Outcomes Assessment for Law Schools

Outcomes assessment is a well-established educational practice, but has not been widely used by U.S. law schools. This report discusses an increasing trend towards the use of outcomes assessment in law schools, including proposed revisions to the ABA accreditation standards that would require law schools to implement an assessment plan. The report also profiles several law schools that have already undertaken assessment plans, as part of a university-wide initiative or at the behest of external agencies such as regional accreditors.
Assessment is an educational concept that has been increasingly employed in American higher education since the 1980s, but has not yet penetrated deeply into law schools.\(^1\) As a definition, one authority has proposed that “for law schools . . . assessment connotes a set of practices by which an educational institution adopts a mission, identifies desired student and institutional goals and objectives (‘outcomes’), and measures its effectiveness in attaining these outcomes.”\(^2\) This three-step process reflects a common definition of assessment, and closely resembles the “four-step planning-assessment cycle” recognized by Standard 7 (institutional assessment) of the accreditation standards of the Middle States Commission on Higher Education (MSCHE).\(^3\)

One explanation of why law schools have lagged behind in adopting outcome assessment practices is centered on the lack of assessment requirements by relevant accreditation bodies. The American Bar Association (ABA), which is the primary accreditor of most law schools, has only recently begun to consider incorporating outcome assessment into its accreditation standards. Regional accreditors, such as MSCHE, “have all moved . . . to an outcome-based system of accreditation” since at least the late 1990s,\(^4\) but for various reasons this has not deeply affected law schools. Independent law schools, such as XYZ, generally are not required to carry regional accreditation in addition to their ABA accreditation (although some do, such as Franklin Pierce Law Center).\(^5\) University law schools are implicitly subject to the regional accreditation of the mother institution, but because regional accreditors “accredit institutions, not individual

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MSCHE Standard 7 Four-Step Assessment Framework

1. **Adopting a Mission:** “Developing clearly articulated written statements, expressed in observable terms, of key institutional and unit-level goals that are based on the involvement of the institutional community, as discussed under Standard 1 (Mission and Goals).”

2. **Identifying Desired Goals:** “Designing intentional objectives or strategies to achieve those goals, as discussed under Standard 2 (Planning, Resource Allocation, and Institutional Renewal).”

3. **Measuring Effectiveness:** “Assessing achievement of those key goals.”

4. **Applying Assessment Results:** “Using the results of those assessments to improve programs and services, as discussed under Standard 2 (Planning, Resource Allocation, and Institutional Renewal), with appropriate links to the institution’s ongoing planning and resource allocation processes.”


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\(^2\) Munro. “Outcomes Assessment for Law Schools.” op. cit. p. 11


programs, law schools until very recently have been able to pay very little attention to the requirements of regional accreditation, leaving that task to the university central administration.”

However, the requirements of regional accreditation will be increasingly felt by law schools, as these bodies, “acting under the aegis of the U.S. Department of Education, are demanding that law schools, as units of accredited colleges and universities,” undertake typical outcome assessment practices, including “[stating] their mission and outcomes, [explaining] how their curricula are designed to achieve those outcomes, and [identifying] their methods for assessing student performance and institutional outcomes.”

Even in the absence of any pressure from regional accreditors, law schools will probably have to come to terms with outcome assessment in the near future, given ongoing revisions to ABA accreditation standards. In October 2007, the ABA’s Legal Education Section appointed a special subcommittee of the Standards Review Committee “to examine ways to revise the accreditation process to rely, to a greater extent than it currently does, on output measures.” The subcommittee released its final report in July 2008, and as of September 2009 was still receiving comments and feedback on its proposed revisions. The Standards Review Committee considered a draft of changes to Chapter 3 (Program of Legal Education) of the ABA’s Standards and Rules of Procedure for Approval of Law Schools at its October 2009 meeting and will consider a further revision of the proposed changes at its January 2010 meeting.

Thus, appropriate standards for outcome assessment in law schools are still developing, both under the official aegis of the ABA, and through the practices of individual law schools responding to the demands of regional accreditation. In addition, outcome assessment has attracted the interest of numerous individual law professors interested in legal pedagogy, which has produced a rich source of ideas and initiatives for outcome assessment in law schools. A primary example is a recent conference on assessment at the University of Denver’s Sturm College of Law, which itself was a response to “the calls for better methods of student, teaching, and institutional assessment” made in two recent, influential reports on legal education: the Carnegie Report and the Stuckey Report.

In this report, we examine all of these sources of information to suggest what appropriate standards for outcome assessment in law schools might be.

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6 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 47
7 Munro. “Outcomes Assessment for Law Schools.” op. cit. p. 3.
8 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 1
ABA Outcome Assessment Standards

The ABA’s special subcommittee on outcome measures released its final report in July 2008. In preparing its recommendations, the committee consulted several sources of expertise. With respect to the role of assessment in education, regardless of accreditation requirements, the committee considered the findings of the Carnegie Report and the Stuckey Report; the use of outcome assessment in legal education in other countries; and the demands of legal practice and how they might shape assessment of legal education. With respect to the use of assessment as a requirement for accreditation, the committee looked at the accreditation requirements of other professions (e.g., medicine, engineering); the use of assessment by regional accreditors (e.g., MSCHE); and the recommendations of the Council for Higher Education Accreditation (CHEA).

The committee’s approach was essentially pro-assessment. As it notes in the final report, the preamble to the ABA’s accreditation standards has since 1995 “articulated a vision of law school accreditation that is conceptualized in outcome-based terms,” yet the accreditation standards themselves have not been revised to reflect this, and continue to “focus more heavily on inputs than outputs.”13 These input measures include items such as the physical plant, the number of faculty, and the institutional budget. The current ABA standards also incorporate some output measures, including primarily the bar passage rates of a school’s graduates, but this measure itself has come in for criticism.14 Thus, the committee’s focus was less on the desirability of outcome assessment per se (which can be assumed) than on identifying the best approaches to outcome assessment for legal education, and the role that assessment should play in accreditation.

Although assessment is certainly an accreditation issue, the underlying issue is one of legal pedagogy and educational effectiveness, which is what accreditation exists to ratify. Thus, as noted above, the ABA outcome measures committee turned for insight to two recent studies on legal education: the Carnegie Report15 and the Stuckey Report.16 The scope of these reports extends beyond outcome assessment, but the reports necessarily address issues that are “critical to any discussion of the use of outcome measures in legal education,”17 namely:

- What outcomes are central to legal education?
- How effective are current measures at assessing these outcomes?
- What alternative outcome measures might be used?18

13 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 1
14 Ibid., p. 4
17 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 6
18 Ibid.
Outcomes Central to Legal Education

In considering what outcomes are central to legal education, both the Carnegie and Stuckey reports agree that the single, overarching outcome of a professional education such as law is to “to initiate novice practitioners to think, to perform, and to conduct themselves (that, is to act morally and ethically) like professionals.”\(^\text{19}\) Using slightly different formulations, the Carnegie and Stuckey reports break this central outcome into the three basic outcomes, or “competencies,” of legal knowledge, practice skills, and a professional attitude. In current legal education, these three categories can be found respectively in, for example, doctrinal classes (e.g., torts, contracts), legal research and writing classes, and professional responsibility or ethics classes. Other experiences, such as legal clinics, might combine all three elements. As the curriculums of many, if not most, law schools will suggest, however, the greater emphasis tends to be placed on imparting legal knowledge (i.e., doctrinal classes). Thus, it may not be surprising that the Carnegie and Stuckey reports agree “in their overarching criticism that legal education focuses disproportionately on developing the academic knowledge base . . . to the exclusion of developing necessary practical skills and professionalism.”\(^\text{20}\)

Effectiveness of Current Outcome Measures

This arrangement of the legal curriculum has clear implications for assessment practices. Put simply, “law schools assess what they value.”\(^\text{21}\) This means that assessment issues are inextricably bound up with substantive issues of legal pedagogy. Following this principle, the ABA’s outcome measures committee identified three “specific claims for improvement” of assessment practices that are embedded in the Carnegie and Stuckey criticisms of legal pedagogy:

- The need for increased use of formative assessment;
- The need for increased assessment of practice skills and professional attitude, as well as legal knowledge;
- The need for a “cohesive and unified set of teaching goals,” rather than mere “ad hoc goal setting by individual faculty members.”\(^\text{22}\)

Formative Assessment

The two major types of educational assessment are formative and summative assessment. Simply defined, formative assessments are “used to provide feedback to students and faculty.”\(^\text{23}\) They allow either party to gauge how they are doing, and to make necessary adjustments. They are commonly offered before the completion of the learning unit, and

\(^{19}\) William M. Sullivan et al., qtd. in “Report of the Outcome Measures Committee,” p. 7.
\(^{20}\) “Report of the Outcome Measures Committee,” ABA. op. cit. p. 8
\(^{21}\) Ibid.
\(^{22}\) Ibid.
may or may not produce a grade or score that will be reflected in the student’s permanent record. Summative assessments, on the other hand, are “used for assigning a grade or otherwise indicating a student’s level of achievement.” 24 They occur at the completion of the learning unit and are reflected in the student’s permanent record (e.g., a final grade, or class rank). Although formative assessment is not unheard of in law schools, “the norm . . . is to give a final exam at the end of the semester without conducting any formative assessment during the course.” 25

The ABA committee noted that both the Carnegie and Stuckey reports “argue that legal education relies too heavily on summative examinations . . . to assess students.” 26 The reports argue that, instead, law school assessment “should include midterms, practice examinations, feedback on multiple examinations, and the use of formative assessments.” 27 Indeed, the Stuckey report recommends that “providing formative feedback to students ought to be the primary form of assessment in legal education.” 28

Assessing Practice Skills and Professional Attitude

Both the Carnegie and the Stuckey reports recognize that current legal education focuses “predominantly” on legal knowledge, to the detriment of practice skills and professional attitude, thus “exacerbat[ing] the gap between what practitioners and the academy value.” 29 This gap “deprives students of forming the skills necessary to take abstract principles which were learned in law school and apply them in real-life or simulated contexts.” 30

As a corrective, many authorities recommend better integration of the three competencies in the legal curriculum. A decade ago, Munro recognized that “the learning experience should be structured so that knowledge, skills, and concepts build upon one another in an orderly progression of increasing difficulty and complexity,” suggesting that, for example, professional skills such as “analysis, oral advocacy, or drafting should be incremental and developmental, starting with simpler, discrete tasks; proceeding to more complex and difficult tasks; and ending with ‘keystone’ performances that integrate multiple complex skills.” 31 By contrast, Munro noted, the curriculums of most law schools feature “discrete, nonintegrated classes and substantially elective second- and third-year curricula, mak[ing] progressive educational development nearly impossible.” 32 The report of the ABA committee echoes this concern, noting that when subjects are taught “without sufficient progression and integration of the three types of competencies . . . law schools are not preparing students well for the profession.” 33 The Carnegie report suggested that “the interdependence of knowledge, skills and sense of purpose in professional practical reasoning” – i.e., the

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24 Ibid.
25 Ibid.
26 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 9
27 Ibid., p. 10
29 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 8
30 Ibid.
31 Munro. “Outcomes Assessment for Law Schools.” op. cit. p. 54
32 Ibid.
interdependence of the three competencies – “is difficult to teach or assess through the usual academic techniques, which focus on procedures and techniques out of context.”34

Cohesive and Unified Teaching Goals

As discussed at the outset of this report, the establishment of an institutional mission and clear objectives to fulfill that mission are generally recognized as important foundational steps in the assessment process. This principle is affirmed by the practices of other professional schools. As part of its review, the ABA committee evaluated the accreditation standards used in ten other fields of professional education, including medicine, dentistry, and pharmacy. It found that “institutional mission stands out as an important element in the standards of the ten professional accrediting agencies,”35 and is almost always more prominent in these accreditation standards than it is in the ABA’s standards. Most importantly, the committee found that “in the standards of every profession the outcome criteria, including the performance-based assessment measures, are often linked directly to the school’s mission.”36 Put simply, assessment is a way of judging whether an institution is achieving its stated mission. An organization with a poorly defined or nonexistent mission may find it hard to meaningfully assess institutional effectiveness.

