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## Reflections on Identifying and Mapping Learning Competencies and Outcomes: What Do We Want Law Students to Learn?

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MARGARET MARTIN BARRY

## Reflections on Identifying and Mapping Learning Competencies and Outcomes: What Do We Want Law Students to Learn?

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## IDENTIFYING AND MAPPING LEARNING COMPETENCIES AND OUTCOMES

### I. INTRODUCTION

We sit at a critical point in training our future attorneys for practice. Until relatively recently in its history,<sup>1</sup> legal education has proceeded without much holistic analysis of why we teach what we do and how effectively our students are learning it. It is particularly important at this juncture in our collective history for law schools to take such steps. The aspiring lawyers we educate face increasingly complex and seemingly intractable problems that society needs them to play key roles in solving. Fundamental to preparing them for such roles is clarity about why we teach what we teach and how effectively our students are learning.

Setting goals for what students should learn and assessing whether they are in fact learning is an educational premise that law schools navigate based on assumptions that have evolved very little beyond their roots in the early part of the twentieth century. Prior to 2014, most law schools accepted that what had traditionally been taught and how it was taught should remain essentially the same; the juris doctor was satisfied when graduates demonstrated a basic understanding of core substance along with the ability to analyze it, typically on a summative examination at the end of a course.<sup>2</sup> This narrow set of competencies was viewed as meeting the obligation to prepare students to take the bar and responsibly practice law.<sup>3</sup>

Even as law schools are being asked to change their cultures to accommodate more precise goals for student learning, there is little appetite for this change. Accordingly, certain courses are taught in the first year and certain staples follow in the second and third years. The first year has been tinkered with the most, with legal methods instruction, public law, and occasional clinic opportunities enhancing the otherwise standard array of courses.<sup>4</sup> The second- and third-year offerings<sup>5</sup> have been

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1. See discussion *infra* Part II.
  2. In 2014, the ABA promulgated changes in law school accreditation expectations, requiring law schools to change their educational approach by identifying student learning outcomes and expanding assessment. See *infra* pp. 133–35.
  3. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 301(a) (2017) [hereinafter ABA STANDARDS] (“A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”).
  4. See Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & Soc. JUST. 247, 256–66 (2012) (discussing steps some schools have taken to modify the traditional array of courses); Ethan J. Leib, *Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDUC. 166, 166–81 (2008) (discussing the challenges, but ultimate benefit, of introducing a legislation course into the first-year curriculum); see also Susan J. Hankin, *Bridging Gaps and Blurring Lines: Integrating Analysis, Writing, Doctrine, and Theory*, 17 LEGAL WRITING 325, 334–41, 349–54 (2011) (discussing the evolution of the University of Maryland’s integration of Legal Analysis and Writing and doctrinal courses in the first year of law school). Hankin also references other schools that have used a similar approach, such as Pace University School of Law and the University of Baltimore School of Law. *Id.* at 361–62.
  5. I use the reference to second or third year loosely since some law schools offer, not necessarily linked to the curricular design I contemplate, a four-year evening or extended course of study, or accelerated courses that can yield a juris doctor in two calendar years of condensed study. See, e.g., *Part-Time Program*, GEO. L., <https://www.law.georgetown.edu/academics/academic-programs/jd-program/part-time-program/index.cfm> (last visited Jan. 22, 2018); *Part-Time Evening Division*, N.Y.L. SCH., <http://www>.

more idiosyncratic, reflecting some mission-driven emphases, faculty interests, and attention to bar examination subjects, such as Evidence, Criminal Procedure, Federal Income Taxation, Trusts and Estates, and Family Law. With the intention of teaching substance and analysis, professors generally teach these courses using some version of the case-dialogue method.<sup>6</sup>

Certain movements within legal education have challenged the scope of the skills and substance taught. Critical theory, legal realism, and the clinical legal education movements have resulted in new course opportunities, reconsideration of how doctrine is analyzed, and a broader inclusion of values-based lawyering.<sup>7</sup> These movements have had an impact on values conveyed and the analytical premises in some courses; however, they did not lead to fundamental change in what is considered essential or core in legal education.<sup>8</sup> For example, although much attention has been paid to experiential learning<sup>9</sup> as significant in addressing the broader set of skills emphasized by the clinical legal education movement and reflected in accreditation requirements, the sentiment that these skills are not essential still influences curricular priorities.<sup>10</sup>

Traditional assumptions about what is important in legal education were reinforced by bar examiners, the hiring bar, and student expectations.<sup>11</sup> Indeed, prior to the 2014

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nyls.edu/admissions/j-d-applicants/part-time-evening-division/ (last visited Jan. 22, 2018); *Fast Forward: The Two-Year Accelerated JD Program*, DREXEL U. THOMAS R. KLINE SCH. L., <http://drexel.edu/law/academics/jd-programs/2-year-accelerated-jd/> (last visited Jan. 22, 2018). VLS, for example, has offered an accelerated juris doctor program for the past few years. *Accelerated Juris Doctor*, VT. L. SCH., <https://www.vermontlaw.edu/academics/degrees/jd/accelerated-jd> (last visited Jan. 22, 2018).

6. WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUND. FOR THE ADV. OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 50–54 (2007) (discussing legal education’s “signature pedagogy”).
7. Leib, *supra* note 4, at 167.
8. See Steven C. Bennett, *When Will Law School Change?* 89 NEB. L. REV. 87, 103 (2010) (“Despite long-standing recognition of the need for reform of legal education, law schools have demonstrated persistent and powerful resistance to change. As the President of the Association of American Law Schools wrote in 2005, ‘most students are experiencing a core curriculum that, at least superficially, looks very similar to the one I first encountered nearly fifty years ago.’ More recently, for all its careful preparation and comprehensive scope, the 2007 *Carnegie Report* has encountered ‘widespread indifference’ within the legal academy.” (footnotes omitted)); see also Robert F. Blomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountainside*, 29 VAL. U. L. REV. 641, 662–63 (1995) (finding the process of curricular reform thwarted by protection of turf and personal autonomy); Mary A. Lynch, *An Evaluation of Ten Concerns About Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976, 998 (2012) (identifying a concern that faculty members who believe focusing on student learning outcomes and assessment of student learning is anti-theoretical and encourages “teaching to the test”).
9. The definition of experiential learning that I have in mind is the broad language of ABA Standards 303(3) and 304—clinics, externships, and simulation courses. See ABA STANDARDS, *supra* note 3, §§ 303(a)(3), 304.
10. SULLIVAN ET AL., *supra* note 6, at 87–88 (observing that the primary focus of legal education has been analysis of legal doctrine with other courses considered “of secondary intellectual value and importance”).
11. See ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADV. OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 37 (2016), [http://iaals.du.edu/sites/default/files/reports/foundations\\_for\\_practice\\_whole\\_lawyer\\_character\\_quotient.pdf](http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf) (discussing a

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changes in law school accreditation expectations as reflected in the revised American Bar Association (ABA) Standards,<sup>12</sup> there had been some incentive to assess legal education in relation to what law students should be learning but little commitment to systemic change.<sup>13</sup> Economic shifts, demands in the professional market, student anxiety over the cost of legal education, greater attention to the ongoing critique of legal education, and the inability to ignore what the rest of higher education expects all induced a climate of change.<sup>14</sup> With the revisions to the ABA Standards, law schools are expected to seriously engage in design processes that might have raised eyebrows, elicited emphatic yawns, and been ignored a decade ago. These requirements suggest possibilities for greater cohesion and relevance in curricular landscapes that previously were as immutable as they were essentially indistinguishable.

The revised ABA Standards ask each school to look thematically at its whole curriculum with the idea that a legal education should reflect an institutional assessment of what students are expected to learn.<sup>15</sup> Schools are to establish certain basic outcomes identified in ABA Standard 302,<sup>16</sup> and they are expected to identify

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recent study by the Institute for the Advancement of the American Legal System which found a disjuncture between what lawyers say is important for new lawyers to know and what they look for in hiring).

12. The U.S. Department of Education has delegated to the ABA authority to accredit U.S. law schools. *See* ABA STANDARDS, *supra* note 3, at v; SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, THE LAW SCHOOL ACCREDITATION PROCESS 3 (2016), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/2016\\_accreditation\\_brochure\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2016_accreditation_brochure_final.authcheckdam.pdf). As part of exercising that authority, the ABA established the ABA Standards and Procedures for Approval of Law Schools, which underwent significant revisions that were implemented and became effective in 2014. ABA STANDARDS, *supra* note 3, at v; *see* SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, TRANSITION TO AND IMPLEMENTATION OF THE NEW STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 1 (2014), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2014\\_august\\_transition\\_and\\_implementation\\_of\\_new\\_aba\\_standards\\_and\\_rules.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf).
13. SULLIVAN ET AL., *supra* note 6, at 190.
14. TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS'N, DRAFT REPORT AND RECOMMENDATIONS 1 (2013), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/taskforcecomments/task\\_force\\_on\\_legaleducation\\_draft\\_report\\_september2013.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/task_force_on_legaleducation_draft_report_september2013.authcheckdam.pdf). The profession as a whole is growing more specialized and streamlined on the one hand, while on the other, services available for those on the low- to moderate-income end of the spectrum are stagnant, in need of creativity and adaptability. *See* BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD xxxvii–xlii (Deborah Maranville et al. eds., 2015). For both aspects of what the profession demands, lawyers find that they must understand and apply competencies that law schools have largely ignored. *Id.* Many scholars have discussed this. *Id.* Contributors to *Building on Best Practices: Transforming Legal Education in a Changing World* echoed the observation. *E.g.*, Martin J. Katz & Kenneth R. Margolis, *A Balanced Curriculum*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra*, at 45, 45–46.
15. ABA STANDARDS, *supra* note 3, § 301.
16. *Id.* § 301(b). ABA Standard 301(b) specifies that a law school must establish and publish outcomes that will prepare students for passing the bar and responsible participation in the profession. *Id.* ABA Standard 302 provides a baseline for these learning outcomes. *Id.* § 302. Standard 302 states:

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

additional outcomes reflective of mission.<sup>17</sup> They are also expected to assess what they have identified as necessary for the professional degree offered.<sup>18</sup> A few schools have embraced the challenge and moved ahead with curricular analysis, assessment, and redesign.<sup>19</sup> A number of conferences<sup>20</sup> have provided guidance for those embarking on the process or reflecting on what they have done.<sup>21</sup> The conferences

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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.* The list covers most of what any law school could broadly identify as the outcomes it wants for its students. *See id.* With the exception of ABA Standard 303, what these outcomes mean in terms of the specific competencies is left for schools to determine. *Id.* ABA Standard 303 specifies professional responsibility, legal writing, and experiential inputs. *Id.* § 303.

17. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, MANAGING DIRECTOR'S GUIDANCE MEMO: STANDARDS 301, 302, 314 and 315, at 3 (2015) [hereinafter GUIDANCE MEMO], [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_learning\\_outcomes\\_guidance.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf) (noting that a school's outcomes will differ based on its missions).
18. *Id.*
19. *See* LORI E. SHAW & VICTORIA L. VANZANDT, STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT 193–99 (2015) (listing learning outcomes adopted by five law schools); *see also* Assessment, TEX. SOUTHERN U. T. MARSHALL SCH. L., <http://www.tsulaw.edu/assessment/> (last visited Jan. 18, 2018) (listing eight student learning outcomes); *Learning Outcomes for Degree Programs & Concentrations*, B.U. SCH. L., <https://www.bu.edu/law/faculty-and-staff/learning-outcomes/> (last visited Jan. 18, 2018) (listing four learning outcomes for a J.D. degree); *Mission Statement and Learning Outcomes*, CORNELL L. SCH., [http://www.lawschool.cornell.edu/registrar/aba\\_standards.cfm](http://www.lawschool.cornell.edu/registrar/aba_standards.cfm) (last visited Jan. 18, 2018) (listing five learning outcomes which are similar to the provisions of ABA Standard 302); Tex. S. Univ. Thurgood Marshall Sch. of Law, *Core Competencies for TMSL Students*, TMSL FACULTY CORNER, <http://www.centerforlegalpedagogy.com/student-competencies> (last visited Jan. 18, 2018) (identifying core competencies); *UC Hastings at a Glance*, UC HASTINGS C.L.S.F., <http://www.uchastings.edu/about/fact-stats/index.php#PLOS> (last visited Jan. 18, 2018) (listing the six learning outcomes of the J.D. program). *See generally* Debra Moss Curtis & David M. Moss, *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education*, 34 NOVA L. REV. 473 (2010) (discussing Nova Southeastern University, Shepard Broad Law Center's experience with mapping its curriculum to achieve curricular reform to improve student learning).
20. One of those conferences was the Third Alliance for Experiential Learning Symposium at New York Law School in June 2016, the planning for which inspired this article. The symposium took a careful look at how to identify and effectively assess experiential learning outcomes in the legal education context.
21. *Alliance for Experiential Learning in Law*, NE. U. SCH. L., <https://www.northeastern.edu/law/experience/alliance/index.html> (last visited Jan. 18, 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. 18, 2018) [hereinafter *Boston University Conference*]; *Assessment Conference*, U. DENV. STURM C. LAW, <http://www.law.du.edu/conferences/past-conferences/assessment-conference> (last visited Jan. 18, 2018) (noting that the conference “responded to the calls for better methods of student, teaching, and institutional assessment made in the Carnegie Report,” and highlighting speakers such as Steven Bahls, the chair of the ABA Standards Review Committee's subcommittee developing the changes to require outcome measures and assessment); ASS'N OF AM. LAW SCH., 38TH ANNUAL CONFERENCE ON CLINICAL LEGAL EDUCATION 3 (2015), [https://www.aals.org/wp-content/uploads/2015/02/2015Clinical\\_Brochure.pdf](https://www.aals.org/wp-content/uploads/2015/02/2015Clinical_Brochure.pdf) (“Legal education confronts a period of intense change. These changes include drops in

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have helped participants consider what to teach, how to teach it, and how to assess whether the teaching is working. As schools grapple with the challenges of curricular design and assessment, future conferences will be able to provide opportunities to refine the outcomes and assessment process.

Part II of this article looks at the influences on and changes in Chapter 3 of the revised ABA Standards that require schools to identify student learning outcomes and assess them. Part III discusses an approach to two initial stages of the required outcomes and assessment process—identifying learning outcomes and competencies and mapping the extent to which they are being met in the curriculum.<sup>22</sup> Part IV concludes this article with reflections on the process identified in Part III. Others have written about meeting the new ABA requirements,<sup>23</sup> but engaging law schools

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enrollment, a market downturn in jobs for graduates, transformations in law practice, and a rethinking of the roles of and the need for lawyers. Some argue that law schools must address these changes or lose control over legal education. Proposals to eliminate the third year, to revamp the traditional curriculum, to graduate ‘practice-ready’ lawyers, and to permit students to take the bar early, all act as the forward edge of reform in legal education. A ‘new normal’ seems to be taking hold. This conference will explore this new paradigm, and ask whether and how clinicians should lead in the ‘new normal’ of legal education.”); *2015 Annual Meeting: Legal Education at the Crossroads*, Ass’n AM. L. Schs. (2015), [https://www.aals.org/wp-content/uploads/2014/12/Program\\_Final.pdf](https://www.aals.org/wp-content/uploads/2014/12/Program_Final.pdf); *2015 AALS Midyear Meeting*, Ass’n AM. L. Schs., [https://www.aals.org/wp-content/uploads/2015/05/Midyear15\\_eBrochure.pdf](https://www.aals.org/wp-content/uploads/2015/05/Midyear15_eBrochure.pdf) (last visited Jan. 18, 2018) (“Law schools are entering a new era, one in which they will be expected to seriously evaluate what their students have learned throughout their law school careers.”); *2016 AALS Annual Meeting Highlights*, Ass’n AM. L. Schs., <https://www.aals.org/aals-newsroom/2016-aals-annual-meeting-highlights> (last visited Jan. 18, 2018).

22. The Glossary of Education Reform, which provides a good working definition of curriculum mapping, says, in part,

Curriculum Mapping is the process indexing or diagramming a curriculum to identify and address academic gaps, redundancies, and misalignments for purposes of improving the overall coherence of a course of study and, by extension, its effectiveness (a curriculum, in the sense that the term is typically used by educators, encompasses everything that teachers teach to students in a school or course, including the instructional materials and techniques they use).

In most cases, curriculum mapping refers to the alignment of learning standards and teaching—i.e., how well and to what extent a school or teacher has matched the content that students are actually taught with the academic expectations described in learning standards—but it may also refer to the mapping and alignment of all the many elements that are entailed in educating students, including assessments, textbooks, assignments, lessons, and instructional techniques.

Generally speaking, a coherent curriculum is (1) well organized and purposefully designed to facilitate learning, (2) free of academic gaps and needless repetitions, and (3) aligned across lessons, courses, subject areas, and grade levels. When educators map a curriculum, they are working to ensure that what students are actually taught matches the academic expectations in a particular subject area or grade level.

*Curriculum Mapping*, GLOSSARY EDUC. REFORM, <http://edglossary.org/curriculum-mapping/> (last updated Nov. 18, 2013). Once the school is clear as to its goals for student learning as reflected in the outcomes and competencies it has identified, then the process of aligning the curriculum to coherently express these goals can begin in earnest.

23. See, e.g., SHAW & VANZANDT, *supra* note 19 (providing a comprehensive discussion of the outcomes and assessment process).

in the level of reflection suggested by the revised Standards and demanded by our times is sufficiently ambitious to invite further consideration.

## II. WHY CHANGE?

Our legal education journey from apprenticeship to the first law faculty at William and Mary in 1779 to the casebook method in the 1890s created an unfortunate distrust of integrating substance with its application in professional practice.<sup>24</sup> The growth of clinical legal education in the 1970s reflected a desire to establish a more balanced approach,<sup>25</sup> although calls for this balance were made much earlier than that. As early as 1917, Professor William Rowe argued that law student volunteer affiliations with legal aid efforts then extant should be formalized and transformed into a feature of the law school curriculum.<sup>26</sup> He wrote that the legal field was lagging behind medicine, architecture, engineering, and other disciplines in providing such clinical experiences to students.<sup>27</sup>

In 1921, the Carnegie Foundation for the Advancement of Teaching (“Carnegie”) funded a study on Legal Education that became known as the “Reed Report.”<sup>28</sup> The report identified three components needed to prepare students for the practice of law: general education (at least two years of pre-law training), theoretical knowledge of the law, and practical skills training.<sup>29</sup> The idea that legal education should focus on inculcating skills and values was further articulated in the ABA’s 1992 release of a book commonly known as the “MacCrate Report.”<sup>30</sup> The MacCrate Report identified ten skills and four values necessary for lawyers to assume “ultimate responsibility for a client.”<sup>31</sup> With the exception of the legal analysis and reasoning skills emphasized through casebook teaching, the skills identified by the Reed and

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24. Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 5–6 (2000) (describing the early stages of legal education in the United States and its singular focus on the casebook method).

25. *Id.* at 16–17.

26. See William V. Rowe, *Legal Clinics and Better Trained Lawyers—A Necessity*, 11 ILL. L. REV. 591, 607–08 (1917).

27. *Id.* at 596, 606 (“One year of the clinic is not enough. Indeed, eventually, the clinic may be made a principal medium of instruction in all years for all subjects.”); Barry et al., *supra* note 24, at 6–7.

28. ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921) (naming the report after nonlawyer author Alfred Zantzinger Reed).

29. Barry et al., *supra* note 24, at 7.

30. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT]. The name “MacCrate Report” recognizes the leadership of Robert MacCrate, Chair of the Task Force. *Id.* at v. At a luncheon at the Third Alliance for Experiential Learning Symposium, Professor Randy Hertz paid tribute to Robert MacCrate, who died on April 6, 2016. N.Y. Law Sch., *Third National Experiential Learning Symposium – Lunch and Afternoon Panel (June 11, 2016)*, YouTube (June 22, 2016), [https://youtu.be/0\\_r5d6UQQ0Q?t=4m](https://youtu.be/0_r5d6UQQ0Q?t=4m).

31. MACCRATE REPORT, *supra* note 30, at 135–36.

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MacCrate reports have not typically been the focus of the substantive courses that remain the heart of legal education curricula.<sup>32</sup>

In 2007, two publications made the case for broadening legal education goals yet again: the Clinical Legal Education Association's (CLEA) publication *Best Practices for Legal Education*<sup>33</sup> and the Carnegie publication *Educating Lawyers*.<sup>34</sup> Both books offered similar and complementary visions of the need for law students to learn the fundamental knowledge, skills, and values of the profession and the means by which this should be achieved.<sup>35</sup> The books sparked renewed assessment and critique of legal education<sup>36</sup> and helped lay the foundation for the ABA accreditation changes that followed. Their publication shortly before the 2008 economic crisis was timely, as considerable concern grew about the future of and preparation for the legal profession.<sup>37</sup>

In 2008, the ABA Section of Legal Education and Admissions to the Bar's Standards Review Committee (SRC) embarked on a review of all of its standards for legal education.<sup>38</sup> In looking at Chapter 3 of the Standards, the SRC was impressed by the recent Carnegie and CLEA publications, as well as critique of legal education that had gained steam in the wake of the economic downturn.<sup>39</sup> It wanted to encourage law schools to be clearer about what students should learn and whether students were in fact learning what the schools intended. The ABA was also influenced by regional higher education accreditation standards.<sup>40</sup>

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32. See generally REED, *supra* note 28; MACCRATE REPORT, *supra* note 30. "In the law, however, the consequence of the university model was more often simply the deferment of practice experience until entry into the profession." SULLIVAN ET AL., *supra* note 6, at 6.

33. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 27 (2007).

34. SULLIVAN ET AL., *supra* note 6, at 8.

35. Early in the text, *Educating Lawyers* introduces its central theme that "knowledge, skill, and moral discernment" should be united in "a more capacious, yet more integrated, legal education." *Id.* at 12. *Best Practices for Legal Education* similarly calls for developing knowledge, skills, and values. STUCKEY ET AL., *supra* note 33, at 31. It expands on this idea throughout the book's discussion of best practices. See *id. passim*.

36. See, e.g., Lynch, *supra* note 8, at 977–78 ("These books not only became a focus of national dialogue among law professors and law school administrators, but also captured the attention of the national media. Legal education reform became a dominant theme within and outside of the academy." (footnote omitted)).

37. Courtney G. Lee, *Changing Gears to Meet the "New Normal" in Legal Education*, 53 DUQ. L. REV. 39, 43 (2015) (discussing the "Great Recession" of 2008, which dragged most legal education programs along with it).

38. The author was a member of the ABA's SRC at the time that this review began, serving on the Committee from 2004 to mid-2011.

39. Susan Hanley Duncan, *The New Accreditation Standards Are Coming to A Law School Near You—What You Need to Know About Learning Outcomes & Assessment*, 16 J. LEGAL WRITING INST. 605, 608–09 (2010) (discussing the influence of Carnegie's *Educating Lawyers* and CLEA's *Best Practices for Legal Education*, along with other literature, and the impact of changes to higher education accreditation criteria on the work of the ABA's SRC when reviewing Chapter 3 of the ABA Standards).

40. SHAW & VANZANDT, *supra* note 19, at 23 ("The current push for law schools to up their assessment game is, at least in part, the result of the tightening of the regional accreditors' standards over the past decade."); see also U.S. Regional Accreditation: An Overview, NEW ENG. ASS'N SCHS. & CS. COMMISSION ON

The regional standards for higher education accreditation that the SRC looked to are quite specific in requiring student learning outcomes and assessment.<sup>41</sup> The regional accreditors require schools to state what they want students to learn and how they know students are learning it.<sup>42</sup> The revised ABA Standards reflect the same focus by instructing law schools to articulate what their students should know upon graduation<sup>43</sup> and assess whether these outcomes are being learned.<sup>44</sup> The Standards speak to an iterative process that is now linked to the ABA's self-study requirement.<sup>45</sup> In the past, self-study reports typically responded to certain data

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INSTITUTIONS HIGHER EDUC., <https://cihe.neasc.org/about-accreditation/us-regional-accreditation-overview> (last visited Jan. 18, 2018) (describing the role of higher education regional accreditors as overseeing “the quality of research universities; community colleges; liberal arts colleges; state colleges; religiously affiliated institutions; special-purpose institutions in the arts, sciences, and professional fields”). The regional accreditors are authorized by the U.S. Department of Education through a process of recognition. *Accreditation in the United States*, U.S. DEP'T EDUC., [http://www2.ed.gov/adms/finaid/accred/accreditation\\_pg7.html#law](http://www2.ed.gov/adms/finaid/accred/accreditation_pg7.html#law) (last visited Jan. 18, 2018). NEASC Accreditation Standard 4.2 requires schools to publish learning goals and requirements for each program, including the academic skills and competencies to be acquired. COMM. ON INSTs. OF HIGHER EDUC., NEW ENG. ASS'N OF SCHs. & COLLS., STANDARDS FOR ACCREDITATION 8 (2016) [hereinafter REGIONAL STANDARDS], [https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/Standards/Standards\\_for\\_Accreditation.pdf](https://cihe.neasc.org/sites/cihe.neasc.org/files/downloads/Standards/Standards_for_Accreditation.pdf). Standard 4.3 refers to the need for programs to have a “coherent design” characterized by, among other things, a “sequential progression.” *Id.* References to learning outcomes and assessment also include Standards 4.33, 6.18, and 8.2. *Id.* at 12, 20, 24. Other regional accreditors similarly refer to identifying student learning outcomes and assessment. *See* COUNCIL FOR HIGHER EDUC. ACCREDITATION, 2017-2018 DIRECTORY OF CHEA-RECOGNIZED ORGANIZATIONS 4-5 (2017), <https://www.chea.org/userfiles/Recognition/directory-CHEA-recognized-orgs.pdf> (providing a listing of regional accreditors and links to their websites, each of which identify accreditation criteria). These regional higher education accreditors do not except law schools from their accreditation requirements, although the ABA is recognized by the Department of Education as having the primary responsibility for law school accreditation. *See Accreditation in the United States*, *supra*. Thus, while law schools must be accredited by the ABA, any university the law school is affiliated with or any master's program offered by an independent law school must be accredited by regional accreditors. *See id.* If these accreditors do not simply rely on the ABA assessment and find the law school program lacking, it may affect the university or independent law school's ability to gain regional accreditation. *See id.*; *U.S. Regional Accreditation: An Overview*, *supra*.

41. REGIONAL STANDARDS, *supra* note 40, at 8, 12, 20, 24; *see also* Anthony Niedwiecki, *Law Schools and Learning Outcomes: Developing a Coherent, Cohesive, and Comprehensive Law School Curriculum*, 64 CLEV. ST. L. REV. 661, 665 (2016) (noting that regional accreditors require law schools to have an extensive learning outcome and assessment plan).
42. *See, e.g.*, REGIONAL STANDARDS, *supra* note 40, at 24 (requiring clear public statements about what students should learn from their education).
43. ABA STANDARDS, *supra* note 3, §§ 301(b), 302 (requiring law schools to design and publish learning outcomes, as well as establish learning outcomes, including certain minimal competencies). “Focusing on outcomes should serve as a catalyst for law schools to be intentional in curriculum development.” GUIDANCE MEMO, *supra* note 17.
44. ABA STANDARDS, *supra* note 3, § 315 (requiring institutional assessment of student learning outcomes).
45. The ABA's self-study requirement for law schools is part of the accreditation review that occurs in seven-year cycles for law schools. AM. BAR ASS'N, SELF STUDY 2016-2017 (2016) [hereinafter SELF STUDY SUMMARY], [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/March2016CouncilOpenSessionMaterials/2016\\_e2\\_2016\\_17\\_self\\_study\\_outline.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/March2016CouncilOpenSessionMaterials/2016_e2_2016_17_self_study_outline.authcheckdam.pdf); SECTION OF LEGAL EDUC. &

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points that the ABA perscribed—admissions, graduation, bar passage, employment, economic health, faculty performance, and faculty status.<sup>46</sup> The revised rules require additional information:

Site teams visiting schools in the 2016–17 academic year and thereafter will be asked to report on the progress schools are making in establishing learning outcomes and in developing an assessment plan. Schools will be expected to show steady work and progress toward the adoption of a full set of learning outcomes. Those outcomes should be in place by the end of the 2017–2018 year. Schools must have adopted an assessment plan and be able to demonstrate that they are implementing it by the end of the 2018–2019 academic year. This schedule is consistent with the timeline recommended by the SRC’s Learning Outcomes Subcommittee.<sup>47</sup>

How any of this will look in terms of addressing some of the core critiques of legal education is another matter.<sup>48</sup> The revised Standards provide, for the first time, that law schools require six credits of experiential learning prior to graduation.<sup>49</sup> The ABA defines this experiential requirement as including simulation, clinic, or externship courses.<sup>50</sup> This is hardly enough of a requirement to lead to an integrated system of acquiring the knowledge, skills, and values a new lawyer needs to step into professional practice. Indeed, the ABA is still sorting out its sense of what is needed to improve legal education, as seen in the recent changes to the bar passage requirement<sup>51</sup> and related comments from the ABA that suggest a lack of confidence

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ADMISSIONS TO THE BAR, AM. BAR ASS’N, REPORT OF THE TASK FORCE ON ACCREDITATION PROCESSES 5 (2002). The instructions ask schools to assess the education quality of their programs, but prior to the revised ABA Standards, this had not been understood to include identifying specific student learning outcomes and assessing them. See SELF STUDY SUMMARY, *supra*. Questions 16 and 38 specifically ask for that information in the current Questionnaire. AM. BAR ASS’N, SELF STUDY 2016–2017 SITE EVALUATION QUESTIONNAIRE—NARRATIVE RESPONSES 6, 14 (2016) [hereinafter SITE EVALUATION QUESTIONNAIRE], [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/March2016CouncilOpenSessionMaterials/2016\\_e3\\_2016\\_2017\\_seq\\_narrative\\_responses.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/March2016CouncilOpenSessionMaterials/2016_e3_2016_2017_seq_narrative_responses.authcheckdam.pdf).

