LEGAL EDUCATION AT THE CROSSROADS V. 3.0: A CONFERENCE ON ASSESSMENT

Incorporating Effective Formative Assessment Into Course Planning: A Demonstration and Toolbox

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Description of Session

This workshop will provide attendees with the methodology and tools necessary to incorporate effective formative assessment into any course. The workshop will take the form of an interactive role play in which a faculty member who wants to incorporate formative assessment into a doctrinal course consults with faculty members who are familiar with both *Educating Lawyers* and *Best Practices for Legal Education*. Through the consultation, workshop attendees will be exposed to and involved in developing a toolkit that they can then use to incorporate formative assessment into their own courses.

The session will begin with a few questions to the group asking them to reflect on a recent opportunity they have had to observe student learning and how formative assessments either were or could have been useful to enhance that learning.

The session will proceed with the role play of a consultation among faculty to demonstrate how one would engage in careful course planning for more effective formative student assessment. The consultation will begin by having the teacher identify what needs to be taught in the course. Next, she and two Best Practices/Carnegie consulting faculty members will brainstorm about the types and frequency of formative assessment, and how such tools should be structured to maximize their potential for validity, reliability, and fairness.

By focusing on the goals of the course (what is to be learned) and the goals of each assessment (how each assessment will evaluate whether students are learning what is being taught), the consultation will demonstrate how the teacher should structure the assessments to be criteria-referenced (focused on the learning outcomes) and not norm-referenced (based on how students perform relative to each other). The discussion will also highlight how the teacher can use the assessments to inform students of their level of professional development, how this process relates to their proficiency in the subject matter, and how formative assessments assist students in maximizing their learning. We will emphasize the points that formative assessments are feasible, there are multiple methods for assessing student learning throughout the semester, and faculty can ensure that summative assessments are also formative assessments.

The session also will involve brainstorming by attendees about strategies for finding time for formative assessments and how to engage law students actively in the selection of educational objectives and the assessment of teaching choices and assessment tools.

Our goal is for participants to leave the workshop with a methodology and concrete tools for integrating effective formative assessments into their own courses, and to spur discussions in their law schools concerning the need for more systematic formative assessments throughout the curriculum.

Checklist for Designing Formative Assessment[1]

Step One: Identify Objectives

☐   What are my primary subject matter objectives – what knowledge do I want the students to gain?

☐   What are my primary skills objectives – what kinds of skills (analytic, communicative, reflective, etc.) do I want the students to acquire?

☐   What are my primary values and attitudes objectives – what do I want students to believe or value relating to this course?

☐   For each of these objectives, how strongly do I want students to know, do or believe? Will this class introduce this knowledge, skill or value or will the class be building on prior learning so that I can expect greater mastery?

☐ How many of these goals and objectives can students realistically achieve at the desired level in the time available? What am I willing to sacrifice? What is non-negotiable learning?

☐ Have I stated these objectives and degrees of proficiency in concrete, measurable terms?

Step Two: Plan for Assessment

☐   How will the students demonstrate their achievement of the objectives? What will I see and hear that will reveal that the students have achieved these objectives at the desired level of proficiency?

☐   What criteria will I use to measure whether and to what degree the required learning has taken place?

☐   When will the assessment activity take place?

☐   Where will the assessment take place?

☐   Who will assess the students' learning? (teacher assessment, self-assessment, peer assessment, external assessment)

☐   Why is the assessment tool being used? (to inform teacher of student learning, to inform student of student learning, to inform others of student learning, to guide additional learning (formative assessment), to "grade" (summative assessment)

☐   Do I need to reconsider my objectives after planning these assessments?
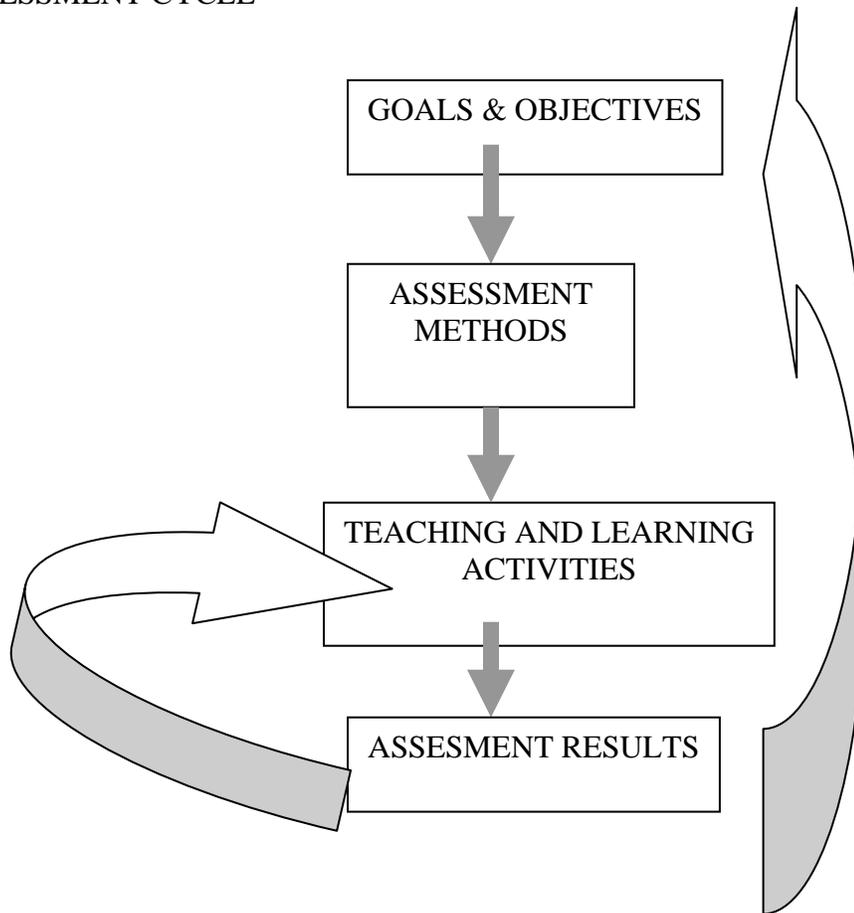
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[1] B. Glesner Fines 2009

Step Three: Design teaching materials and methods

☐ Do my materials and methods match my planned objectives and assessments? (Am I teaching what I test and testing what I teach?)

☐ Do I need to reconsider my objectives or my assessment plan after planning teaching and learning activities?

Step Four: Assess and Evaluate

☐ Should I reconsider any aspect of my assessment plan in light of the teaching and learning experience?

☐ Based on what I have learned from the assessment, how can I assist students in revising their learning? How can I revise my teaching and assessment plan to improve outcomes?

THE ASSESSMENT CYCLE

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                    ┌─────────────────────┐
                    │ GOALS & OBJECTIVES  │
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                    │     ASSESSMENT      │
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                    │ TEACHING AND LEARNING│
                    │     ACTIVITIES      │
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                    │  ASSESMENT RESULTS  │
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Excerpts from BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP by Roy Stuckey et. al. (Clinical Legal Education Association 2007)[1]

The main purpose of assessments in educational institutions is to discover if students have achieved the learning outcomes of the course studied. . . We use assessments to find out whether students are learning what we want them to learn (p. 235)

Outcomes of assessment should be to foster learning, foster confidence in the learner, enhance the learner's ability to self-monitor, and drive institutional self-assessment and curricular change. (p. 235, quoting Epstein & Hundert at 226)

Assessment methods and requirements probably have a greater influence on how and what students learn than any other single factor. This influence may well be of greater importance than the impact of teaching materials. (p. 235, quoting Bone at 2)

Effective assessment exhibits qualities of validity, reliability, and fairness. Validity means that an assessment tool must accomplish the purpose for which it was intended. Reliability means the test or measuring procedure yields the same results on repeated trials. (p. 239)

Judith Wegner describes five key principles that should influence the design process of an assessment system (p. 239-40):

1. Learning is the point
2. Learning must be made visible in order to be assessed
3. Learning is multifaceted and develops over time
4. Assessment must reflect the particular purposes being served
5. Assessment must occur in context

BP suggests 11 principles for assessment:

1. Be clear about the goals of each assessment
2. Assess whether the student is learning what is being taught (validity)
3. Criteria-referenced not norm-referenced (reliability)
4. Use assessments to inform students of their level of professional development
5. Be sure assessment is feasible (can't measure outcomes that aren't measurable)
6. Use multiple methods of assessment
7. Distinguish between formative and summative assessments
8. Conduct formative assessments throughout term
9. Conduct summative assessments throughout term
10. Make summative assessments also formative assessments (students learn through feedback)
11. Have students compile educational portfolios

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[1] Prepared by Carolyn Grose

What am I trying to evaluate with each assessment method? Four basic kinds of assessments: (p. 240-41)

1. Cognitive – what does the student know?
2. Behavioral – how has that knowledge affected student's behavior?
3. Performance – what can student do?
4. Attitudinal – how has knowledge/experience affected student's attitude?

Assessment must be reliable, fair and valid. Congruence is a necessary aspect of validity – goals of the test must agree with the goals of the instruction. (p. 241)

Purpose of assessment is to determine whether students have achieved learning outcomes. There is a recursive relationship between assessment and outcomes.

Thus, before each assessment, we should consider what we expect students to learn in our course and what is important for us to assess. Different assessment methods may be required to assess each of the following educational objectives that we might be trying to achieve:

- Self-reflection and life-long learning skills
- Intellectual and analytical skills
- Core knowledge of the law
- Core understanding of the law
- Professionalism
- Professional skills

(p. 243)

What matters is whether students adequately achieve the learning outcomes of the course. Our goal should be to achieve the learning outcomes we establish for our course, whether those are to learn certain information, understand key concepts, or develop skills to a specified level of proficiency. (p. 244)

We should work on developing and disclosing criteria-referenced assessments. Criteria-referenced assessments rely on detailed, explicit criteria that identify the abilities students should be demonstrating . . . and the bases on which the instructor will distinguish among excellent, good, competent, or incompetent performances. (p. 244)

"The implicit pedagogical philosophy underlying criterion-referenced assessment is that the fundamental purpose of professional education is not sorting, but producing as many individuals proficient in legal reasoning and competent practice as possible." (p. 245 – quoting the Carnegie Report at p. 210-11)

Use of clear criteria . . . increases the reliability of the teacher's assessment by tethering the assessment to explicit criteria rather than the instructor's gestalt sense of the correct answer or performance. This enhances learning and encourages students to become reflective, empowered, self-regulated learners. (p. 245)

Formative assessments are used to provide feedback to students and faculty. Their purpose is purely educational, and while they may be scored, they are not used to assign grades or rank students. A summative assessment is one that is used to assigning a grade or otherwise indicate a student's level of achievement. (p. 255)

"The essential goal of professional schools must be to form practitioners who are aware of what it takes to become competent in their chosen domain and equips them with the reflexive capacity and motivation to pursue genuine expertise. They must become 'metacognitive' about their own learning, to use the psychologists' term. This is why effective means of formative assessment are so critical for training professionals." (p. 256, quoting Carnegie at 217)

Formative assessments also help teachers know whether their coverage of a topic is sufficient or whether they need to review the material again or present it in a different manner. (p. 256)

Formative assessments can take many forms:

- Practice exams
- Short homework problems
- Peer-assessment or peer-review projects
- Self-scoring computer quizzes

[lots of ideas from Munro, pp 257 et seq – note: seems to spill over into methods of delivery of instruction, no?]

Challenge   students   to   do   self-assessment   (MHS'   form   on   p.   261)

Willam Mitchell Task Force on Assessment Report

>   A.   Valid Evidence of Achievement of Outcomes

Wiggins and McTighe urge teachers to resist the temptation to move directly from identification of measurable outcomes to designing learning activities. They advise:

> [C]ontrary to much common practice, we ask designers to consider the following questions after framing the goals: What would count as evidence of such achievement? What does it look like to meet these goals? What, then, are the implied *performances* that should make up the assessment toward which all teaching and learning should point? Only after answering these questions can we logically derive the appropriate teaching and learning experiences so that students might perform successfully to meet the standard.[3]

They emphasize the importance of clarifying what desired outcomes look like in practice before choosing activities or texts,[4] warning that to do otherwise is to teach "more 'by hope' than 'by design.'"[5]

Successful outcomes-based teaching requires clarity about what constitutes measurable evidence of student achievement. The teacher must to be able to visualize and articulate what competent performance looks like in order to effectively teach it. Thus, teachers should first decide how an outcome will be assessed (articulating evidence of proficiency) and then settle on a teaching approach. The relationship between outcomes and assessment provides an important check on the designation of outcomes because, no matter how desirable, a student outcome that cannot be measured cannot be assessed.[6]

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[3] WIGGINS, *supra* note 2, at 17.
[4] *Id.* at 14-15.
[5] *Id.* at 15.
[6] BEST PRACTICES, *supra* note 2, at 253 ("There may be some desirable outcomes that are impossible or too difficult to assess. For example, it may not be feasible to assess a student's commitment to justice. This does not mean law schools should stop trying to instill a commitment to seek justice in students, but we may not be able to measure how well we are succeeding. Therefore, we should be careful to distinguish between desired outcomes and measurable outcomes.")

1. *Emphasis on Formative Assessment*

The Carnegie Report strongly criticizes the traditional law school practice of administering a single examination at the end of the semester,[7] preferring formative assessments, which involve feedback aimed at improvement, to summative assessments, which provide "no navigational assistance."[8] The authors conclude that "assessment should be understood as a coordinated set of formative practices that, by providing important information about the students' progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers."[9] Thus, assessment should be used to improve student knowledge and performance, not merely to evaluate or grade it.

Task Force members explored identification of measurable interim steps in the learning process leading to practical wisdom. The following chart does not propose specific assessments but illustrates points during a course or across the curriculum at which formative assessments might occur. Depending on how the curriculum is sequenced, students could be required to demonstrate proficiency at certain stages before proceeding to the next.

2. Assessment Methods

Assessment may take many forms, from observation and dialogue, to traditional tests, to performance tests and projects.[10] Ideally the evidence needed to gauge whether a desired proficiency has been achieved should inform the type of assessment used. For example, basic knowledge may be suitably tested by a multiple-choice quiz but measurement of deep insight may require contextual performance.[11] Across the semester, assessors should use a variety of assessment techniques, each geared to the task at hand.

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[7] CARNEGIE REPORT, *supra* note 2, at 162.

[8] *Id.* at 164; *see also* BEST PRACTICES, *supra* note 2, at 245.

[9] CARNEGIE REPORT, *supra* note 2, at 171.

[10] WIGGINS, *supra* note 2, at 152 (describing the continuum of assessment as more akin to a scrapbook than a snapshot); *see also* BEST PRACTICES, *supra* note 2, at 240, 253 (discussing cognitive, behavioral, performance, and attitudinal assessments and use of multiple methods of assessment); JAY MCTIGHE & STEVEN FERRARA, ASSESSING LEARNING IN THE CLASSROOM 12 (2004).

[11] WIGGINS, *supra* note 2, at 170; s*ee* Grant Wiggins, EDUCATIVE ASSESSMENT: DESIGNING ASSESSMENTS TO INFORM AND IMPROVE STUDENT PERFORMANCE 9 (1998) (hereinafter EDUCATIVE ASSESSMENT) (comparing inferring ability to drive based on a paper and pencil test to inferring ability to drive based on a road test).

Wiggins and McTighe introduce the additional concept of "authentic assessment," which is an

> [A]ssessment composed of performance tasks and activities designed to simulate or replicate important real-world challenges. The heart of authentic assessment is realistic performance-based testing – asking the student to use knowledge in real-world ways, with genuine purposes, audiences, and situational variables. Thus, the context of the assessment, not just the task itself and whether it is performance-based or hands-on, is what makes the work authentic (e.g. the "messiness" of the problem, ability to seek feedback and revise access to appropriate resources). Authentic assessments are meant to do more than "test": they should teach students (and teachers) what the "doing" of a subject looks like and what kinds of performance challenges are actually considered most important in a field or profession. The tasks are chosen because they are representative of essential questions or challenges facing practitioners in the field.[12]

Wiggins and McTighe recommend use of realistic demonstrations of knowledge and skills that include opportunities to rehearse and refine the performance or final product.[13]

For students to effectively prepare and reflect on their work, they need to know how levels of proficiency are differentiated as well as the criteria for differentiation.[14] Thus, educators recommend use of rubrics that identify desired behaviors and understandings and explicitly describe points along the continuum from novice-level to mastery.[15] (See an example of a K-12 rubric in Appendix C.) To be effective, rubrics should address the salient features of quality performance, use clear definitions and indicators, assist with both instruction and assessment, and promote fair administration.[16]

Both the Carnegie Report and Best Practices favor the use of student portfolios (paper or web-based) containing evidence of student learning in the form of papers, briefs, exercise evaluations, self-evaluations, and video-taped performances.[17] The authors of Best Practices quote Judith Wegner's conclusion that the benefits of using

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[12] WIGGINS, supra note 13, at 337-38.

