

TEACHING AND ASSESSING PROFESSIONAL COMMUNICATION SKILLS IN LAW SCHOOL

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ABSTRACT

Legal education has faced much criticism in recent years. That criticism has largely focused on law schools' failure to prepare students for the practice of law. Critics have thus urged law schools to establish learning outcomes aimed at teaching students how to become practice-ready professionals and have called for the adoption of effective assessment tools to evaluate and improve student learning.

While slow to respond to the call for reform, in August 2014, the American Bar Association finally adopted new accreditation standards on learning outcomes and assessment measures. The adoption of these standards represents a shift in legal education—a shift from educational inputs to learning outputs. In other words, the new ABA standards now require law schools to shift from teaching students how to think like lawyers toward assessing whether students are in fact learning how to be lawyers.

This article examines the new ABA standards on learning outcomes and assessment and their potential impact on reforming legal education. The article argues law schools should embrace the new ABA standards as a valuable method to reflect, evaluate, and improve legal education in their quest to produce practice-ready professionals. In particular, through the lens of an individual course developed to teach professional communication skills, this article illustrates how law schools can engage in small-scale experimentation of articulating learning outcomes and utilizing assessment tools, at the individual course level, all the while focusing on the central purpose of assessment—the improvement of student learning.

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I. INTRODUCTION: A CALL FOR REFORMING LEGAL EDUCATION

Much of the recent criticism concerning legal education stems from two influential reports published in 2007: *The Carnegie Report*¹ and *Best*

1. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATIONS FOR THE PROFESSION OF LAW (HB Printing 2007) [hereinafter THE CARNEGIE REPORT]. The Carnegie Report was commissioned by The Carnegie Foundation for the Advancement of Teaching and, more specifically, through the foundation’s Preparation for the Profession Program whose focus

Practices for Legal Education (“*Best Practices*”).² These reports, commissioned to examine the state of legal education in the United States, undertook a comprehensive and critical look at law schools’ approach toward educating students for the practice of law.³ Their findings and recommendations sparked an ongoing conversation about what it means to produce “practice-ready” professionals.⁴

At its core, *The Carnegie Report* set to examine the achievements and shortcomings of American legal education.⁵ Thus, while the report commended law schools for successfully teaching students how to “think like a lawyer,”⁶ it criticized legal education for placing too much emphasis on thinking and not enough on doing.⁷ According to the report’s findings, law schools today do not teach students the practical skills the legal profession demands of them upon entry into the practice of law.⁸ The report therefore urged law schools to bridge the gap from “thinking like a lawyer” to “lawyering” in an attempt to better prepare students for the practice of law and the role they will play in the legal profession.⁹

Similarly, while acknowledging law schools “help students acquire some of the essential skills and knowledge required for [the practice of] law,” *Best Practices* criticized the lack of commitment in legal education in preparing students how to actually practice law.¹⁰ In particular, it criticized

was on “conducting comparative studies of the educational [programs] in five professional fields: law, engineering, the clergy, nursing, and medicine.” *Id.* at 15.

2. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007) [hereinafter *BEST PRACTICES*]. The Best Practices Project was commissioned by the Clinical Legal Education Association to “develop a statement of best practices” related to legal education. *Id.* at ix.

3. *See id.* at vii (stating one of the questions the report intended to address was whether law schools were “adequately educating students through the content and methodology of [their] present law school curriculums to perform effectively as lawyers after graduation”); *see also* THE CARNEGIE REPORT, *supra* note 1, at 1-2 (explaining the focus of the report was on determining how future lawyers are being prepared for their roles and responsibilities in the practice of law).

4. *See, e.g.*, David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?_r=0 (“Law schools have long emphasized the theoretical over the useful . . . [T]hose pushing for more practical content . . . do [not] expect client-ready lawyers . . . [Rather,] they would like to see less bias against professional training and more classes that engage the law as it exists today.”); Ann Marie Cavazos, *Demands of the Marketplace Require Practical Skills: A Necessity for Emerging Practitioners, and Its Clinical Impact on Society—A Paradigm for Change*, 37 J. LEGIS. 1, 6 (2011) (arguing that practice-readiness is measured by the value of law school graduates to the market, i.e., their “ability to provide effective and efficient legal services at the lowest cost for the consumers/client and highest margin to the firm” or organization).

5. *See* THE CARNEGIE REPORT, *supra* note 1, at 17-19.

6. *Id.* at 87.

7. *See id.* at 87-95.

8. *See id.*

9. *See id.*

10. *BEST PRACTICES*, *supra* note 2, at 7.

law schools for failing to articulate and establish learning outcomes at both the institutional, programmatic, and individual course levels.¹¹ It further criticized the absence of effective assessment tools in legal education to evaluate and improve student learning.¹² As a result, *Best Practices* called for a shift in legal education toward better preparing students for the practice of law by setting clear educational objectives, adopting effective assessment measures to determine whether students are indeed achieving these objectives, and using assessment to improve instruction.¹³

Following the publication of these reports, the Council of the Section of Legal Education and Admissions to the Bar (“the Council”) for the American Bar Association¹⁴ created an Outcome Measures Committee to determine “whether and how [the Council] can use output measures, other than bar passage and job placement, in the accreditation process.”¹⁵ The Committee’s report, published in July 2008, recommended the Council charge the Standards Review Committee with reexamining the then-existing accreditation standards and interpretations in an attempt to move away from relying on input measures and toward utilizing output measures.¹⁶ The report identified such a move as consistent with the recommendations of *The Carnegie Report* and *Best Practices* for a shift toward learning outcomes and assessment.¹⁷ After six years of comprehensive review,¹⁸ the Council approved the 2014 Revised Standards for Approval of Law Schools.¹⁹ The ABA House of Delegates concurred in

11. *See id.* at 8-9.

12. *Id.* at 9.

13. *Id.* at 7.

14. The Section of Legal Education and Admissions to the Bar is ABA’s oldest section and is responsible for determining the legal education requirements for admission to the practice of law. *See* ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014-2015, at vii [hereinafter ABA STANDARDS AND RULES], <https://perma.cc/SVQ6-5KG2>. In 1952, the Council of the Section of Legal Education and Admission to the Bar was “approved by the United States Department of Education as the recognized national agency [responsible] for the accreditation of programs leading to the J.D. degree.” *Id.* The Council sets and interprets the standards for the accreditation process. *See id.*

15. ABA SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE OUTCOME MEASURES COMMITTEE 4 [hereinafter OUTCOME MEASURES COMMITTEE REPORT], <http://perma.cc/UX2M-E9T5>.

16. *Id.* at 64.

17. *Id.*

18. *See* Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL’Y 11, 22-23 (2013) (asserting the ABA has been slow to respond to the calls for reform in preparing students for the practice of law).

19. *See* ABA STANDARDS AND RULES, *supra* note 14, at v.

the proposed Revised Standards, and the Standards became effective on August 12, 2014.²⁰

These new ABA Standards on learning outcomes and assessment measures certainly represent a step toward reforming legal education to better prepare students for the practice of law. But to truly transform legal education, law schools should embrace learning outcomes and assessment for more than mere compliance with the new ABA accreditation standards; they should embrace outcome assessments as a valuable method to reflect, evaluate, and improve legal education in the quest of producing practice-ready professionals.²¹

This article illustrates how law schools can use learning outcomes and assessment measures, at the individual course level, to better prepare students for the practice of law. Part II of the article reviews the new ABA Standards on outcomes and assessment. It also examines the underlying principles of outcome-based education and identifies the different levels at which assessment must occur: the institutional, the programmatic, and the individual course levels. Part III provides an example of employing learning outcomes and assessment measures at the individual course level by discussing a course I designed and taught at the University of North Dakota School of Law. The course, entitled Professional Writing and Communication, intended to impart in students the professional skills practicing attorneys use when communicating with broad audiences—the very same skills attorneys often rely on to market their law practice. Part III examines each stage of the assessment cycle for the course and offers some reflections on it. Part IV concludes by encouraging law schools to embrace the new ABA Standards as a valuable tool for evaluating the program of legal education, improving student learning, and producing practice-ready professionals.

20. *Id.*

21. See Ruth Jones, *Assessment and Legal Education: What is Assessment, and What the *# Does It Have to Do with the Challenges Facing Legal Education?*, 45 MCGEORGE L. REV. 85, 91-92 (2013) (explaining “[a]ssessment has been employed for two related and sometimes conflicting purposes: accountability and improvement,” accountability being used to prove the institution is meeting certain standards imposed by external groups, such as accrediting agencies, and improvement being employed to improve student learning).

II. ABA'S MOST RECENT RESPONSE TO THE CALL FOR REFORM: NEW STANDARDS ON LEARNING OUTCOMES AND ASSESSMENT REQUIREMENTS

In its most recent response to the call for reforming legal education to produce practice-ready professionals, the ABA revised its Standards and Rules of Procedure for Approval of Law Schools to include new standards on learning outcomes and assessment requirements.²² This revision was largely intended to shift the center of legal education from “teaching to learning and from curriculum to outcomes.”²³ To that end, the ABA revised its standards on the objectives of legal education²⁴ and learning outcomes,²⁵ and added new standards on assessment of student learning²⁶ and evaluation of law schools’ programs of legal education, learning outcomes, and assessment methods.²⁷

22. See ABA SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REVISED STANDARDS FOR APPROVAL OF LAW SCHOOLS (Aug. 2014) [hereinafter ABA REVISED STANDARDS], http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_redline.authcheckdam.pdf.

23. Cara Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate: Empowerment in the Midst of a "Perfect Storm,"* 14 CONN. PUB. INT. L.J. 67, 68 (2014) (stating the new revised standards represent a “quantum shift” from “what is delivered to students to what students take away from their educational experience” (quoting 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, 228 (2011))); see also ABA SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR, EXPLANATION OF CHANGES ch. 3 (2014) [hereinafter ABA REVISED STANDARDS, EXPLANATION OF CHANGES], http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201408_explanation_changes.authcheckdam.pdf (stating the changes to Chapter Three, Program of Legal Education, are in accordance with the recommendations of the Outcome Measures Committee to reduce “reliance on input measures and to adopt a greater and more overt reliance on outcome measures” (internal quotation marks omitted)).

24. See ABA REVISED STANDARDS, EXPLANATION OF CHANGES, *supra* note 23, at Standard 301 (stating Standard 301, Objectives of Program of Legal Education, was revised to include the requirement of “a rigorous program of legal education” as well as “[t]he requirement of preparation for ethical participation in the legal profession”).

25. See *id.* at Standard 302 (“Standard 302 [Curriculum] has been replaced with revised Standard 302 [Learning Outcomes] and revised Standard 303 [Curriculum].”).

26. See *id.* at Standard 314 (“This is a new Standard that introduces the obligation of law schools to use assessment methods in the curriculum to measure and improve student learning and to provide feedback to students.”).

27. See *id.* at Standard 315 (“This is a new Standard. It requires the dean and faculty of the law school to engage in an ongoing evaluation of the program of legal education, learning outcomes, and assessment methods.”).

A. THE NEW STANDARDS ON LEARNING OUTCOMES AND ASSESSMENT

Setting the tone for the shift toward learning outcomes and assessment, Standard 301(a) now identifies the overarching objective of legal education: to prepare law students, “upon graduation, for admission to the bar and for effective, ethical, and responsible participation” in the practice of law.²⁸ In other words, as revised, the new objective of legal education is to prepare students for the transition from law school to law practice by equipping them with the skills necessary to pass the bar and enter the practice of law.²⁹ To further that objective, Standard 301(b) requires law schools to “establish and publish learning outcomes designed to achieve” the objective of preparing students for admission to the bar and for the practice of law.³⁰ The minimum competencies these learning outcomes must strive to accomplish are outlined in Standard 302, Learning Outcomes.³¹ Law schools are of course free to identify “any additional learning outcomes pertinent to [their] program of legal education.”³²

Establishing learning outcomes to achieve the newly articulated objective of producing practice-ready graduates,³³ however, necessarily requires a change in the current law school curriculum. Standard 303 outlines these necessary changes. For example, under Standard 303(a), law schools must now require “each student to satisfactorily complete” (1) a professional responsibility course “that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;” (2) “one writing experience in the first year and at least one additional writing experience” after that; and (3) six credit

28. ABA REVISED STANDARDS, *supra* note 22, at Standard 301(a).

29. *See id.*

30. *Id.* at Standard 301(b).

31. *Id.* at Standard 302. The newly adopted Standard 302 states:

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

(a) Knowledge and understanding of substantive and procedural law;

(b) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;

(c) Exercise of proper professional and ethical responsibilities to client and the legal system; and

(d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

32. *Id.* at Interpretation 302-2.

33. *See id.* at Standard 301.

hours of experiential course work.³⁴ The Standard further defines an experiential course as “a simulation course, a law clinic, or a field placement” that “integrate[s] doctrine, theory, skills, and legal ethics” and provides students with “multiple opportunities for performance” and “self-evaluation.”³⁵ Lastly, Standard 303 continues to require law schools to offer students substantial opportunities to participate in law clinics, field placements, and pro bono work.³⁶

Newly revised Standards 301 through 303 reflect the ABA’s attempt to address some of the sharp criticism addressed at the existing overreliance on input measures in legal education.³⁷ The purpose of the revised standards was therefore to identify the new minimum learning outcomes law schools must adopt and to outline certain curricular changes to assist in the compliance with these outcomes. But the identification of learning outcomes means little without the tools to measure if these outcomes are in fact being met. Accordingly, the revisions to Chapter Three of the ABA Standards also include the addition of new Standards 314 and 315.³⁸

In its entirety,³⁹ Standard 314, Assessment of Student Learning, provides as follows: “A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback”⁴⁰ The Interpretations accompanying the Standard define formative assessment methods as “measurements at different points during a particular course or at different points over the span of a student’s education that provide meaningful feedback to improve student learning.”⁴¹ Summative assessment is defined as the “measurement[] at the culmination of a particular course or at the culmination of any part of a student’s legal

34. *Id.* at Standard 303. The mandates for a professional responsibility course and the rigorous writing experiences were largely carried over from the old Standard 302-2. *See id.* at Standard 302-2. The mandate for six credit hours of experiential learning, however, was newly added to the Standard. *Id.* at Standard 303.

35. *Id.* at Standard 303(a)(3)(i), (iii)-(iv).

36. *Id.* at Standard 303(b).

37. *See* ABA REVISED STANDARDS, EXPLANATION OF CHANGES, *supra* note 23, at Ch. 3 (explaining the revisions on learning outcomes are “consistent with best practices in legal education and encouraged by the U.S. Department of Education guidelines”).

38. *See* ABA REVISED STANDARDS, *supra* note 22, at Standards 314-315.

39. *See* David Thomson, *When the ABA Comes Calling, Let’s Speak the Same Language of Assessment*, 23 PERSP. TEACHING LEGAL RES. & WRITING 68, 69 (2014) (arguing the requirement of Standard 314, “taken alone, is so vague as to beg a whole set of questions” as to what law schools are expected to do to comply with it).

40. ABA REVISED STANDARDS, *supra* note 22, at Standard 314.

41. *Id.* at Interpretation 314-1.

education that measure[s] the degree of student learning.”⁴² Standard 314 does not, however, require law schools to use any particular assessment methods.⁴³ Instead, guidance as to the assessment methods that “may be used to measure the degree to which students have attained competency in the school’s student learning outcomes” comes from Standard 315.⁴⁴ Standard 315, which now requires law school deans and faculty to “conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods,”⁴⁵ lists both some traditional and some innovative examples of assessment methods. For instance, bar exam passage rates and placement percentages remain recommended as tools for assessing whether a law school is meeting the objective of producing practice-ready graduates.⁴⁶ But the Standard also adds some more innovative methods for measuring student learning.⁴⁷ These methods include “evaluation of student learning portfolios; student evaluations of the sufficiency of their education; [and] student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge.”⁴⁸

The revisions to the ABA standards on learning outcomes and assessment measures represent one step, albeit a smaller one than many had hoped for, toward shifting the focus of legal education from educational inputs to learning outputs.⁴⁹ As law schools embark on or continue to move from what students are being taught to what students are actually learning, they must remember the central purpose of assessment, the foundational principles behind it, and the different levels at which assessment must occur to make its use effective.

42. *Id.*

43. *Id.* at Interpretation 314-2.

44. *Id.* at Interpretation 315-1.

45. *Id.* at Standard 315. Standard 315, Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods, provides:

The dean and the faculty of a law school shall conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods; and shall use the result 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.

46. *See* ABA REVISED STANDARDS at Interpretation 315-1.

47. *Id.*

48. *Id.*

49. *See* Warren, *supra* note 23, at 67-68.

B. A PROPOSED WAY OF THINKING ABOUT THE NEW STANDARDS ON
LEARNING OUTCOMES AND ASSESSMENT

Assessment, or outcome-based education, refers to the methods employed to determine “whether students are learning what we want them to learn.”⁵⁰ In other words, the central purpose of assessment is to discover whether students are achieving the learning outcomes set for a particular skill set, an individual course, or an entire instructional program.⁵¹ This purpose has been described as one of improvement⁵² and it is fulfilled when a school uses assessment to engage in a critical evaluation of the curriculum and course instruction in order to determine how to improve student learning.⁵³

Law schools, however, have traditionally used assessment for a different, and a somewhat conflicting, purpose—the purpose of institutional accountability.⁵⁴ When assessment is used for accountability, its primary objective is to “collect data to prove effectiveness” in an attempt to meet the external requirements set by an accreditation agency like the Council.⁵⁵ The focus is thus on satisfying the imposed upon external requirements rather than on evaluating the program’s effectiveness for purposes of improvement.⁵⁶ And while the new ABA standards continue to mandate the use of assessment for institutional accountability,⁵⁷ the standards also add a requirement for law schools to “utilize both formative and summative assessment methods” in order to “improve student learning and provide meaningful feedback to students.”⁵⁸ It is the latter requirement that indeed fulfills the central purpose of assessment and ensures law schools are using assessment to improve legal education so that students are better prepared for the practice of law.

50. See BEST PRACTICES, *supra* note 2, at 235-36.

51. See *id.*; see also Jones, *supra* note 21, at 88 (defining assessment as a “method for identifying the most effective teaching methods and program elements . . . a process for employing systematically collected information to improve the learning experience of students”).

52. See Jones, *supra* note 21, at 91-92.

53. See 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, 172-73 (2012).

54. See Jones, *supra* note 21, at 91-92.

55. *Id.* at 91; see also ABA STANDARDS AND RULES, *supra* note 14, at vii (stating the Council is the national agency responsible for accrediting educational programs leading to a J.D. degree).

56. Jones, *supra* note 21, at 91.

57. See ABA REVISED STANDARDS, *supra* note 22, at Standards 302-303.

58. *Id.* at Standard 314.

In addition to keeping the central purpose of assessment in mind, law schools should also remember the foundational principles behind it. To be effective, assessment must occur in three distinct stages, which comprise the assessment cycle: (1) identify the goals and objectives for student learning (learning outcomes); (2) collect information to determine if students are achieving these goals and objectives (assessment); and (3) use the information gathered to improve the instruction.⁵⁹ To be effective, assessment must also occur at all levels of the law school experience: the institutional level, the curriculum or programmatic level, and the individual course level.⁶⁰

Institutional assessment involves establishing the educational goals and objectives—the learning outcomes—of the institution as a whole.⁶¹ Once the learning outcomes for the institution have been articulated, a law school should assess its overall curriculum to determine “when, where, and how each desired outcome will be accomplished in the overall program of instruction.”⁶² The process of curriculum and co-curriculum mapping could assist the institution at making that determination at the programmatic level.⁶³ Having conducted a curriculum assessment, the focus can then shift from establishing learning outcomes and evaluating if students are achieving these outcomes “on the aggregate” to setting course goals and assessing student learning at the individual course level.⁶⁴

Course assessment involves the same assessment cycle as institutional and programmatic assessment.⁶⁵ The instructor first articulates the student learning objectives for the course and selects the assessment measures for it.⁶⁶ These assessment measures are in turn used to gather information

59. Warren, *supra* note 23, at 71; *see also* Jones, *supra* note 21, at 88; MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN* 136 (2009) (describing the assessment cycle as a four-stage cycle: (1) articulating student learning outcomes, (2) gathering information about how well the students are achieving these outcomes, (3) interpreting the information collected, and (4) using the information to improve teaching).

60. Warren, *supra* note 23, at 71-72.

61. Fisher, *supra* note 23, at 229 (explaining the educational goals and objectives of a law school typically derive from the school’s mission statement and the ABA Standards); *see also* BEST PRACTICES, *supra* note 2, at 40 (“There is nothing more important for any educational institution than to have clearly articulated educational goals.”).

62. BEST PRACTICES, *supra* note 2, at 93.

63. *Id.* (“For each outcome, a curriculum map identifies where in the curriculum students will be introduced to the skill, value, or knowledge; where in the curriculum the students will practice it; and at what point of the curriculum students can be expected to have attained the desired level of proficiency.”)

64. Fisher, *supra* note 23, at 236.

65. *Id.*

66. SCHWARTZ ET AL., *supra* note 59, at 136.

about how well the students are achieving the learning objectives set for the course—student assessment.⁶⁷ The instructor then analyzes and interprets the information collected by looking for common themes so that she can make the necessary adjustments to improve student learning.⁶⁸ It is the assessment at the individual course level that the next part of this article attempts to address by using an individual course as a case study.

III. LEARNING OUTCOMES AND ASSESSMENT AT THE INDIVIDUAL COURSE LEVEL

As stated above, assessment will be effective when it occurs at the institutional, programmatic, and course levels. But while its underlying purpose—to improve student learning—will remain the same, the considerations of how to achieve that purpose will necessarily vary depending on the level. These considerations are discussed below.

A. ARTICULATING THE LEARNING OUTCOMES FOR THE PROFESSIONAL WRITING AND COMMUNICATION COURSE

The first step in the assessment cycle, be it at the programmatic or course level, is to articulate learning goals and objectives (learning outcomes).⁶⁹ At its inception, the Professional Writing and Communication course had three main goals.⁷⁰ First, the course aimed to help students develop the professional skills to communicate with broad audiences, skills that would benefit them in both the practice and the business of law. Second, the course aimed to incorporate a mix of assessment instruments and innovative pedagogical approaches in an attempt to offer and discern

67. *Id.*

68. *Id.*; see also Fisher, *supra* note 23, at 236-37.

69. SCHWARTZ ET AL., *supra* note 59 at 136.

70. I use the term “goal” here broadly to encompass student learning outcomes for the course as well as the curriculum and institutional objectives of the law school. See BEST PRACTICES, *supra* note 2, at 42-43 (stating learning outcomes should first be set at the institutional level, followed by the curriculum level and the individual course level); see also Fisher, *supra* note 23, at 229 (explaining an institution’s educational goals and objectives are often driven by the school’s mission statement). But see SCHWARTZ ET AL., *supra* note 59, at 38-39 (defining a course goal as “a statement of what students should be able to do by the end of [the] course” and explaining that “goal statements are most effective when they . . . focus on the student—not the teacher”). At the time I was developing the course, the law school’s mission statement read, in relevant part: “The University of North Dakota School of Law seeks to: (1) [e]ducate students for professional service in the law and law related professions . . . [and] (5) [f]urther the overall goals and objectives of the University of North Dakota.” UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW, <http://law.und.edu/about/mission.cfm> (last visited Jan. 25, 2016). The school’s curriculum mission aspired, inter alia, “to produce well-rounded legal professionals with the necessary skill set to serve as effective, innovative, and ethical leaders.” *Id.*

the most effective teaching methods for learning the professional communication skills the course had set to impart in students. Third, the course aspired to enhance the law school's relationship with the bench and bar of the state and expose law students to networking opportunities with potential employers.

The primary goal of the course was to provide students with the opportunity to develop professional communication skills. In particular, the learning objective was for students to acquire the written and oral communication skills lawyers are often expected to and do in fact use in practice—the skills to communicate with broad audiences, including current and potential clients and fellow attorneys, as opposed to the skills needed to communicate with judges or opposing counsel. This learning objective intended to bring students one step closer to becoming the practice-ready professionals we, as law teachers, aspire them to be.

Thus, rather than focusing on the “traditional” legal writing and communication skills, such as motion and brief writing, negotiation techniques, trial advocacy skills, or transactional drafting, the course focused on developing written and oral communication skills that would assist students in marketing and advancing their law practice—the very skills lawyers in small and solo practice⁷¹ need in order to market and self-promote their services and talents.⁷² From a writing perspective, the course

71. I emphasize small and solo practice because, in 2005, seventy-five percent of lawyers in private practice worked for small firms (firms with less than twenty attorneys), with almost half of all private practice lawyers (forty-nine percent) working as solo practitioners. AMERICAN BAR ASSOCIATION, LAWYER DEMOGRAPHICS REPORT (2014), <http://www.americanbar.org/content/dam/aba/administrative/marketresearch/lawyer-demographics-tables-2014.authcheckdam.pdf>. For 2013, the year in which the course was offered, a little less than half of the school's graduates (twenty-five of sixty-one) entered private practice. UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW, ABA EMPLOYMENT SUMMARY FOR 2013, http://law.und.edu/_files/docs/other/und-law-aba-employment-2013.pdf. Of the twenty-five graduates in private practice, fifteen were solo practitioners and nine were employed by small law firms (firms with less than twenty-five attorneys). *Id.*; see also Jeffrey J. Pokorak, Ilene Seidman, Gerald M. Slater, *Stop Thinking and Start Doing: Three-Year Accelerator-to-Practice Program as a Market-Based Solution for Legal Education*, 43 WASH. U. J.L. & POL'Y 59, 74 (2013) (stating the majority of law school graduates enter small and solo practice and explaining that while many of them choose that path intentionally, “current economic conditions are adding to the growing ranks of unintentional entrepreneurs”).

72. See, e.g., Segal, *supra* note 4 (asserting that to be successful, law school graduates need “entrepreneurial skills, management ability and some expertise in landing clients”); Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909, 922 (“A skills curriculum should reflect the diverse tasks performed by lawyers. . . . Creative efforts to develop a diverse program of skill instruction may include not only traditional categories of litigation and transactions, but also practice tasks . . .”). Cf. Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer*, 71 ALB. L. REV. 201, 202-06 (2008) (arguing that if “the goal of legal education is to produce graduates who possess the skills, knowledge, and values necessary to be successful

sought to develop skills for four distinct types of professional writing: legal blogs,⁷³ client newsletters,⁷⁴ bar journal articles,⁷⁵ and client advisories.⁷⁶ On the oral communication side, the course aimed to develop the skills necessary to give a continuing legal education (“CLE”) presentation to non-specialist lawyers and presentations to lay audiences.⁷⁷

A secondary goal for the course was to allow me, the instructor, to engage in a small-scale experimentation of various assessment tools and teaching methodologies in the classroom. By focusing on the use of both traditional and innovative approaches to instruction,⁷⁸ the course sought to offer students the opportunity to learn the identified professional skills in different ways. The course also provided me with the chance to discern and determine what teaching methods best reach students with diverse learning styles in acquiring these practical skills.

Finally, a subsidiary goal of the course, one I actually articulated after the course was designed,⁷⁹ was to increase exposure for both the law school and its students throughout the state, foster collaboration between the School of Law and the bench and bar, and provide students with the opportunity to network with potential employers. As the only law school in the state, UND has always been uniquely positioned to collaborate closely with the bench and bar. Many of the most respected lawyers and judges in the state are in fact graduates of the law school,⁸⁰ who are eager to give

legal professionals[.]” then law schools should focus on teaching students the business of law as well).

73. See Jennifer Murphy Roming, *Legal Blogging and the Rhetorical Genre of Public Legal Writing*, 12 LEGAL COMM’N & RHETORIC J. 29, 30-31 (2015) (discussing the growing importance of and pragmatic need for “public legal writing” skills, such as the skills used for legal blogging and other types of online social media writing).

74. See, e.g., Milton W. Zwicker & Wells H. Anderson, *Attract New Clients with Effective E-Newsletters*, 24 NO. 8 GPSOLO 20, 21 (December 2007).

75. See, e.g., Roger F. Smith, *Keeping Clients: The Twin Challenges of Marketing and Client Retention*, 58-DEC. OR. ST. B. BULL. 35, 37 (1997) (stating that when it comes to marketing, lawyers often write articles for bar journals as a means of building “professional recognition for their particular expertise”).

76. See, e.g., Daniel Turinsky, *Assisting Clients with Employment Law Compliance in a New Regulatory Environment*, Aspatore (Oct. 2013), WL 5290582, at *7 (noting regular communication with existing clients is crucial to maintaining relationships and suggesting client advisories help keep clients informed on recent legal developments).

77. See, e.g., Smith, *supra* note 75, at 37 (identifying CLE presentations and other seminars as commonly used marketing tools).

78. See SCHWARTZ ET AL., *supra* note 59, at 41 (explaining the importance of using a variety of teaching methods to give students as many opportunities to learn as possible).

79. *Id.* at 43-44 (noting the process of designing the course often leads to revising existing, and sometimes to discovering additional, course goals).

80. See, e.g., *Most N.D. Supreme Court Justices, Attorneys in Fighting Sioux Nickname Case Have UND Law School Ties*, THE GRAND FORKS HERALD (Feb. 28, 2012), <http://law.und.edu/news/2012/02/tiestoundlaw.cfm> (explaining the vast majority of lawyers,

back to the institution. Nurturing these relationships provides unparalleled opportunities for UND's law students⁸¹ and strengthens the future of the legal profession in the state.

B. DESIGNING THE COURSE

Having articulated the goals and objectives for the course, I shifted to the next stages of the course design, which included planning the assessment instruments,⁸² selecting the textbook, and writing the syllabus.

1. *Planning the Assessment Instruments.*

The options for assessment instruments—instruments for accurately assessing student learning of the skills articulated in the learning objectives for the course—were numerous. After all, the variety of written and oral communication skills the course sought to achieve lent itself well to an even wider variety of assessment tools, from law-practice exercises to written articles and oral presentations.⁸³ Moreover, to ensure that the assessment instruments selected were aimed at all thinking levels, from understanding to application, I knew I would likely plan for more assessment items than I would probably be able to use for the actual course.

including four of the five North Dakota Supreme Court justices and the Attorney General of North Dakota, are graduates of the UND School of Law).

81. See, e.g., Loreleil Laird, *In Rural America, There Are Job Opportunities and a Need for Lawyers*, AM. BAR ASS'N J., http://www.abajournal.com/magazine/article/too_many_lawyers_not_here_in_rural_america_lawyers_are_few_and_far_between (discussing a newly created program by the University of North Dakota School of Law, in collaboration with the State Bar Association of North Dakota, which provides a summer stipend to law students interested in working with rural state judges in an attempt to address the shortage of attorneys in rural America); *UND Law Marks a First with Tribal Court Externship*, DAILY NEWS (June 14, 2013), http://www.wahpetondailynews.com/und-law-marks-a-first-with-tribal-court-externship/article_9ff40ede-d51a-11e2-92b0-0019bb2963f4.html (describing a new externship opportunity for UND Law students with the U.S. Attorney's Office, placing students with a tribal court and allowing students to work with both assistant U.S. attorneys and with tribal prosecutors in an effort to provide exposure and an understanding of the criminal justice system on the state's reservations).

82. SCHWARTZ ET AL., *supra* note 59, at 43 (“[T]he choice to make assessment the next topic (after articulating course goals and objectives . . . and before you design the course) is an intentional one. . . . [D]efining assessment right after you have articulated your objectives and before you design your course ensures that your assessment instruments are congruent with [the course's] goals.”).

83. See, e.g., *id.* at 139 (listing the following options as possible assessment instruments in law school: analytical essays, legal documents, journals, simulations, verbal presentations, and so on); see also Paul S. Ferber, *Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417, 418 (2002) (defining simulation as “the performance of a lawyering task” through the use of a “hypothetical situation, which eliminates reality”).

Although student assessment can be used in different ways,⁸⁴ my focus for the course was on planning assessment instruments that would accurately determine whether students were acquiring the knowledge, skills, and values the course had set to accomplish and helping students become self-regulated learners.⁸⁵ And because “[a]ssessment and learning are intricately connected,”⁸⁶ it was student learning, not teaching, that drove the planning process. Recognizing students need many opportunities to practice what they learn, receive meaningful feedback, and be given the chance to improve on the basis of that feedback,⁸⁷ I set to select a variety of professional communication tasks to help students approach learning from different perspectives and engage in self-regulated learning.

The scope of what tools to use to assess the learning in a course entitled Professional Writing and Communication depended largely on the definition of what constitutes professional, law-related communication. The number and type of assessment tools also depended on the credit hours awarded for the course (two in this case). Finally, class size played a role in the planning process because if the goal was to select assessment tools that would allow students increased and repeated opportunities for practice and performance based on individualized feedback, then the number of students who could enroll in the course necessarily had to be limited.⁸⁸

To better understand the choices for the assessment tools I ultimately made, I first considered the range of responses I received from surveying a number of practicing attorneys and judges in the state on what constitutes professional communication in law practice. The main question I sought

84. SCHWARTZ ET AL., *supra* note 59, at 44-45 (offering three uses of student assessment: (1) “evaluating student performance on the aggregate level for the purpose of evaluating student effectiveness of your course[;]” (2) helping students “not only learn more and learn better . . . , but also learn to take control over their learning process[;]” and (3) “evaluating student performance for the purpose of assigning grades”).

85. *See, e.g.*, Niedwiecki, *supra* note 53, at 176 (asserting formative assessment “should be used to assist students in becoming better self-regulated learners”).

86. *See* SCHWARTZ ET AL., *supra* note 59, at 135.

87. *See id.* at 137 (describing this type of assessment as formative assessment, an assessment “where the purpose is to help students learn rather than to assign grades”); *see also* BEST PRACTICES, *supra* note 2, at 255-56 (explaining the purpose of formative assessments is “to provide feedback to students and faculty” and to ensure students have information about their performance and faculty have information about their teaching effectiveness).

88. I limited the course to sixteen students with the hope of having more time to provide meaningful and particularized feedback to each individual student. In addition, I wanted to allow students the opportunity to “close the gap” between their performance and the identified learning outcomes for the assignment. *See* Niedwiecki, *supra* note 53, at 177. I ultimately ended up with twelve students in the class. If I were to teach the course again, I would again strive for somewhere between twelve to sixteen students, with no more than eighteen, to ensure the same opportunities for students to self-regulate their learning.

advice on was the distinction between “traditional” legal writing and what I referred to as “nontraditional,” professional writing and communication. It was no surprise that under the category of traditional writing most attorneys and judges listed writing aimed primarily at judges or opposing counsel, such as pre-trial and trial motions and appellate briefs.

When asked, however, to define what other types of professional writing and communication practitioners typically engage in in the practice of law, the answers varied widely. A number of attorneys listed writing short bar journal articles and giving presentations to both lawyers and lay audiences as an important aspect of promoting their legal expertise and fulfilling their duty as servants of the profession. Others discussed the importance of providing proactive advice and updates to current and potential clients on the latest legal developments in their specialty area.⁸⁹ Yet others suggested a move toward social media writing, including legal blogs, tweets, and Facebook statuses for the law firm’s webpage, all of which can also serve as great marketing tools for the attorneys and their respective law firms.⁹⁰

Guided by the desire to offer a comprehensive set of assessment instruments that would accurately evaluate students’ learning and logically build on each skill learned, I chose to select the following assessment instruments for the course: (1) a legal blog entry; (2) a bar journal article to be submitted for publication to *The Gavel*, the official bar journal of the North Dakota State Bar Association; (3) a newsletter article to be submitted for publication to the *Employment Law Letter*; (4) a client advisory; and (5) a CLE presentation, including a written outline of the presentation and a handout to serve as a practical, take-away resource for attendees.⁹¹

89. See generally NORTH DAKOTA EMPLOYMENT LAW LETTER, Vogel Law Firm (Lisa Edison-Smith & Leslie Bakken Oliver, eds.). Some of the attorneys I was fortunate to work with during the preparation for the course specialized in the area of labor and employment law, for example. As part of their commitment to providing clients with a full range of services, these attorneys had created the North Dakota Employment Law Newsletter. The purpose of the newsletter was to keep clients informed about the latest news in the area of labor and employment law and, of course, to market the talented attorneys serving as the newsletter’s editors.

90. I received a number of other suggestions on what attorneys considered to be professional writing and communication skills, such as writing short practical pieces to be published in practice manuals, giving media interviews, and drafting op-eds. Although I had to limit the number of assignments for the course, others interested in developing a similar course can certainly revise the list of assignments to fit the particular needs of the law students and the area the law school serves.

91. See SCHWARTZ ET AL., *supra* note 59, at 139 (listing the following factors, among others, to consider when preparing assessment instruments: the rationale for the assessment, the task students will need to perform and the time it will take students to complete that task, the content of the assessment, possible collaboration between students, and feedback from the instructor).

Admittedly, my choice of selecting assessment instruments was also influenced by the willingness of the editors of both *The Gavel* and the *Employment Law Letter* to allow students enrolled in the course to submit their final product for publication. After all, providing students with the opportunity to have their work reviewed, edited, and published by outside sources was one more opportunity for assessing student learning. In addition, providing students with the opportunity to have their articles read by a significant number of practitioners and judges in the state, as well as potential clients, was exactly in line with the course's subsidiary goal of helping students learn the importance of marketing their skills and abilities to clients or, as it was the case here, to potential employers and future colleagues.

Although the primary focus in planning the assessment instruments was to help students develop the professional communication skills articulated as the learning objectives for the course, I also planned on using the five assessments instruments identified above to evaluate student performance for the purpose of assigning grades.⁹² My decision to do so was influenced by a number of factors. First, using multiple assessments to assign grades avoids the risk of inaccuracy.⁹³ Second, using a variety of assessments (here, evaluation of student learning was done both through written work and oral presentations) accounts for “the science of teaching and learning [that] students perform differently on different kinds of assessments.”⁹⁴ Lastly, because the assessment instruments reflected the

92. While formative assessments may be scored, they are not used to assign grades. See BEST PRACTICES, *supra* note 2, at 255-56 (stating formative assessments are used to assess students' learning while summative assessments are “used to assign grades or rank students”); SCHWARTZ ET AL., *supra* note 59, at 154 (“Grading, or *summative assessment*, . . . focuses on evaluation rather than practice and development”); see also Steven J. Johansen, *It's Not About the Grades . . . Really*, 21 NO. 1 PERSP. TEACHING LEGAL RES. & WRITING 1, 1 (Fall 2012) (“Even if we accept that grades are a practical necessity, it does not follow that everything students do must be graded. If we want students to focus on our formative assessment, then we should do as much formative assessment as possible, saving the actual grading until students have had as much opportunity to develop their skills as possible.”). However, the assessment instruments chosen for the course could serve as both formative and summative assessments because each instrument was a multi-step process. See *infra* Part III.C.2 (discussing the use of the client newsletter as both formative and summative assessment); see also Herbert N. Ramy, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 844 (2013) (explaining formative assessments generally take place throughout the course of the semester and are intended to provide students with information on their performance of a specific skill).

93. See SCHWARTZ ET AL., *supra* note 59, at 156.

94. *Id.* at 157.

learning objectives for the course, the instruments would necessarily test what the course had set out to teach.⁹⁵

The one course assignment I chose to require, but not grade, was a cover letter and a résumé. In fact, this was the first assignment students had to complete for the course. Students were asked to submit a written draft of a cover letter and a résumé for a specific job posting. Each student then met with me individually to discuss both her work and her expectations for the course. My purpose for including this assignment was two-fold. On one end, perhaps the more selfish end, the assignment allowed me the opportunity, early on in the semester, to determine who my students were, to get to know each of them on a more personal level, and to learn about their professional goals and aspirations. On the other end, the assignment allowed me, in a limited fashion, to assess the entry knowledge and skill set of the students in the course and to discover their learning style preferences.⁹⁶

2. *Selecting the Textbook and Writing the Syllabus.*

With these assessment instruments in place, I was ready to continue with the next stages in the design process—selecting a textbook and writing the syllabus. I knew from the start that no textbook would meet the precise needs of the course, because of its highly individualized focus and content, and that finding a textbook to cover each learning unit, from writing a legal blog to giving a CLE presentation, would be an impossible task.⁹⁷ But I also knew that because one of the goals for the course was to help students learn a particular set of writing skills, a textbook on writing would be beneficial. Thus, my motivation for selecting a textbook was based on my desire to find a text that would best advance the goals and objectives of the course all the while engaging students in learning the skills, knowledge, and values the course had set to accomplish.⁹⁸ The text that best fit these needs was *Thinking Like a Writer* by Steven Armstrong and Timothy Terrell.⁹⁹

95. See BEST PRACTICES, *supra* note 2, at 241 (stating assessment instruments should be used to evaluate whether students are learning what is being taught in the course).

96. See SCHWARTZ ET AL., *supra* note 59, at 43 (describing the importance of assessing learners early on in the course and cautioning not to assume students are like us—law professors).

97. I could have, of course, designed my own text for the course. For example, Aspen Custom Solutions provides law professors with the option to combine materials from various legal education sources, include supplementary materials, and customize content to account for the particular needs of each individual course. See Aspen Content Solutions | Wolters Kluwer, <http://www.aspenlaw.com/pages/solutions> (last visited on Jan. 25, 2016).

98. See SCHWARTZ ET AL., *supra* note 59, at 46–47. In considering what textbook to adopt, law professors should look for a text that, among other things, (1) is congruent with the goals and objectives of the course; (2) “[i]ntroduce[s] topics with overviews and a problem the students can

In addition, because the course aimed to help students learn how to communicate with broad audiences, including lay audiences, I also selected Bryan Garner's *Legal Writing in Plain English*.¹⁰⁰ I chose Garner's text because it not only explained every principle of good legal writing, but also because the practical exercises included in it, as part of learning each concept, provided an invaluable opportunity for students to assess their learning progress often and accurately. Of course, while I was happy with the textbooks I had selected for the course, I was fully aware that I would need to provide supplemental materials to students in order to better facilitate their learning of each particular skill covered in the course.

Having selected the textbooks and using the assessment instruments as the basis for the individual learning units,¹⁰¹ I was ready to put everything together into one cohesive course by writing the course syllabus. In thinking about the syllabus, I adhered to some basic principles.¹⁰² First, I did not want the syllabus to be merely a list of assignments. To me, the syllabus sets the tone for the course¹⁰³ because it is typically the first interaction (be it in person or on paper) I have with students. Thus, I wanted to use the syllabus as a tool for engaging students from the start by sparking their interest in the subject matter of the course. Second, I wanted to use the syllabus to express the high expectations for the course.¹⁰⁴ Keeping in mind the multiple assignments I have chosen to include and the fact that each assignment, in turn, consisted of multiple steps, I wanted to

solve once they have learned the topic"; (3) presents concepts in a logical sequence, beginning with easier concepts and progressively moving toward more complex ones; (4) "[i]nclude[s] thinking questions at all thinking levels"; and (5) "[e]ngage[s] a wide variety of learners." *Id.*

99. STEVEN V. ARMSTRONG & TIMOTHY P. TERRELL, *THINKING LIKE A WRITER* (3d ed. 2010).

100. BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES* (2d ed. 2008).

101. *See* SCHWARTZ ET AL., *supra* note 59, at 48 (suggesting once a teacher identifies the individual learning units for the course, the teacher should then synthesize those units in a course design).

102. *See, e.g.*, Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, But Our Course*, 47 WASHBURN L.J. 367, 373 (2008) (listing the following five components as essential for every effective syllabus: (1) goals, (2) materials, (3) assignments, (4) both teaching and learning methods, and (5) evaluation or assessment).

103. *See* SCHWARTZ ET AL., *supra* note 59, at 59 ("Whether you want them to do so or not, students will draw inferences about who you are, what you value, what you think of your students, and how you will teach based solely on what you say in your syllabus and the tone with which you say it."); *see also* Hess, *supra* note 102, at 374 ("The syllabus is often the first contact students have with their teacher—it leaves a lasting impression.").

104. *See* Hess, *supra* note 102, at 374 (explaining a successful syllabus should communicate a teacher's expectations for the course, including "students' roles and responsibilities [regarding] . . . participation, effort, respect for teacher and [fellow] students, contribution to an effective learning environment, and collaboration with students and the teacher").

ensure students understood the amount of work and effort that would be required of them, both in and out of the classroom. Lastly, I wanted to use the syllabus as a way of conveying my enthusiasm for the course¹⁰⁵ and my view of how the course would facilitate student learning and would assist students in acquiring the skills to become practice-ready professionals.

And so I did. After a summer of defining and redefining the goals and objectives for the course, evaluating the most appropriate tools for assessing student performance, creating individual learning units and combining them in a logically structured course, I was ready to enter the classroom and welcome what I hoped to be students eager to engage and excited to learn.

C. TEACHING THE COURSE¹⁰⁶

As mentioned above, a secondary goal for the course was to allow for the small-scale experimentation of various teaching methodologies in an attempt to reach students with diverse learning styles and to determine what teaching methods work best for practical skills courses.¹⁰⁷ Although the traditional approach to delivering instruction in law school courses has been to rely on “a limited range of teaching methods that are not always carefully chosen for their effectiveness,”¹⁰⁸ the better practice for bridging the gap between teaching and learning in the classroom is to use a variety of both efficient and effective teaching methods.¹⁰⁹ And to determine which method is the “best” teaching method for imparting information regarding a particular skill set, a teacher must answer two questions.¹¹⁰ First, a teacher must determine which method best advances and accomplishes the learning goals and objectives for the course, “defined as the method that would

105. *See id.* (stating effective teachers use the course syllabus to express their enthusiasm for the subject matter of the course and explaining the description of the course is typically the best way to communicate that enthusiasm).

106. Although this section focuses on the number of different pedagogical tools employed throughout the course, my approach to selecting the various teaching methods to employ took into account the fact that “[t]eaching is creating a place in which students learn” and that “[c]reating a place in which students learn means that [a teacher’s] role in the classroom is less about what [the teacher] say[s] and more about what the students are doing.” *See* SCHWARTZ ET AL., *supra* note 59, at 108; *see also* BEST PRACTICES, *supra* note 2, at 131 (encouraging law professors to make their classrooms student-oriented and to remember “the guiding principle of education: ‘[t]he aim of teaching is simple: it is to make student learning possible’”) (quoting DIANA LAURILLARD, *RETHINKING UNIVERSITY TEACHING: A FRAMEWORK FOR THE EFFECTIVE USE OF EDUCATIONAL TECHNOLOGY* (1993)).

107. *See supra* Part III.A.

108. BEST PRACTICES, *supra* note 2, at 130 (asserting the instructional tools used for teaching analytical skills, for instance, are not necessarily the best tools for developing basing understanding of the material).

109. *See id.*

110. *Id.* at 131.

contribute most to student achievement in mastering the [course's] objectives.”¹¹¹ Second, a teacher must conduct a cost-benefit analysis to evaluate whether the benefits of using the “best” method outweigh the cost associated with its use.¹¹² Having completed this two-step process, a teacher should then examine the value of using multiple methods of instruction to meet the diverse needs and interests of student learners.¹¹³

1. *Determining the Teaching Methods.*

My determination of the best methods for advancing the goals and objectives for the course began with an examination of the most widely used teaching method in law schools, the case-dialogue method.¹¹⁴ The case-dialogue method, also referred to as the Socratic or “quasi-Socratic” method, has been described as law schools’ “signature pedagogy.”¹¹⁵ The use of this method or, more specifically, overreliance on it as the primary method of instruction in law school, has been the subject of much criticism in recent years.¹¹⁶ But even without this criticism, I knew that using the case-dialogue method in a course intended to impart in students the practical skills of conducting lawyering tasks would be an ineffective way of ensuring students are in fact learning these skills.¹¹⁷ My attention thus

111. *Id.* (quoting Steven Hartwell & Sherry L. Hartwell, *Teaching Law: Some Things Socrates Did Not Try*, 40 J. LEGAL EDUC. 509, 510 (1990)).

112. *Id.*

113. *Id.* at 132-33.

114. *See* THE CARNEGIE REPORT, *supra* note 1, at 23, 47 (“The legal-case method, in all its variations, has dominated . . . most legal education through much of the past century”).

115. *See id.*

116. *See, e.g., id.* at 56-59 (identifying the lack of experience with clients as the primary flaw of the case dialogue method); *see also* BEST PRACTICES, *supra* note 2, at 133 (defining the “main impediment to improving law school teaching” as “the enduring overreliance on the Socratic dialogue and case method”).

117. *See, e.g.,* Christine N. Coughlin, Lisa T. McElroy & Sandy C. Patrick, *See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361, 361 (2010) (“While the Socratic dialogue does contribute to advancing and improving students’ legal reasoning skills—helping them to better ‘think like a lawyer’—its use in the law school curriculum is naturally limited”); BEST PRACTICES, *supra* note 2, at 134-35 (arguing the Socratic dialogue method has significant deficiencies as an instructional tool because “[i]ts impact on individual students is sporadic, it emphasizes certain steps of the cognitive process while ignoring others, and it does not provide a feedback mechanism to address and correct skills deficiencies”); *see also* Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 351-53 (describing the Socratic dialogue method as a vicarious learning/self-teaching model because students experience vicariously what the questioned student, the student who is being “called upon,” experiences and because professors expect students to learn on their own what they need to know to succeed in the classroom); R. Michael Cassidy, *Beyond Practical Skills: Nine Steps for Improving Legal Education Now*, Essay, 53 B.C. L. REV. 1515, 1520-21 (2012) (explaining the case dialogue

turned on practice-oriented pedagogies—pedagogies that would effectively transform the theoretical knowledge of what it means to be a lawyer into acquiring the professional communication skills for actually being one.¹¹⁸

The iterative method was one such pedagogical tool. I was particularly interested in experimenting with it based upon my professional experience as a law clerk prior to entering academia. The iterative process, as used for the writing of appellate decisions, centers around a number of meetings between the judge and the law clerk assigned to draft the opinion “in which they compare, correct, and modify drafts, redrafting in response to each other’s criticism until they reach a final product that reflects, as fully as possible, the judge’s considered decision.”¹¹⁹ Iteration is also the method lawyers often employ in practice to produce various legal documents.¹²⁰ For instance, a partner assigns a project to an associate, say drafting an advice letter to a client.¹²¹ The associate produces an initial draft of the letter, which the partner then reviews and comments on.¹²² The associate incorporates the suggested edits into a new draft and the process continues until the goal—a well-written client letter—is finally reached.¹²³

Another pedagogical approach I examined for the course came from the pedagogy of legal writing, specifically, teaching legal writing through composition theory. A legal writing pedagogy informed by composition theory is “performative and learned in role.”¹²⁴ It facilitates the learning process through leading, coaching, and providing quality feedback to allow students to accurately detect and timely improve their abilities to practice lawyering tasks.¹²⁵ I was familiar with this teaching method from my year of teaching first-year legal writing, and I was excited to experiment with it in an upper-level writing course.

Lastly, in accordance with the subsidiary goal of the course to increase the law school’s exposure in the legal community, I wanted to incorporate

method uses an inductive form of reasoning while a problem-solving approach, for example, relies on a more deductive form of reasoning).

118. See THE CARNEGIE REPORT, *supra* note 1, at 87 (asserting that developing students’ abilities to be a lawyer should be the focus of law schools following the “think like a lawyer” initial stage of legal education).

119. *Id.* at 98.

120. *Id.*

121. See *id.* at 98-99.

122. See *id.* at 99.

123. See *id.* (describing the process as “organizing and re-organizing facts and ideas in a conceptual framework and with a concrete purpose”) (internal quotation marks omitted).

124. *Id.* at 108.

125. See *id.*

practicing attorneys into the instruction of the course.¹²⁶ The expertise and experience these practicing attorneys carry make them valuable teaching resources.¹²⁷ By drawing on their actual practice, for example, practicing attorneys can offer students a different perspective—a more realistic one—of what it means to be a practitioner.¹²⁸ They also add to the diversity of ideas and experiences students get exposed to during law school.¹²⁹ And, let us not forget, that providing students with the opportunity to network with practitioners can often translate into forming long-lasting relationships, gaining a mentor or two, and receiving a job offer. Thus, using practicing attorneys as a pedagogical tool not only enhances the learning process but also contributes to developing students’ self-marketing skills early on in their professional career.

Having determined what methods would most effectively and efficiently advance the learning goals and objectives for the course, I moved to step two of the process—conducting a cost-benefit analysis to determine whether the cost associated with incorporating these methods outweighs the benefits the methods offered.¹³⁰ The cost involved two considerations: time and resources.¹³¹ Because both the iteration and composition-theory-based methods emphasize the importance of repeated feedback, the time associated with incorporating each into the classroom is significant.¹³² However, the benefit of providing meaningful feedback to students and offering the opportunity for repeat performance in the course easily outweighed the cost of the time expanded.

The second consideration involved the “cost” of integrating practicing attorneys as teaching resources. