directly, such as the use of standardized tests, classroom assignments, portfolios, or performance evaluations, such as mock client interviews.⁵² Assessment experts suggest that using direct measures, such as classroom testing, is more likely to yield meaningful data because we are evaluating students based on work they are heavily invested in, and for which they have incentives to do their best.⁵³

E. Create partnerships with our colleagues in the profession to help us better understand and refine the parameters of our assessments

Working with practitioners to frame assessment is a somewhat novel idea, but it makes sense. In many cases, we are using assessment to look more closely at particular skills and abilities—mainly ones that mirror how our students will be called upon to perform in the practice of law.⁵⁴ Lawyers can help with this by providing deeper insights into the nuances of practice, so that we are more accurately describing the skills and values we hope to measure.⁵⁵ The collaboration that this fosters can be meaningful for students on many levels because it gives them another window into the profession; for faculty, it can help clarify some particularly murky point of policy

51. Trudy W. Banta & Charles Blaich, *Closing the Assessment Loop*, CHANGE: MAG. HIGHER LEARNING, Jan./Feb. 2011, at 22, 23–25 (“[G]ood discussion about assessment data resembles a good seminar discussion about a book. People cite the text, in this case the data, and then dig in, push back, consider their own experience, and try to find broad themes.”).

52. See SHAW & VANZANDT, *supra* note 19, at 105–06.

53. HUTCHINGS, *supra* note 43, at 13 (noting that “[a] focus on [classroom] grading and feedback would also address the long-standing problem of student motivation by assuring that assessment does indeed ‘count’ in ways that elicit students’ best work”).

54. See SHAW & VANZANDT, *supra* note 19, at 24–29 (discussing the emphasis of the ABA standards on outcomes assessment on identifying and measuring lawyering skills and competencies).

55. See, e.g., Neil W. Hamilton, *Law Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. ST. THOMAS L.J. 6, 29 (2013). Professor Neil Hamilton has written extensively about law firm competency models and the implications of those models for developing and assessing law students’ professional development. See *id.* He notes that many law firms are moving toward “competency” models that define the characteristics of the most effective and successful lawyers in the firm, and then use those models in the assessment and development of junior lawyers. See *id.* At the same time, law schools are adopting competency-based learning outcomes and developing ways to assess them. See *id.* This convergence of law firm and law school assessment creates additional entry points for potentially useful collaborations with practitioners.

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or practice in a field of law; and finally, for the entire law school, it helps develop a shared sense of the attributes graduates need to be successful practitioners.

Are there challenges with these and other ideas associated with assessment? Of course. These include time constraints for faculty, the need to align the work of assessment with institutional reward systems, the lack of faculty training in assessment, including working with data, the belief among some that assessment is reductionist or that it does not work, and concerns that the process itself infringes on the freedom and autonomy of faculty.⁵⁶ In addition, the sheer logistics of organizing thoughtful institutional assessment, which can include a good deal of advance planning, can be daunting.⁵⁷ These and other concerns connected with the assessment process have to be acknowledged and addressed along the way.⁵⁸

From my perspective, however, if we can leverage the mandates for external accountability and use assessment as a tool to help our institutions move forward and thrive in this new environment of legal education, it would be worth the effort.

56. See Mary A. Lynch, *An Evaluation of Ten Concerns About Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976, 985–1001 (2012).

57. In addition to enlisting the support of multiple stakeholders in planning for assessment (including the development of an assessment plan), implementing assessment can require a good deal of advance planning and coordination. For instance, if the plan calls for direct assessment of students' written work in multiple sections of particular courses (called course-embedded assessment), faculty members teaching the courses would need to meet to discuss the logistics (what writing will be assessed, when will the assessment take place, who will conduct the review, and how will the results be shared, for example). Indirect assessment, such as a survey or a student focus group, also requires advance planning and coordination. For a thorough discussion of the steps involved in various stages of the assessment process, including planning, implementation, and evaluation, see SHAW & VANZANDT, *supra* note 19; BANTA & PALOMBA, *supra* note 11.

58. HUTCHINGS, *supra* note 43, at 8–9; see also Glesner Fines, *supra* note 18, at 417 (discussing the suspicion with which many faculty members view assessment and the importance of addressing this).