[13] *Id.* at 154-157 (recommending design prompts making explicit the goal, role, audience, situation, performance/product, and standards).

[14] *Id.* at 173.

[15] *Id.* at 175. Note that Mitchell's WRAP and Advocacy courses use feedback forms for student performances that identify desired behaviors but do not specifically describe points along the continuum from novice to mastery.

[16] JUDITH ARTER & JAY MCTIGHE, SCORING RUBRICS IN THE CLASSROOM 72 (2001).

[17] CARNEGIE REPORT, *supra* note 2, at 174; BEST PRACTICES, *supra* note 2, at 261.

portfolios include "making the results of learning . . . more explicit, placing greater responsibility on students to understand and direct their own learning and personal growth, integrating academic and extracurricular development, creating more effective means to track student progress and enhance program quality, and assisting students in their search for employment."[18]

3. Validity

In light of the array of potential assessment methods, Wiggins and McTighe warn that "[j]ust because the performance is complex and the task interesting, it doesn't follow that the evidence we gain from student project work is appropriate for the desired results."[19] They strongly urge assessors to ask themselves the following questions:

> How likely is it that:
> - A student could do well on this performance task, but really not demonstrate the understanding you are after?
> - A student could perform poorly on this task, but still have significant understanding of the ideas and show them in other ways?[20]

In other words, assessors must pay particular attention to validity: what can (and cannot) be inferred from the evidence obtained through the assessment.[21]

4. Emphasis on Criterion-based Grading

Exploration of assessment also raises issues related to grading. The Carnegie Report and Best Practices distinguish norm-referenced grading from criterion-referenced grading. Norm-referenced grades are "based on how students perform in relation to other students in a course rather than how well they achieve the educational objectives of the course."[22] However, criterion-referenced grades are based on an absolute standard of performance and "rely on detailed, explicit criteria that identify the abilities students

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[18] BEST PRACTICES, *supra* note 2, at 262 (quoting an unpublished manuscript by Judith Wegner).

[19] WIGGINS, *supra* note 13, at 183; *see also* EDUCATIVE ASSESSMENT, *supra* note 32, at 17 ("Assessment reform must center on the purpose, not merely on the techniques or tools, of assessment.").

[20] WIGGINS, *supra* note 2, at 184.

[21] *Id.* at 185.

[22] BEST PRACTICES, *supra* note 2, at 243. *See also* CARNEGIE REPORT, *supra* note 2, at 168.

should be demonstrating . . . and the bases on which the instructor will distinguish among excellent, good, competent, or incompetent performances."[23]

The Carnegie Report and Best Practices urge use of criterion-referenced grading because it is more directly linked to student achievement and results in a less harshly competitive learning atmosphere.[24] However, those who favor norm-referenced grading argue that potential employers expect law schools to sort and rank students, that doing otherwise may result in grade inflation, and that such a system more effectively identifies students who should not continue in law school.[25]

5. Recommendations on Assessment from Best Practices

Best Practices summarizes eleven best practices for assessment as follows:

- Be clear about goals for each assessment
- Assess whether students learn what is taught
- Conduct criteria-referenced assessments, not norm-referenced assessments
- Use assessments to inform students of their level of professional development
- Be sure assessment is feasible
- Use multiple methods of assessing student learning
- Distinguish between formative and summative assessments
- Conduct formative assessments throughout the term
- Conduct multiple summative assessments throughout the term if possible
- Ensure that summative assessments are also formative assessments
- Require students to compile educational portfolios[26]

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[23] BEST PRACTICES, *supra* note 2, at 244. *See also* CARNEGIE REPORT, *supra* note 2, at 168.

[24] CARNEGIE REPORT, *supra* note 2, at 166, 168. BEST PRACTICES, *supra* note 2, at 243.

[25] CARNEGIE REPORT, *supra* note 2, at 168-70.

[26] BEST PRACTICES, *supra* note 2, at 239-63.

Bibliography of Additional Resources

WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007).

ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007)

GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS (ILST 2000) available at http://lawteaching.org/publications/books/outcomesassessment/munro-gregory-outcomesassessment2000.pdf)

B. Glesner-Fines, *The Impact of Expectations on Teaching and Learning*, 38 GONZAGA L. REV. 89 (2002-03).

Patrick T. O'Day, *Assessing What Matters in Law School: The Law School Survey of Student Engagement*, 81 IND. L. J. 401 (2006) (discussing the Law School Survey of Student Engagement (LSSSE) report).

Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807 (2007).

Websites and blogs:

Best Practices in Legal Education blog, *see*
        http://bestpracticeslegaled.albanylawblogs.org/

Institute for Law Teaching and Learning website
        http://lawteaching.org

Barbara Glesner-Fines' *Teaching and Learning* website, at
        http://www.law.umkc.edu/faculty/profiles/glesnerfines/bgf-edu.htm.

Steven Friedland's *Teaching and Learning* blog
        http://idd.elon.edu/blogs/law

The critical first step in teaching is to know what you want the students to learn. You want to set these goals at two levels: the overall course goals and the objectives of each individual learning activity.

Grant Wiggins and Jay McTighe, in their work on Understanding by Design, emphasize beginning your search for course goals by looking for the "Big Idea" in the course. They suggest the following questions for identifying an idea around which it is worth building a course:

> • Does it have many layers and nuances, not obvious to the naïve or inexperienced person?

> • Can it yield great depth and breadth of insight into the subject? Can it be used throughout [a legal career]?

> • Do you have to dig deep to really understand its subtle meanings and implications even if anyone can have a surface grasp of it?

> • Is it (therefore) prone to misunderstanding as well as disagreement?

> • Are you likely to change your mind about its meaning and importance over a lifetime?

