

EMBEDDING ASSESSMENT PRINCIPLES IN EXTERNSHIPS

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Externships have become an increasingly important component of legal education, as law schools seek to increase experiential learning opportunities for students to gain practice skills prior to entering the profession. As externship courses grow and become an integral part of the law school curriculum, externship teachers should implement best practices for assessing their students' learning, including setting learning outcomes for their courses, selecting assessment tools, gathering and analyzing assessment data, and using assessment data to make course adjustments that will improve student learning. This Article provides a primer on the process of course-level assessment and then explains how to apply that process in the specific context of externship courses. It analyzes a variety of learning goals for externships, explores how the typical components of externship courses can be used as assessment tools, and offers sample rubrics that externship teachers may use to evaluate student performance. It also discusses obstacles that law teachers may encounter when implementing assessment measures, and it offers suggestions for overcoming those barriers. The Article concludes by proposing a suggested methodology for grading externships, should teachers wish to incorporate letter grades as part of an assessment regimen.

INTRODUCTION

Legal education should prepare students “for accomplished and responsible practice in the service of others. It is preparation for ‘good work.’”¹ For novice attorneys to act competently and serve responsibly when they enter practice, they must learn the knowledge,

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¹ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 23 (Carnegie Foundation for the Advancement of Teaching 2007) (hereinafter cited as “CARNEGIE REPORT”) (citing H. GARDNER, M. CSIKSZENTMIHALYI & W. DAMON, GOOD WORK: WHEN EXCELLENCE AND ETHICS MEET (2001)). See also CARNEGIE REPORT, *supra* at 22 (“[P]rofessional education aims to initiate novice practitioners to think, to perform, and to conduct themselves (that is, to act morally and ethically) like professionals.”).

skills, and values that the legal profession requires.² Thus, the essential goal of law schools should be to form practitioners “who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise.”³ To foster students’ development of these capacities, law schools are increasingly expanding the role of externships⁴ in the curriculum.⁵

To determine whether they are graduating proficient and reflective practitioners, law schools must effectively measure their students’ learning.⁶ This process is known as assessment—“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.”⁷ Sound assessment typically involves evaluation at three levels: institutional, program, and course-level.⁸ Course-level assess-

² E.g., CARNEGIE REPORT, *supra* note 1, at 23.

³ *Id.* at 173.

⁴ E.g., J.P. Ogilvy, *Guidelines With Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155, 179 (2002-03) (Externship is “program of study in which a law student earns academic credit for engaging in authentic lawyering tasks under the guidance and supervision of an experienced supervisor in an institution outside of the law school.”); ROY STUCKEY & OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 198 (Clinical Legal Education Association 2007) (hereinafter cited as “BEST PRACTICES REPORT”) (“Externships are courses in which a significant part of the learning relies on students either representing clients or performing other professional roles under the supervision of practicing lawyers or observing or assisting practicing lawyers or judges at work.”).

⁵ See, e.g., Nancy M. Maurer & Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLIN. L. REV. 115 (2012) (externships are becoming increasingly important as law schools respond to demands for reform and to graduate “practice ready” lawyers); see also Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLIN. L. REV. 71, 76-78 (2010) (economic recession and fewer employment opportunities have increased demand for externships); Sudeb Basu & J.P. Ogilvy, *Externship Demographics Across Two Decades With Lessons for Future Surveys*, 19 CLIN. L. REV. 1, 5 (2012) (survey results showing increase in law school externship offerings).

⁶ See *infra* notes 15-23 and accompanying text.

⁷ CARNEGIE REPORT, *supra* note 1, at 171.

⁸ E.g., Gregory S. Munro, *How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation*, 1 J. ASS’N LEGAL WRITING DIRECTORS 229, 229 (2002). Institutional assessment “refers to processes by which faculty, administrators, and others secure meaningful feedback about student, faculty, and alumni performance on a range of institutional outcomes.” *Id.* at 229. Program assessment occurs when a particular department or program within an institution examines student learning within that program and then takes action. BARBARA E. WALVOORD, *ASSESSMENT CLEAR AND SIMPLE: A PRACTICAL GUIDE FOR INSTITUTIONS, DEPARTMENTS, AND GENERAL EDUCATION* 4 (2d ed. 2010). For example, a law school’s legal writing program might implement an assessment regimen to measure first-year students’ development of analytical and writing skills and evaluate the effectiveness of the legal writing program as a whole.

ment is evaluation that “takes place within the confines of a single class. The instructor examines student work, talks with students about what worked for them, and then makes changes to his or her pedagogy or classroom activities.”⁹ This Article focuses on course-level assessment in the context of externships.

“Research has accumulated that shows a positive relationship between formative classroom assessment and student motivation and achievement on both classroom and large-scale assessments.”¹⁰ Legal education as a whole, however, typically does not emphasize formative assessments or use assessments to improve teaching and learning. Rather, “the current grading practices of legal educators in the United States function less as a means for measuring student learning than as a means for sorting and ranking students and for ‘weeding out’ students who are not developing the requisite knowledge, skills, and values to pass a bar examination.”¹¹

Using assessment in this manner is short-sighted and squanders opportunities to accomplish its fundamental purposes—fostering learning, inspiring confidence in the learner, enhancing the learner’s ability to self-monitor, and driving institutional assessment and curricular change.¹² This misuse also prevents law schools from gauging their own effectiveness and determining whether they are graduating proficient practitioners. “A law school that fails to assess student performance or its performance as an institution, or that uses the wrong measures in doing so, has no real evidence that it is achieving any

⁹ WALVOORD, *supra* note 8, at 4. See also GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 131 (2000) (“The purpose of classroom assessment is ‘to help students learn more effectively and efficiently than they could on their own.’ Classroom assessment focuses on ‘small-scale assessments conducted continuously by . . . teachers to determine what students are learning in that class.’”) (quoting THOMAS A. ANGELO & K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS 3 (2d ed. 1993) and K. PATRICIA CROSS, FEEDBACK IN THE CLASSROOM: MAKING ASSESSMENT MATTER 5 (1988)); LINDA SUSKIE, ASSESSING STUDENT LEARNING: A COMMON SENSE GUIDE 6 (2d ed. 2009) (“Assessment in individual courses is typically based on the tests and assignments that contribute to the grading process. . . . [A]ssessment at the course level means not just assigning individual grades but also reflecting on how well students as a whole are achieving the course’s key learning goals.”).

¹⁰ Kathleen M. Cauley & James H. McMillan, *Formative Assessment Techniques to Support Student Motivation and Achievement*, 83 CLEARING HOUSE: A JOURNAL OF EDUCATIONAL STRATEGIES, ISSUES, AND IDEAS 1, 1 (2010). See also, e.g., Sophie Sparrow, *Taking a Small Step Toward More Assessments*, 16 THE LAW TEACHER 1, 1 (Fall 2009) (“Experts on learning tell us that the most effective learning environments are ‘assessment centered.’”).

¹¹ BEST PRACTICES REPORT, *supra* note 4, at 236-37 (citing JUDITH WEGNER, THINKING LIKE A LAWYER ABOUT LAW SCHOOL ASSESSMENT (Draft 2003) (unpublished manuscript on file with Roy Stuckey) at 19-22 and 34).

¹² BEST PRACTICES REPORT, *supra* note 4, at 235 (quoting Ronald M. Epstein, M.D., & Edward M. Hundert, M.D., *Defining and Assessing Professional Competence*, JAMA, Jan. 9, 2002, at 226).

goals or objectives.”¹³ This failure of proof, in turn, “invites demands for accountability.”¹⁴

The American Bar Association (“ABA”), which accredits U.S. law schools,¹⁵ is beginning to make such demands. While the ABA historically has evaluated law schools based on “inputs,” such as facilities, faculty size, and budget,¹⁶ it recently has signaled a shift to an evaluation process based on outputs.¹⁷ Consequently, an ABA committee has drafted revised accreditation standards and submitted them to the ABA’s Section on Legal Education for review and approval.¹⁸

The draft standards emphasize assessment of student learning.

¹³ MUNRO, *supra* note 9, at 4.

¹⁴ *Id.*

¹⁵ *E.g.*, 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 LEGAL WRITING: J. LEGAL WRITING INST. 605, 605 (2010) (“Since 1952, the Department of Education has recognized the American Bar Association (ABA) as the national agency for the accreditation of programs leading to the first professional degree in law.”); Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcome Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. U. L.J. 225, 226 (2011) (“The Council of the ABA Section on Legal Education and Admissions to the Bar is recognized by the U.S. Department of Education as the national accrediting agency for law schools.”).

¹⁶ *See* ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE OUTCOME MEASURES COMMITTEE 2 (2008), [http://apps.americanbar.org/legaled/committees/subcomm/Outcome Measures Final Report.pdf](http://apps.americanbar.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf) (hereinafter cited as “ABA OUTCOME MEASURES REPORT”) (“[C]urrent Standards on the law school curriculum and other critical Standards focus more heavily on inputs than outputs.”); Lori A. Roberts, *Assessing Ourselves: Confirming Assumptions and Improving Student Learning by Efficiently and Fearlessly Assessing Student Learning Outcomes*, 3 DREXEL L. REV. 457, 457 (2011) (“[T]he ABA’s current accreditation standards, unlike those of other professional educational programs, are based on inputs, rather than evidence demonstrating actual student learning.”).

¹⁷ In 2007, the Chair of the ABA’s Section on Legal Education and Admissions to the Bar appointed a Special Committee on Output Measures and charged the Committee to determine whether and how we can use output measures, other than bar passage and job placement, in the accreditation process. The Committee may consider approaches taken by other accrediting agencies, evaluate criticism of existing measures, and analyze relevant information and studies. The Committee also should consider methods to measure whether a program is accomplishing its stated mission and goals. The Committee should define appropriate output measures and make specific recommendations as to whether the Section should adopt those measures as part of the Standards.

ABA OUTCOME MEASURES REPORT, *supra* note 16, at 1. In 2008, this Committee recommended reframing the current ABA Accreditation Standards “to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures. *Id.* The report states further that “such a shift towards outcome measures is consistent with the latest and best thinking of U.S. legal educators and legal educators in other countries and is also consistent with insights gleaned from legal practice and from accreditors in other fields of professional education.” *Id.*

¹⁸ Memorandum from Jeffrey E. Lewis, Standards Review Committee Chair, to the Council of the Section of Legal Education and Admissions to the Bar (July 24, 2013) (on file with author) (hereinafter cited as “Lewis Memorandum”).

For example, they propose a new standard that requires law schools to establish learning outcomes that include competency in, among other things, the “professional skills needed for competent and ethical participation as a member of the legal profession.”¹⁹ In addition, a law school must “utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.”²⁰ Finally, the dean and faculty of a law school must “conduct ongoing evaluation of the law school’s academic program, learning outcomes, and assessment methods” and “use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.”²¹

The ABA recognizes that moving to an outcomes approach is “a quantum shift in the structuring of the law school accreditation process,”²² and commentators have called these proposals a “sea change” in legal education.²³ While change can sometimes inspire fear and dread, the move toward outcome measures and increased formative assessment should not generate such negative feelings. Rather, law teachers should embrace this shift for the opportunities it creates to improve student learning and implement best practices in teaching.

This Article does that in the context of externships, which have become an increasingly important component of the law school curriculum in response to demands that students should be “practice ready” upon graduation.²⁴ The Article provides a comprehensive guide for implementing assessment in externships and other clinical courses.²⁵ It recommends the use of formative, criterion-referenced assessment in externships and explains the rationale for doing so. It demonstrates the process for implementing effective assessment in externships, with concrete examples of learning goals, assessment tools, and methods for compiling and analyzing assessment data. It also includes sample rubrics that externship teachers can use or adapt to assess student per-

¹⁹ *Id.* at 45 (Proposed Standard 302(d)).

²⁰ *Id.* at 54 (Proposed Standard 314).

²¹ *Id.* (Proposed Standard 315).

²² ABA OUTCOME MEASURES REPORT, *supra* note 16, at 61.

²³ Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L.J. 667, 667 (2011). See also James Podgers, *Sweeping Accreditation Review May Prompt “Sea Change” In Law School Evals*, A.B.A. J. (June 3, 2009), available at www.abajournal.com/news/article/review_of_accreditation_standards_likely_to_bring_sea_change_to_how_law_sch/.

²⁴ See, e.g., Maurer & Cole, *supra* note 5, at 115. See also Baker & Lancaster, *supra* note 5, at 76-78; Basu & Ogilvy, *supra* note 5, at 5.

²⁵ While the Article focuses on externships, the processes it explains and recommends are easily transferable to other clinical courses.

formance in each of the core aspects of externships—journals, timesheets, mid-semester meetings, rounds discussions, and reflective essays.

The Article proceeds in four parts. Part I discusses the relationship between assessment and grading and explains the fundamentals of assessment. In Part II, I demonstrate how to apply course-level assessment in externships, including the process for creating rubrics to evaluate externship assignments. Part III discusses potential obstacles to implementing assessment in externships. Part IV explores whether letter grades should be part of an assessment regimen and proposes a method for grading externships.

I. FUNDAMENTALS OF COURSE-LEVEL ASSESSMENT

A. *The Relationship Between Grading and Course-Level Assessment*

While assessment and grading are related processes, and often are used in conjunction with one another, it is important to understand that they serve different purposes and should not be conflated. Course-level assessment measures an individual student's performance on the basis of explicit criteria, with the teacher providing contemporaneous feedback to the student on his or her progress in achieving the course's learning objectives.²⁶ It is "the process of determining what a student understands, how that student can improve that understanding, and how she can apply that understanding to future experiences."²⁷

Grading, on the other hand, ranks students in comparison to one another. While grading can have other purposes, it often is used primarily to reward exemplary performances, penalize poor performances, and sort students for employers.²⁸ Moreover, grades alone cannot identify the concepts that students have learned and the con-

²⁶ MUNRO, *supra* note 9, at 12 (citing ALVERNO COLLEGE FACULTY, STUDENT ASSESSMENT-AS-LEARNING, AT ALVERNO COLLEGE 3 (1994)).

²⁷ Steven J. Johansen, "What Were You Thinking?": *Using Annotated Portfolios to Improve Student Assessment*, 4 LEGAL WRITING: J. LEGAL WRITING INST. 123, 125 (1998).

²⁸ Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 CLIN. L. REV. 299, 306 (1997). *See also, e.g.*, Philip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 436 (1989) ("[T]he immediate function of law school grading practices is to establish a highly disaggregated class ranking system" that "is an efficient device, or at least a rational one, for sorting students in ways that serve the hiring purposes of many law firms."); Jeffrey Evans Stake, *Making the Grade: Some Principles of Comparative Grading*, 52 J. LEGAL EDUC. 583, 584 (2002) ("Grades generally purport to tell only who performed better and who performed worse on an instrument of assessment, usually a single exam or paper."); *id.* (grades sort students for employers).

cepts that they do not yet understand.²⁹ For example, a student's grade of "B" in an organic chemistry course implies that "the student has probably learned a good deal about organic chemistry. But that grade alone cannot pinpoint what aspects of organic chemistry she has and has not mastered."³⁰ Thus, at best, grades provide only indirect evidence of student learning and are not a substitute for true course-level assessment.³¹

Awarding letter grades is not currently the norm in externship courses. In response to a recent survey conducted by the Center for the Study of Applied Legal Education, 88 ABA-accredited law schools provided detailed information about their externship courses.³² The data reflect that 81.5% of the students in those courses receive a pass/fail grade for their fieldwork credit hours, "while 12.3% receive a letter or numerical grade, 5.5% receive a mixed pass/fail and letter/numerical grade, and 0.7% have the option of a pass/fail or letter/numerical grade."³³ Students are more likely to be graded on the classroom portion of an externship course. In 47.9% of the courses, students receive mandatory letter or number grades for the classroom portion, while 45.4% of the courses award pass/fail grades, and 5.0% award a mixed pass/fail and letter/numerical grade for the classroom portion.³⁴ My externship course currently falls into the pass/fail category, with students receiving a pass/fail grade for their fieldwork and classroom work. However, as discussed in Part IV, *infra*, I have devised a method for grading an externship course in conjunction with course-level assessment that externship teachers may wish to consider.