Thus, perhaps the greatest obstacle to outcome assessment in law schools is that they frequently lack “an express mission or stated student or institutional outcomes,” leaving “the traditional law school curriculum deficient in both structure and coherence.”37 Recognizing this, both the Carnegie and Stuckey reports “criticize law schools for not approaching teaching goals at a cohesive, institutional level,” relying instead on the ad hoc arrangements of “individual faculty members defining their own learning outcomes and modes of assessment.”38 The Stuckey report, for instance, recommends that law faculty should “be able to articulate clearly what each course demands, not only in terms of the academic knowledge base acquired by the student, but also in terms of what students should understand and be able to do,” and that, further, each course syllabus should “offer these stated outcomes to provide an institutional context and message to students.”39

Alternative Outcome Measures

As these criticisms imply, there are numerous alternative outcome measures for law schools to use. Many specific measures have been adopted by various law schools, and these are discussed below. Here it seems appropriate to present some general principles for developing alternative outcome measures. In Outcomes Assessment for Law Schools, Munro introduced seven principles to “help a law school determine its outcomes.”40 As these were adopted in the Stuckey report,41 and then reiterated in the ABA committee report,42 they

35 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 20
36 Ibid.
37 Munro. “Outcomes Assessment for Law Schools.” op. cit. p. 52
38 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 10
39 Ibid.
40 Munro. “Outcomes Assessment for Law Schools.” op. cit. p. 94
seem to be invested with some degree of confidence in the field. The principles are as follows:

1. **Practitioner Input**: Outcomes should be formulated “in collaboration with the bench, bar, and perhaps other constituencies.” Practitioners such as these may have invaluable perspectives on what “graduates need to be able to do to serve clients and society.”

2. **Institutional Mission**: Simply, “outcomes should be consistent with and serve the school’s mission.” This presumes, of course, the existence of a clearly defined institutional mission which, as discussed above, is an important foundational step in the assessment process, but one often lacking in law schools.

3. **Faculty Consensus**: Outcomes should be adopted by the faculty “only upon arriving at consensus after dialogue and deliberation,” rather than being adopted “on an ad hoc basis on the whim of individual professors.” An outcome adopted by consensus “gains acceptance and permanence,” but ad hoc outcomes “may present problems of inconsistency with mission, lack of acceptance, and lack of credibility.”

4. **Measurability**: Obviously, outcomes should be measurable. As Munro puts it, “it is self-defeating to state an outcome which cannot be assessed.” However, the opposite extreme should also be avoided – when evaluating the measurability of an outcome, “it is important not to be bound by expectations of objective, decimal-place accuracy.” Rather, Munro defines “measurable” in this context as “a general judgment of whether students know, think, and can do most of what we intend for them.” For example, assume a desired outcome that students be able to “recognize and resolve ethical dilemmas.” This may be “difficult, if not impossible, to measure with mathematical accuracy,” but faculty who have worked with a student for a semester will probably be able to form “a general judgment as to whether the student has the ability to recognize and resolve ethical dilemmas,” and this constitutes measurability.

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42 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 10
43 Munro. “Outcomes Assessment for Law Schools.” op. cit. pp. 94
44 Ibid.
45 Ibid.
46 Ibid.
47 Ibid.
48 Ibid., p. 95
49 Ibid.
50 Ibid.
51 Ibid.
52 Ibid.
5. **Explicit and simple:** Outcomes should be stated simply, “in plain English, and without educational and legal jargon.” This makes them accessible to all constituencies, including faculty, students, practitioners, and others, and allows them all to “focus on common goals.” Similarly, outcomes should be stated explicitly, which “assures continuity in the academic program,” and makes it less likely “that outcomes will be ignored by new or visiting faculty members.”

6. **Number of outcomes:** Simply put, “there is no ‘correct’ number of outcomes for a law school.” Rather, the number and extent of outcomes should be tailored to the “mission, resources, and time” of the institution and the faculty, who must consider “how many outcomes they can reasonably address and assess during law school.” The Stuckey report notes, with respect to this principle, a recommendation of the American Association of Higher Education that “educational institutions embarking on an outcomes-focused approach start small and focus on articulating, assessing and insuring student acquisition of core skills, values, and knowledge and gradually build towards a more robust list of skills, values, and knowledge.”

7. **Reasonable demands:** Stating desired outcomes will make implicit demands on students and faculty, and these demands “should be reasonable in light of the abilities of the students and the faculty.”

**Proposed ABA Assessment Standards**

As suggested above, the ABA’s special subcommittee on outcome measures took an essentially pro-assessment attitude in developing its findings. In making its recommendations to the Standards Review Committee, it thus focused on subsidiary issues, such as what detail or specificity any ABA-promulgated standards should carry; how any new standards should be integrated with existing outcome assessment standards (mainly the bar passage rate standard); and the timing of the implementation of any new accreditation standards.