> • Does it reflect the core ideas in a field or in life, as judged by experts?[1]

Using this approach, you will be identifying a "theme" or two for the course. This approach is a helpful approach to identifying the core of the course. As you develop the theme, then, you will want to identify some more specific objectives:

> • subject matter objectives – what knowledge do you want the students to gain?

> • skills objectives – what kinds of skills (analytic, communicative, reflective, etc.) do you want the students to acquire?

> • values and attitudes objectives – what do you want students to believe or value relating to this course?

The division between these categories is, of course, artificial, because unless one's goals are set very low, students cannot acquire knowledge in law school without having also acquired some analytic skills and some (often implicit but nevertheless present) values about that knowledge. The question is one of emphasis – you must in all your teaching determine the priorities of learning goals.

After you have narrowed down some priorities for learning goals, you must then decide on the level of proficiency you will expect for student learning. Will this class introduce this knowledge, skill or value or will your class be building on prior learning so that you can expect greater mastery? The choice here, of course, is that of depth v. breadth. Breadth tends to win out in most classes, bowing to the ever-present drive for "coverage" implicit in the growing size of course books and the press of the "mile wide and inch thick" bar examination. The range of choice of depth v. breadth in any one class is staggering. Can you not conceive of a particular case, statute, doctrine or theory that could occupy all of your student's learning for fourteen weeks if you set the level of expected proficiency high enough? Is there a course in the curriculum for which all the doctrine, rules, policies and context could be covered – even in cursory fashion – in fourteen weeks? Most of us choose a proficiency goal for student learning that allows us to land somewhere in between becoming experts on the minutae and becoming acquainted with the field.

As you think about proficiency goals, consider a common initial learning task in law school: Distinguishing between primary and secondary authority.

At the most basic level, we want students to be able to define primary and secondary legal authority and recognize the most common categories of each of these. As soon as a student declares "but it's a US Supreme Court case, of course it's primary authority", we recognize that students also need to be able to recognize the interactions of jurisdictional power and primary authority. At an even more sophisticated level, we may want them to be able to recognize the gradations of authority within primary and secondary – differentiating, for example, between a law review article on international law by a recognized scholar, a law review article on domestic law by a recognized scholar, and a law review article by a student author. Were we to aim for mastery of this basic concept, we might ask students to consider why some authorities are considered binding and others not and the circumstances in which otherwise binding precedent is subject to change. And so on…

Once you have chosen some goals and levels of proficiency, you must state those goals in concrete, measurable terms – what will you see and hear that will let you know the students have achieved these objectives? It is very easy to say that you want the students to "know the law" or "be able to communicate clearly" – but those generalized goals are not likely to guide you in developing activities and assessments. So aim for statements of objectives that the students themselves will be able to use to assess whether they are achieving.

Here are twenty questions you might ask to uncover the learning goals and objectives you desire for students in a class.

To identify expectations about learning outcomes:

1. Why do students take your course?
2. What courses require your course as a prerequisite? Why?
3. How, if at all, is the subject matter of your course tested on the bar exam?
4. What expectations do the bench and bar have for students who have taken your course?
5. If you don't know the answer to these questions, why not?

To identify "subject matter" objectives:

6. If your course were cut to three hours (three clock hours, not credit hours), what would you teach in that three hours?
7. What do you think students will most remember from your course in three years?
8. What subject matter do you most consistently test? What percentage of the test is devoted to this subject?
9. What thematic idea does your course share with other courses in the curriculum?
10. What major subjects from the subject matter field do you omit from your course coverage? Why?

To identify "skills" objectives:

11. What fundamental information and communication skills do students exercise in your course (i.e., reading, researching, listening / oral and written communication)?
12. What analytical skills do students have an opportunity to practice in your course that they are unlikely to have practiced in other courses?
13. What skill do students bring to your course that students have an opportunity to master through repeated opportunities for practice and feedback?
14. What role(s) do lawyers play in the field of practice connected with your course? How does your course introduce students to that role?
15. What skills do students practice in your course that will allow them to continue to improve their skills? (e.g., self evaluation, reflective, collaboration, receiving feedback, seeking out assistance)

To identify values and attitudes objectives:

16. What major misunderstanding, mistaken assumption, prejudice, or bad habit (of thought or practice) do students bring to your course that you would like them to "unlearn"?
17. Who are the clients your students encounter in this course? What do they learn about those clients and their world?
18. Who are the lawyers and other professionals your students encounter in this course? What attitudes to students learn about lawyering and collaborating (within and across professional lines) from their study of these professionals?
19. What is the primary professionalism value you model in your teaching?
20. What central dilemma faced by attorneys in practicing in your subject area do your students have an opportunity to face and resolve?

Apart from skills-focused classes such as legal writing or clinic course, most law school classes provide little formal assessment of student learning while that learning is taking place. In most law school classrooms, assessment of learning is either an informal process of observation in the day-to-day classroom teaching, or an exam after the class has ended. While both assessment tools are valuable, neither is designed expressly for improving individual student learning. The informal observations of classroom learning and semester-end, summative examinations, are either too little or too late to achieve these gains.

That goal can be achieved through the use of other assessment techniques during the semester. Frequent, timely and focused assessment is critical to improving student learning. Frequent assessment can also result in metacognitive gains, as students develop the skills for self-assessment of learning. As awareness of learning motivates further learning, a cycle of success can increase student learning in sometimes dramatic fashion. A second important goal of classroom assessment of student learning is the improvement of faculty teaching. While most faculty are aware of the need for frequent feedback to improve student learning, what faculty sometimes recognize only intuitively is that they too need frequent and timely assessment in order to improve their teaching. B. Davis, *Tools for Teaching* (Jossey-Bass 1993) The following materials are designed to explore methods of obtaining that feedback on student learning throughout the semester: both for student feedback and for informing one's own teaching. Many of the techniques described are built upon those compiled by Thomas Angelo and K. Patricia Cross in Classroom Assessment Techniques.[1] The techniques those authors gathered shared several characteristics: "learner-centered, teacher-directed, mutually beneficial, formative, context-specific, ongoing and firmly rooted in good practice." [2]

A Process for Using Classroom Assessment Techniques

As with all effective teaching and learning, the critical first step is to clarify your goal or purpose. What do you want to discover about your student's learning and how do you plan to use the data you gather? Do you want to assess what students bring into a course or what they are taking from it? What aspect of student learning do you want to learn more about: knowledge, skills or attitudes & values?