B. The Four Steps of Course-Level Assessment

Course-level assessment involves four basic steps: (1) setting the

²⁹ Johansen, *supra* note 27, at 125.

³⁰ SUSKIE, *supra* note 9, at 10.

³¹ *Id.* at 11; *see also id.* at 10 ("Grades alone are usually insufficient evidence of student learning for assessment purposes."); Johansen, *supra* note 27, at 125 ("[G]rades themselves do not improve assessment.").

³² DAVID A. SANTACROCE & ROBERT R. KUEHN, CENTER FOR THE STUDY OF APPLIED LEGAL EDUC., THE 2010-11 SURVEY OF APPLIED LEGAL EDUCATION 21 (2012), <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf>.

³³ *Id.* at 23. *See also* Basu & Ogilvy, *supra* note 5, at 28 (2007-2009 and 2002-2003 surveys of externship courses found that 80% of the respondent courses that had no classroom component graded fieldwork on pass/fail basis).

³⁴ SANTACROCE & KUEHN, *supra* note 32, at 24. *See* Basu & Ogilvy, *supra* note 5, at 28-29 (2007-2009 survey of externship courses found that, of the respondent courses that had a classroom component, only 38% awarded letter or number grades for the classroom portion). Basu and Ogilvy contend that the low percentage of graded classroom components shows a "general discomfiture" in assigning letter or number grades in clinical and externship courses. *Id.* at 29.

desired learning outcomes for the course; (2) selecting assessment tools to measure achievement of the learning outcomes; (3) gathering and analyzing the information that the assessment tools generate; and (4) using that information to make adjustments that will improve student learning.³⁵ Professor Gregory Munro, a recognized assessment expert, conceptualizes these steps as “a loop in which the teacher facilitates the student’s active learning, the student performs what she has learned, student and teacher assess the student’s performance, and the teacher provides the student feedback that shows where and how the student’s learning and performance can improve.”³⁶ The remaining sections of this Part provide a background explanation of the four steps of the assessment process, and Part II, *infra*, demonstrates how to apply them specifically to externships.

1. *Setting the Learning Outcomes for a Course*

Learning outcomes are simply statements of what students should be able to do by the end of a course.³⁷ They articulate the “knowledge, skills, attitudes, and habits of mind that students take with them from a learning experience.”³⁸ These outcomes are crucial because they determine course coverage, expectations for class preparation, and design of the course syllabus, class sessions, assignments, and examinations.³⁹ All law teachers “should be able to articulate clearly . . . what they seek to accomplish in each of their classrooms.”⁴⁰

To be effective, learning outcomes should be concrete and should

³⁵ Fisher, *supra* note 15, at 236-42. Similarly, Professor Suskie defines assessment as the ongoing process of:

- Establishing clear, measureable expected outcomes of student learning
- Ensuring that students have sufficient opportunities to achieve those outcomes
- Systematically gathering, analyzing, and interpreting evidence to determine how well student learning matches our expectations
- Using the resulting information to understand and improve student learning.

SUSKIE, *supra* note 9, at 4. *See also* WALVOORD, *supra* note 8, at 3-4 (describing steps in the assessment process).

³⁶ MUNRO, *supra* note 9, at 72.

³⁷ MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW, & GERALD HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 38 (2009) (hereinafter cited as “*TEACHING LAW BY DESIGN*”). The terms “learning outcomes” and “learning goals” are synonymous. *E.g.*, SUSKIE, *supra* note 9, at 117 (“*Learning outcomes* or *learning goals* are goals that describe how students will be different because of a learning experience.”) (emphasis in original); WALVOORD, *supra* note 8, at 14 (“I use the term *goals* throughout, but in various settings, you will find other terms such as *objectives* or *outcomes* (student learning outcomes are sometimes referred to as “SLOs.”)) (emphasis in original). This Article uses the term “learning outcomes.”

³⁸ SUSKIE, *supra* note 9, at 117.

³⁹ *TEACHING LAW BY DESIGN*, *supra* note 37, at 39.

⁴⁰ Roy Stuckey, ‘*Best Practices*’ or Not, *It Is Time to Re-think Legal Education*, 16 *CLIN. L. REV.* 307, 317 (2009).

“identify high level intellectual activities or important values[.]”⁴¹ They “can be very broad (e.g., students will develop strong communication skills) or very narrow (e.g., when conducting an interview, students will know how to ask open-ended questions).”⁴² They also “should be stated explicitly, simply, in plain English, and without legal and educational jargon.”⁴³ Effective outcomes are written as declarative statements, such as, “after completing this course, students will be able to _____.”⁴⁴

Learning outcomes also should be measurable.⁴⁵ If a professor cannot measure whether students are achieving the course’s outcomes, then those outcomes are not helpful to the assessment process. Professors should not, however, expect “objective decimal-place accuracy.”⁴⁶ In the context of assessment, measurable “means ‘a general judgment of whether students know, think, and can do most of what we intend for them.’”⁴⁷

Once professors establish clear and measurable learning outcomes, they must communicate and explain those outcomes to the students.⁴⁸ “Students learn when they ‘have a sense of what they are setting out to learn, a statement of explicit standards they must meet, and a way of seeing what they have learned.’”⁴⁹ Thus, professors should state the learning outcomes in the syllabus and discuss them with students at the beginning of the course.⁵⁰

⁴¹ TEACHING LAW BY DESIGN, *supra* note 37, at 39.

⁴² Andrea A. Curcio, *Assessing Differently and Using Empirical Studies to See If It Makes a Difference: Can Law Schools Do It Better?*, 27 QUINNIPIAC L. REV. 899, 913 (2009).

⁴³ MUNRO, *supra* note 9, at 95. See also SUSKIE, *supra* note 9, at 131 (“Fuzzy, vague goals can be avoided by stating outcomes using concrete action words that describe in explicit, observable terms what students can do after they’ve learned the material.”).

⁴⁴ WALVOORD, *supra* note 8, at 14. See also Fisher, *supra* note 15, at 238; HOWARD E. KATZ & KEVIN FRANCIS O’NEILL, STRATEGIES AND TECHNIQUES OF LAW SCHOOL TEACHING: A PRIMER FOR NEW (AND NOT SO NEW) PROFESSORS 2-4 (2009) (process for establishing course goals).

⁴⁵ MUNRO, *supra* note 9, at 95.

⁴⁶ *Id.*

⁴⁷ *Id.* (quoting JAMES O. NICHOLS, THE DEPARTMENTAL GUIDE TO IMPLEMENTATION OF STUDENT OUTCOMES AND INSTITUTIONAL ASSESSMENT EFFECTIVENESS 22 (1991)).

⁴⁸ MUNRO, *supra* note 9, at 15.

⁴⁹ *Id.* (quoting Georgine Loacker et al., *Assessment in Higher Education: To Serve the Learner*, in ASSESSMENT IN AMERICAN HIGHER EDUCATION: ISSUES AND CONTEXTS 47 (Clifford Adelman ed., 1986)); see also Duncan, *supra* note 15, at 616 (“Providing this roadmap to students at the beginning of the semester ‘helps them focus on what’s most important and get the most out of their learning experience.’”) (quoting SUSKIE, *supra* note 9, at 90).

⁵⁰ MUNRO, *supra* note 9, at 144.

2. *Selecting Assessment Measures for the Course*

Assessment measures are “tools used to obtain and document information about student achievement, skills, and ability.”⁵¹ Assessments can take various forms, such as exams, quizzes, essays, reviews of student performances, drafting assignments, and in-class exercises.⁵² Assessment tools are important because they have a significant impact on student learning. According to the *Best Practices Report*, “[a]ssessment 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.”⁵³ Thus,

changing the assessment procedure is one of the most effective ways of changing how and what students learn. Surface approaches are induced by excessive workloads, a narrow band of assessment techniques and undue emphasis upon knowledge reproduction. Deep approaches are influenced by choice, a variety of assessment methods, project work and an emphasis upon tasks that demand demonstration of understanding.⁵⁴

Externship teachers therefore must consider their expectations for student learning and the skills and knowledge to be assessed before they select assessment tools.⁵⁵

a. The Purposes of Assessment Tools: Formative, Summative, or Both

“It is important to know what we will do with the information our assessments will produce.”⁵⁶ The purpose of any assessment can be formative, summative, or both.⁵⁷

“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.”⁵⁸

⁵¹ Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 76 (2010).

⁵² GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 286-87 (1999). See also Steven Friedland, *A Critical Inquiry Into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147, 164-66 (2002) (describing different types of law school evaluation instruments); Munro, *supra* note 8, at 238-44 (same).

⁵³ BEST PRACTICES REPORT, *supra* note 4, at 235 (quoting ALISON BONE, NATIONAL CENTRE FOR LEGAL EDUCATION, *ENSURING SUCCESSFUL ASSESSMENT* 3 (1999)).

⁵⁴ BEST PRACTICES REPORT, *supra* note 4, at 236 (quoting BONE, *supra* note 53, at 4).

⁵⁵ BEST PRACTICES REPORT, *supra* note 4, at 243. In addition, different assessment methods may be required to assess different educational objectives. *Id.*

⁵⁶ *Id.* at 255.

⁵⁷ *Id.*

⁵⁸ *Id.* See also MUNRO, *supra* note 9, at 72 (“[A] formative tool is designed to facilitate the student’s learning and to provide extensive feedback.”).

Formative evaluation provides students with “real time” feedback on their performance, thus giving them an opportunity to identify areas that need improvement before a final judgment is rendered.⁵⁹ Professor Munro offers the following example of formative assessment:

[S]uppose a teacher presents students with incremental problems of increasing complexity at the start of each chapter of a law textbook and requires students to analyze and solve the problems by seeking out and applying the law to the facts of the problem. When completed, the teacher reviews the answers and gives the students feedback, which they use to tackle the next set of problems. This is a type of formative learning experience[.]⁶⁰

While formative assessment is rare in law schools, perhaps because of large class sizes,⁶¹ it should be the primary form of assessment because it improves student learning.⁶² “Contemporary learning theory suggests that efficient application of educational effort is significantly enhanced by the use of formative assessment.”⁶³ Indeed, a recent study demonstrated that formative assessments improve law student performance on a cumulative final exam.⁶⁴

Summative assessment is more common in law schools. Summative assessments tend to occur at the end of a course and typically are used “for assigning a grade or otherwise indicating a student’s level of achievement.”⁶⁵ “In contrast to formative evaluation, which looks forward to ways in which students might continue to learn, summative evaluation looks back and judges how much students have learned.”⁶⁶ Thus, the typical end-of-the-semester law school examination is summative because it “measure[s] student learning after the fact” and is “seldom used as a diagnostic tool or instructional device for student

⁵⁹ Lynn M. Daggett, *All of the Above: Computerized Exam Scoring of Multiple Choice Items Helps to: (A) Show How Exam Items Worked Technically, (B) Maximize Exam Fairness, (C) Justly Assign Letter Grades, and (D) Provide Feedback on Student Learning*, 57 J. LEGAL EDUC. 391, 397 (2007).

⁶⁰ MUNRO, *supra* note 9, at 72-73.

⁶¹ *Id.* at 36. “Notable exceptions exist, however, in clinical education, legal writing courses, and professional skills simulations, as well as in moot court, client counseling, trial, and negotiation competitions.” *Id.*

⁶² BEST PRACTICES REPORT, *supra* note 4, at 256 (quoting WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS 242 (Draft July 2006)).

⁶³ *Id.*

⁶⁴ Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence That Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 380 (2011-12).

⁶⁵ BEST PRACTICES REPORT, *supra* note 4, at 255. See also Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 171 (2012) (Summative assessment “refers to the process of evaluating whether a student has satisfied the learning outcomes of a course[.]”).

⁶⁶ Daggett, *supra* note 59, at 397.

learning during the course.”⁶⁷ Because summative assessments are not used primarily to improve student learning, they “should be the exception in law schools, not the rule.”⁶⁸

b. Two Types of Assessments: Norm-Referenced and Criterion-Referenced

Whether their purpose is formative or summative, assessments fall within two basic types: norm-referenced and criterion-referenced.

Norm-referenced assessments “evaluate student performance in relation to the performance of all the students in the class. They are designed to rank each student in relation to how she or he performs compared with other students in the same class, usually based on a curve.”⁶⁹ Norm-referencing emphasizes the differences among students and “stratifies student performances largely for purposes external to the learning process, notably the allocation of rewards (such as law journal membership) and the convenience of employers.”⁷⁰ Norm-referenced evaluation does not require students to meet an objective standard of achievement.⁷¹ Thus, “[a]n ‘A’ in a course in which grading is completely norm-referenced means the student’s performance ranked at the top of the class, without regard to whether this student or the class as a whole performed at an excellent, mediocre, or poor level.”⁷²

Professor Munro calls norm-referenced evaluation “inconsistent with sound assessment principles.”⁷³ This inconsistency exists because norm-referenced assessments do not measure a student’s achievement of a course’s educational objectives; instead, they judge only how well a student performed in relation to other students in the course, which can negatively affect student motivation and learning.⁷⁴

⁶⁷ MUNRO, *supra* note 9, at 35-36. *See also id.* at 73 (“Legal education characteristically makes only summative use of exams, utilizing them primarily to assign grades.”); *id.* at 72 (“A summative exam . . . might test the student’s knowledge and abilities at the end of a course and provide the student and teacher information on how well the student learned. A summative exam is not primarily a learning experience and does not provide the student extensive feedback.”).

⁶⁸ *Id.* at 73.

⁶⁹ Lasso, *supra* note 51, at 76. *See also* Jay M. Feinman, *Law School Grading*, 65 UMKC L. REV. 647, 648 (1997) (Norm-referenced grading “is the measurement of a student’s performance in relationship to the performance of other students.”).

⁷⁰ Feinman, *supra* note 69, at 650.

⁷¹ Leslie M. Rose, *Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 123, 126 (2011).

⁷² Daggett, *supra* note 59, at 399.

⁷³ MUNRO, *supra* note 9, at 119-120.

⁷⁴ BEST PRACTICES REPORT, *supra* note 4, at 243. *See also, e.g.,* Rose, *supra* note 71, at

Scholars also criticize norm-referenced assessment because it is used to ensure that grades can be apportioned along a bell curve.⁷⁵ According to the *Best Practices Report*,

[w]e should not be concerned about whether students' performances will be distributed along a normal "bell curve" because one should not expect it to be. Mandatory grade curves are not consistent with best practices for assessing student learning. A bell curve outcome actually reflects a failure of instruction.⁷⁶

In contrast to norm-referencing, criterion-referenced assessments "evaluate student performance in relation to a specific standard" and "are designed to help evaluate whether students have met a specific level of performance."⁷⁷ Scores are based on students' individual performances "in relation to absolute expectations about the level of knowledge or skill the class should achieve[.]"⁷⁸ and there is no pre-set distribution of grades.⁷⁹ Thus, criterion-referenced assessment is preferable because it measures student proficiency in acquiring knowledge and skills instead of merely sorting students.⁸⁰ An example of a criterion-referenced assessment system would be "giving A's to students who demonstrate mastery of 80 percent or more of course learning objectives as measured on an exam[.]"⁸¹

Criterion-referenced assessment often uses rubrics, which are de-

142 ("Norm-referenced grading is inconsistent with the principles of the humanizing legal education movement because it not only fosters a stress-inducing competitive atmosphere, but it also interferes with the deep learning created by intrinsic motivation, autonomy support, and self-efficacy."); Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 897 (2009) (curved grading may impede enthusiasm for law study because it diminishes autonomy).

⁷⁵ BEST PRACTICES REPORT, *supra* note 4, at 243-244.

⁷⁶ *Id.* at 244.

⁷⁷ Lasso, *supra* note 51, at 76-77. *See also* Feinman, *supra* note 69, at 648 (Criterion-referenced evaluation "is the measurement of a student's performance against an established standard.").

⁷⁸ Lasso, *supra* note 51, at 77. *See also* Daggett, *supra* note 59, at 399 ("An 'A' in a course in which grading is completely criterion-referenced means the student demonstrated excellent mastery of the course concepts and skills, without regard to how other students did."); Feinman, *supra* note 69, at 650 (Criterion-referenced grading "emphasizes the absolute achievement of each student."). Thus, criterion-referenced grading also is consistent with the movement to "humanize" legal education, since it promotes students' well-being, intrinsic desire to learn, and responsibility for their own learning. *E.g.*, Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 297-303 (2008).

⁷⁹ Rose, *supra* note 71, at 128 (quoting CARNEGIE REPORT, *supra* note 1, at 170).

⁸⁰ Lasso, *supra* note 51, at 77-78 (quoting CARNEGIE REPORT, *supra* note 1, at 168). In addition, the *Best Practices Report* recommends that law teachers conduct criterion-referenced assessments, not norm-referenced assessments, to minimize the risk of unreliability in assigning grades. BEST PRACTICES REPORT, *supra* note 4, at 243. *See also* Rose, *supra* note 71, at 124 (Criterion-referenced grading "avoids many of the negative aspects of norm-referenced grading and is more consistent with current trends in legal education.").

⁸¹ Daggett, *supra* note 59, at 398.

tailed written grading criteria that describe what students should learn and how they will be evaluated.⁸² The course's learning goals determine the criteria for assessment.⁸³ While rubrics vary considerably in complexity and design, they typically "divide an assignment into its component parts and provide a detailed description of what constitutes acceptable or unacceptable levels of performance for each of those parts."⁸⁴ According to Professor Sophie Sparrow, another recognized assessment expert, using rubrics causes professors to focus on the most meaningful aspects of their courses:

To develop explicit criteria that will be distributed to students in writing, we must necessarily be clear about what we expect students to learn; we must identify the core skills and knowledge that are necessary to be competent or proficient in the particular area of law. These are fundamental questions focusing not on what we will "cover" in class and how we will fill up the time, but on what we want students to take away with them, hold on to, and return to in the future.⁸⁵

Part II.B, *infra*, explains in more detail the process for creating rubrics for an externship course and includes sample rubrics for typical externship assignments.

c. Qualities of Sound Assessments: Validity, Reliability, and Fairness

Regardless of their purpose and type, assessments that are effective and educationally sound exhibit three qualities: validity, reliability, and fairness.⁸⁶

Validity means that an assessment tool accomplishes the purpose

⁸² Rose, *supra* note 71, at 128 (citing Sophie Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 6 (2004)); see also BEST PRACTICES REPORT, *supra* note 4, at 244 ("Criteria-referenced assessments rely on detailed, explicit criteria that identify the abilities students should be demonstrating (for example, applying and distinguishing cases) and the bases on which the instructor will distinguish among excellent, good, competent, or incompetent performances."); DANIELLE D. STEVENS & ANTONIA J. LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE GRADING TIME, CONVEY EFFECTIVE FEEDBACK AND PROMOTE STUDENT LEARNING 3 (2005) (hereinafter cited as "INTRODUCTION TO RUBRICS") ("At its most basic, a rubric is a scoring tool that lays out the specific expectations for an assignment."); SUSKIE, *supra* note 9, at 137 (rubrics are scoring guides describing criteria a teacher will use to evaluate or grade student assignments).

⁸³ Sparrow, *supra* note 82, at 7.

⁸⁴ INTRODUCTION TO RUBRICS, *supra* note 82, at 3; see also Sparrow, *supra* note 82, at 7 (rubrics typically include benchmarks describing varying levels of student performance). Because criterion-referenced grading evaluates students on the degree to which they meet such clearly identified and explicit criteria, it is consistent with sound assessment principles. MUNRO, *supra* note 9, at 120.

⁸⁵ Sparrow, *supra* note 82, at 18.

⁸⁶ BEST PRACTICES REPORT, *supra* note 4, at 239.

for which it is intended.⁸⁷ “In the law school context, an exam is valid if it measures what the professor wanted the students to learn in the course[.]”⁸⁸ If, for example, the purpose of an assessment is to measure students’ thinking abilities, then the assessment should evaluate those abilities and allow the teacher to draw inferences about them.⁸⁹ Conversely, “[i]f the test measures something other than what a professor intended students to learn in the course . . . , then it is not a valid test.”⁹⁰ An example of an invalid assessment is a test measuring students’ problem-solving skills, if the professor did not teach such skills.⁹¹

Reliability means the measurement is consistent and “yields the same results on repeated trials.”⁹² Reliability is important because it reduces the impact of subjective influences on the evaluator.⁹³ An exam that is reliable will measure like performances similarly, “whether it is comparing the similar performances of two different test-takers, of a single test-taker who has taken a test several times, or even among individual test questions.”⁹⁴ Exams that are not reliable “produce scores that are due significantly to chance and other irrelevant factors, rather than scores that are due to different levels of student performance[.]”⁹⁵ For example, if “one inserted three copies of the same student-drafted contract into the pile of contracts being graded by the instructor and the instructor gave the three copies three

⁸⁷ *Id.* at 239-41; HESS & FRIEDLAND, *supra* note 52, at 289.

⁸⁸ Friedland, *supra* note 52, at 158. *See also* MUNRO, *supra* note 9, at 106 (“In law school courses, validity means the test or other assessment of student performance measures whether the course goals and objectives have been met. This is content validity.”).

⁸⁹ HESS & FRIEDLAND, *supra* note 52, at 289.

⁹⁰ Friedland, *supra* note 52, at 158-59. *See also*, MUNRO, *supra* note 9, at 106-07 (“On a larger scale, the validity question is whether the mode of assessment measures how well the student outcomes are being met. There must be a reasonable connection between that which was taught in the course and that which is being assessed.”).

⁹¹ Professor Lasso provides an example of a valid assessment for a torts class. He first leads the class through an analysis of several cases to extract the black-letter rules for various intentional torts and defenses and to identify the facts that support such claims and defenses. He then gives the students a short fact scenario and asks them to enumerate the potential torts and defenses that it raises. Students have 30 minutes to complete the exercise, and they may consult their outlines and class notes. This assessment is valid because it measures only whether students have learned to identify and differentiate between the various torts and defenses, provides sufficient time for completion, and does not require the skill of memorization. Lasso, *supra* note 51, at 84-85.

⁹² BEST PRACTICES REPORT, *supra* note 4, at 239. *See also* HESS & FRIEDLAND, *supra* note 52, at 289 (“Reliability indicates that the results of the test can be replicated.”).

⁹³ Lasso, *supra* note 51, at 85.

⁹⁴ Friedland, *supra* note 52, at 161; *see also* Lasso, *supra* note 51, at 85 (“If an assessment is reliable, it does not matter whether a student is assessed first or last or even whether one teacher or another is conducting the assessment.”).

⁹⁵ Daggett, *supra* note 59, at 395.

different grades, the assessment would lack reliability.”⁹⁶ Assessment instruments that do not consistently yield the same results lack reliability and are “of no value in an assessment program.”⁹⁷

Finally, an assessment tool should be fair. “Fairness requires that the assessment be equitable in both process and results.”⁹⁸ Suppose, for example, that students in the same course are evaluated by two graders. One grader gives all “A”s, while the other grader views all performances as “C”s.⁹⁹ This difference in the assessment process makes it unfair.¹⁰⁰ Other examples of unfairness include “inconsistent policies regarding makeup performances and postponements; inadequate information about the logistics, format, and scope of exams; lack of information about what learning the teacher thinks is important; and testing for skills and abilities not taught in the course.”¹⁰¹

d. Multitude and Variety of Assessments

“The assessment movement emphasizes the use of multiple and varied modes of assessment over time.”¹⁰² “Multiple” means assessing students’ learning more than once during the course.¹⁰³ Multiple evaluations are beneficial because they “increase the accuracy of the conclusions about student performance, improve student performance on the final examination, and increase the range of skills, values, and knowledge that the instructor may evaluate.”¹⁰⁴ Indeed, a recent study found that students responded positively to multiple assessments and believed that the multiple assessments helped them learn.¹⁰⁵

⁹⁶ MUNRO, *supra* note 9, at 108.

⁹⁷ *Id.* at 107.

⁹⁸ *Id.* at 109.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 109-10. *See also id.* at 142 (“Fairness in assessment dictates that the teacher identify criteria by which she will assess student performance. If the teacher cannot state the criteria for demonstrating competent ability, then students have grounds to complain that the grading is too subjective, if not entirely arbitrary.”). In addition, assessments that lack validity or reliability are inherently unfair. *Id.* at 110.

¹⁰² *Id.* at 74.

¹⁰³ HESS & FRIEDLAND, *supra* note 52, at 289-90.

¹⁰⁴ BEST PRACTICES REPORT, *supra* note 4, at 260. *See also* HESS & FRIEDLAND, *supra* note 52, at 289-90 (“Frequent evaluation and feedback allow the students and teacher to monitor progress and to make appropriate adjustments during the course. Research shows that frequent evaluation improves student performance on the final exam.”); LASSO, *supra* note 51, at 75 (“For the learning loop to work optimally, students need several chances during the semester to reflect on what they have learned, what they still need to know, and how to improve their learning.”).

¹⁰⁵ Andrea A. Curcio, *Moving in the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159 (2009).

“Varied” assessment means “the scheme includes more than one type of evaluation tool, such as essay exams, papers, journals, multiple-choice exams, written projects, and performance of practice skills.”¹⁰⁶ Variety is important because a “valid, reliable, and fair picture of the student’s ability is much more likely to exist if the measures are done several times using different modes of evaluation.”¹⁰⁷

e. Providing Prompt Feedback

For assessments to improve student learning, professors must provide students with prompt feedback.¹⁰⁸ “The learning loop is complete only if what the teacher learns about the student’s performance is communicated to the student, so that the student knows how to improve.”¹⁰⁹ Research indicates that feedback “should be given in a timely manner, detail the strengths and weaknesses of the students’ work, offer suggestions for improvement, and involve praise and constructive criticism.”¹¹⁰ The *Best Practices Report* gives detailed guidance about providing feedback:

Teachers should return all written exams and papers to students, with notes indicating specific strengths and shortcomings. Teachers should explain to students how they fared on other forms of summative evaluations. Teachers should provide model answers to exams, and encourage students to seek guidance about how to improve, either through internet correspondence, one on one meetings, class debriefings, or other methods.¹¹¹

3. *Gathering and Reviewing the Assessment Data*

“The main purpose of assessments in educational institutions is to discover if students have achieved the learning outcomes of the course

¹⁰⁶ HESS & FRIEDLAND, *supra* note 52, at 290.

¹⁰⁷ BEST PRACTICES REPORT, *supra* note 4, at 253 (quoting Gregory S. Munro, *How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation*, in ERASING LINES: INTEGRATING THE LAW SCHOOL CURRICULUM 238 (Pamela Lysaght et al. eds., 2002)).

¹⁰⁸ MUNRO, *supra* note 9, at 151.

¹⁰⁹ *Id.* See also Lasso, *supra* note 51, at 75 (“Prompt feedback allows students to take control over their own learning by obtaining necessary remediation for identified deficiencies in their understanding, and to adjust their approaches to future learning tasks.”); BEST PRACTICES REPORT, *supra* note 4, at 260 (“Students cannot learn unless the results of their summative assessments are explained to them.”).

¹¹⁰ Niedwiecki, *supra* note 65, at 178; see also, e.g., Greg Sergienko, *New Modes of Assessment*, 38 SAN DIEGO L. REV. 463, 465 (2001) (faster feedback is more effective); TEACHING LAW BY DESIGN, *supra* note 37, at 143. Cf. Paula J. Manning, *Understanding The Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes*, 43 CUMB. L. REV. 225 (2012-13) (discussing feedback best practices that are consistent with self-determination theory).

¹¹¹ BEST PRACTICES REPORT, *supra* note 4, at 261.

studied. In other words, we use assessments to find out whether students are learning what we want them to learn.”¹¹² To make this determination, teachers must review the results of their assessments and compare them to the outcomes established for their individual classes and the entire course.¹¹³ Reviewing assessment data can range from reading through a batch of “minute papers”¹¹⁴ to get a sense of students’ understanding of class discussions, to tallying scores on quizzes and exams, to conducting statistical analyses to identify differences in student performances.¹¹⁵ In reviewing the data, it is crucial to ensure that the assessments actually produced the information about student learning that the teacher intended for them to produce.¹¹⁶

4. *Using Assessment Data to Improve Student Learning*

The final step in course-level assessment is for teachers to use the assessment data to make course corrections that will improve student learning. If the data are not used in this way, then they are essentially useless. When review of the data is complete, professors should ask themselves questions, such as the following: “If [students are] not learning some important things, what are the stumbling points? How might I change my curriculum or teaching strategies to help them learn more effectively? Might new pedagogies or new technologies lead to improved student learning?”¹¹⁷ Answering these questions can lead to any number of helpful adjustments, such as using more or different assessment techniques, employing a variety of teaching styles, or changing methods of communicating information to students.

II. APPLYING COURSE-LEVEL ASSESSMENT IN EXTERNSHIP CLASSES

A. *Setting Learning Goals for Externships*

Following the method above, the first step in applying the assessment process to externship courses is to select the course goals. “[I]t is critical that externships have clear educational objectives[.]”¹¹⁸ Ac-

¹¹² *Id.* at 235.

¹¹³ *E.g.*, SUSKIE, *supra* note 9, at 4, 65.

¹¹⁴ A “minute paper” is a brief in-class assessment that asks students to answer two questions at the end of a class: “What was the most important thing you learned during this class and what important questions remain unanswered?” Fisher, *supra* note 15, at 239-40.

¹¹⁵ SUSKIE, *supra* note 9, at 258-65.

¹¹⁶ *E.g.*, *id.* at 256.

¹¹⁷ *Id.* at 65.

¹¹⁸ BEST PRACTICES REPORT, *supra* note 4, at 200. *See also* Ogilvy, *supra* note 4, at 160 (Externship courses should have “articulated curricular goals, policies, and procedures that are clear and consistent with the law school’s mission, location, curriculum, the students’

cordingly, externship teachers should draft statements of the outcomes they want their students to achieve.¹¹⁹ The *Best Practices Report* suggests the following format for externship learning objectives:

“[U]pon completion of the externship, students will be able to _____.” The blank would contain a statement of what students would know, understand, or be able to do, for example, “draft interrogatories in a civil lawsuit,” “present the state’s case in taking a guilty plea,” “draft a motion for continuance,” “describe how criminal cases proceed from arrest to conviction,” or “explain the value of a lawyer’s reputation for integrity.”¹²⁰

Such outcome statements are important because they cause teachers “to think more carefully about what we believe are the most important purposes of our courses and guide us in designing the delivery of the promised outcomes.”¹²¹

There is a plethora of learning outcomes from which an externship teacher may choose. “Externship goals vary greatly across the law school academy, from very specific skills-based learning objectives in programs that are more like traditional live-client clinics (*e.g.*, become proficient at live-client interviewing), to less specific and more generalized learning objectives in broader-based programs (*e.g.*, develop skills through learning by reflection).”¹²² The choice of goals may depend largely on whether the externship course is a “general” program, which includes a wide variety of placement types, or a specialized program that focuses on one kind of placement, such as judicial externships or prosecutor externships.¹²³ When the course is

perceived interests and needs, and the placement sites’ requirements[.]”); *cf.* Jerry R. Foxhoven, *Beyond Grading: Assessing Student Readiness to Practice Law*, 16 CLIN. L. REV. 335, 341 (2010) (urging clear identification of goals in the context of clinical education); Deborah Maranville, Kate O’Neill, & Carolyn Plumb, *Lessons for Legal Education From the Engineering Profession’s Experience With Outcomes-Based Accreditation*, 38 WM. MITCHELL L. REV. 1017, 1021 (2011-12) (“Developing and clearly articulating learning outcomes is the cornerstone of the outcomes assessment process and, arguably, the crux of any education experience.”).

¹¹⁹ BEST PRACTICES REPORT, *supra* note 4, at 199.

¹²⁰ *Id.* at 199-200.

¹²¹ *Id.* at 200. *See also* Michael A. Yarnell, *An Externship Program: Start It, Grow It, Improve It*, 3 PHOENIX L. REV. 473, 490 (2010) (“The learning goals shape every aspect of the program, including its implementation and future.”).

¹²² Yarnell, *supra* note 121, at 484. *See also* Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLIN. L. REV. 347 (1999) (discussing the wide variety of goals that externship teachers may choose, including, among others, facilitating learning through reflection and critical thinking and facilitating learning about specific skills and values of the profession); Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZAGA L. REV. 315, 318 (2005-06) (externships can teach practice skills, role formation, and practice in reflection).

¹²³ *See* Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices,*

limited to one type of externship, certain tasks and themes are common to all of the students' fieldwork. Thus, for example, the goals of an appellate externship class might include improving research and writing skills, understanding standards of review, and training in oral advocacy.

Conversely, students in general externship classes that include different types of placements do not necessarily share common tasks and experiences. A general program may include students externing for trial and appellate judges, public-defender offices, prosecutor offices, regulatory agencies, and nonprofits. Accordingly, broader goals that pertain to all of the students regardless of their placements, such as goals relating to ethics, professionalism, or public service, may be appropriate for general courses.

For externship courses seeking to emphasize lawyering skills, the ABA's *MacCrate Report* identifies ten "fundamental lawyering skills" that can serve as learning goals.¹²⁴ These skills include, among others, legal analysis and reasoning, communication, counseling, and recognizing and resolving ethical dilemmas.¹²⁵ In addition, Professors Marjorie Shultz and Sheldon Zedeck recently identified twenty-six factors that are important to lawyer effectiveness, including "problem solving," "practical judgment," "questioning and interviewing," and "influencing and advocating."¹²⁶ Factors identified in the Shultz and Zedeck study also might serve as learning goals for an externship course focused on practice skills.

Another possible learning objective for an externship course is developing students' abilities to engage in reflection. The ability to reflect is important because reflection "permits the assimilation of

Problems, and Possibilities, 2 CLIN. L. REV. 413, 423-24 (1996) (explaining differences between general and specialized externship programs). See, e.g., Hans P. Sinha, *Prosecutorial Externship Programs: Past, Present and Future*, 74 MISS. L. J. 1297 (2005) (describing externship programs specific to prosecutors' offices).

¹²⁴ ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) 138-40 (1992) (hereinafter cited as "MACCRATE REPORT"). See also MUNRO, *supra* note 9, at 28 (calling MacCrate Report's statement of fundamental lawyering skills and professional values "an explicit statement of outcomes for legal education"). See also Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 SW. U. L. REV. 1, 35 (2010) (identifying practice skills that may be used as educational goals in experiential-learning courses); Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb, & Russell Engler, *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 533 (2011/2012) (same).

¹²⁵ MACCRATE REPORT, *supra* note 124, at 138-40.

¹²⁶ Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 629 (2011).

new learning by taking what is already known, adapting it to an individualized purpose, and transforming the reflective thought into action.”¹²⁷ Thus, when American University’s Washington College of Law created an externship program, its faculty focused on “providing students with tools for thinking critically about their work as lawyers in the institutions in which they will operate.”¹²⁸ The pedagogical goals called for students “to observe the realities they are likely to face in practice, to develop some critical perspective on the conditions they find, and to begin to develop strategies for realizing their goals and values within these settings.”¹²⁹ Similarly, externship faculty at California Western School of Law identified self-reflection, self-direction, and “lawyers’ professional roles in relation to ethical and moral dilemmas, as well as larger societal concerns,” as the learning goals for their externship course.¹³⁰

Another potential learning goal for externships, which the *Best Practices Report* suggests teachers have overlooked, is professionalism, which it defines as “the values, behaviors, attitudes, and ethical requirements of lawyers[.]”¹³¹ Several resources identify components of professionalism that teachers can use as specific learning goals. The *Best Practices Report*, for example, suggests the following components of professionalism: “civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rule of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.”¹³² The *MacCrate Report* identifies four fundamental values

¹²⁷ Cavazos, *supra* note 124, at 29. See also SUSKIE, *supra* note 9, at 185 (reflection helps students learn by encouraging the skills of metacognition and synthesis).

¹²⁸ Peter Jaszi, Ann Shalleck, Marlana Valdez, & Susan Carle, *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLIN. L. REV. 403, 405 (1999).

¹²⁹ *Id.* See also Seibel & Morton, *supra* note 123, at 419 (listing as possible externship goals “training in self-directed learning, education in perspectives on the legal system, and introducing students to a wide range of specific practice contexts”).

¹³⁰ Linda Morton, Janet Weinstein, & Mark Weinstein, *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLIN. L. REV. 469, 472 (1999).

¹³¹ BEST PRACTICES REPORT, *supra* note 4, at 198.

¹³² *Id.* at 80 (quoting definition adopted by New Mexico Commission on Professionalism). See also, e.g., TEACHING LAW BY DESIGN, *supra* note 37, at 70 (listing qualities of professionalism identified by practicing lawyers); CONFERENCE OF CHIEF JUSTICES, NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM 2 (1999), <http://ccj.ncsc.org/resources/reports/~media/microsites/files/ccj/web%20documents/national-action-plan-full.ashx> (“[P]rofessionalism includes not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds the minimum ethical requirements.”). But see Thomas D. Morgan, *Calling Law a “Profession” Only Confuses Thinking About the Challenges Lawyers Face*, 9 U. ST. THOMAS L.J. 542, 543 (2011) (suggesting that professionalism best describes qualities of personal character and not aspects of an attorney’s occupational role).

of the legal profession: providing competent representation; promoting justice, fairness, and morality; striving to improve the profession; and developing professionally as a lawyer.¹³³ The *Carnegie Report* offers a multi-faceted definition of professional identity, including values such as honesty, integrity, consideration, civility, and individual and social justice, and goals such as establishing and maintaining trust with clients, exercising respect and consideration for clients, and understanding an attorney's "sense of responsibility toward the profession."¹³⁴ Other scholars have defined values of the legal profession to include a conscientious approach to work, curiosity and empathy, appropriate behavior standards,¹³⁵ and core competencies such as ethical practice and equal access to justice.¹³⁶ Any one of these values, or any combination of them, could serve as learning goals for an externship course focused on professionalism and professional values.

I teach a general externship course that includes placements with trial and appellate judges, state and federal agencies, the state legislature, and various nonprofit organizations. There are few, if any, practice skills or areas of substantive law that all of the placements share. Accordingly, I have focused on four learning goals¹³⁷ that I think are common to all students in the course, regardless of their individual placements. Upon completion of the course, students will:

1. be able to engage in effective self-reflection to learn from their experiences;
2. be able to identify fundamental values of the legal profession and recognize the presence or absence of those values in practice situations;
3. be able to articulate the concept of a "professional identity" and the facets of their own professional identity;¹³⁸
4. be able to articulate the concept of "equal access to justice" and the lawyer's professional duty to promote access to justice for all.¹³⁹

Finally, this discussion of practice skills, reflection, and profes-

¹³³ MACCRATE REPORT, *supra* note 124, at 140-41.

¹³⁴ CARNEGIE REPORT, *supra* note 1, at 130-32.

¹³⁵ Cynthia Batt & Harriet N. Katz, *Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*, 10 CLIN. L. REV. 581, 593-99 (2004).

¹³⁶ Foxhoven, *supra* note 118, at 356.

¹³⁷ Professors Schwartz, Sparrow, and Hess recommend that law teachers limit themselves to three or four learning goals per course. TEACHING LAW BY DESIGN, *supra* note 37, at 39.

¹³⁸ See, e.g., Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967, 967-68 (1989-90) (Some clinical and skills programs "articulate a goal of helping the students with role identification, including developing personal and professional value systems, as the transition is made from student to a lawyer.").

¹³⁹ See, e.g., Foxhoven, *supra* note 118, at 356 (identifying "equal access to justice" as a core competency for students to develop in a clinical course).

sionalism as possible learning goals is intended to be illustrative, not exhaustive. There are many other worthy learning goals that I have not discussed, such as learning about the substantive law of particular practice areas, procedural law or evidence, the functions of the legal system and the rule of law, social justice issues, law office management, and the skill of working collaboratively, to name just a few.¹⁴⁰ No single learning goal is superior; the most important principle regarding goals is simply that they must be intentional and selected after careful consideration.

B. Selecting Assessment Tools for Externships

The goals selected for an externship course influence the choice of assessment tools, because teachers must choose assessments capable of measuring attainment of the goals.¹⁴¹ “The main purpose of assessments in educational institutions is to discover if students have achieved the learning outcomes of the course studied.”¹⁴² Externship pedagogy has developed to include several typical components, including journals, timesheets, a seminar class, student self-evaluations, and a final reflective essay.¹⁴³ Depending on the goals of an externship course, teachers can use all of these pedagogical components as effective assessment tools.

As noted above, the goals for my externship course focus on reflection, professional identity and values, and access to justice. Accordingly, the following sections discuss the process for designing

¹⁴⁰ See, e.g., Margaret Martin Barry, Martin Geer, Catherine F. Klein, & Ved Kumari, *Justice Education and the Evaluation Process: Crossing Borders*, 28 WASH. U. J.L. & POL'Y 195 (2008) (giving ideas for teaching and assessing ethic of social justice); Stefan H. Krieger & Serge Martinez, *Performance Isn't Everything: The Importance of Conceptual Competence in Outcome Assessment of Experiential Learning*, 19 CLIN. L. REV. 251 (2012) (clinical courses should assess students' development of “conceptual competence” and not just competence in performing practice skills); Roy Stuckey, *Can We Assess What We Purport to Teach in Clinical Law Courses?*, 9 INT'L J. CLIN. LEGAL EDUC. 9, 27 (2006) (ideas for assessing students' development of commitment to seeking justice).

¹⁴¹ See Ogilvy, *supra* note 4, at 160-61 (externship goals should be translatable into measurable outcomes); *id.* at 170-71 (externship course should have established baselines and benchmarks against which to measure student progress); see also, e.g., BEST PRACTICES REPORT, *supra* note 4, at 200 (“If an externship course has educational objectives, some effort should be made to determine if it is achieving them.”); Eyster, *supra* note 122, at 352 (“[G]oals should be established for the program, and curricular decisions (including size; seminar topics and format; nature of placements; faculty involvement in supervision; and other factors) should derive from those goals.”).

¹⁴² Stuckey, *supra* note 140, at 10.

¹⁴³ See, e.g., Eyster, *supra* note 122, at 349 (externship courses typically require students to keep reflective journals and meet in a seminar class); Maurer & Cole, *supra* note 5, at 153 (externship courses can require students to submit contemporaneous time records and to assess their work performance at placement sites); SANTACROCE & KUEHN, *supra* note 32, at 23 (survey data reflect that 83.5% of externship courses use student time logs).

assessments to measure those particular goals. However, the process for designing assessments is the same, regardless of the goals selected, so this process is transferable to courses that emphasize other goals.

1. *Using Student Journals as an Assessment Tool*

One of my course goals is to teach students how to engage effectively in self-reflection to learn from their experiences, which has been called “a critical feature of clinical learning.”¹⁴⁴ To learn from their experiences, students must have opportunities to reflect upon and discuss those experiences.¹⁴⁵ A journal is a tool that students can use to reflect upon their externship experiences and that teachers can use to assess whether students are learning the skill of reflection.

In the educational context, a journal is “a regular, written communication from a student to a teacher, related to the course of study, that is authored by the student at the request of the teacher and to which the teacher may respond in writing.”¹⁴⁶ In externship courses, teachers often use journals to promote students’ “focused reflection on the fieldwork experience.”¹⁴⁷ Such reflection is “not simply reviewing what happened; instead, it consists of the student engaging in a critical analysis of his or her own work.”¹⁴⁸ Journal writing fosters reflection by giving students an opportunity “to take a step away from the cases, clients, and legal issues with which they have been engaged and to think about them objectively.”¹⁴⁹

To use journals to assess whether externship students are learning the skill of reflection, a teacher must consider the issues discussed in Part I.B above. What is the purpose of using the journal as an assessment? Is it a formative assessment, a summative assessment, or some

¹⁴⁴ Cavazos, *supra* note 124, at 28. See also, e.g., Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLIN. L. REV. 1, 14 (1999) (calling reflection “the mantra of clinical legal education”); Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training By Using Lessons Learned From New Clinicians*, 11 CLIN. L. REV. 49, 52-53 (2004) (“[T]he primary goal of clinical legal education is to teach students how to learn from experience.”). See generally Margaret Martin Barry, *Reflective Lawyering*, in LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS 145-70 (J.P. Ogilvy, Leah Wortham, & Lisa G. Lerman eds., 2d. ed. 2007).

¹⁴⁵ Timothy W. Floyd, Oren R. Griffin, & Karen J. Sneddon, *Beyond Chalk and Talk: The Law Classroom of the Future*, 38 OHIO N.U. L. REV. 257, 270 (2011).

¹⁴⁶ J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55, 56 (1996); see also *id.* at 55 (noting that journals are used extensively in externship programs).

¹⁴⁷ Harriet N. Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*, 1 T.M. COOLEY J. PRAC. & CLIN. L. 7, 8 (1997).

¹⁴⁸ Cavazos, *supra* note 124, at 29.

¹⁴⁹ *Id.* Reflective journal writing also “supports the externship or internship learning experience by putting an experience into perspective.” *Id.*

combination of the two? Should the journals be graded? If journals are graded, should the grading be norm-referenced or criterion-referenced? How does a teacher make a journal a valid, reliable, and fair assessment? These questions are addressed below.

a. Journals Can Be Formative, Summative, or Both.

Journals can be formative or summative, or they can contain elements of both types of assessments. If a journal is solely formative, it should not be graded, and a teacher should use it only to provide feedback to students and evaluate their progress in developing reflection skills. Conversely, a teacher would typically grade a summative journal and use it solely to measure whether students have met course goals regarding reflection skills.

If a journal is both formative and summative, it has the dual purposes of assigning a grade and providing feedback to the teacher and the student on how well the student is learning reflection skills.¹⁵⁰ When a teacher wants an assessment to be both formative and summative, he or she should first provide the student an opportunity to learn the skill before awarding a grade. According to Professor Roy Stuckey, “[f]eedback should be formative until the student has had an opportunity to study and practice the required task. Some students will demonstrate good practice skills in their first performance, but those who do not should not suffer a grade penalty because other students came into the course with more highly developed skills or knowledge.”¹⁵¹ Accordingly, teachers should not grade the initial journal assignment and should use it only to give students feedback. They then may grade subsequent journals.

Scholars disagree on whether teachers should grade journals.¹⁵² Some suggest that teachers should grade journals to “send an important signal about the importance of this reflective process and make students go about it seriously and reflectively.”¹⁵³ If journals “are not

¹⁵⁰ See Lasso, *supra* note 51, at 78 (“Summative/formative assessments are graded assessments administered prior to the end of the semester so that they provide information to teachers regarding students’ progress toward achieving course learning goals. In addition to a grade, however, these assessments provide students significant feedback to help them develop their learning skills and improve their performance.”).

¹⁵¹ Stuckey, *supra* note 140, at 24-25. See also TEACHING LAW BY DESIGN, *supra* note 37, at 159 (recommending that teachers “[p]rovide students with opportunities to practice meeting criteria before they are graded”).

¹⁵² See SUSKIE, *supra* note 9, at 186 (stating that opinions on whether student reflections can and should be graded “are decidedly mixed”).

¹⁵³ Michael Moffitt, *Lights, Camera, Begin Final Exam: Testing What We Teach In Negotiation Courses*, 54 J. LEGAL EDUC. 91, 98 (2004) (discussing grading of journals in negotiation class); see also Kelley Burton & Judith McNamara, *Assessing Reflection Skills in Law Using Criterion-Referenced Assessments*, 19 LEGAL EDUC. REV. 171, 178 (2009) (“If

graded, some students may reasonably infer that they are not what ‘really matters’ in the course.”¹⁵⁴ Indeed, the teacher of a pass/fail externship course has observed that she “had little leverage to force a higher level of work” in journals and that “students correctly guessed that I would not flunk someone for failing to be conscientious about their journal.”¹⁵⁵

Professor J.P. Ogilvy, on the other hand, chooses to grade externship journals primarily in quantitative terms.¹⁵⁶ He bases his evaluation on the number of journals submitted and whether the journals meet a minimum level of seriousness.¹⁵⁷ Since almost everyone meets the minimum requirements, the journals have little impact on his students’ grades.¹⁵⁸ Professor Ogilvy acknowledges that other teachers may want to use a qualitative grading system for journals “because they believe that students may not take the exercise seriously without the incentive that earning a grade may offer.”¹⁵⁹ He prefers a quantitative system, however, because he perceives difficulties in achieving a valid and reliable scheme for grading journals qualitatively.¹⁶⁰ Others have raised concerns that grading reflective assignments may stifle student candor and encourage students “to write only what they think [teachers] want to hear instead of what they truly think and feel.”¹⁶¹ Thus, a professor must weigh these pedagogical considerations in deciding whether to assign grades to journals or use them only to provide formative feedback to students.¹⁶²

reflective practice is to be valued highly, particularly in the context of legal education where students are highly competitive and motivated by grades, it must be summatively assessed.”); Ross Hyams, *Student Assessment in the Clinical Environment—What Can We Learn From the US Experience?*, 9 INT’L J. CLIN. LEGAL EDUC. 77, 85 (2006) (stating that journals must be graded in order for students to take them seriously); SUSKIE, *supra* note 9, at 186 (“Scores and grades can also be important incentives for students to give careful thought to their reflections.”).

¹⁵⁴ Moffitt, *supra* note 153, at 98. See also Georgina Ledvinka, *Reflection and Assessment in Clinical Legal Education: Do You See What I See?*, 9 INT’L J. CLIN. LEGAL EDUC. 29, 40 (2006) (“If reflection is not to be assessed there must be a risk that some students will view it as less important than assessable work, and therefore potentially expendable.”).

¹⁵⁵ Tarr, *supra* note 138, at 992.

¹⁵⁶ Ogilvy, *supra* note 146, at 101.

¹⁵⁷ *Id.* at 101 & n.104.

¹⁵⁸ *Id.* at 101.

¹⁵⁹ *Id.* at 102.

¹⁶⁰ *Id.* at 102-04.

¹⁶¹ SUSKIE, *supra* note 9, at 186; Moffitt, *supra* note 153, at 99 (stating that students may write “something the teacher will like” and that “the purely reflective ideal of journaling is disrupted if students know their journals will be graded.”).

¹⁶² This question about assigning grades applies to all components of externship pedagogy. A broader discussion weighing the pros and cons of awarding letter grades as part of an assessment regimen is included in Part IV, *infra*.

b. If Journals are Graded, the Scores Should Be Criterion-Referenced.

If a professor chooses to grade journals in a qualitative way, in which points are awarded on other than a pass/fail basis or the number of journals submitted, then the professor should use a criterion-referenced system. As explained in Part II.B.2.b *supra*, criterion-referenced grading is preferable because it evaluates a student's performance in relation to objective criteria that the teacher has identified as indicia of proficiency.¹⁶³ "To judge students as they demonstrate their knowledge and abilities, we must make explicit the criteria for competent performance. If students know the criteria ahead of time, they can strive to meet them in their performance."¹⁶⁴ Thus, to use journals as a tool to assess students' reflective skills, teachers should identify the criteria for a competent reflective journal and provide those criteria to students in advance.¹⁶⁵ Teachers can do this through the use of rubrics.

c. Professors Should Use Rubrics to Make the Assessment of Reflective Journals Valid, Reliable, and Fair.

A journal graded pursuant to a rubric is a reliable assessment because each journal is graded according to the same objective criteria, thus creating consistency in grading.¹⁶⁶ Similarly, a journal scored with a rubric is a fair assessment because the professor has identified in advance the criteria on which he or she will evaluate the journals, and students can write their journals with those criteria in mind.¹⁶⁷

In their book *Introduction to Rubrics: An Assessment Tool To Save Grading Time, Convey Effective Feedback and Promote Student*

¹⁶³ See Rose, *supra* note 71, at 138 (noting that both Carnegie Report and Best Practices Report "favor criteria-referenced grading as a more reliable assessment method because it is based on 'explicit criteria rather than the instructor's gestalt sense of the correct answer or performance'" (quoting BEST PRACTICES REPORT, *supra* note 4, at 245)).

¹⁶⁴ MUNRO, *supra* note 9, at 99.

¹⁶⁵ See WALVOORD, *supra* note 8, at 19 ("A basic principle is that, if you're using a rubric, it should be shared with students before they begin the assignment or test.").

¹⁶⁶ See, e.g., SUSKIE, *supra* note 9, at 139 ("Rubrics make scoring more accurate, unbiased, and consistent. Rubrics ensure that every paper is evaluated using the same criteria."); TEACHING LAW BY DESIGN, *supra* note 37, at 159 ("[W]hen teachers have explicit criteria, such as when using checklists and rubrics, they grade consistently and reliably."); BEST PRACTICES REPORT, *supra* note 4, at 243 (encouraging law professors "to develop and apply explicit grading criteria to minimize the risk of unreliability in assigning grades.").

¹⁶⁷ See, e.g., MUNRO, *supra* note 9, at 142 ("Fairness in assessment dictates that the teacher identify criteria by which she will assess student performance. If the teacher cannot state the criteria for demonstrating competent ability, then students have grounds to complain that the grading is too subjective, if not entirely arbitrary."); Rose, *supra* note 71, at 152 ("Criteria-referenced grading is fair and consistent.").

Learning, Professors Dannelle Stevens and Antonia Levi provide an excellent step-by-step guide for designing rubrics.¹⁶⁸ According to Stevens and Levi, “[r]ubrics are composed of four basic parts in which the professor sets out the parameters of the assignment.”¹⁶⁹ Those four parts, which are set out in a grid, are a task description, a scale, the dimensions of the assignment, and specific criteria for each level of performance.¹⁷⁰

The task description is simply the assignment itself that involves some sort of student “performance,” whether in the form of a paper, a presentation, or a skills demonstration.¹⁷¹ Stevens and Levi recommend placing the task description at the top of the rubric.¹⁷² They find that placing the description there “grabs the students’ attention in a way nothing else can, when placed at the top of what they know will be a grading tool.”¹⁷³

The scale sets out the levels of achievement that students may attain on the assignment, such as “exemplary,” “competent,” or “unacceptable.”¹⁷⁴ “Terms used to describe the level of performance should be tactful but clear.”¹⁷⁵ Some professors use grades or numbers for their levels of achievement, while others use descriptors such as “high level,” “middle level,” and “beginning level.”¹⁷⁶ Stevens and Levi recommend limiting a rubric to just three levels of performance when initially constructing it, and, if necessary, expanding it to include additional levels after it has been used on an actual assignment.¹⁷⁷

The dimensions of the assignment are the skills and knowledge that are required and are being assessed.¹⁷⁸ “Dimensions should actually represent the type of component skills students must combine in a successful scholarly work, such as . . . content, technique, citation, examples, analysis, and a use of language appropriate to the occasion.”¹⁷⁹ Dividing the assignment into such distinct dimensions allows

¹⁶⁸ INTRODUCTION TO RUBRICS, *supra* note 82, at 5-15. For other helpful explanations of the process for creating rubrics, see Sparrow, *supra* note 82, at 32-37; SUSKIE, *supra* note 9, at 148-151. Resources for creating rubrics also are available online. See, e.g., Legal Writing Institute, Grading Rubrics (2006), http://www.lwionline.org/grading_rubrics.html; Georgia State University, Sample Rubrics, <http://www.gsu.edu/ctw/sample-rubrics.html>.

¹⁶⁹ INTRODUCTION TO RUBRICS, *supra* note 82, at 5.

¹⁷⁰ *Id.* at 5-6.

¹⁷¹ *Id.* at 6.

¹⁷² *Id.*

¹⁷³ *Id.* at 7. For ease of reading and grading, Stevens and Levi also recommend that rubrics should not exceed one page. *Id.*

¹⁷⁴ *Id.* at 6, 8.

¹⁷⁵ *Id.* at 8.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 6, 9-10.

¹⁷⁹ *Id.* at 10.

“the components of the task [to be] clearly identified.”¹⁸⁰

Finally, the performance criteria set out the qualities that comprise each level on the scale. For example, in a scale ranging from “advanced level” to “beginning level,” the rubric should describe the elements of a performance that reaches the level of “advanced” and the elements of performances that fall short of “advanced.”¹⁸¹ The performance elements should be described as specifically as possible so students will be able to see the areas in which they are doing well and the areas in which they need improvement.¹⁸² For the lower levels of the scale, Stevens and Levi recommend articulating performance criteria that describe “the most common ways in which students fail to meet the highest level of expectations.”¹⁸³

Applying these guidelines, I have designed the following rubric for assessing a student’s externship journal:

Task **Students shall write a two-page journal entry for each work week reflecting on their externship experiences and observations.**
Description:

	Excellent	Competent	Needs Work
Professionalism: Punctuality	<input type="checkbox"/> Submitted by deadline or requested extension for good cause prior to deadline.		<input type="checkbox"/> Submitted late.
Professionalism: Compliance w/ Instructions	<input type="checkbox"/> Two full pages in length. <input type="checkbox"/> Lists week for which written.		<input type="checkbox"/> Less than two full pages. <input type="checkbox"/> Doesn't list week for which written.
Quality of Reflection ¹⁸⁴	<input type="checkbox"/> Journal is introspective; includes meaningful personal responses and reactions to externship experiences, thinking deeply about issues raised, insights gained, and developments or changes in writer’s own knowledge, values, and beliefs	<input type="checkbox"/> Journal explores externship experiences with sufficient depth to allow teacher to respond with comments or questions that prompt additional insight or thought. <input type="checkbox"/> Journal includes some analysis and evaluation of experience, but	<input type="checkbox"/> Minimal compliance with journal requirement; for example, merely lists tasks performed, summarizes case law or legal doctrine researched, or cuts and pastes from an externship work product such as a memo, brief, or case summary.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 10-11.

¹⁸² *E.g.*, Sparrow, *supra* note 82, at 9.

¹⁸³ INTRODUCTION TO RUBRICS, *supra* note 82, at 11.

¹⁸⁴ In developing these criteria for assessing reflection, I drew guidance from the following sources: Cavazos, *supra* note 124, at 29-30 (reflection on action); Katz, *supra* note 147, at 38-39 (complexity); *id.* at 19 (sufficient depth to allow teacher response); *id.* (minimal compliance; listing tasks performed); Ogilvy, *supra* note 146, at 59-60 (introspection); *id.* at 77 (self-assessment); SUSKIE, *supra* note 9, at 194 (meaningful personal responses).

	<p>due to externship experiences.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Journal shows complexity; writer considers others' points of view and evaluates experiences from more than just his or her own perspective. <input type="checkbox"/> Journal shows "reflection on action"; writer applies principles or knowledge learned from externship experience, reading assignment, or class discussion to a new situation or explores how such knowledge could be applied to a new situation. <input type="checkbox"/> Journal shows self-assessment: writer evaluates own strengths/weaknesses, contemplates what writer still needs to learn. 	<p>considers the experience from only the writer's point of view.</p> <ul style="list-style-type: none"> <input type="checkbox"/> Journal makes some connection between prior knowledge and new knowledge gained from externship experience. <input type="checkbox"/> Journal lacks self-assessment; does not consider writer's own strengths and weaknesses. 	<ul style="list-style-type: none"> <input type="checkbox"/> Merely describes externship experiences without any analysis or critical evaluation of the experiences. <input type="checkbox"/> Lacks complexity and self-assessment. <input type="checkbox"/> Makes no connections between prior knowledge and new knowledge gained from externship.
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As the grid indicates, the task description is that students “shall write a two-page journal entry for each work week reflecting on their externship experiences and observations.” The rubric then lists the three dimensions of student learning that are being assessed.¹⁸⁵ There is a scale that includes three possible levels of performance: “excellent,” “competent,” and “needs work.” Each level of performance then lists the specific criteria that warrant a rating of “excellent,” “competent,” or “needs work” for each dimension of the journal.

In addition to assessing reflection, teachers may use journals to assess other more specific learning goals, such as students’ understanding of professional values like honesty, diligence, or competence, or their understanding of “equal access to justice” and the lawyer’s professional duty to promote access to justice. If teachers seek to assess such specific goals, they can assign students to write directed journals addressing the identified topics and then assess the journals pursuant to a rubric designed to evaluate the students’ achievement of those specific goals.

¹⁸⁵ I use journals to assess students’ learning of professional values such as punctuality and compliance with instructions, in addition to assessing reflection.

2. Using Student Timesheets as an Assessment Tool

Externships often require students to keep timesheets.¹⁸⁶ Students in my course must submit a timesheet for each work week that includes a description of the tasks performed, while still maintaining workplace confidentiality. While timesheets document students' performance of work hours required to complete the externship, they also foster the development of professional skills and values such as time management, good planning, and business management.¹⁸⁷ "By maintaining timesheets, students come to understand the time it takes to accomplish specific tasks, begin the habit of keeping accurate records, and create business records for the purposes of collecting attorney fees[.]"¹⁸⁸

As with any other assessment, professors using timesheets as an assessment tool must decide whether the purpose of the timesheet is formative or summative, and whether timesheets should be graded. If professors grade timesheets, they should use a criterion-referenced system and should not grade the first timesheet submitted, so that students may receive formative feedback before they receive a grade. A rubric should be used to ensure reliability and fairness. Following the recommendations of Professors Stevens and Levi, below is a simple rubric I designed for assessing student timesheets:¹⁸⁹

¹⁸⁶ SANTACROCE & KUEHN, *supra* note 32, at 23 (survey data reflecting that 83.5% of externship courses use student time logs); *see also, e.g.*, Maurer & Cole, *supra* note 5, at 153 (externship courses can require students "to submit contemporaneous time records identifying tasks performed and the amount of time spent in order to ensure that the student is performing real legal tasks").