The committee’s recommendations have led to the drafting of revisions to Chapter 3 (Program of Legal Education) of the ABA’s Standards and Rules of Procedure for Approval of Law Schools, which are still being considered by the Standards Review Committee. It is of course impossible to say what form the final draft of these revisions will take, or whether the revisions will be adopted by the ABA at all. However, it may be worth noting the general

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53 Ibid.
54 Ibid.
55 Ibid.
56 Ibid.
57 Ibid.
59 Munro. “Outcomes Assessment for Law Schools.” op. cit. pp. 95
60 “Report of the Outcome Measures Committee.” ABA. op. cit. p. 58
outlines of the proposed revisions, as an indicator of what the major law school accreditor considers plausible standards for outcome assessment.

The current Chapter 3 of the ABA Standards contains eight standards. The latest draft revisions propose the insertion of two new standards, as shown in Table 1 below.

Table 1: Outline of Proposed Revisions to Chapter 3 of the ABA Standards

<table>
<thead>
<tr>
<th>Current Standards</th>
<th>Draft Revised Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>301 – Objectives</td>
<td>301 – Objectives</td>
</tr>
<tr>
<td>302 – Curriculum</td>
<td>302 – Learning Outcomes</td>
</tr>
<tr>
<td>303 – Academic Standards and Achievements</td>
<td>303 – Curriculum</td>
</tr>
<tr>
<td></td>
<td>304 – Assessment of Learning Outcomes and Institutional Effectiveness</td>
</tr>
</tbody>
</table>
|                           | 305 – Academic Standards and Achievements, etc.  


As is evident, the two new standards would address learning outcomes and the assessment of those outcomes, both for individual students and for the institution as a whole. Thus, these standards correspond roughly to MSCHE standards 14 and 7, respectively. In addition to these major changes, proposed revisions to the existing standards would lead to conformity with the new emphasis on outcomes. For instance, current Standard 302 (Curriculum) would require that the curriculum be “designed to produce graduates who have attained the learning outcomes identified” by the new standards.63

The proposed new Standard 302 (Learning Outcomes) states, foundationally, that a law school must “identify, define, and disseminate the learning outcomes it seeks for its graduating students,” and that these learning outcomes should be “consistent with and support the stated mission and goals of the law school.”64 Beyond this, the standard is organized essentially around the three competencies identified by the Carnegie and Stuckey reports, and discussed above: legal knowledge, practice skills, and professional attitude. Relevant language from the proposed standard is highlighted on page 11, below. The alternative proposed versions of 302(b)(2)(iii) give an idea of how the ABA is wrestling with the appropriate specificity for these standards. The second alternative simply appends a list of specific professional skills that “shall” be included in the learning outcomes, namely “trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, factual investigation, organization and management of legal work, and drafting.”65 Under the first alternative version of 302(b)(2)(iii), this list of skills would be

62 Current Standards 304-308 would follow the new Standard 305 in sequence. The only change the draft revisions propose for any of these latter standards is the elimination of Interpretation 305-3, which currently prohibits students from receiving academic credit for compensated field placements, a change that would encourage more apprenticeship-type arrangements.

63 “Student Learning Outcomes – DRAFT for January 8-9, 2010 meeting.” ABA. op. cit. p. 1

64 Ibid., p. 2

65 Ibid.
relegated to the proposed Interpretation 302-2 as examples of skills that “could” fulfill the standard.66

<table>
<thead>
<tr>
<th>Proposed ABA Standard 302 – Learning Outcomes</th>
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<tbody>
<tr>
<td>“(b) . . . The learning outcomes shall include:</td>
</tr>
<tr>
<td>(1) knowledge and understanding of the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;</td>
</tr>
<tr>
<td>(2) proficiency as an entry level practitioner in:</td>
</tr>
<tr>
<td>(i) legal analysis and reasoning, legal research, problem solving, written and oral communication in a legal context;</td>
</tr>
<tr>
<td>(ii) the ability to recognize and resolve ethical and other professional dilemmas; and</td>
</tr>
<tr>
<td>(iii) [Alternative One] a sufficient depth and breadth of other professional skills that the law school identifies as necessary for effective, responsible and ethical participation in the legal profession.</td>
</tr>
<tr>
<td>(iii) [Alternative Two] a sufficient depth and breadth of other professional skills that the law school identifies as necessary for effective, responsible and ethical participation in the legal profession, which shall include trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, factual investigation, organization and management of legal work, and drafting.</td>
</tr>
<tr>
<td>(3) knowledge and understanding of:</td>
</tr>
<tr>
<td>(i) a lawyer’s ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;</td>
</tr>
<tr>
<td>(ii) the legal profession’s values of justice, fairness, candor, honesty, integrity, professionalism, respect for diversity and respect for the rule of law; and</td>
</tr>
<tr>
<td>(iii) a lawyer’s responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them . . .”</td>
</tr>
</tbody>
</table>


The proposed new Standard 304 (assessment of learning outcomes and institutional effectiveness) complements proposed Standard 302. The latter requires law schools to establish learning outcomes, and the former requires them both to assess these outcomes and to tie this assessment to the evaluation of overall institutional effectiveness. As one comment on the revisions put it, the proposed Standard 304 “imposes two kinds of duties on a school: to assess individual student learning outcomes and to assess its own institutional

66 Ibid., p. 3
effectiveness.” It also requires the school to conduct an ongoing evaluation of the appropriateness of its learning outcomes and assessment methods.

The parameters for student assessment set by the proposed Standard 304 are broad and flexible. For assessing student learning outcomes, the standard requires that a school “employ a variety of assessment methods and activities, consistent with effective pedagogy, systematically and sequentially throughout the curriculum.” A separate requirement that a school “provide feedback to students periodically and throughout their studies about their progress in achieving its learning outcomes” suggests the increased use of formative assessment (i.e., feedback).

To assess institutional effectiveness, the standard requires that the dean and faculty of the law school “gather data to measure the degree to which its students, by the time of graduation, have attained its learning outcomes.” The standard does not specify what form this “data” should take. As discussed above with respect to the principle that outcomes should be measurable, evaluations need not be “mathematically accurate” to be effective and the proposed standard seems to recognize this.

The second step in the assessment of institutional effectiveness required by the proposed standard is for the law school to “periodically review” whether “student attainment of proficiency in the learning outcomes [is] sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly as entry level practitioners in the legal profession.” Following this review, a school could take any of three potential steps (assuming that student attainment of learning outcomes is found insufficient): adjust the learning outcomes; adjust the assessment methods; or improve the curriculum and delivery. The ultimate goal of adjusting any of these, however, remains the same: the effective preparation of entry level lawyers.

Specific assessment methods are addressed in the proposed Interpretation 304-1, which clearly states that “law schools are not required by Standard 304 to use any particular activities or tools” for assessment, but does give a number of examples. The interpretation divides assessment tools into those “internal to the law school and [those] external to the law school.” Examples of each are shown below.

<table>
<thead>
<tr>
<th>Internal Measures</th>
<th>External Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completion of courses with appropriate assessment mechanisms</td>
<td>Bar exam passage rates</td>
</tr>
<tr>
<td>Performance in clinical programs, simulations, or internships</td>
<td>Placement rates</td>
</tr>
</tbody>
</table>

68 “Student Learning Outcomes – DRAFT for January 8-9, 2010 meeting.” ABA. op. cit. p. 4
69 Ibid., p. 5
70 Ibid.
71 Ibid.
72 Ibid.
73 Ibid.
<table>
<thead>
<tr>
<th>Internal Measures</th>
<th>External Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation of in-depth research papers</td>
<td>Surveys of attorneys, judges, and alumni</td>
</tr>
<tr>
<td>Preparations of pleadings and briefs</td>
<td>Assessment of student performance by judges, attorneys or law professors from other schools.</td>
</tr>
<tr>
<td>Evaluation of student learning portfolios</td>
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</tr>
</tbody>
</table>


Most of these measures are straightforward, but have not been explicitly set forth in the current version of the ABA Standards. The one exception is the bar exam passage rate, which already plays an important part in ABA accreditation. The current Interpretation 301-6 and Appendix 3 to the ABA Standards define how law schools can make use of bar passage rates to satisfy Standard 301(a), which requires that the school’s education program prepare “students for admission to the bar, and effective and responsible participation in the legal profession.”

The ABA subcommittee on outcome measures recognized that the introduction of new outcome measures might create “various types of relationship” with this existing measure. For instance, would the bar passage rate be treated as a “trump” over the other measures, so that a school in compliance with the bar passage rate could ignore the other measures, or so that failure to comply with the bar passage rate would jeopardize accreditation even if a school were in compliance with all other measures? Or might “the overall list of new and old outcome measures . . . function as a whole, with no single measure taking precedence over the others”? The committee’s preference was for the latter approach, so that all of the measures “should function – along with bar passage – as a constellation of criteria for assessing whether a law school is adequately fulfilling its functions of teaching substantive knowledge, skills, and values.”

The current draft of revisions does not address the relationship between the bar passage rate and any new outcome measures, and leaves Interpretation 301-6 unchanged. This seems likely to remain the case. A summary of key issues in the revision process, prepared in advance of the Standards Review Committee’s January 2010 meeting, states explicitly that the “Standards should not modify the recently approved Interpretations concerning the bar exam [i.e., Interpretation 301-6 and Appendix 3] . . . At some point the bar exam Interpretations could be re-visited, but it is not part of this process.” Thus, for the foreseeable future, law schools should be able to rely on the existing standard for bar exam passage rates, regardless of what happens with the proposed outcome measures revisions.

75 “Report of the Outcome Measures Committee.” ABA. op. cit. pp. 59
76 Ibid., p. 61
77 “Student Learning Outcomes – DRAFT for January 8-9, 2010 meeting.” ABA. op. cit. p. 2
Implementation of Assessment in Law Schools

The report of the ABA subcommittee on outcome measures, the Carnegie and Stuckey reports and other studies of legal pedagogy, and the proposed revisions to the ABA accreditation standards all provide a rough framework for using outcomes assessment in law schools. However, they all remain somewhat indefinite in their prescriptions, as is necessary for pronouncements with such broad audiences. In order to give an idea of how these principles might work in practice, this section profiles outcome assessment efforts already underway at several law schools.

Catholic University of America – Columbus School of Law

The law school at Catholic University provides an example of a basic and straightforward outcomes assessment program, as part of a university-wide requirement for monitoring student outcomes. The law school states four goals, or outcomes, for its students:

- To introduce students to, and help them develop, analytic skills
- To train students in substantive law, including the basic first-year curriculum, a core group of upper-level courses, and specialized courses for students who have a particular field of interest. This goal also includes “adequate academic preparation for passage of the relevant bar examination.”
- To provide students with training in the necessary legal skills to be effective practitioners, including but not limited to “legal research and writing, oral advocacy, client counseling, negotiation, trial skills, alternative dispute resolution, mediation, etc.”
- To encourage students “to consider the moral and ethical foundations of legal practice and legal policy through both our course in Professional Responsibility as well as our courses in law and religion and social concerns.”

As is evident, these goals correspond fairly closely to the three competencies discussed in the Carnegie and Stuckey reports, namely legal knowledge, practice skills, and professional attitude.

Having established these outcomes, the law school has identified a number of measures with which to assess how students are doing and, by extension, how the law school is performing. These measures are fairly basic, but give an idea of how law schools can begin to make use of existing or readily available data to assess outcomes. Catholic’s measures include:

79 “Stated goals of the J.D. program.” Catholic University of America. outcomes.cua.edu/law
80 Ibid.
81 Ibid.
1. **Bar passage rate**: As discussed above, and as acknowledged by the Catholic law school, these data are already required for accreditation by the ABA. However, Catholic has “begun an extensive program of transcript reviews and organization of data to attempt to draw correlations between various aspects of [the] program and student pass rates.” For instance, the analysis can show whether students who fail to pass were less likely to have taken rigorous upper-level electives.

2. **Internship evaluations**: Catholic runs two internship programs, called Becoming a Lawyer and Supervised Fieldwork, respectively, and participating employers are required to produce “written evaluations of [the] students’ competency and effectiveness.”

3. **Alumni survey**: The law school conducted a formal survey of alumni in preparation for its last ABA self-study in 1999. As part of an outcome assessment program, a law school might take this kind of externally-imposed measure and deploy it more frequently or apply its results more rigorously than is required by rule.

4. **Informal alumni feedback**: Catholic’s law school has several specialized programs (e.g., Communications Law Institute) that maintain their own alumni associations. These groups, which include alumni and their employers, “often provide feedback and input to . . . program directors as to the quality of [the] programs in these fields.”

5. **Job placement**: As do most law schools, in accordance with ABA and NALP requirements, Catholic’s career services office monitors the job placements of all graduates, including types and rates.

Although these are rudimentary measures, in some cases already required by external agencies, they have led to substantial changes at Catholic suggesting how a more rigorous use of existing data can create a desirable assessment feedback loop. Specifically, Catholic used its bar passage data to create “an intensive faculty Bar Pass Initiative” that included improved academic advising and support. In another initiative, “research into the skills most valued by employers and practitioners” was used to revise the school’s upper-level writing requirement. Similarly, input from alumni and employers is used when considering “the course proposals that the Curriculum Committee reviews.” This would seem to be the kind of outcomes usage desired by Munro when he bemoaned the “mushrooming” of the elective curriculum through the ad hoc addition of “hobby horse” courses by the faculty, rather than the introduction of electives “based upon a priority list determined by consensus after considering the school’s mission and student and institutional outcomes.”

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82 Ibid.
83 Ibid.
84 Ibid.
85 Ibid.
86 Ibid.
87 Ibid.
88 Munro. “Outcomes Assessment for Law Schools.” op. cit. p. 53
Georgia State University – College of Law

The Georgia State University (GSU) College of Law developed a Learning Outcomes Assessment Plan in 2004, as part of an institutional effectiveness initiative led by the university’s academic support unit, the Center for Teaching and Learning.89 The plan included a statement of intended outcomes and assessment methods,90 and a report of data gathered for the 2004-05 academic year.91 It is not clear that the GSU College of Law has since repeated this exercise, but the 2004 effort provides a good example of a law school making use of existing mechanisms to compose an assessment plan – essentially formalizing and centrally organizing what may have constituted disparate assessment efforts.

The assessment plan begins with a clear statement of institutional mission, and then sets forth seven intended outcomes: communication; legal research; analysis and critical thinking; knowledge of legal doctrine; lawyering skills; professionalism and ethics; and preparation for career or advanced legal study. Despite this multiplicity, these outcomes do not really stretch beyond the three competencies of the Carnegie and Stuckey reports. The last, preparation for career, is essentially a restatement of the overarching outcome of a legal education as identified by the Carnegie report (quoted above). Other GSU outcomes (e.g., communication, legal research) could be grouped together as part of the practice skills competency. What seems important is that the GSU outcomes do encompass all three competencies, including legal knowledge, skills, and professional attitude (i.e., professionalism and ethics).

The next step in the GSU assessment plan is the identification of assessment methods for each outcome. The law school identified nine assessment methods, each of which might have relevance for more than one outcome. The matrix on the next page, adopted from the GSU assessment plan, plots the principal assessment methods against the outcomes for which they are relevant.

The key concept here is that the law school “identified” the assessment methods, rather than “creating” them. Most of the nine methods, if not all, are commonly found in law schools. In the case of GSU, none appears to have been specially developed as part of the assessment plan. For instance, to assess analysis and critical thinking, the plan calls upon the traditional methods of the final, summative examination and in-class, “Socratic” dialogue, even though these have been called into question by pedagogical studies such as the Carnegie and Stuckey reports. On the other hand, the GSU plan also incorporates pedagogical features that might be considered innovative, such as a requirement that “second year law students must successfully pass an intensive course in Litigation, in which students demonstrate basic proficiency in client interviewing, drafting, written and oral argument, and conducting a jury.

89 “Institutional Effectiveness Assessment Plan – Department/Unit.” Georgia State University Center for Teaching and Learning October 3rd, 2005. www2.gsu.edu/~wwwctl/about/Annual-Report05.pdf
90 “Learning Outcomes Assessment Plan.” Georgia State University College of Law. education.gsu.edu/ctl/outcomes/COL-Assessment_Plan.htm
91 “Annual Student Learning Outcomes Assessment Report – Academic Year 2004-05.” Georgia State University College of Law. education.gsu.edu/ctl/outcomes/Law/Law-LOA05.htm
The critical point is that the plan relies heavily on existing assessment methods, an approach which conforms to one of the basic principles of assessment discussed above: that institutions embarking on assessment should “start small” and build towards a more “robust” assessment program.

Table 3: Learning Outcomes and Assessment Methods Matrix –
Georgia State University College of Law

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Course Final Exams</th>
<th>First-Year Research &amp; Writing Program</th>
<th>Upper-Level Writing Requirement</th>
<th>Litigation Course</th>
<th>Prof. Resp. Course</th>
<th>Bar Exam</th>
<th>MPRE</th>
<th>Stud. / Grad. Surveys</th>
<th>Externship Feedback</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Analysis / Critical Thinking</strong></td>
<td>✔</td>
<td>✔</td>
<td>✗</td>
<td>✗</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td></td>
<td>✔</td>
<td>✗</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Legal Research/Writing</strong></td>
<td>✔</td>
<td>✗</td>
<td></td>
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<td></td>
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<td></td>
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<tr>
<td><strong>Knowledge of Core Legal Doctrine</strong></td>
<td>✔</td>
<td>✗</td>
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<tr>
<td><strong>Lawyering Skills</strong></td>
<td></td>
<td>✗</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td><strong>Professionalism / Ethics</strong></td>
<td></td>
<td></td>
<td></td>
<td>✗</td>
<td>✔</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Preparation for Career/Advanced Legal Study</strong></td>
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</tbody>
</table>

Source: “Learning Outcomes Assessment Plan.” Georgia State University College of Law.

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92 “Learning Outcomes Assessment Plan.” Georgia State University College of Law, op. cit.
Responsibility for the implementation of the GSU assessment plan was distributed across several parties within the law school. The associate dean for academic affairs was given “overall responsibility for maintaining data collection and reporting and disseminating various assessment results.”93 These assessment results would then be applied for various purposes. The curriculum committee, for instance, would use them to recommend “curricular changes in response to assessment findings.”94 Moreover, individual faculty would be held responsible “for implementing appropriate changes in their respective courses insofar as assessment findings implicate learning outcomes in particular course areas.”95

University of Pittsburgh – School of Law

Both Georgia State and Catholic University’s law school assessment plans provide simple examples of what an assessment framework might look like. However, they are less explicit about what actually goes on within that framework – the “nitty gritty” of implementing and executing a plan. The experience of the University of Pittsburgh’s law school provides some insight into that aspect of assessment.

Pitt’s assessment experience seems particularly relevant because it reflects what has been, or will become, a more common scenario in the coming years. As discussed in the introduction, regional accreditors are increasingly putting pressure on law schools, as units of accredited colleges and universities, to implement outcomes assessment plans. This is the case at Pitt, where the law school has undertaken an outcomes assessment plan “at the prompting of [the] University administration, after the University itself was prompted to undertake assessment by its accrediting agency” (Pitt’s regional accreditor is the MSCHE).96 Thus, the University of Pittsburgh School of Law has been developing a system for assessing the learning outcomes of law students for the past three years. Because it derived from an external impetus, Pitt’s assessment initiative was “largely unplanned” but nonetheless developed into what other schools might find an “instructive and replicable process.”97

Pitt’s implementation of its assessment plan can be divided into two parts. The first attempt at assessment was led by the dean’s office, with minimal faculty participation, in what it called a “path of least resistance” approach.98 Because the law faculty “was resistant to and skeptical of assessment,” the dean and the associate dean for academic affairs felt that “minimizing the time and effort [they] asked the faculty to expend” would make the process go most smoothly.99 The dean’s office began developing student learning outcomes and appropriate assessment methods, and solicited faculty input through the standing faculty Steering Committee and through four faculty consultants, who were asked for input and

93 Ibid.
94 Ibid.
95 Ibid.
97 Ibid.
98 Ibid., p. 2
99 Ibid.
feedback without the formality of being shaped into an outcomes assessment committee. The entire faculty was surveyed at key points, such as in the final selection of outcomes, but the dean’s office “shielded the faculty completely from the nitty gritty aspects once [it] undertook [the] first round of actually assessing student work.”

This first attempt was feasible and seemed to work well. Indeed, parts of the law school’s assessment plan were singled out for recognition by the university administration and held up as models for other schools. However, in the second year, “members of the faculty expressed a wish for greater involvement in assessment” – not, apparently, because of an enthusiasm for assessment but “mainly because they began to realize the potentially significant ramifications of assessment for how they taught and wanted to keep an eye on and have input into an unavoidable task.” The objections of the Pitt law faculty to assessment, most of which were “quite typical of views that have been expressed in the legal academy generally,” fell into a number of broad categories. Examples are as follows:

- Institutional assessment of learning outcomes is not necessary, because the existing mechanism (i.e., final grades assigned by individual faculty) is adequate.

- Institutional assessment “would entail a large and unjustifiable drain on faculty resources,” diverting faculty efforts from teaching, scholarship, and service.

- Institutional assessment would interfere with legal pedagogy, by reducing the outcomes of legal education to only what can “be quantified or evaluated objectively,” and forcing professors to “teach to the test.”

It is worth noting that not all faculty members at Pitt were opposed to the assessment plan, and some were supportive, perceiving an opportunity to ensure that the law school “had a clear institutional sense of mission and direction,” and to otherwise improve the law school’s teaching mission.

In its second attempt at assessment, the dean’s office responded to this faculty interest in the assessment process by appointing “an ad hoc faculty Committee on the Assessment of Student Learning Outcomes” (CASLO). The committee was charged with developing “a proposed general approach or philosophy to guide the Law School’s efforts regarding assessing student learning outcomes,” and with allocating responsibility for carrying out these tasks within the law school. Although initially skeptical of, if not hostile to, assessment, the committee warmed to its task and by the end of the third year put forth several proposals that were adopted by the full faculty, including:

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100 Ibid., p. 3
101 Ibid.
102 Ibid., p. 4
103 Ibid.
104 Ibid.
105 Ibid., p. 5
106 Ibid.
The creation of a standing faculty committee, with annually rotating membership that would include doctrinal, clinical, and legal writing faculty, to advise the administration on assessment issues. The associate dean of academic affairs serves ex officio.\textsuperscript{107}

That the assessment process should “be integrated with the Law School’s curriculum,” so that “assessment measures . . . focus on criteria and results that are coherent with the curriculum and the results . . . [are] used to inform and update curricular change.”\textsuperscript{108}

That the assessment process specifically “evaluate[s] how well the School is preparing students for practicing law.”\textsuperscript{109}

The faculty also adopted CASLO recommendations that addressed faculty concerns about assessment. For instance, CASLO recommended that “faculty work in preparing evaluation instruments and scoring student work should be compensated,” either directly or through “incentives or adjustments to individual faculty members’ other responsibilities.”\textsuperscript{110}