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[1] THOMAS ANGELO AND K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES (2d Ed., Jossey-Bass 1993).
2 Id.. at 4.

Bloom's taxonomies of educational objectives[3] is a time-tested tool for clarifying goals for assessment. The following summary of the Cognitive Domain taxonomy may be helpful in identifying the specific objective[4]

1.   Knowledge of terminology; specific facts; ways and means of dealing with specifics (conventions, trends and sequences, classifications and categories, criteria, methodology); universals and abstractions in a field (principles and generalizations, theories and structures):
Knowledge is (here) defined as the remembering (recalling) of appropriate, previously learned information.
o   defines; describes; enumerates; identifies; labels; lists; matches; names; reads; records; reproduces; selects; states; views.

2.   Comprehension: Grasping (understanding) the meaning of informational materials.
o   classifies; cites; converts; describes; discusses; estimates; explains; generalizes; gives examples; makes sense out of; paraphrases; restates (in own words); summarizes; traces; understands.

3.   Application: The use of previously learned information in new and concrete situations to solve problems that have single or best answers.
o   acts; administers; articulates; assesses; charts; collects; computes; constructs; contributes; controls; determines; develops; discovers; establishes; extends; implements; includes; informs; instructs; operationalizes; participates; predicts; prepares; preserves; produces; projects; provides; relates; reports; shows; solves; teaches; transfers; uses; utilizes.

4.   Analysis: The breaking down of informational materials into their component parts, examining (and trying to understand the organizational structure of) such information to develop divergent conclusions by identifying motives or causes, making inferences, and/or finding evidence to support generalizations.
o   breaks down; correlates; diagrams; differentiates; discriminates; distinguishes; focuses; illustrates; infers; limits; outlines; points out; prioritizes; recognizes; separates; subdivides.

5.   Synthesis: Creatively or divergently applying prior knowledge and skills to produce a new or original whole.
o   adapts; anticipates; categorizes; collaborates; combines; communicates; compares; compiles; composes; contrasts; creates; designs; devises; expresses; facilitates; formulates; generates; incorporates; individualizes; initiates; integrates; intervenes; models; modifies; negotiates; plans; progresses; rearranges; reconstructs; reinforces; reorganizes; revises; structures; substitutes; validates.

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3   B.S. BLOOM, ET. AL, ED., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS (1956).
4   The summary is provided by Professor Günter Krumme, University of Washington, Seattle, at http://faculty.washington.edu/~krumme/guides/bloom.html (with permission)(last visited June 8, 2001).

6.   Evaluation: Judging the value of material based on personal values/opinions, resulting in an end product, with a given purpose, without real right or wrong answers.
o   appraises; compares & contrasts; concludes; criticizes; critiques; decides; defends; interprets; judges; justifies; reframes; supports.

Of course, this listing focuses only on cognitive learning outcomes. One may be interested in student opinions and values, or their communication skills or their assessment of their own learning.

The key here is to choose a very specific context and very specific information you want to gather about student learning.   In a civil procedure class, assessing whether students understand the minimum contacts test from International Shoe is not the kind of assessment one can undertake in a single classroom assessment. One can, however, determine whether students can articulate the test itself or explain one factor from the test. One can also ask students to identify the part of the test that is least clear to them. Remember to keep assessment simple and focus on those aspects of the class that present the greatest potential for affecting teaching and learning.

Having chosen a goal, one can then design a strategy for assessment.   Choose from some of the techniques described in these materials or design an assessment that meets your particular needs and teaching style. Consider implementation issues: should student performance be anonymous? (Anonymity can give students greater freedom in expressing opinions and taking risks, but it reduces accountability and does not provide you with a way to gauge individual learning gains).   Do you want assessment of individual learning or will paired or small group provide you with sufficient information (or serve other learning and teaching goals)? Will the technique be comfortable or foreign to the students? How much introduction will be required so carry out the assessment? The most simply assessment device benefits from informing the students of the purposes of the device.

Once you actually implement an assessment technique, be sure to follow through. Analyze the information you have gathered. What have you learned about the student learning? How will that knowledge affect your teaching? How will you share what you have learned with the students. Students will be more willing to actively engage in assessment activities and will learn more from them if you explain how the assessment results can be used to improve their own individual learning.

Assessment Techniques

1. Improving a Tried and True Assessment Technique: Watching Student Non-verbal Cues

Every teacher watches his or her students to assess teaching and learning in the classroom.[5] We might observe students to assess their understanding, engagement,

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5   Well, not <u>every</u> teacher. I once had an elderly history teacher in junior high school who, at the beginning of class, would sit at her desk at the front of the room and talk to a pencil held in her lap. Fifty

attitudes, and adjust our pace, content or presentation accordingly. In particular, we might observe students for understanding or lack of understanding of a particular discussion or lecture.

Obviously, there are significant limitations on assessment based on non-verbal feedback. The student who looks the most confused may in fact have the most sophisticated understanding of the material and may simply be grappling with the cutting-edge of the material being addressed. The student who appears hostile may simply have a stomachache.