¹⁸⁷ Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. CIN. L. REV. 897, 946-48 (2013) (timesheets can be used to teach law students time-management skills).

¹⁸⁸ Kathleen M. Burch & Chara Fisher Jackson, *Creating the Perfect Storm: How Partnering with the ACLU Integrates the Carnegie Report's Three Apprenticeships*, 3 J. MARSHALL L. J. 51, 90 (2009); *see also* BEST PRACTICES REPORT, *supra* note 4, at 189 (clinical courses should teach office procedures).

¹⁸⁹ This rubric can be used for both graded and ungraded timesheets.

Task Description: **Students shall complete and submit a timesheet for each week of externship work.**

	Competent	Needs Work
Professionalism: Punctuality	<input type="checkbox"/> Submitted by deadline or requested extension for good cause prior to deadline.	<input type="checkbox"/> Submitted late.
Professionalism: Compliance w/ Instructions	<input type="checkbox"/> Correctly states date of work week. <input type="checkbox"/> Signed by supervisor. <input type="checkbox"/> Signed by student. <input type="checkbox"/> Time calculated in tenths of hour. <input type="checkbox"/> Accurate time calculations. <input type="checkbox"/> Provides sufficient detail regarding work performed. <input type="checkbox"/> Uses time codes provided.	<input type="checkbox"/> Does not correctly state date of work week. <input type="checkbox"/> Not signed by supervisor. <input type="checkbox"/> Not signed by student. <input type="checkbox"/> Time not calculated in tenths of hour. <input type="checkbox"/> Inaccurate time calculations. <input type="checkbox"/> Does not provide sufficient detail regarding work performed. <input type="checkbox"/> Does not use time codes provided.
Professionalism: Maintaining Workplace Confidentiality	<input type="checkbox"/> Does not include confidential workplace information.	<input type="checkbox"/> Includes confidential workplace information.

3. *Using Externship “Rounds” as an Assessment Tool*

The *Best Practices Report* recommends accomplishing externship objectives through “a combination of assigned readings (about professionalism and other topics to be studied), classroom discussions, supervisors who will take time to explain and answer questions, and structured systems that require students to reflect on their experiences.”¹⁹⁰ Accordingly, many externship courses include seminar classes during which students participate in “rounds.”¹⁹¹ In clinical legal education, “rounds” are “facilitated classroom conversations” in which students “discuss with each other their cases or projects,” “apply and test lawyering theory in the real world[,]” and “extract theory from their and their classmates’ experiences.”¹⁹² This peer-to-peer dialogue reinforces students’ “professional reasoning and ethical decision-making”¹⁹³ and facilitates students’ learning from experience.¹⁹⁴

¹⁹⁰ BEST PRACTICES REPORT, *supra* note 4, at 200.

¹⁹¹ See, e.g., SANTACROCE & KUEHN, *supra* note 32, at 24 (survey data indicating that 87.9% of externship courses include a classroom component).

¹⁹² Susan Bryant & Elliot S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?*, 14 CLIN. L. REV. 195, 196 (2007); see also Bryan L. Adamson, Bradford Colbert, Kathy Hessler, Katherine Kruse, Robert Kuehn, Mary Helen McNeal, Calvin Pang, & David Santacroce, *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353, 365 (2012) (defining rounds as “a special type of seminar class or group session designed to generate student discussion of practice, policy, or ethical issues that arise in their cases, to help students draw general lessons about law or lawyering from their specific cases, and to build camaraderie by learning about each others’ cases and from each other”).

¹⁹³ Bryant & Milstein, *supra* note 192, at 196.

Because rounds enable this guided reflection on students' work experiences, they give students "an ideal opportunity to explore the moral, ethical, and professional dilemmas that lawyers regularly encounter."¹⁹⁵ Through rounds, students can discuss and learn "the fundamental values of the profession, and observe and adopt the professional norms that will guide their careers[.]"¹⁹⁶ Thus, teachers can use rounds as a tool to assess whether students are learning the fundamental values of the legal profession.

To use rounds as an assessment tool, professors first should give students clear instructions in advance regarding the topics to discuss.¹⁹⁷ If externship professors seek to assess the learning of professional values, then they should direct students to address professional values in their presentations.¹⁹⁸ For example, teachers could instruct students to discuss observations from their externships regarding the presence or absence of particular professional values, such as honesty, civility, competence, or promoting access to justice. Students also could be asked to explain the impact that the presence or absence of those professional values had on the experience discussed. Furthermore, if professors wish to assess their students' own demonstration of professional values, they can assess the students' preparation for both rounds and general classroom discussions. Below is a simple rubric I have created to evaluate these qualities:

¹⁹⁴ Adamson, *et al.*, *supra* note 192, at 365-66. In addition, "[s]tudents report liking rounds and identify these conversations as a major source of learning." Bryant & Milstein, *supra* note 192, at 199.

¹⁹⁵ Adamson, *et al.*, *supra* note 192, at 366 (quoting Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240, 243 (2009)). *See also, e.g.*, James H. Backman, *Where Do Externships Fit? A New Paradigm is Needed: Marshaling Law School Resources to Provide an Externship for Every Student*, 56 J. LEGAL EDUC. 615, 637-38 (2006) (The externship seminar class "guides the student to critically reflect about the externship experience and typically includes skill development, perspectives on the practice of law, professional responsibility training, professional development for the student, career choices, and a focus on self-directed learning.").

¹⁹⁶ Adamson, *et al.*, *supra* note 192, at 366.

¹⁹⁷ *See, e.g.*, Bryant & Milstein, *supra* note 192, at 228 (teachers shape rounds conversations by setting ground rules, selecting topics, and defining preparation requirements, or asking students to set these parameters).

¹⁹⁸ *See, e.g., id.* (noting that learning goals will determine the shape that rounds take). For an example of an in-class exercise I use to help students identify fundamental values of the legal profession, *see* Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240, 254-55 (2009) (describing "the 'good' lawyer" exercise). Teachers also can use rounds to assess other course goals by directing students to address other topics in their rounds presentations.

Task Description: At the beginning of each seminar class, students will present an externship experience during a rounds discussion. Students should be prepared to:

- a. Discuss a specific externship task or experience;**
- b. State any difficulties or problems (if any) associated with the task or experience;**
- c. Identify the presence or absence of a professional value in conjunction with the externship experience presented;**
- d. Explain the effect that the presence or absence of that professional value had on the externship experience.**

	Competent	Needs Work
Learning Professional Values:	<ul style="list-style-type: none"> <input type="checkbox"/> Able to identify the presence or absence of a professional value in conjunction with an externship experience. <input type="checkbox"/> Able to explain the effect that the presence or absence of that professional value had on the externship experience being discussed. 	<ul style="list-style-type: none"> <input type="checkbox"/> Unable to identify the presence or absence of a professional value in conjunction with an externship experience. <input type="checkbox"/> Unable to explain the effect that the presence or absence of a professional value had on the externship experience being discussed.
Professionalism: Preparation for Rounds Discussion	<ul style="list-style-type: none"> <input type="checkbox"/> Was prepared to present an externship experience during rounds. <input type="checkbox"/> Presented the externship experience in a logical and organized manner. <input type="checkbox"/> Stated difficulties or problems (if any) associated with the externship task or experience. 	<ul style="list-style-type: none"> <input type="checkbox"/> Not prepared to present externship experience during rounds. <input type="checkbox"/> Did not present the externship experience in a logical and organized manner. <input type="checkbox"/> Unable to state whether difficulties or problems were associated with the externship task or experience.

4. Using Mid-Semester Meetings as an Assessment Tool

Another common component of externship courses is an individual meeting between the externship teacher and each extern student at some point during the semester. The purpose of the meeting typically is to evaluate the progress of the externship and ensure that the student is having a good educational experience.¹⁹⁹ However, teachers can use these meetings as more than just a status check; they also can use them to assess students' development of aspects of professional identity, such as the capacity to work well with a supervisor, the

¹⁹⁹ See, e.g., BEST PRACTICES REPORT, *supra* note 4, at 205 (recommending frequent interaction between students and externship faculty, through means such as individual meetings, tutorials, and seminars); Bernadette T. Feeley, *Guiding Law Students Through For-Profit Field Placements*, 19 CLIN. L. REV. 57, 60 (2012) (“Externship clinicians and students usually meet individually before and during the externship to discuss the student’s goals, progress, and other topics for reflection.”). Often, the individual meetings occur at mid-semester. See Laurie Barron, *Learning How To Learn: Carnegie’s Third Apprenticeship*, 18 CLIN. L. REV. 101 (2011) (discussing use of mid-semester meetings in externship course). See generally Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255 (2004) (discussing pedagogical value of student-faculty conferences).

ability to be reflective, and the skill of preparation.²⁰⁰ Externship students sometimes must take the initiative to obtain sufficient supervision from their field supervisors, and “the ability to obtain guidance, direction, and wisdom from any supervisor is a skill that must be developed.”²⁰¹ The individual meeting between the student and externship teacher is a means to measure students’ development of these capabilities.²⁰²

To serve this assessment purpose, the meeting must be properly structured.²⁰³ Teachers should tell students in advance the meeting’s purpose and if there are any specific topics they should address. If the student is responsible for setting the agenda and determining the content of the meeting, rather than merely responding to questions from the teacher, then the student should be notified of these expectations in advance.²⁰⁴ The student’s performance should be measured against objective criteria that align with the learning goals the meeting is intended to achieve. Below is a rubric I created for such meetings that is designed to assess development of students’ skills of preparation, self-reflection, and ability to work with supervisors:

²⁰⁰ See Barron, *supra* note 199, at 105.

²⁰¹ *Id.* at 111.

²⁰² *Id.* at 112 (“[A]n institutionalized externship program provides the only opportunity within the law school curriculum for a faculty member to help a law student navigate this supervisory relationship with an outside lawyer or judge.”); see also *id.* (“The mid-semester process provides an exceptional opportunity for the faculty member, who does not bear the burden of any responsibility for the legal work, to help the student reflect on this experience.”).

²⁰³ Requiring a structured process for a mid-semester meeting enables faculty members to “model and teach students to be deliberate and thoughtful in their interactions with their [field] supervisors.” *Id.* at 118. This meeting process also can model for students how they should interact with others when they serve as supervisors in the future.

²⁰⁴ See *id.* at 119-20 (stating that students should have primary responsibility for determining content of mid-semester meetings to emphasize self-directed learning); Wellford-Slocum, *supra* note 199, at 312 (“Explicitly encouraging students to share in the responsibility of evaluating their work also strengthens their intrinsic motivation to excel because students are thereby more inclined to internalize their role as the ultimate owner of the work product.”). See also Barron, *supra* note 199, at 120 (asserting that a student’s preparation for mid-semester meeting reinforces development of ongoing self-assessment).

Task Description: Each student shall participate in a mid-semester meeting with the Externship Director to evaluate the status and progress of his or her externship.

	Competent	Needs Work
Skill of Self-Reflection	<ul style="list-style-type: none"> <input type="checkbox"/> Student is able to identify strengths in his or her externship performance. <input type="checkbox"/> Student is able to identify weaknesses/areas for improvement in his or her externship performance. <input type="checkbox"/> Student is able to identify knowledge that has been useful in externship. <input type="checkbox"/> Student is able to identify gaps in knowledge where he or she needs to know more. <input type="checkbox"/> Student is able to formulate “action items” to implement after the meeting to address weaknesses in externship performance or gaps in knowledge. 	<ul style="list-style-type: none"> <input type="checkbox"/> Student is unable to identify strengths in his or her externship performance. <input type="checkbox"/> Student is unable to identify weaknesses/areas for improvement in his or her externship performance. <input type="checkbox"/> Student is unable to identify knowledge that has been useful in externship. <input type="checkbox"/> Student is unable to identify gaps in knowledge where he or she needs to know more. <input type="checkbox"/> Student is unable to formulate “action items” to implement after the meeting to address weaknesses in externship performance or gaps in knowledge.
Professionalism: Working With A Supervisor	<ul style="list-style-type: none"> <input type="checkbox"/> Student is able to identify difficulties, if any, in relationship with field supervisor, including student’s own responsibility for any such difficulties. <input type="checkbox"/> Student is able to identify “action items” to implement (if applicable) after meeting to address difficulties in relationship with field supervisor. 	<ul style="list-style-type: none"> <input type="checkbox"/> Student is unable to state if there are any difficulties in relationship with field supervisor, including student’s own responsibility for any such difficulties. <input type="checkbox"/> Student is unable to identify “action items” to implement (if applicable) after meeting to address difficulties in relationship with field supervisor.

5. *Using Final Essays as an Assessment Tool*

Externship courses often require students to write a final essay at the conclusion of their externship reflecting on the overall experience.²⁰⁵ I require students to write an essay ranging from five to seven pages, and I give them great flexibility in their choice of topics. While I offer suggested topics that students may address if they choose, I stress that the primary purpose of the final essay is for them to assess their own learning and critically evaluate their externship experience.²⁰⁶

²⁰⁵ E.g., Carl J. Circo, *An Educational Partnership Model for Establishing, Structuring, and Implementing a Successful Corporate Counsel Externship*, 17 CLIN. L. REV. 99, 130 (2010) (stating that “[i]n keeping with common externship practice,” the program requires a final reflection paper); Jaszi, *et al.*, *supra* note 128, at 423 (stating that the externship course requires a final paper that is either reflective or research-based).

²⁰⁶ Below is my list of suggested topics for the final essay. I instruct students that they may address one, all, or any combination of these topics:

1. What have you learned from the externship experience? How has your extern-

Asking students to self-assess in this manner fosters their development as reflective practitioners because it helps them “see how they progress through the four steps of learning: experience, reflection, theory, and application.”²⁰⁷ The self-assessment process requires them “to focus on the key competencies, engage in self-reflection, develop an awareness of their limitations, and identify a plan for improvement.”²⁰⁸ Thus, teachers can use final essays in which students assess themselves and their externship experience to measure their development of the skill of self-reflection. Below is a rubric I have created to assess both the reflective²⁰⁹ and professional aspects of students’ final essays:

-
- ship experience contributed to your overall legal education? What aspects of your legal education best prepared you for your externship?
 2. Review the Learning Agenda that you completed at the beginning of the semester. Did you meet the educational goals that you set for yourself? Why or why not?
 3. Now that you have completed the externship, are there new personal goals that you would like to set for yourself, either to correct deficiencies in your legal skills or to continue to improve certain skills in which you found yourself proficient? If so, describe your new goals and the steps that you will need to take to accomplish them.
 4. What is the mission of your placement site? What is it trying to accomplish? Does it accomplish this mission? Why or why not?
 5. What recommendations for improvement, if any, would you make regarding the operations and procedures of the office where you served as an extern? What advice would you give to future externs at this placement site?
 6. Has your externship experience made you want to do public service work (either as a career or on a *pro bono* basis), or has it dissuaded you from engaging in public service work? Why or why not?
 7. Could you be personally and professionally satisfied working for your externship placement after graduation? Why or why not?
 8. How does your externship experience compare to your previous work experiences?
 9. Describe any ethical quandaries that arose for you or others at your placement. How were those questions resolved? Would you have resolved the questions differently? If so, how so and why?

Conversely, if professors want to use a final essay to assess other learning goals, then they can be more directive in the assignment and instruct students to write about a specific topic that will allow the teacher to evaluate the achievement of that goal.

²⁰⁷ Foxhoven, *supra* note 118, at 345.

²⁰⁸ *Id.* See also, e.g., Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513, 539 (2009) (describing General Practice Skills course in which students evaluate how well the course helped them become practice-ready and learn the skills and values used by attorneys in different areas of practice).

²⁰⁹ See also, e.g., Burton & McNamara, *supra* note 153, at 187 (describing and providing sample rubric used for assessing student reflection).

Task Description: Students shall write a five to seven page final essay reflecting on the overall externship experience.

	Excellent	Competent	Needs Work
Professionalism: Compliance w/ Instructions	<ul style="list-style-type: none"> <input type="checkbox"/> Submitted by deadline or sought extension for good cause prior to deadline. <input type="checkbox"/> Five to seven pages in length. 		<ul style="list-style-type: none"> <input type="checkbox"/> Submitted late. <input type="checkbox"/> Less than five pages in length.
Professionalism: Good Written Communication	<ul style="list-style-type: none"> <input type="checkbox"/> Well-organized in a manner appropriate to the subjects discussed; clear and logical structure; flows naturally from one topic to the next. <input type="checkbox"/> No errors in grammar or spelling. 	<ul style="list-style-type: none"> <input type="checkbox"/> Is organized and has a structure that reader can follow; some relationship and connection between topics discussed. <input type="checkbox"/> A few errors in grammar or spelling. 	<ul style="list-style-type: none"> <input type="checkbox"/> Lacks organization and structure; written in a “stream of consciousness” style; no flow between topics discussed. <input type="checkbox"/> Several errors in grammar or spelling.
Quality of Reflection	<ul style="list-style-type: none"> <input type="checkbox"/> Essay is introspective and shows meaningful critique and evaluation of externship experience. <input type="checkbox"/> Essay shows meaningful self-assessment. Student explores with depth what student has learned from externship, evaluates student’s own strengths and weaknesses, and contemplates what student still needs to learn. <input type="checkbox"/> Essay shows “reflection on action”; student applies principles or knowledge learned from externship to a new situation or explains how such knowledge can be applied to a new situation. 	<ul style="list-style-type: none"> <input type="checkbox"/> Essay includes some evaluation of externship experience, but lacks depth or meaningful critique. <input type="checkbox"/> Essay includes some self-assessment, but does not discuss in depth what student has learned, what student still needs to learn, and student’s own strengths and weaknesses. <input type="checkbox"/> Essay makes some connection between prior knowledge and new knowledge gained from externship experience. 	<ul style="list-style-type: none"> <input type="checkbox"/> Essay merely describes externship experience without any analysis or critical evaluation; for example, merely summarizes tasks performed or legal doctrines researched during the semester. <input type="checkbox"/> Essay lacks self-assessment of student’s own strengths and weaknesses, what student has learned, and what student still needs to learn. <input type="checkbox"/> Essay makes no connections between prior knowledge and new knowledge gained from externship experience.

C. Gathering and Using Data From Externship Assessments To Improve Teaching

Once an externship teacher has administered assessments, he or she then must analyze the results to determine what students are and

are not learning. As Professor Sparrow explains, rubrics facilitate this evaluation:

To improve student learning, it is helpful to understand more completely where students are mastering material and where they are struggling. Using rubrics allows us to do this. When we analyze how students meet explicit criteria, we can assess our own teaching and identify where we need to change.²¹⁰

In analyzing whether students are meeting the criteria set out in rubrics, externship professors can look for trends and outliers in student performances on the various assessments.²¹¹ Identifying such patterns can reveal the concepts that students have mastered and the areas in which they still need improvement. For example, if comparing student journals to the journal rubric reveals that many students are simply summarizing their externship experiences rather than distilling insights and lessons from them, then this indicates the students have not mastered the skill of self-reflection. Similarly, if applying the “rounds” rubric shows that students are not able to identify professional values, then this indicates that they have not learned those values.

When the assessment data reveal deficits in student learning, externship professors should examine their methods for teaching those concepts and consider whether changes in pedagogy are warranted. Such changes can include revisions in syllabi, emphasizing different skills, modifying assignments, changing teaching techniques, or some combination of pedagogical changes.²¹² With respect to teaching techniques, teachers can use the assessment data to make changes both during the course, *i.e.*, to “re-teach” the concept before the course ends using a different approach, and to change the teaching method when the concept is taught in future courses. In evaluating teaching methods, it also can be helpful for a professor to consider the teaching methods used for concepts that students learned well, and the methods used for concepts with which students are still struggling.²¹³ For example, if the assessment data indicate that students learned the fun-

²¹⁰ Sparrow, *supra* note 82, at 27. See also SUSKIE, *supra* note 9, at 139 (“Rubrics improve feedback to faculty and staff. If a number of students aren’t demonstrating understanding of a particular concept or skill, rubrics bring this to your attention.”).

²¹¹ TEACHING LAW BY DESIGN, *supra* note 37, at 162 (encouraging teachers to look for trends in scores); Jessica Clark & Christy DeSanctis, *Toward a Unified Grading Vocabulary: Using Rubrics In Legal Writing Courses*, 63 J. LEGAL EDUC. 3, 20 (2013) (explaining how legal writing teachers can identify trends in data produced by rubrics).

²¹² See, e.g., Victoria L. VanZandt, *Creating Assessment Plans for Introductory Legal Research and Writing Courses*, 16 LEGAL WRITING: J LEGAL WRITING INST. 313, 352 (2010). The classroom assessment data also may be used for program or institutional assessment. *Id.*

²¹³ See, e.g., Clark & DeSanctis, *supra* note 211, at 20-21.

damental values of the legal profession, and the teacher used a simulation or a small-group exercise to teach those concepts, then the teacher might consider using a similar technique to teach other concepts that the data indicate students did not learn.

In sum, the most important point about gathering assessment data is a simple one—externship professors must use the data to improve student learning. If externship teachers use assessment tools in their courses but then fail to compile and analyze the data those tools generate, “then the whole assessment plan has failed its purpose.”²¹⁴

III. POTENTIAL OBSTACLES TO IMPLEMENTING ASSESSMENT MEASURES

As with any suggested change in pedagogy, externship teachers should consider and address the potential obstacles that may arise if they implement assessment methods in their courses. Others have written extensively about, and responded to, the objections that law professors opposed to assessment have raised.²¹⁵ Rather than reiterate those discussions here, which is beyond the scope of this Article, I will instead address some of the primary concerns about course-level assessment that might arise in the externship context.

A. Time and Resource Constraints

One of the primary concerns about implementing course-level assessment in law school courses is lack of time and resources.²¹⁶ If a professor is not currently using assessment measures in a course, then it will take an initial investment of time to create assessments such as in-class exercises, out-of-class assignments, and rubrics.²¹⁷ However, this expenditure of time is justified because student assessment “provides the feedback for students that is integral to teaching and learn-

²¹⁴ VanZandt, *supra* note 212, at 352.

²¹⁵ See, e.g., Mary A. Lynch, *An Evaluation of Ten Concerns About Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976 (2012); MUNRO, *supra* note 9.

²¹⁶ E.g., Hill, *supra* note 23, at 668 (“The notion of additional formative assessment requirements has met some resistance given the perceived increased workload and time commitment for faculty.”); Lynch, *supra* note 215, at 994 (“[I]dentifying and articulating objectives to be assessed will be time consuming for faculty unaccustomed to the challenge of precisely articulating what their course or the curriculum achieves in terms of student learning.”); Moffitt, *supra* note 153, at 99 (stating that “grading journals requires considerable time and effort”); Roberts, *supra* note 16, at 467 (citing “time and resources constraints” as barriers to assessment); Sparrow, *supra* note 82, at 26 (“It is true that designing a rubric can take considerable time and energy.”).

²¹⁷ E.g., Hill, *supra* note 23, at 677 (noting initial “start-up costs” associated with adding formative assessments to courses); MUNRO, *supra* note 9, at 157 (“No one can say that a good program of classroom assessment . . . will not take more time, because we are comparing it to a system in which assessment is almost nonexistent.”).

ing.”²¹⁸ According to Professor Munro, the “benefits and satisfaction [of assessment] will drive the effort in spite of any additional time involved.”²¹⁹

In addition, a professor’s initial investment of time in creating assessment measures is repaid by increased efficiency over time. Professor Sparrow reports that, after using rubrics for several years, she is “much more efficient at modifying them for a particular assignment, and that the grading time is reduced.”²²⁰ Her colleague recounted a similar experience, commenting that, “while the initial investment of time is high, that time is worth it. Because I make the rubric well before grading, I gain time management flexibility. And the time spent grading each paper is greatly reduced.”²²¹ Externship teachers can reap these same rewards by using rubrics.

B. Academic Freedom

Concerns about academic freedom also pose potential obstacles to the use of course-level assessment.²²² As Professor Lynch observes,

²¹⁸ MUNRO, *supra* note 9, at 156.

²¹⁹ *Id.* at 157. Evidence-based research supports Professor Munro’s assertion. In a recent empirical study, Professors Carol Springer Sargent and Andrea Curcio found that using formative assessments that provided regular feedback to students improved student performance on a cumulative final exam. Sargent & Curcio, *supra* note 64. The study compared student performance in two second-year Evidence courses taught by the same professor using the same casebook. *Id.* at 385-86. One course served as the control group, while the other served as the intervention group. *Id.* at 385. The control group was taught using a problem method supplemented by case analysis, and it had a cumulative final exam that counted as the entire course grade. *Id.* The intervention group was taught using a problem method supplemented by case analysis, but it also was given “a series of formative assessments, including five ungraded quizzes and a graded midterm.” *Id.* After the quizzes and mid-term, the students in the intervention group “were given model answers and grading rubrics and were asked to engage in reflective exercises to help them calibrate their comprehension and prepare for the cumulative final exam[,]” which counted for 83% of the course grade. *Id.* at 386.

The final exams given to the control group and the intervention group had eleven short-answer questions in common. *Id.* at 389. The researchers used the scores on the eleven common questions to compare the performances of the two groups. *Id.* After controlling for several variables, the researchers found that the scores of the intervention group were about half a letter grade higher than the scores of the control group. *Id.* at 391. Thus, the comparison demonstrated that “formative assessments improved performance for a majority of students taking a second year Evidence course.” *Id.* at 394. Additional data analysis showed that the performance benefit “inured to students with both above and below the median law school first year grades.” *Id.*

²²⁰ Sparrow, *supra* note 82, at 28.

²²¹ *Id.* See also Hill, *supra* note 23, at 677 (noting that time concerns are reduced as professors become more proficient in assessment techniques and build on prior assignments); Sargent & Curcio, *supra* note 64, at 400 (while drafting formative assessment measures “initially takes a few hours, those materials do not need updating each term”).

²²² See, e.g., Duncan, *supra* note 15, at 609 (“Some faculty members object to assessment because they think it will endanger their academic freedom or be used to blame individual professors unfairly.”).

concerns about asking professors to identify and assess student learning outcomes “appear to be driven by fear that this process will lead to the loss of academic freedom and the imposition of uniform methods of teaching, uniform selection of classroom content and assignments, and uniform evaluation and grading rubrics.”²²³ Without a doubt, academic freedom is a crucial component of legal education, and it must be preserved and protected. While a comprehensive discussion of academic freedom is beyond the scope of this Article, encouraging law professors to implement course-level assessment does not violate the tenets of academic freedom.

Asking professors to articulate the knowledge or skills they want their students to acquire, and to measure whether their students have achieved those goals, does not dictate the content of one’s classroom, the topics one covers, or the teaching methods one uses. Professors remain free to decide the course objectives, course coverage and materials, and teaching strategies. They maintain the freedom to have rigorous classes with high expectations for students, engage students with complex or controversial ideas, exercise their independent judgment, and employ creative and innovative teaching techniques.²²⁴ Assessment does not dictate the learning outcomes that professors choose or the measures that professors use to evaluate their achievement. Indeed, those decisions must be made by the externship professor, not the faculty, the law school administration, a state legislature, or an accrediting agency. Assessment merely asks professors to be intentional about the goals for their teaching, communicate those goals to their students, and measure whether students are actually accomplishing those goals.²²⁵ Thus, this process is not contrary to aca-

²²³ Lynch, *supra* note 215, at 990.

²²⁴ *E.g., id.* at 993.

²²⁵ The Association of American Colleges and Universities has indicated that assessment and academic freedom are consistent with one another:

Faculty are responsible for establishing goals for student learning, for designing and implementing programs of general education and specialized study that intentionally cultivate the intended learning, and for assessing students’ achievement. . . . Academic freedom is necessary not just so faculty members can conduct their individual research and teach their own courses, but so they can enable students—through whole college programs of study—to acquire the learning they need to contribute to society.

WALVOORD, *supra* note 8, at 8 (quoting Association of American Colleges and Universities’ Board of Directors Statement on Academic Freedom and Educational Responsibility (2006)). Other scholars also have concluded that assessment and academic freedom are compatible. For example, Professor Steven Friedland contends that

[t]he imposition of learning outcomes does not impact either the spirit or letter of academic freedom, no matter how broadly it is painted. . . . Under a system of directed outcomes, academic freedom still exists—particularly in the way the courses are presented, from materials chosen, to teaching methodologies, to assessment formats. In essence, institutional goals can be legitimately implemented on a course-by-

ademic freedom, which has never been unlimited and which “is not the freedom to do whatever you want with your students.”²²⁶

C. Student Objections to Assessment

Student resistance presents another potential barrier to course-level assessment. Students may perceive the assignment of formative assessments as creating more work for them.²²⁷ As Professor Munro notes, “[m]any students have become accustomed to nonparticipation by years of education that consisted of passive learning and standardized exams.”²²⁸ Law students who are used to studying appellate decisions via the Socratic method and having a single end-of-the-semester exam “may balk when first presented with participatory forms of learning and performance-based assessment of that learning.”²²⁹

Student resistance, however, should not block the implementation of formative course-level assessment. As noted above, empirical evidence demonstrates that formative assessments improve law-student learning,²³⁰ and numerous studies from other disciplines “suggest that students learn better if they are given multiple assessments and feedback throughout the semester.”²³¹ Moreover, at least one study of law students found that they responded positively to the use of multiple assessments, and “a significant majority of the students believed that the various assessments helped them learn.”²³² Such evidence provides strong support for the use of course-level assessment. Thus, the solution to student resistance is not to retreat from assessment, but “to forge ahead with learning that involves the student, encouraging student performance which demonstrates what they know judged according to explicit criteria. Students learn quickly to like and appre-

course basis for the overall advancement of the law school.

Steven I. Friedland, *Outcomes and the Ownership Conception of Law School Courses*, 38 WM. MITCHELL L. REV. 947, 964-65 (2012). See also Denise S. Smith & Michael A. Katz, *Academic Freedom in an Age of Assessment and Accountability*, 22 MIDWEST L.J. 1, 28 (2008) (discussing harmony of assessments and academic freedom).

²²⁶ Lynch, *supra* note 215, at 993.

²²⁷ *Id.* at 1011.

²²⁸ MUNRO, *supra* note 9, at 165.

²²⁹ *Id.* See also Lynch, *supra* note 215, at 1011 (noting professors’ anecdotal reports of student “pushback for introducing expectations for performance earlier than the final exam”).

²³⁰ Sargent & Curcio, *supra* note 64.

²³¹ Curcio, *supra* note 105, at 160.

²³² *Id.* at 161. Students in the study also “noted that the variety of assessments allowed them an opportunity to learn from their mistakes and improve, and many students liked the fact that their grade did not depend upon a single day’s performance.” *Id.* at 170-71 (internal footnotes omitted). See also Sargent & Curcio, *supra* note 64, at 379 (Students “believe they could learn better if they had more feedback, and many voice deep frustration at the low quality and quantity of feedback during the semester from their professors.”).

ciate active, effective education.”²³³

D. Lack of Teacher Training in Assessment

Finally, another potential barrier to the implementation of assessment is law professors’ lack of formal training in assessing student learning and providing feedback.²³⁴ This deficit, however, can be overcome by a modest investment of effort. According to the *Best Practices Report*, “[a]ll professionals must be lifelong learners[.]”²³⁵ and “the ability to learn what needs to be learned to cope with a novel situation” is “a crucial quality” for lawyers.²³⁶ This principle holds true for law professors as well.

To the extent that law professors lack knowledge about course-level assessment, we must engage in self-directed learning,²³⁷ which is a skill we teach our students,²³⁸ and educate ourselves. There is a vast array of books and articles about assessment, some of which relate to higher education generally and others that are specific to legal education.²³⁹ There also are regular conferences about assessment²⁴⁰ and online resources, such as the Institute for Law Teaching and Learning²⁴¹ and the Best Practices for Legal Education blog.²⁴² In addition, law schools can support faculty members’ individual efforts by spon-

²³³ MUNRO, *supra* note 9, at 165.

²³⁴ *E.g.*, Niedwiecki, *supra* note 65, at 174.

²³⁵ BEST PRACTICES REPORT, *supra* note 4, at 66.

²³⁶ Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 894 (1985).

²³⁷ BEST PRACTICES REPORT, *supra* note 4, at 127 (defining self-directed learning).

²³⁸ *Id.* (“[L]aw schools must produce graduates who possess excellent self-directed learning skills.”); *see also, e.g.*, Niedwiecki, *supra* note 65, at 153 (“Because law schools cannot teach students every area of the law or every skill they will use as lawyers, the focus should be on teaching them how to transfer their learning in law school to the novel situations they will face in the legal profession.”); Michael Hunter Schwartz, *Teaching Law Students To Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 471 (2003) (Many law professors “believe our job is to teach our students to be lifelong learners, to have the learning skills to be able to learn what they need to learn to serve the first clients who walk into their offices.”).

²³⁹ *See, e.g.*, Parts I and II, *supra*.

²⁴⁰ The Association for the Assessment of Learning in Higher Education conducts an annual conference on assessment. *See* www.aalhe.org/content/annual-conferences. A list of other assessment conferences is available at www.assessmentconferences.com. The University of Denver Sturm College of Law and the Charlotte School of Law also have recently sponsored conferences on assessment. *See, e.g.*, University of Denver Sturm College of Law, Schedule for Legal Education at the Crossroads v.3: Conference on Assessment, <http://www.law.du.edu/index.php/assessment-conference>; Charlotte School of Law, Assessment and Student Outcomes Conference—Implications of the Proposed ABA Standard on Student Learning Outcomes, <http://cslguides.charlottelaw.edu/content.php?pid=123677&sid=1062763> (bibliography).

²⁴¹ Institute for Law Teaching and Learning, <http://lawteaching.org/>.

²⁴² Best Practices for Legal Education Blog, <http://bestpracticeslegaled.albanylawblogs.org/>.

soring professional development sessions on best practices for assessment. As legal educators, we must avail ourselves of these resources so we can become more effective teachers and make use of pedagogical tools that enhance student learning.

IV. SHOULD GRADES BE PART OF AN ASSESSMENT REGIMEN FOR EXTERNSHIPS?

In implementing course-level assessment, externship teachers also should consider whether to include letter grades as part of the process. As explained in Part I.A *supra*, grades alone are not a substitute for genuine assessment. Nonetheless, it is worthwhile to consider whether to award grades on assessments because grades can affect student motivation.²⁴³ It is undeniable that grades operate as a “powerful incentive” for students because they determine rewards and punishments such as Dean’s list, graduation honors, law review membership, and academic probation and dismissal.²⁴⁴ While grades are not essential to student motivation, they “may be one of the most efficient methods to induce learning behaviors[.]”²⁴⁵ Conversely, the absence of grades can negatively affect student effort. As one law school administrator has noted, “Pass-fail leads students not to work hard. No grades, no standards. When students must make decisions about time allocation, they do what’s needed to ‘only pass.’”²⁴⁶

²⁴³ Douglas A. Henderson, *Uncivil Procedure: Ranking Law Students Among Their Peers*, 27 U. MICH. J.L. REFORM 399, 402 (1994) (stating that grades serve motivational, diagnostic, informational, and administrative purposes) (citing Moshe Zeidner, *Key Facets of Classroom Grading: A Comparison of Teacher and Student Perspectives*, 17 CONTEMP. EDUC. PSYCHOL. 224, 225 (1992)). See also Robert C. Downs & Nancy Levit, *If It Can't Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 822 (1996-97) (Law school examinations “can be methods of knowledge assessment, impetus or motivation for study, devices for feedback, and teaching tools themselves.”).

²⁴⁴ Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 883 & n.19 (1996-97); see also Kissam, *supra* note 28, at 463 (Employers “use class ranks and law review status to screen and select law students for the more prestigious and lucrative employment opportunities that the legal profession has to offer.”); Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, With A Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657, 686 (1996-97) (stating that grades place students “into strata, including those unfit for graduation, those fit for graduation, those who are outstanding, and many gradations among them, including individual location in a class rank”).

²⁴⁵ Fines, *supra* note 244, at 884. Characterizing grades as “external rewards,” Professor Fines asserts that law professors should ask not whether external rewards motivate students to learn, but “rather, whether intrinsic rewards could provide a sufficiently powerful motivation that we could effectively dispense with grades.” *Id.* See also, e.g., TEACHING LAW BY DESIGN, *supra* note 37, at 155 (quoting educator as saying that “grades are among the most powerful learning and motivating tools we have”); Sparrow, *supra* note 82, at 5 (calling grading “the most effective tool a teacher has to promote learning”).

²⁴⁶ CARNEGIE REPORT, *supra* note 1, at 169.

Research indicates that grading can have positive effects on student motivation and performance in clinical courses. In a 1995 study, Professors Stacy Brustin and David Chavkin surveyed students in clinical courses at the Catholic University Columbus School of Law to determine if the courses should convert from a pass-fail grading model to a letter-grade model.²⁴⁷ Sixty-one percent of the surveyed students responded that a numerical grading system “had a significant positive impact on their motivation in their clinical courses.”²⁴⁸ Students “also admitted that if faced with the choice of preparing for a number-graded course or a pass/fail course, they would focus their efforts on the number-graded course.”²⁴⁹ The survey also found that the majority of faculty teaching in the clinic “felt that grades had a positive impact on preparation for and participation in seminar, simulations, and case work.”²⁵⁰ According to the faculty, “[t]he difference was particularly notable in seminar and simulations. Compared to prior semesters, students more consistently prepared for class and participated in class discussions and simulations.”²⁵¹ Thus, these study results indicate that awarding letter grades enhanced student performance and placed the clinical courses on a footing equal to their graded doctrinal counterparts.

Despite these motivational effects, a consideration of including grades in course-level assessment also should weigh the negative consequences of grades. “Grades can influence the ways students think about themselves, swelling their heads or shaking their confidence.”²⁵² Grades often can significantly affect the career tracks available to students and even eliminate them from some employment opportunities.²⁵³ Law schools’ emphasis on curved grading, which limits the best grades to only a small percentage of students, “suggests that only those at the top will be considered valuable, and creates a sense of

²⁴⁷ Brustin & Chavkin, *supra* note 28.

²⁴⁸ *Id.* at 314.

²⁴⁹ *Id.* at 315. See also Fines, *supra* note 244, at 884 (noting that “in a system in which some classes are rewarded with grades, most students are likely to direct their efforts toward these classes and away from other, perhaps more intrinsically rewarding subjects.”); Friedland, *supra* note 52, at 171 (“[C]ourses that are not graded often reflect a lower status in the law school culture.”); Rose, *supra* note 71, at 129 (“a pass-fail system can decrease student motivation by eliminating the reward of a higher grade for more work[.]”). Cf. SOURCEBOOK ON LEGAL WRITING PROGRAMS 76-77 (Eric Easton ed., 2d ed. 2006) (stating that grading the legal writing course makes students “more likely to expend the necessary effort to learn the important” skills needed and encourages students to give the course the same weight as their other first-year courses).

²⁵⁰ Brustin & Chavkin, *supra* note 28, at 317-18.

²⁵¹ *Id.* at 318.

²⁵² Stake, *supra* note 28, at 584. See also Fines, *supra* note 244, at 883 (“Students use grades to define themselves in positive or negative fashion, as in ‘I am a B student.’”).

²⁵³ Stake, *supra* note 28, at 585.

competition for survival.”²⁵⁴ Letter grades also raise issues of fairness and consistency for students and teachers alike, as the prevailing method of law school testing—the single “do or die” examination at the end of a course—has been roundly criticized as arbitrary, invalid, and pedagogically unsound.²⁵⁵

After carefully weighing these advantages and disadvantages, I decided to develop a way to include letter grades as part of a criterion-referenced assessment process for an externship course. I base my decision on three primary factors: the motivational and class “standing” effects identified in the Brustin/Chavkin study, and my desire to recognize students who excel in their externships. In the seven years I have taught my externship course, I have observed that most students work equally hard and perform well in their externship fieldwork. This result is expected and understandable—students are building their reputations in the legal community, and they want to impress their site supervisors in the hope of obtaining future employment references and opportunities.

On the other hand, I have observed a wide range of student performance in the seminar component. Some students, for example, routinely submit late journals and timesheets or miss deadlines for end-of-semester assignments. Others submit timesheets lacking adequate work descriptions, or journals and final essays lacking depth or meaningful reflection. Some students attend the seminar classes when they

²⁵⁴ Lawrence S. Krieger, *What We're Not Telling Law Students—And Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession From Its Roots*, 13 J. L. & HEALTH 1, 25 (1998-99). According to Professor Krieger, students who “succeed in the grades race are likely to experience a performance-based boost in their sense of personal worth, confidence, and security.” Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 118 (2002). Conversely, students “who falter in the competition by receiving less-than-stellar grades often become thoroughly deflated; their sense of confidence, security, and personal worth plummets.” *Id.*

²⁵⁵ According to Professors Downs and Levit,

[a] vast amount of research in educational testing theory suggests that the preferred method of testing in law schools is one least recommended by professional educators. A single examination followed by a course grade prevents professors from giving students repeated feedback, which many theorists say is essential to deep learning. A one-shot examination highlights inaccuracies in evaluation that may result from student illness or personal troubles, or imbalances between student coverage and selective testing.

Downs & Levit, *supra* note 243, at 823; *see also, e.g.*, Henderson, *supra* note 243, at 406-412 (using a single, end-of-term essay exam to assign law school grades is “psychometrically unsound” and does not encourage effective learning); Kissam, *supra* note 28, at 489-93 (explaining educational disadvantages of end-of-semester examinations that count for most or all of a student’s grade); MUNRO, *supra* note 9, at 36-37 (The essay exam favored in legal education “lacks a sound basis in educational or assessment principles. Legal educators who have subjected the essay or bluebook exam to critical analysis during the last seventy-five years have roundly criticized it.”).

have not read the assigned materials and are not prepared to discuss them. Conversely, some students put extraordinary effort into the seminar component and perform at an extremely high level, but I have no means to recognize their outstanding work. Under the pass/fail system, every student who completes the minimum requirements for an externship receives the identical grade of “credit.” Awarding letter grades based on valid and reliable criterion-referenced assessments, as discussed *supra*, is a means to address these issues. After providing students an opportunity to practice and receive feedback on initial externship assignments, teachers can award letter grades on subsequent assignments scored pursuant to their rubrics. Thus, the subsequent assignments will be both formative and summative assessments.²⁵⁶

The dual-supervision model of externship pedagogy presents a wrinkle in awarding letter grades that is unique to externships. In externships, students typically have two supervisors: a practicing attorney or judge who directs their day-to-day work at the placement site, and a faculty member who arranges the placements, reviews student journals and timesheets, and teaches the seminar class. Because the faculty member does not supervise the student’s work at the placement site, the faculty member has little or no basis for evaluating the quality of that work. Likewise, the students’ work at the different placement sites often varies widely, making it difficult for the faculty member to measure the students’ work against the same standards.

This complication, however, is not insurmountable. One solution is to award an identical amount of points for each student’s fieldwork, relying on the placement supervisor’s evaluation of the student’s work, and to award additional points for the seminar portion of the externship, relying on the faculty member’s evaluation of the student’s written assignments, oral presentations, class attendance, and class participation.²⁵⁷ Accordingly, an externship teacher could award points for just the course elements that he or she directly evaluates, such as the seminar class, student journals, and final essays, and award a uniform amount of points for the students’ fieldwork, based on a positive evaluation from the placement supervisor.²⁵⁸ The sum of

²⁵⁶ See Section I.B.2, *supra*.

²⁵⁷ Ogilvy, *supra* note 4, at 173. See also SANTACROCE & KUEHN, *supra* note 32, at 23-24 (survey data showing that externship courses commonly award letter or numerical grades for students’ classroom work and pass/fail grades for their fieldwork at placement sites).

²⁵⁸ Thus, each student who receives a positive evaluation from his or her placement supervisor would receive an identical amount of points, which is included in the student’s final grade for the course. Assuming that all students receive positive evaluations from their field supervisors, their total points for the course, and thus their final grades, would

these points then would determine each student's final letter grade in the course.

It bears repeating, however, that grades are not a substitute for true assessment. While grades can enhance student motivation and performance, they are not sufficient in and of themselves to improve student learning. Accordingly, externship teachers should use grades as just one part of an overall assessment process that is valid, fair, reliable, and criterion-referenced.

CONCLUSION

With the pending ABA proposals on student learning outcomes, some form of assessment mandate is inevitably coming to American legal education. Rather than dread and forestall assessment, law faculty should embrace it for the improvements in teaching and student learning that it produces. The goal of every law school and law professor should be doing everything within their means to prepare their students to be competent and ethical lawyers. Course-level assessment is a potent tool that law teachers can use to achieve that goal.²⁵⁹

While externships are rich educational experiences for students, teachers can make them even better by using assessments that set learning goals and measure students' attainment of those goals. When incorporating assessment principles into externship courses, teachers should follow the four steps of the assessment process and think intentionally about their course goals and selection of assessment tools. An assessment regimen should be criterion-referenced, valid, reliable, and fair. It should provide timely and specific feedback to students on their performance. Teachers also should design and use rubrics to provide clear standards to students, ensure consistency in assessment, and enhance their own efficiency. Most importantly, teachers must review and evaluate the data their assessments produce to "close the loop" and improve their own teaching. By taking these steps and making this investment of time, externship professors can both maximize their students' learning and enhance their own teaching.

vary based only on their performance in the seminar portion of the course.

²⁵⁹ See Johansen, *supra* note 27, at 126 ("If our goal is to prepare our students to be competent lawyers, then we should use assessment strategies that further that goal.").