Having completed just over three years of implementing an assessment plan, the dean of Pitt Law was able to identify “the six biggest lessons” learned from the process. In general, Pitt’s experience has been “consistent with a number of recommendations in the literature on assessment of learning outcomes in legal education,” and so the lessons tend to reinforce some of the principles discussed above.\textsuperscript{111} The lessons include the following:

1. “Think big. Make the assessment process meaningful.”\textsuperscript{112} In its first year, Pitt tried to keep the assessment process as unobtrusive as possible, but this “yielded no lasting benefits.”\textsuperscript{113} It was only when the administration “stopped treating assessment as a chore from which to spare [its] colleagues and opened the door to [its] colleagues’ – and [its] own – greater ambitions” that assessment began to develop as a positive force in the school.\textsuperscript{114} In this regard, Pitt’s dean suggests distinguishing between two purposes of assessment plans such as theirs. One is to satisfy a central administration or an accrediting agency. But another is to “[advance] the School’s mission and strategic objectives,” and the dean suggests focusing on this second purpose, “to insure that assessment does not devolve into a mere assignment that drains . . . resources but does little to move the School forward.”\textsuperscript{115}
2. “At the same time, take small steps.” As discussed above, as a general principle of assessment, institutions adopting an assessment plan for the first time would likely be best served to start small. Pitt endorses this view, suggesting that law schools should combine a large ambition, as noted in the first lesson, with “modest aspirations in terms of implementation.” One approach might be to begin by simply cataloging existing assessment methods, as Catholic University or Georgia State did. Another, suggested by Pitt’s dean, is to test new assessment methods on a small scale. Thus, when Pitt “undertook to develop rubrics for assessing students’ written work to evaluate their legal analysis and reasoning,” it first implemented the rubrics in its two small graduate programs, the M.S.L. and the LL.M, so that it could “test and refine them with a smaller set of exams and papers before applying them to [the] much larger J.D. program.”

3. “Recognize the limits of assessment – but recognize the potential range of assessment methods, as well.” This principle essentially states that an administration should respect faculty concerns about assessment – that a school should “heed the misgivings of those in legal education . . . who warn that not every skill or value…can be reduced to a performance that is easily measured or assessed.” On the other hand, Pitt has discovered that “a wide range of assessment methods is available for evaluating students’ attainment of different types of skills, attributes, and knowledge.” This echoes the principle, discussed above, that “measurability” need not mean “mathematical accuracy.”

4. “Engage a broad spectrum of faculty members.” Pitt’s dean identifies several types of faculty who should be enlisted in an assessment effort. First, any faculty who have indicated any interest in assessment should be included, regardless of their expertise or role within the law school (e.g., doctrinal or clinical) because these faculty, naturally, will bring an “enthusiasm and energy” that will help propel the initiative forward. Second, any faculty with expertise in relevant subjects such as learning theory or program evaluation should be included. Although law professors with this complementary skill-set may be “a rare breed,” they are invaluable because they can navigate the broader world of education theory, as well as understand how a law school works. Finally, any faculty committee or task force working on assessment should include representatives from the full range of the curriculum (e.g., doctrinal, clinical, legal writing). The obvious reason for this is that assessment should ideally encompass all of the different areas students will be exposed to, including doctrinal knowledge, practice skills, and professional responsibility.

116 Ibid., p. 10
117 Ibid.
118 Ibid., p. 11
119 Ibid.
120 Ibid., pp. 11-13
5. “Share more information with faculty members than you might think they are interested in receiving or than you might find comfortable sharing.” This lesson resembles the first lesson, above. Essentially, Pitt’s dean found that, counterintuitively, it was only after “‘burdening’ [the faculty] with more information, including some long and . . . dense readings on assessment” that faculty interest was piqued. In particular, it was found that “learning about the prevalence of outcomes assessment in other fields of professional education and the apparent inevitability of outcomes assessment in American legal education seems to have played a key role” in getting Pitt’s law faculty invested in the assessment process, skeptically or otherwise.

6. “Be patient, and be willing to have difficult conversations.” Pitt’s assessment plan has been in development for three years, has taken at least two different forms, and remains a work in progress. Implementation of an assessment plan takes time, and Pitt’s dean recommends giving “the faculty time to absorb the idea of and learn about assessment and to allow them to come to their own conclusions.”

121 Ibid., p. 13
122 Ibid.
123 Ibid.
Conclusion

Outcomes assessment for law schools is still in a nascent stage, but it seems clear that it will become an increasingly important practice in the future. Regardless of where the ABA comes down with the proposed revisions to its accreditation standards, many schools, like Pitt, may feel the pressure from a regional accreditor to implement an assessment plan. And as the Carnegie and Stuckey reports suggest, enhanced assessment practice has a role to play in designing more effective legal pedagogy, regardless of external requirements such as accreditation.

Effective outcomes assessment is a difficult process, but the basic framework should be clear. Of primary importance is the establishment of a clear institutional mission. From this follows the identification of desired outcomes. Both the mission and the outcomes may vary from law school to law school – a public, regional law school, for instance, may have a very different mission from an elite, “national” law school – but the findings of the Carnegie and Stuckey reports strongly suggest that any law school’s outcomes should encompass the three main competencies of legal knowledge, practice skills, and professional attitude.

Having established a mission and desired learning outcomes, the law school must then identify appropriate assessment methods for determining whether the outcomes are being met. As suggested by several examples in this report, these need not necessarily be radical or innovative instruments, and a law school may already have in place a number of assessment methods that simply need to be reported and organized more effectively. Finally, assessment results must be applied in some way. As noted in this report, assessment results might lead to curricular or classroom-level changes by individual faculty. In any event, the ultimate purpose of assessment, not to be lost sight of, is to help a given law school do a better job of preparing its students for the practice of law.
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