Moreover, non-verbal symbols are highly culture, and even gender, bound. For example, suppose the class is being presented a very controversial theory in the class. Many students are nodding their head. Does that mean they agree? For most men, this is the likely explanation ("I agree."). For most women, however, nodding is used to encourage further conversation ("I'm listening.")[6] Eye contact, posture, where a student chooses to sit in a classroom all might say something about the student's learning or reactions to your teaching... or it might not.

How might that process of watching be improved to increase the validity of non-verbal feedback as an assessment device? By consciously planning and implementing the technique as one would any other classroom assessment technique.

Choose a question: Is my pace through overheads (or power point slides) appropriate when conducting a lecture class?

Choose a technique: I will watch for students writing, attending, and non-verbal indications that will indicate whether I need to slow down or speed up.

Implement the technique: Introduce it to students: "I have a tendency to move through slides fairly quickly. I will try to watch you all to be sure I'm not going too fast." (With this introduction, student will more readily provide the non-verbal feedback you need to match your pace.)

Follow-through: Explain to students when you choose not to slow down ("I see some of you would like to review that overhead more; we can't right now, but I will have copies available after class" or "Ooops, need to see that one a minute more. Sure."

Similar explicit attention given to reading non-verbal cues as a source of feedback can improve this technique we use almost daily, though in implicit, often unconscious ways.

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minutes would pass without so much as a glance at us. Needless to say, little learning took place among the 13-year-old students, no matter how motivated they were to learn. Recently, I have been reminded of that teacher as I have attended lectures or classes conducted with power point presentations, in which the instructor is talking to the computer screen much as Mrs. M talked to her pencil. The technology may have improved but the teaching hasn't.

6 DEBORAH TANNEN, YOU JUST DON'T UNDERSTAND (1991).

Of course, one can move beyond mere observation and ask students for feedback ("Am I going to fast?" "Did I clarify that concept ?")

2. Improving a Tried and True Technique: Classroom Dialogues

Along with pure lecture, the overwhelming majority of law school classes are taught by a dialogue method.[7] Faculty can obtain a good deal of assessment information about the student or students participating in the dialogue, though the validity of that information may depend on the student's response to the stress of "the hot seat." Given the pervasive use of this teaching technique, it would seem that time spent in developing dialogue as assessment would be most productive as well as comfortable to all concerned.

One problem with using classroom dialogue as assessment is that we are sometimes unsure what it is we are assessing with any set of questions. Often we are not truly trying to assess student learning as much as promote thought or organize learning. However, if we carefully design questions with assessment in mind, we can gather information about the student's knowledge, skill, attitudes or preparation.

The second problem with dialogue as assessment, is that it only assesses the learning of those students participating in the dialogue. To gather information about the learning of the class as a whole, we need to find a way to broaden the dialogue. Two simple variations on the traditional dialogue method can increase the number of students we can direct questions and from whom we can obtain responses:

Variation One: Am I right?

One easy way to broaden dialogue is to simply poll the class for agreement or disagreement with a particular student's response. There are important reasons why one would not want to call on (or accept the volunteering) of a student to engage in a dialogue, knowing that the student's answer would be subject, not only to your critique, but to a vote of peers. In the competitive and often stressful law school classroom, such a technique could quickly destroy class rapport and alienate students from one another. The same effect, however, could be obtained by placing yourself in the "hot seat" – responding to a question or posing an analysis of a particular problem and then asking the students to vote – "Am I right?" Students can vote by raising hands, displaying cards or signs you have distributed ahead of time, or – if the classroom is equipped – providing electronic "votes." Using methods that do not require students to display their answer to others may provide more accurate assessment. You can require participation ("Everybody has to play") or not, depending on your goal.

Using the feedback: If the vast majority of the class answers correctly, you can simply provide a brief explanation and then move on. If, however, the majority of the class is incorrect, you can backtrack, address the misconception (to a more an audience whose attention has been sharpened by being "wrong") and then move forward again. If the

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7 Steven I. Friedland , *How We Teach: A Survey Of Teaching Techniques In American Law Schools,* 20 SEATTLE U. L. REV. 1 (1996).

class is divided, you can also provide explanation and move ahead or, for more active learning for all participants, ask students to turn to someone who gave a different answer and convince that person of the "correct" response. The ensuing dialogue will, often as not, replicate the one-on-one dialogue you would be having with the student who did not understand.

Example:

In a professional responsibility class, students often do not distinguish carefully among the categories of withdrawal from representation – either confusing mandatory and permissive withdrawal or confusing those withdrawals for which one must show no material adverse effect on the client and those withdrawals that are justified even if such an adverse effect would result. The instructor would prepare a hypothetical in which withdrawal was permissive but which would be adverse to the client. After presenting the hypothetical, the instructor would propose an analysis that reflects the typical confusions and then ask "Am I right?" After noting the student response, the instructor would then adjust the remainder of the discussion on that doctrine to reflect student understanding.

Variation Two: Dialogue with groups

Rather than asking a single student to present arguments or analysis or articulation of knowledge, ask the class as a whole, invite the class to then break into small groups or pairs and discuss their answer, and then have groups report back. This "think-pair-share" technique is a cornerstone of cooperative learning, but can also provide an efficient method for assessing the learning of the class as a whole. In the reporting of each team or group's answers, the instructor can assess student learning and proceed as is appropriate to that feedback. For example, after the first one or two groups have responded, the instructor can ask if another group has come up with something different or additional. The safety of a group response will often encourage students to risk answering incorrectly. This is especially so if the instructor minimizes any sense of competition among groups to get the "right" answer and provides students positive reinforcement for their participation. For some discussions, groups might be asked to write out their answer on an overhead transparency to be shown anonymously to the class.