46. SITE EVALUATION QUESTIONNAIRE, *supra* note 45. With the exception of questions 16 and 38, much of what is asked of law schools in the accreditation evaluation process still focuses on these points, but the ABA has been quite clear about the reporting on learning outcomes and assessment that it expects. *Id.*
47. GUIDANCE MEMO, *supra* note 17, at 6.
48. As discussed earlier, legal education has been criticized for failing to be clear about its goals for student learning. It has relied heavily on developing a narrow set of skills and covering certain doctrine. The core critique has been that this focus has failed to develop the broader skills and the values that are essential to preparation for professional practice. See, e.g., Barry et al., *supra* note 24; Rowe, *supra* note 26, at 596.
49. ABA STANDARDS, *supra* note 3, § 303(a)(3).
50. ABA STANDARDS, *supra* note 3, § 304.
51. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, COUNCIL MEETING MINUTES (2016), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/December2016OpenSessionMaterials/2016\\_october\\_council\\_open\\_session\\_minutes.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/December2016OpenSessionMaterials/2016_october_council_open_session_minutes.authcheckdam.pdf) (“After carefully considering [the majority of comments opposing changes to the bar passage requirement, most of which focused on lack of data, indicating that raising the bar passage requirement would be beneficial] and in light of the purposes to be

in what learning outcomes and assessment might achieve in law schools.<sup>52</sup> What this means for what will be expected of schools in response to outcomes and assessment requirements remains to be seen. As law schools engage in the outcomes and assessment process, they may indeed make the kinds of changes that respond to the critiques of legal education. It would be a shame if that process yields greater emphasis on more of the same in doctrinal teaching or defaults to teaching to a standardized test. The promise of these revised ABA Standards is that they encourage schools to consider which integrated set of values, doctrine, and skills lay the foundation for what students should know in order to effectively fulfill their roles as responsible actors in our troubled world.<sup>53</sup>

### III. ADOPTING AND MAPPING GOALS FOR STUDENT LEARNING

The first step in the outcomes and assessment process is to identify the learning outcomes that reflect what it means to earn a law degree from a particular school.<sup>54</sup>

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served by a standard on bar passage, Council members concluded that the proposed change was necessary to assure tha [sic] the Standards served the public interest and the interests of students by assuring that every law school would be accountable for at least 75% of its graduates passing a state bar examination within two years of graduation. Some members expressed the view that the 75% threshold was too low and that under the proposed Standard law schools would be in compliance with the revised standard when as many as 25% of its graduates who sat for a bar exam had not passed an exam within two years of graduation—a particularly problematic result considering the cost of obtaining a legal education.”).

52. At the October 2016 meeting of the Council of the Section of Legal Education and Admissions to the Bar, the Council Chair, Gregory Murphy, observed that long ago lawyers “read law” during apprenticeships, but those apprenticeships took more than three years. According to Murphy, law schools were developed to teach doctrine, and it is the job of the profession to teach practice. It costs more, he said, to have people ready on the ground, and we need to strike a balance. Gregory Murphy, Council Chair, Remarks at the Meeting of the Council of the Section of Legal Education and Admissions to the Bar (Oct. 21, 2016). This view is contrary to much of the critique of legal education and studies, such as *Educating Lawyers*, which strongly suggest that teaching doctrine alone is not sufficient preparation for entering the profession and that the teaching of doctrine is enhanced when effectively connected to how it fits within professional practice. See SULLIVAN ET AL., *supra* note 6.
53. See Larry O. Natt Gantt II & Benjamin V. Madison III, *Teaching the Newly Essential Knowledge, Skills and Values in a Changing World*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra* note 14, at 253, 253 (“[P]rofessional identity engages students at a deeper level by asking them to internalize principles and values such that their actions flow habitually from their moral compass.”).
54. At a minimum, the law student should expect certain courses that achieve the outcomes outlined in ABA Standard 302. See ABA STANDARDS, *supra* note 3, § 302. ABA Standard 303 lists those inputs:
  - (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members; (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must: (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more

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The next step is to see the extent to which students have the opportunity to learn what have been identified as learning outcomes and to fill any gaps these outcomes might have in the school's curriculum. Once a first pass at this is accomplished, the process of assessing how good a job a school is doing in assuring effective learning of the outcomes begins.<sup>55</sup> The assessment stage provides an institutional feedback loop that reveals how well a school is providing the outcomes it has identified: which outcomes are being achieved, which require additional effort, and which are not realistic or necessary.<sup>56</sup> This process of evaluation and improvement should focus the school on effectively delivering what it has determined it wants its students to learn.<sup>57</sup>

Each of these steps requires considerable commitment by a school and engagement by its faculty.<sup>58</sup> How to effectively move forward is challenging. In considering the first step of identifying student learning outcomes, definitions and what they imply are important. Take the term "student learning outcomes." Lori Shaw and Victoria VanZandt defined the term as meaning what a school determines it wants its students to know, do, and value upon graduation.<sup>59</sup> As noted earlier, long-held assumptions about what students should know, be able to do, and understand about values upon graduation need reevaluation and greater clarity.<sup>60</sup> This calls for schools to embark on the kind of change that history has shown will prove a struggle to achieve.<sup>61</sup>

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of the professional skills identified in Standard 302; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation.

(b) A law school shall provide substantial opportunities to students for: (1) law clinics or field placement(s); and (2) student participation in pro bono legal services, including law-related public service activities.

*Id.* § 303.

55. SHAW & VANZANDT, *supra* note 19, at 82 (discussing planning for the assessment process as the next step after adopting learning outcomes).
56. This idea was discussed at the first plenary panel at the Third Alliance for Experiential Learning Symposium. I chaired that panel, and the speakers were Docia Rudley from Thurgood Marshall School of Law, and Lori Shaw and Victoria VanZandt from Dayton School of Law, with Sophie Sparrow from the University of New Hampshire School of Law as commentator. Sparrow also outlined this process, which she emphasized as iterative at the 2016 Boston University Law School conference. *Boston University Conference*, *supra* note 21.
57. See SHAW & VANZANDT, *supra* note 19, at 6–17 (distinguishing institutional assessment from student and course assessment).
58. See Barbara Glesner Fines, *An Institutional Culture of Assessment for Student Learning*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra* note 14, at 415 (discussing the importance of faculty engagement in the outcomes and assessment process).
59. SHAW & VANZANDT, *supra* note 19, at 8.
60. David M. Moss, *The Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform*, 2013 J. DISP. RESOL. 19 (discussing the responsibility law schools have to examine their curriculums in order to avoid the hidden, misleading messages that exist about what is important for lawyers to learn).
61. Roy Stuckey, *Foreword*, 38 WM. MITCHELL L. REV. 900 (2012) (introducing the journal's issue focused on student learning outcomes in legal education). Roy Stuckey observed that

Terms that are too general to effectively put into operation can chill the effort to reevaluate goals for student learning. Translating the outcomes into competencies can ground faculty discussions by making the outcomes accessible. For example, a learning outcome might state the following: “By graduation, each student will have demonstrated knowledge of and the ability to effectively apply basic legal practice skills.” What this means in terms of what students actually learn benefits from greater specificity. For this stated outcome, which was adopted by Vermont Law School (VLS), the school lists seven related competencies.<sup>62</sup> The competencies reflect the school’s expression of that outcome and allow the school to envision how it might assess whether students are learning it.<sup>63</sup>

*A. An Approach to Adopting Student Learning Outcomes*

In determining what student learning outcomes to adopt, a school could do one of several things. It could simply list the outcomes identified in ABA Standard 302.<sup>64</sup> If a school chooses to adopt the outcomes identified in ABA Standard 302 alone, and does no more, it has arguably met the minimum requirement for identifying student learning outcomes.<sup>65</sup> If the ABA Standard 302 outcomes are connected to

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[t]hose of us who were involved in producing the *Carnegie Report* and the *Best Practices* book did not expect that they would transform legal education immediately, and they did not. The day-to-day lives of most law teachers are not much different now than they were in 2007. Harbingers of real change, however, are present, and five years from now we might find ourselves on the verge of a new era in American legal education.

*Id.* at 901.

62. See Appendix A at page 157.

63. Shaw and VanZandt speak of identifying criteria for each outcome, which criteria are expressed by demonstrating certain competencies. SHAW & VANZANDT, *supra* note 19, at 62–63.

64. ABA Standard 302 provides the following list of outcomes law schools are required to establish:

- (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.

ABA STANDARDS, *supra* note 3, § 302. Subsection (d) is sufficiently broad to have invited the following amplification: “For the purposes of ABA Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.” *Id.* at *Interpretation 302-1*. It should be noted that ABA Standard 302 essentially reframes language formerly stated as inputs with language calling for them to be established as competency in a set of outcomes. *See id.* The former language of ABA Standard 302 began with “A law school shall require that each student receive substantial instruction in” and then continued with a similar list. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS § 302 (2013).

65. ABA STANDARDS, *supra* note 3, § 302 (requiring schools to identify, at a minimum, the outcomes in ABA Standard 302). This approach may or may not be sufficient for ABA accreditation purposes.

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the law school's mission, then they are a step closer to what the ABA instructs.<sup>66</sup> A key aspect of what is required is that a school considers what it believes is important for its students to learn, consistent with expectations for the degree and with what students coming to the institution expect based on the school's mission. If a school adopts ABA Standard 302's list or loosely connects the list to a broad mission without more, it falls short of the intentionality contemplated by the ABA Standards. It also misses the major benefit of engaging the faculty collectively in determining what it means to have a law degree from their particular school.

In looking beyond ABA Standard 302's outcomes, a school can draw upon the abundant research on what is important for law students to learn. In addition to the MacCrate, *Best Practices for Legal Education*, and Carnegie publications referred to earlier, others have studied and provided guidance regarding what law students should learn.<sup>67</sup> The keynote speaker at the Third Alliance for Experiential Learning Symposium, Alli Gerkman, Director of Educating Tomorrow's Lawyers (ETL), spoke of that organization's imminent report on its comprehensive study of what employers seek and law graduates found they needed; the report has since been published.<sup>68</sup> ETL received survey responses from over 24,000 lawyers throughout the country.<sup>69</sup> Its respondents were clear that characteristics—such as integrity and trustworthiness, conscientiousness, and common sense—and professional competencies—such as listening attentively, speaking, writing, and arriving on time—were far more important than the doctrinal analysis emphasized by schools and the bar.<sup>70</sup> The process of choosing among the competencies these reports identify has the potential to help faculty members broaden their ideas and articulate their beliefs about what their students need to learn. Approximately two years before VLS began in earnest to consider student learning outcomes, a faculty working group reviewed existing literature, including reports from other schools that had identified student learning outcomes, and drew from that literature in providing the faculty with a report on competencies law graduates should acquire as a result of their experience at the school.<sup>71</sup>

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GUIDANCE MEMO, *supra* note 17, at 6.

66. GUIDANCE MEMO, *supra* note 17, at 4 (instructing that a school's mission should inform other outcomes and suggesting that the skills listed in Interpretation 302-1 are illustrative).

67. For example, Professors Marjorie Shultz and Sheldon Zedeck conducted a study of over 5,000 law graduates to identify competencies that lawyers need, the bar should test, and schools should teach. *See generally* Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620 (2011).

68. GERKMAN & CORNETT, *supra* note 11, at 1.

69. *Id.*

70. *Id.* at 3. There was an interesting wrinkle to the responses of employers. While the responding professionals were clear about what characteristics of their employees were important to them, ETL found that their hiring practices do not reflect these priorities. *Id.* at 37.

71. Report of the Curriculum Comm. Working Grp. on Competencies & Mapping (Mar. 2012) [hereinafter Curriculum Comm. Report] (on file with author). The report looked at the work done on student learning outcomes by the law schools at the following universities: Stanford, Nova Southeastern, Washburn, Denver, Hamline, Dayton, and Western State. *Id.* It also looked at Thomas M. Cooley Law

A school may also, or in the alternative, choose to gather data about what students should learn from constituencies connected with the school. The process of surveying the different constituencies to determine their priorities for student learning should have distinct goals. For example, VLS chose to survey its faculty, its alumni, its staff, the bench and bar, and its students.<sup>72</sup>

The faculty survey was based on the earlier working group report about competencies students at VLS should learn<sup>73</sup> and also took ABA Standard 302 into account.<sup>74</sup> The survey listed competencies drawn from these sources. The purpose of the survey was to engage the faculty once again in thinking about the competencies students should gain as a result of their education at the school, this time with the goal of actually adopting competencies expected of all students.<sup>75</sup> The survey also

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School. *Id.* The literature considered included several works: MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2009) (discussing course design); PETER B. SLOAN, *FROM CLASSES TO COMPETENCIES, LOCKSTEP TO LEVELS: HOW ONE LAW FIRM DISCARDED LOCKSTEP ASSOCIATE ADVANCEMENT AND REPLACED IT WITH AN ASSOCIATE LEVEL SYSTEM* (2d ed. 2007) (examining how many law practices are jettisoning the traditional lockstep system of promoting a whole class of junior attorneys each year in favor of a more dynamic, performance-based system in which promotion, pay raises, and pricing are based on an associate's demonstrated mastery of a well-defined set of competencies, and describing how, in this new "levels" or "competency-based" system, associates from the same class year can advance at different speeds, depending on how quickly they develop their skills); STUCKEY ET AL., *supra* note 33; SULLIVAN ET AL., *supra* note 6; SCOTT A. WESTFAHL, *YOU GET WHAT YOU MEASURE: LAWYER DEVELOPMENT FRAMEWORKS & EFFECTIVE PERFORMANCE EVALUATIONS* (2008) (dividing into four broad categories the competencies that law practices might expect of first- and second-year associates: legal skills, workload and people management, client services, and professionalism); Shultz & Zedeck, *supra* note 67. VLS found the competencies identified by Shultz and Zedeck particularly instructive. *See* Shultz & Zedeck, *supra* note 67. The author was a member of this initial working group at VLS and chaired the successor group that guided the school's adoption of student learning competencies and outcomes and mapped the curriculum. The faculty adopted that initial report in the spring of 2012, including its recommendation that the faculty engage in discussions about the competencies it identified in order to adopt ones the faculty agreed VLS students would learn before they graduate. The school did not return to this task for two years.

72. VLS relied on an earlier survey of its students that asked about their views on an experiential learning requirement. That survey asked several questions about curricular priorities and was deemed sufficient. Overall, the approach at VLS was designed to be inclusive and methodical in identifying the core competencies that the law school and its community believed are essential for a graduate to achieve. We wanted competencies that resonated with the faculty, the Vermont bar, our alumni, our staff, and our students. We wanted the faculty to commit to assuring that students learned what had been identified. The goal of our future assessment process would be to identify whether the students were actually learning these competencies and to make improvements where this was not the case.
73. *See* Appendix A at page 157.
74. VLS sent several surveys to its faculty, the second of which is described in Part III.A. It also sent the faculty other surveys: the first asked the first-year faculty to provide feedback on a draft survey; the third asked for responses to a set of competencies drawn from the second survey; and a final survey was in the form of an inventory that asked faculty members to identify which competencies they were addressing and at what level in the courses they taught them. All surveys are on file with the author. For discussions of the inventory, see discussions *infra* Sections III.B, III.C.
75. The survey was distributed in the fall of 2014. The faculty had adopted the report more than two years earlier, and the report was seen as laying the foundation for in-depth considerations to follow.

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reflected a determination that outcomes could be adopted later, as abstractions of the competencies faculty considered. This inverted the approach others had taken in which the outcomes are identified first.<sup>76</sup> The working group members discussed briefly the benefit of identifying competencies first as more accessible for purposes of discussion than the broad outcomes,<sup>77</sup> but the approach chosen for the survey was driven primarily by the coherence that a return to the competencies the faculty had considered a few years prior reflected.<sup>78</sup> We thought that picking up the earlier conversation had the best chance of capturing faculty attention.

VLS had additional goals in seeking input from local legal professionals. It identified a cross-section of the state's bench and bar and invited the group to a luncheon. The group was chosen with the goal of getting the perspectives of judges, justices, bar leaders, and lawyers in a variety of practice areas. The school hoped to benefit from a dialogue that would expand its understanding of what the local legal community saw as important capacities for the school's graduates to acquire, and it also hoped to open the door to engaging this cohort in the school's planning and assessment. As we believed that a typical survey would not be effective in gaining an understanding of the group's views, questions seeking their ideas about priorities for student learning were sent to the legal professionals ahead of time. The participants at the luncheon were enthusiastic and thoughtful. Their views did not expand the list of competencies we were considering so much as provide some points of emphasis. The group emphasized the need for greater preparation with regard to client relationships, courtroom dynamics, broad legal writing competencies, and a focus on professional values.<sup>79</sup> They expressed enthusiasm for further participation in the law school's outcomes and assessment process.<sup>80</sup>

VLS also surveyed its alumni and staff, and it relied on an earlier survey of students that asked for their input about curricular priorities. In seeking input from different constituencies, a school can serve a number of goals: it can foster a sense of inclusion, it can improve connections with the bench and bar and with alumni, and most importantly, it can support and even expand what the literature has identified as important for students to learn.

Schools that have engaged in the process of identifying student learning outcomes have come up with varied results, though many reflect similar choices in the outcomes and competencies that express them.<sup>81</sup> VLS identified nineteen competencies that were organized under six student learning outcomes.<sup>82</sup> The competencies were mostly

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76. For other schools considered, see Curriculum Comm. Report, *supra* note 71.

77. See *supra* note 64 and accompanying text.

78. See Curriculum Comm. Report, *supra* note 71.

79. Minutes from the December 10, 2014 Meeting with Members of the Vt. Bench & Bar (Dec. 10, 2014) (unpublished document) (on file with author).

80. *Id.*

81. See Katz & Margolis, *supra* note 14, at 49–51.

82. See Appendix A at page 157.

those listed on the faculty surveys.<sup>83</sup> The school chose not to include the environmental law emphasis that is a central part of its identity in the core competencies and outcomes it identified,<sup>84</sup> reasoning that environmental law is not fundamental to what it expects *all* of its students to learn. Students receiving a juris doctor from VLS should have the tools the school identified as necessary to enter the legal profession; those who want to pursue an area of environmental law would have ample opportunity to do so. The school acknowledged the importance of robust offerings in environmental law and other areas such as international law but did not find it appropriate to consider these areas necessary components of the juris doctor degree it awarded.<sup>85</sup>

*B. What Level of Learning Is Necessary?*

Another aspect of adopting student learning outcomes and competencies is deciding what level of accomplishment should be achieved for each. Every competency should be learned at a level that the faculty believes is sufficient. The VLS surveys asked faculty members to indicate which competencies students should learn before they graduate *and* at what level. With regard to level, our initial survey asked faculty to indicate whether students should know, understand, or master a given competency. Faculty members expressed concern that distinguishing “knowing” from “understanding” was vague,<sup>86</sup> they also objected to the term “mastery” as asking for more than a graduate should be expected to achieve. By the time faculty members were asked to settle on which competencies they were expecting their students to learn and at what level in our mapping inventory, the levels were described as “introduced,” “practiced,” and “proficient”; faculty members could also indicate that they assumed the competency was learned elsewhere.<sup>87</sup> We explained each of these terms in a

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83. Compare GERKMAN & CORNETT, *supra* note 11, at 6, 30–33, with Appendix A.

84. See *History & Mission*, VT. L. SCH., <http://www.vermontlaw.edu/community/about-vls/history-mission> (last visited Jan. 18, 2018) (noting that VLS’s mission statement is “[t]o educate students in a diverse community that fosters personal growth and that enables them to attain outstanding professional skills and high ethical values with which to serve as lawyers and environmental and other professionals in an increasingly technological and interdependent global society”). Environmental law is a dated shorthand for the law school’s focus if you consider this definition: environmental law is a “[c]ollective body of rules and regulations, orders and statutes, constraints and allowances that are all concerned with the maintenance and protection of the natural environment of a country.” *Environmental Law*, BLACK’S LAW DICTIONARY (2d ed. 1910). The school is focused on the environment and broader discussions of climate, energy, and food as they relate to sustainability and sensitive adaptation. See *Environmental Law Center*, VT. L. SCH., <https://www.vermontlaw.edu/academics/centers-and-programs/environmental-law-center> (last visited Jan. 18, 2018).

85. These are among the additional proficiencies that VLS would “endeavor to provide” to its students, as opposed to definitely providing them as core aspects of the degree. They are identified as such in the Outcomes and Competencies adopted by the school. See Appendix A at page 157.

86. Sparrow also made this point at the Boston University conference. *Boston University Conference*, *supra* note 21.

87. The mapping inventory was a grid we developed that provided a vehicle for determining what competencies were taught and at what level in each of the courses at the law school. See Appendix B. Note that while the inventory spoke of outcomes, outcomes were not articulated on the survey beyond the shorthand reflected in the terms knowledge, skills and values.

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memorandum introducing the inventory.<sup>88</sup> In hindsight, it might have been helpful to engage the faculty more on these definitions. Instead, hoping to avoid undue faculty fatigue, the working group moved quickly from the first iteration, heeding faculty feedback and adjusting by offering language derived from other resources.<sup>89</sup>

### *C. Mapping*

Once the outcomes, competencies, and levels of learning have been adopted, mapping whether, where, and to what extent they occur across the curriculum is the next step.<sup>90</sup> When a school has a reliable sense of how the competencies it has adopted appear in the curriculum, it is ready to begin the process of assessing the extent to which students are actually learning them.<sup>91</sup>

Mapping the competencies across the curriculum requires significant faculty engagement. While effective mapping is a governance issue for all faculty, it is particularly important to engage the faculty who teach required courses. One issue to consider is whether all courses should be mapped or only those that are required. The accreditation requirement anticipates that all students will learn the competencies before graduation.<sup>92</sup> A school can specify the level of the learning; however, all students should be learning the competencies identified at the specified level. Since all students must learn the competencies, focusing on the required courses makes the mapping task more manageable.

The mapping inventory that the VLS working group sent to faculty sought information about the competencies taught in all of their courses, not just the required ones. The goal was to get as full a picture as possible about where the adopted competencies were being addressed and at what level across the curriculum. Thus, elective courses as well as required courses were inventoried. We asked faculty members to identify whether a competency was covered in each of their courses and if so, at which level.<sup>93</sup> Once we received the inventories, each member of the working group met individually with assigned faculty colleagues to discuss the survey.<sup>94</sup> In

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88. See Appendix C at page 162.

89. The working group returned to Bloom's Taxonomy and considered input from other resources to revise the proficiency levels used. For example, Shaw and VanZandt speak of the levels used by their school: Introduced, Competency, and Proficiency. SHAW & VANZANDT, *supra* note 19, at 210.

90. *Id.* at 76–80.

91. ABA Standard 314 speaks of course assessment, while ABA Standard 315 speaks of institutional assessment. ABA STANDARDS, *supra* note 3, §§ 314, 315. The ABA provides guidance on the expectations for each form of assessment. GUIDANCE MEMO, *supra* note 17, at 4–6.

92. ABA STANDARDS, *supra* note 3, § 315; GUIDANCE MEMO, *supra* note 17, at 5–6.

93. See Appendix B at page 160. Only full-time faculty received the inventory. This limited the “fullness” of the curricular picture, but with the exception of students meeting the school's clinic or externship requirement by taking a clinic taught by an adjunct faculty member or through an externship, this did not significantly affect the assessment of required courses. A future mapping project would ideally cover all courses taught.

94. See Appendix C at page 162. Working group members interviewed each other as well.

addition to assuring that faculty members understood the competencies inventory they were asked to complete, we wanted to learn as much as possible about approaches to teaching, student assessment, and goals they had for each of their courses. The inventory simply could not provide the breadth of insight we sought.

Why did we seek this level of information at this point in the process? The working group determined that all students need to learn every competency adopted by the school at the level of practice or proficiency. It reported a competency as covered if it was taught in a required course at that level. While the rest of the information it gathered provided an interesting picture of what was happening in courses and the challenges individual faculty members identified, it did not specifically relate to the working group's task.

A school can meet several goals by mapping its curriculum. One goal might be to get as comprehensive a picture as possible about teaching across the curriculum. In addition to asking about competencies, the school might learn what specific goals faculty members have for each of their courses and any challenges they face in meeting those goals. The mapping process might also identify approaches to teaching that flag possible areas requiring support. However, these goals may be too diffuse for mapping focused primarily on discovering where and to what extent the student learning outcomes and competencies adopted by the school are being taught to all students at the desired level.

On the other hand, a lot of ground can be covered in mapping the whole curriculum at a time when faculty members are open to thinking about how their teaching relates to institutional goals. The faculty knows that it must engage in the outcomes and assessment process for accreditation purposes and while the school has the faculty's attention, it is tempting to get as full a sense of what is happening in courses as possible. The information gathered at that point can be used at various stages. The initial goal of identifying whether and to what extent all students are exposed to the set of outcomes and competencies adopted by the school can be extracted from the broader survey, with the other data used at various stages in the process. For example, in addition to mapping which competencies were taught, and at what level in required courses, VLS could draw upon its broad mapping information in creating policies and programs that would support student learning across the curriculum. We learned from faculty members who wanted more support for their teaching and from those who had creative ideas to share, including use of problem solving and formative feedback in a number of the courses that are not required. Thus, it may be useful to engage in the broader approach to mapping, but it is helpful first to identify what purposes this broader approach will serve, and when best to undertake distinct aspects of the process.<sup>95</sup> The risk is overwhelming faculty who

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95. The working group members reported that, for the most part, these were excellent opportunities to learn about what our colleagues thought about with regard to their courses. Many conversations revealed a deep commitment to having students understand the substantive law and think analytically about it. Unsurprisingly, this often involved a tension between covering a lot of substance and the desire for students to really understand the law. Other skills were seen as helpful to understanding, but often in conflict with covering substance. Some faculty members were quite facile with integrating doctrine and

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have limited attention for a multi-layered process, especially one that at a minimum is fraught with the stress of assessment and potential change.

Once a school has mapped its curriculum, any finding of gaps in required courses indicates a need to modify or add to those courses. VLS found that there were few gaps in its required curriculum.<sup>96</sup> This was gratifying, particularly since the school did not simply adopt the list of outcomes specified by ABA Standard 302. However, this result did give pause about how faculty members were assessing practice or proficiency. If a faculty member determined that students were expected to gain proficiency in a certain competency in her course, how was that determination being made?

This gets back to the importance of gaining clarity and consensus on the part of the faculty as the school moves through the outcomes and assessment process. Not only must the outcomes and competencies be fully accepted and understood, but a shared sense of what it means for students to learn them at the identified levels is also necessary. Should we be able to say that a student could gain proficiency if she was only exposed to the competency within a single course? Since a series of experiences are needed to gain proficiency, is the faculty member assuming practice in other courses students have completed? Is the faculty member relying on personal notions of what proficiency should mean at the law school level? The working group defined “proficient” for the VLS faculty as meaning that “students will gain a level of ability with the competency that allows them to function effectively as a new lawyer.”<sup>97</sup> This left a sea of room for interpretation that the school would need to explore further when considering what it means for students to learn the competencies it has identified.

### *D. Sequencing Competencies*

During the mapping process, it became clear that sequencing that develops student exposure to competencies is an essential component of successful curricular planning. For example, a student may have an introduction to negotiation through an exercise in a first-year class, take a negotiation course later on, and then apply

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application of a range of skills. For example, some first-year faculty members had students draft motions, engage in simulated negotiations and other advocacy, and draft legislation. One Evidence course uses a series of questions that students research prior to and argue during class; the course is supplemented by a lab that engages the students in making evidentiary arguments. The working group members summarized each of these discussions and posted them in a folder for faculty consumption. Ideally, the reports will inform future discussions about faculty resources and support.

96. The main gap we found in the VLS curriculum was in covering the bar examination skills competency. While faculty members agreed the skills are important, few wanted to teach them. In adopting the report of the working group, the strongest objections were raised regarding this point. While VLS already has a requirement that students take a number of courses typically found on the bar, this does not necessarily mean that students learn the skills of navigating bar examination questions. Fear of teaching to bar tests was a source of concern. The faculty agreed to first-year faculty members including multistate bar examination-type questions in quizzes, but I expect that this will be subsumed by a separate plan adopted in a subsequent faculty meeting that will have first-year students taking a mini bar examination.

97. See Appendix B at page 160.

negotiation skills in a real-life clinic setting. At that point, entry-level proficiency is more likely than if the student met the professor's expectations in a class exercise but had no further opportunity to develop the competency. As law schools have been quite good at recognizing with regard to legal analysis, building competencies requires repetition. It also requires scaffolding, and scaffolding requires consideration of how to assure that exposure in early courses is developed, not simply repeated or ignored, in later courses. The role of a curriculum committee shifts from simply rearranging the first year or approving new courses proposed by individual faculty members to designing a program that reflects how competencies introduced and practiced in one course can be further developed in other courses. This planning allows the school to proceed with confidence that the outcomes it promises its students are achieved at an appropriate level.<sup>98</sup>

*E. Relying on the Map*

Having identified that competencies are addressed in a given course or set of courses, there needs to be a way to assure that whoever teaches the course in the future is prepared to address those competencies at a similar level. If Professor Jones teaches Torts and includes an introduction to negotiation along with a negotiation exercise, and Professor Fisher does the same in her Torts course, the school needs to be assured that this introduction will continue if Professor Smith replaces Professor Jones, particularly if the curriculum is planned around that introduction. This raises issues of faculty autonomy, which is not the same as academic freedom but touches on the same sentiments.<sup>99</sup> However, the planning suggested by the outcomes and assessment process means that faculty members need to support the curricular design that will achieve the learning the school has committed to providing. Without that support, there is no reliable way to assess and improve on what is being done because the baseline represented by the curriculum map is unreliable. Assessment might well reveal that the negotiations being done in one or both courses are not effective and need to be changed or introduced elsewhere, but if a unilateral decision is made to do away with the negotiations, that decision ripples through the curricular plan affecting the school's efforts to build competencies. The working group proposed including the competencies identified as being addressed in a given course in the published course description so that, in addition to informing students, a faculty member teaching the course would be alert to the expectation. This provides a marker that should also be reinforced by the academic dean.

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98. I distinguish between teaching, which is reasonable to determine at this stage, and learning, which schools explore in the assessment stage.

99. Faculty members design their courses independently and consider this an important aspect of their academic freedom. However, this very independence has made it difficult to generate a cohesive plan for what students should learn. Professor Mary Lynch discusses this tension, stating that while schools must be vigilant in protecting freedom of thought, creativity, and independent professional judgment, this does not mean teaching whatever a faculty member pleases without regard to institutional goals for student learning. Lynch, *supra* note 8, at 990–95.

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The course description and follow-up by the academic dean are fail-safes at best. Far more important is the collaboration needed among the faculty. Some VLS faculty members were addressing more competencies than others in different sections of the same course. Horizontal collaboration would result in foundations that could be relied on in other courses because all sections of the course would have covered similar ground. Vertical collaboration is also needed. The person teaching the negotiation simulation course should know what her students learned about negotiation in Torts and build on it, and the same is true for substantive competencies. Thus, the process of mapping the curriculum should lead to a structure that encourages regular dialogue among at least the cohort of faculty members working on a given set of competencies. This could occur through a set of meetings each semester led by the academic dean or curriculum committee chair, or any individual with clear administrative authority to encourage and help faculty members collaborate effectively.<sup>100</sup>

### *F. Teaching Support*

In addition to encouraging collaboration, curriculum mapping and certainly the institutional assessment that follows it call for commitment to supporting faculty teaching. This may mean equating teaching with scholarship in faculty reviews,<sup>101</sup> supporting innovative teaching,<sup>102</sup> rethinking the role of and approach to student evaluations,<sup>103</sup> and generally creating an atmosphere that encourages and supports faculty commitment to student learning.<sup>104</sup>

None of these steps should be put on hold while the school figures out how and in what increments it will approach institutional assessment. Once the school engages in identifying outcomes and competencies, it should be on the path to designing the education it wants its students to have and moving toward the changes that will achieve it. As the school gains insight through its assessment process, adjustments can be made as needed. It is ideally a rich, iterative process.<sup>105</sup>

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100. This was among the recommendations that the working group made to the VLS faculty.

101. This may not require a change in the rules for evaluating faculty members for promotion and tenure so much as a shift in emphasis. It should also free funds, to the extent any exist, designated to support scholarship to also support teaching.

102. Schools could expand or shift their attention from scholarship support to providing speakers and other support for teaching. Denver University's Sturm College of Law has made such a commitment by naming Professor Roberto Corrada the Mulligan Burlison Chair in Modern Learning, providing him with the resources to focus attention on improving teaching at the law school. *Modern Learning*, U. DENV. STURM C. L., <http://www.law.du.edu/index.php/modern-learning> (last visited Jan. 18, 2018).

103. Student evaluations can often discourage teaching focused on achieving student learning. Lynch discusses this as her eighth concern about using outcomes in legal education. Lynch, *supra* note 8, at 1010–12.

104. The VLS Curriculum Mapping Working Group made this recommendation to the faculty and administration at the end of its process.

105. Sophie Sparrow and Michael Hunter Schwartz both made the point that assessment is an iterative process intended to help schools improve student learning during their presentation, "Evaluating

#### IV. CONCLUSION

The initial steps of the outcomes and assessment process took VLS a year and a half. The school finished the process in spring 2016.<sup>106</sup> The next steps should have been to build support for faculty teaching and develop a plan for institutional assessment. Instead, the school revisited the student learning outcomes and competencies, adopting in a single meeting a much narrower set of learning outcomes.<sup>107</sup>

That the faculty dispensed with the product of such a careful process underscores two essential challenges, if not faults, in how we had proceeded. First, while lengthy, our working group's process was not extensive enough to gain sufficient faculty buy-in for the competencies and outcomes identified. Second, the process asked too much in terms of coordination and shared goals of a faculty that wanted as little intrusion as possible into the ways they approached, and duly struggled with, teaching their respective courses.

It is worth noting that, in adopting its initial set of outcomes and competencies, the school had not concluded that the curriculum needed immediate change. Instead, the school adopted a process for thinking about the curriculum as it relates to the

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Attainment of Outcomes and Creating an Assessment Plan” at the Boston University Conference. *Boston University Conference, supra* note 21.

106. The VLS faculty adopted student learning competencies and outcomes at its Meeting of November 3, 2015. Vt. Law Sch. Faculty Meeting Minutes (November 3, 2015) (unpublished document) (on file with author). The mapping process occurred throughout the following spring semester.

107. The Vermont Law School Juris Doctor Learning Outcomes were revisited by a new set of outcomes adopted by VLS faculty at its Meeting of May 12, 2017. Vt. Law Sch., Faculty Meeting Minutes (May 12, 2017) (unpublished document) (on file with author). The minutes of that meeting state that the new set of outcomes were adopted “[a]fter a brief discussion.” *Id.*

1. Legal Literacy: Graduates will be able to analyze fundamental U.S. law and the role of law in society.
2. Legal Institutions: Graduates will be able to identify, define, and engage institutions and individuals within the legislative process, appropriate administrative agencies, court, and other governmental entities, that shape and influence development of law and policy.
3. Problem Solving: Graduates will demonstrate knowledge of and the ability to effectively apply basic legal practice skills. They should be able to diagnose legal problems, identify solutions, and set strategy for communicating, advocating for, and achieving those solutions.
4. Independent Learning Capacity: Graduates will be able to learn independently, including the ability to assess personal performance by recognizing strengths and weaknesses and developing strategies for improvement.
5. Professional Responsibility and Ethics: Graduates will be able to work respectfully, ethically, and productively with diverse clients and legal professionals. They should possess the skills needed to recognize and resolve dilemmas in an ethical manner.
6. Bar Exam Skills: Graduates will possess the skills needed to successfully perform on the bar examination taken.

*JD Learning Outcomes*, VT. L. SCH., <https://www.vermontlaw.edu/academics/degrees/jd/learning-outcomes> (last visited Jan. 18, 2018).

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outcomes and competencies its mapping process had affirmed the school had essentially met. Nonetheless, a number of competing objectives absorbed the faculty.

At the same time that VLS was identifying its outcomes and competencies, the school went through a self-study for regional accreditation purposes and engaged in strategic planning. The regional accreditation was an impetus for the school to delve into the outcomes and assessment process when it did, and its regional accreditation self-study highlighted the effort. But that external pressure may have left some of the faculty wary of commitment to an iterative assessment process involving the set of competencies identified. Meanwhile, the strategic plan that the school adopted in the same semester it adopted the first set of outcomes and competencies was clear in its focus on initiatives that identified creative new directions for the school, but the plan largely ignored the outcomes and competencies.<sup>108</sup> Administrative changes at the school may also have affected implementation of the recommendations made by the VLS working group that led the competencies and mapping process.<sup>109</sup>

Because the law school landscape can shift so quickly, with enthusiasm ebbing and flowing in connection with sabbatical accreditation visits, administrative personnel shifts, and competing priorities demanding attention, it is important to institutionalize the outcomes and assessment process as early as possible. This can be done by establishing a standing committee charged with identifying competencies and outcomes, mapping them, and engaging in assessment. Such an approach may provide more continuity than a working group, though may not have affected the result at VLS. It may also have helped for the working group to move more quickly to gain faculty support instead of engaging in the more ponderous process of generating several surveys. Our surveys did not result in changes to the list of competencies identified by the prior working group that analyzed the literature and work of other schools, and it took time to generate the surveys and gather responses. Putting our energies into organizing a set of faculty discussions around mapping and sequencing may have allowed for the faculty as a group to be more focused on the structure that identifying outcomes and competencies provides for curricular decisions. The discussions could also have led to a deeper understanding of the levels of proficiency and what that means in terms of horizontal and vertical integration of learning opportunities.

Faculty members and administrators are busy. The idea of a languid ivory tower does not mesh with reality. Many colleagues seem quite stressed, following agendas for teaching and scholarship while making other contributions as they take on a range of leadership positions within and outside of their schools. The result is that the time for discussion is precious. At VLS, we had a little over an hour per meeting at four meetings to discuss the outcomes and competencies. The faculty surveys

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108. Much of the strategic planning was directed at enhancing the school's environmental law master's program, building the school's online offerings, and supporting creative programmatic initiatives.

109. By the end of spring 2016, the Vice Dean left, the Dean submitted his resignation effective in one year, and I left on sabbatical. Shortly thereafter, a new chair took over the outcomes and assessment process, appointed by a different Vice Dean. Currently, the school has a new Dean, a change in other administrative personnel, and a revised administrative structure.

provided a shorthand for those meetings in that faculty members had made choices about competencies they viewed as important. However, the meetings were devoted to adopting the competencies and this may have sacrificed buy-in. At times, it felt like a trial in which the court hears some testimony at one sitting, but then continues the case several times because of other matters requiring attention; coherence and understanding are difficult to achieve. The limited time also contributed to a sense that we needed a product at the end of each meeting so that we did not start again without any progress on the competencies. This inherently limited discussion that could have built a shared vision for the direction the school should take. We did have some of that discussion, but the end product did not seem to be something that the faculty was sufficiently energized by or committed to pursuing.

For in-depth discussions to occur, it is important to set aside a block of time. A faculty retreat with relevant background to focus attention on the goals for identifying student learning outcomes and mapping them may be a more effective, and more efficient, use of faculty time than surveys and a series of brief meetings. A carefully planned retreat might create the space for faculty members to engage in deeper discussion of how the school's goals relate to a legal education landscape that has attracted so much critique. With enough time, the faculty could explore sequential introduction of certain competencies for students to practice or gain proficiency. It could consider how to more productively integrate skills and live client experiences in the teaching of substantive law—a connection that takes us back to Rowe's early vision for legal education.<sup>110</sup>

However, such discussions are anxiety provoking. They begin a process that calls for reevaluating the way that teaching and the curriculum are approached. They seek to inspire change, something law schools have resisted. At VLS, we adopted student learning outcomes and competencies and mapped our curriculum. And then we jumped to a shorthand version. It is not clear whether mapping will be revisited and whether the faculty will be willing to engage in the course assessment, sequencing, collaboration, and design that will be needed to assure all students achieve the learning that the school has articulated. That a committee has taken up the work demonstrates the school's recognition of the need to continue with the process; however, the committee's job may have been less of a challenge if the working group could have engaged the faculty more on the "why" than the "what" of identifying learning outcomes and competencies and mapping them.

The Third Alliance for Experiential Learning Symposium gathered doctrinal, experiential, and administrative experts from a number of law schools.<sup>111</sup> The excitement participants shared was palpable. Faculty members demonstrated their hard, and often unheralded, work in pursuing specific competencies in their

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110. See Rowe, *supra* note 26.

111. *Third National Symposium on Experiential Learning in Law*, N.Y.L. SCH., [http://www.nyls.edu/academics/office\\_of\\_clinical\\_and\\_experiential\\_learning/third-national-symposium-experiential-learning-law/third-national-symposium-experiential-learning-law-agenda/](http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/third-national-symposium-experiential-learning-law/third-national-symposium-experiential-learning-law-agenda/) (last visited Jan. 18, 2018).

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courses.<sup>112</sup> Administrators shared how their schools had institutionalized the learning outcomes and assessment process and goals for assuring stability and commitment.<sup>113</sup> While it is hard to generate that kind of enthusiasm for the outcomes and assessment process, this symposium demonstrated that it can be done.

Assumptions about legal education have led to a self-validating loop in which the schools, the bar, and employers accept and credit past curricular practices. This is so despite near constant complaints from each sector and disappointment on the part of the society the legal profession exists to serve. The ETL report observed after examining its survey of what the profession expects or at least needs from law school graduates that

[f]or legal education to make meaningful strides, law schools and legal employers must work together. They must focus on the desired outcome—law school graduates who are ready to enter the profession—and build learning outcomes and educational and hiring models that serve that goal. When law schools *educate students toward learning outcomes developed with feedback from employers* and employers *hire based on what they say they want*, we will see law school graduates with high character quotients who embody the whole lawyer, we will see the employment gap shrink, we will see clients who are served by the most competent lawyers the system can produce, and we will ultimately see public trust in our system expand.<sup>114</sup>

The requirement that law schools come to the higher education table and think holistically about what their students should learn, along with the extent to which that learning is happening, is an opportunity that should be embraced. As many schools are finding, it is worth taking the time and devoting the attention this kind of shift suggests. That the result may change curricular offerings and approaches to teaching can be invigorating for all involved. What is most exciting is that such a process offers the possibility of identifying what matters in legal education and saying with confidence that our students are prepared to embody the whole lawyer by virtue of the educational experience provided.

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112. *See id.*

113. *See id.*

114. GERKMAN & CORNETT, *supra* note 11, at 38.

**APPENDIX A: VLS Student Learning Outcomes and Related Competencies**

The Faculty voted to approve a set of competencies that are identified below under the relevant student learning outcomes.

**By graduation, each VLS student will have demonstrated the ability to analyze fundamental US law and the role of law in society.** Students will demonstrate this ability by practicing and gaining proficiency in the following:

- Structure, components, and function of the US legal system
- Principles and requirements of professional ethics
- Fundamental areas of United States substantive and procedural law (e.g. Constitutional Law, Public Law, Civil Procedure, Torts, Criminal Law, Property, Contracts, Evidence) sufficient to issue spot and research these areas

**By graduation, each VLS student will have demonstrated knowledge of and the ability to effectively apply basic legal practice skills.** Students will demonstrate this ability by practicing and gaining proficiency in the following:

- Interview clients, witnesses, non-legal professionals, or others
- Problem Solving
  - Identify and understand client issues and goals
  - Recognize and strategize around factual and legal uncertainty
  - Counsel clients
  - Work with others
- Legal Analysis & Reasoning
  - Identify, navigate, and apply relevant legal principles and rules of common law, statutes, and regulations to different factual situations
  - Anticipate, evaluate, and rebut opposing arguments
  - Use legal and non-legal principles and other relevant information to advocate for or against a position or policy
- Legal Research
  - Use strategies and technologies to retrieve and evaluate cases, statutes, legislative history, secondary sources and other materials effectively and efficiently
- Written and Oral Communication
  - Express ideas clearly orally and in writing
    - ◆ Organize and present legal analysis in writing
    - ◆ Draft clear, well-analyzed objective and persuasive legal documents
    - ◆ Attribute appropriately and effectively, including proper use of citation
    - ◆ Explain concepts clearly orally in formal and informal presentations
  - Timely and appropriate communication in a range of professional settings, including presentations, written correspondence (including email), and phone calls

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- Negotiation
- Cross-cultural Communication
  - Identify cultural, gender, race, class, socioeconomic, or other barriers to effective communication with clients
  - Identify strategies to overcome barriers to effective communication with clients and others from different backgrounds, cultures, and experiences

**By graduation, each VLS student will have demonstrated independent learning capacity**

- Assess personal performance by recognizing strengths and weaknesses and developing strategies for improvement

**By graduation, each VLS student will have demonstrated the skills needed to recognize and resolve dilemmas in an ethical manner.** Each student must understand the professional commitment to act consistently with justice, fairness, and ethics as demonstrated through practice and proficiency in the following:

- Ability to identify the moral and ethical responsibilities of lawyers to clients, the profession, and the community
- Ability to identify ethical implications of the law and consider possible directions for reform
- Understanding the responsibility to enhance the capacity of the law and legal institutions to do justice, including access to legal representation
- Understanding the obligation to rid the profession of prejudice based on race, religion, national or ethnic origin, gender, sexual orientation, disability, age, or socio-economic status

**By graduation, each VLS student will exhibit professionalism.** Each student will demonstrate the following:

- The ability to maintain appropriate balance between personal and professional conduct by identifying appropriate roles, boundaries, and limitations
- The ability to work respectfully with opposing parties/counsel
- The ability to work respectfully with experts and other non-lawyers

**By graduation, each VLS student will have demonstrated the skills needed to effectively perform on the bar examination taken.** Each student will have multiple opportunities to practice and gain proficiency in bar examination techniques, such as memorization, the ability to accurately answer closed book multiple choice and essay questions in timed conditions, and the ability to complete the Multistate Performance Test.

*Consistent with its Mission, VLS will endeavor to provide students ability to gain proficiency in the following areas:*

- Environmental Law and Policy
- US law from historical, social, economic, and ethical perspectives
- International aspects of substantive areas of law (e.g., related treaties, conventions, customary law)

- The financial implications of issues presented and how they affect decision-making
- Sound principles of law practice management, including the use of technology as an organizational tool in effectively running a law practice and meeting ethical obligations.
- Trial Practice
  - Draft persuasive briefs (trial and appellate)
  - Conduct formal discovery and fact investigation, including the use of technology in gathering, researching and managing discovery
  - Form investigative strategies
  - Develop well-organized, persuasive trial strategies
  - Present evidence, including the use of technology in effectively presenting evidence
  - Try a simple case
- Dispute Resolution (other than trial)
  - Identify the structure, goals and strategies that apply in mediation
  - Identify the structure and goals of arbitration and distinguish it from trial
- Law Office Management
  - Understand the basics of effective law office management, including client trust accounts, case management technology, confidentiality issues regarding communication and protection of client files, and strategies for developing the business.

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**APPENDIX B: Competencies and Outcomes Inventory**

**Your name:** ..... **Name of the course:** .....

*\*Print one copy of this form for each course you teach.*

Competency	Introduced	Intro Assumed	Practiced	Practice Assumed	Proficiency	Not Covered
<b>Knowledge</b>						
US legal system						
Professional ethics						
Substantive & procedural law						
<b>Skills</b>						
Understand client issues and goals						
Factual & legal uncertainty						
Work with others						
Identify, navigate & apply legal principles and law to factual situations						
Anticipate, evaluate & rebut opposing arguments						
Advocate for or against a position or policy						
Use strategies and technology for legal research						
Express ideas clearly orally and in writing (see below)						
Organize and present legal analysis in writing						
Draft clear, well—analyzed objective and persuasive legal documents						
Attribute appropriately and effectively						
Explain concepts clearly orally						
Interview clients and others						
Counsel clients						
Timely & appropriate communication						
Negotiate						

Competency	Introduced	Intro Assumed	Practiced	Practice Assumed	Proficiency	Not Covered
ID strategies to overcome barriers to effective communication with clients & others						
<b>Values</b>						
Ability to ID the moral & ethical responsibilities of lawyers						
Ability to ID ethical implications of the law & consider possible directions for reform						
Understand the obligation to rid the profession of prejudice						
Maintain appropriate balance between personal and professional conduct						
Work respectfully with opposing parties/counsel						
Work respectfully with experts & other non-lawyers						

## IDENTIFYING AND MAPPING LEARNING COMPETENCIES AND OUTCOMES

### APPENDIX C: Competencies and Outcomes Inventory

Please use the attached form to indicate which competencies you address and at what level in each of your courses, and to identify your primary goals for each course. Print a copy of the form for each course that you teach. **On the grid, mark with an “X” where appropriate.**

A member of the Curriculum Mapping Group will arrange to meet with you to discuss the form, gain further input and answer questions. Prior to the meeting, forward the completed grid, along with a copy of your syllabus **for each course you teach.**

In using the grid, please refer to the list of outcomes attached for a detailed description of the relevant competency; the form follows the order on the attachment but abbreviates for manageability.

#### **Terms:**

**Competency** refers to the knowledge, skills and values that are being taught in a given course.

**Outcome** means the extent to which a student achieves the competency at the desired level.

**Introduced** means that students are made aware of the competency at a level that provides a basic understanding of the competency and foundation for further development, whether at law school or beyond.

**Practiced** means that students apply the competency that was introduced, either through a series of simulations, lab, clinic, or other experience.

**Proficient** means that students will gain a level of ability with the competency that allows them to function effectively as a new lawyer.

**Assumed** means that you have assumed that students have been introduced to the competency and/or have practiced the competency prior to the course.

**Not covered** means that you do not address this competency in your course.

As you think about the competencies that you expect your students to learn, consider how you introduced, practiced or sought proficiency and how you know whether the student is learning at the level you intend.

For example, if you state you introduced “oral and written advocacy” into the course—how? Someone might say “Socratic” method and someone else might say “every student must do an oral presentation”—very different. If we ask how you assess written advocacy—someone might say “written test at the end of the semester that requires clear writing” and someone might say “2 motions and a client letter”.

Thank you!