3. Borrowing from the Past: The Pop Quiz

Short multiple choice or short-answer quizzes can be powerful tools for assessing and promoting student learning and improving the quality of teaching. So long as the quizzes do not count for the final grade (or count only a minimal amount) students appreciate the clear, timely feedback these quizzes can provide. Since most students are comfortable with quizzes, they require less introduction and meet with less student resistance than other methods might. Quizzes can be used to assess student's background knowledge or understanding in order to plan approaches to lessons, to establish a baseline to measure student learning, and to assess student understanding. They can also serve a number of

purposes beyond assessment, such as guiding student learning and discussion of a subject, setting up class discussion, or reviewing materials already learned. Quizzes can, of course, be part of summative evaluation process as well.[8]

Design questions carefully. Designing multiple choice questions is an art form in itself, of which others at the conference will be providing additional information. True-false questions are often easier to start with and may be just as effective in assessing student knowledge, though they may not be able to assess higher-order cognitive skills as well. Short answer questions need to be precisely written to obtain valid assessment. Despite the difficulty in designing quizzes, the benefits are well worth the investment of time. Students will be quite forgiving of poorly drafted questions if no grade is involved (indeed some additional learning benefit and class rapport can be gained by incorporating an "appeal" process into quizzes – nothing creates class solidarity faster than proving the professor wrong!)

Consider when to give the quiz. Depending on the purpose for the quiz, you may be comfortable distributing the quiz as part of class preparation and using class time to review the quiz. Quizzes can be designed for computerized administration so students can take the quiz on line and receive immediate feedback. A reporting function on some computer assisted instruction programs would allow you access to the student score. Use the data to improve learning. As with all assessment devices, students appreciate knowing how they did individually, how that performance compares with their peers, and how the assessment device will be used to improve their learning.

4.   Fill in the blanks

Often the most confusion students have in mastering any particular area of law is in finding the appropriate organization or categorization for doctrines. Assessment devices can be specifically geared toward viewing student's "maps" of a subject. You can ask students to sketch a flowchart of a concept or you can provide students structures for them to fill in. To make the assessment device efficient, you should focus on content or structure but not both. (See examples below).

To use this strategy effectively, you must ask yourself why a structural overview would be useful to the students' learning at this point. Do students need to learn to break down and analyze a rule? Are students losing the "big picture" in the midst of learning a doctrine or concept? Do students need assistance in seeing relationships between ideas? Are the students at the point in their learning that synthesis and condensation of material is critical to their ability to use the information? Obviously, the incomplete outline or graphical map at the end of the semester will be geared more toward synthesis and overview than in-depth analysis and organization of any particular set of ideas.

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8 These materials focus on assessment techniques designed to be formative – that is, to inform and improve learning and teaching – rather than summative, to report on the end results of the teaching and le arning in a course.

Earlier in the semester, outlines and graphical maps can help students identify main ideas or see the overall organization of one topic, identify relationships between ideas and rules, or guide the students through a process of problem solving in a particular area of law.

Using the feedback. Review the assessments for common misconceptions and areas of uncertainty. Follow up with additional clarification. Design problems against which students can "test" their matrix.

For example, in civil procedure II I give the following matrix to students and ask them to put the appropriate language in the appropriate boxes.

CIVIL PROCEDURE EXERCISE:

Directions: Work in Pairs. Below is a chart containing the four categories from the minimum contacts test. Following the chart is a list of terms.

First, decide which terms go with which category. (The terms may not be sufficient to support jurisdiction or even relevant. Don't worry about that issue yet. Just place the terms in the categories in which they make the most sense. If a term does not appear to relate to any category, leave it out. If a term could appear in more than one category, put it in the category that it best fits.) Second, for each category, arrange the terms in the order that best articulates the law regarding that category.

Contacts	State of Mind	Relatedness	Reasonableness (Fair play/justice)

 Awareness that product will enter state   Continuous
Affecting state citizens   Foreseeability that product will enter state
Frequent   Georgraphical location of forum state
Giving rise to the cause of action   Having a physical presence
Having a logical connection   History of the type of jurisdiction asserted
Identity of the plaintiff   Identity of the defendant
Integral to the claim   Intentionally directed toward the state
Large volume   Large percentage of business
Location of evidences and witnesses   Nathe cause of acture of tion (type of law)
Presence of international effects   Presence of property
Purchases in the state   Purposefully placing in stream of commerce
Substantial   Volume, value and hazardous character

   As a follow-up activity, I ask the students to select one or two terms from each category and construct a hypothetical that could be characterized as meeting those terms and those terms only.   I then have them argue about whether personal jurisdiction would be constitutionally appropriate under those facts.

Graphics can even be used to assess attitudes. For example, in professional responsibility class, I ask students during the first class to draw a picture or some symbols that represent a "professional." This exercise provides insight into and extraordinarily rich discussion of student attitudes toward their chosen career path.

5.   *Stop, Ask and Listen*

Perhaps the easiest way to assess student learning is simply to ask. Many of the techniques described in educational literature are simply a variation on stopping class for a moment, asking a question, and then having student provide a short written response. Described by Angela & Cross as "The Minute Paper" and introduced to law professors as "Free writes"[9] the technique has a number of variations depending on the information one is soliciting from the students. To use the technique, the professor simply stops the class and asks students to respond (on an index card or half-sheet of paper) to one of several questions, such as:

"What was the most important thing you learned during this class (from this reading, from this discussion, etc.)?"
"What important question remains unanswered?"
"What was the muddiest point in ....?"
"Summarize the key points from this doctrine"?
"Paraphrase the holding from X (or the doctrine of X)?"
"Give one example of ..."
As with all assessment techniques, be sure to analyze the data obtained and report back to students.

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9 *David Dominguez Laurie Zimet Fran Ansley Charles Daye Rod Fong, Inclusive Teaching Methods Across The Curriculum: Academic Resource And Law Teachers Tie A Knot At The AALS*, 31 U.S.F. L. Rev. 875 (1997).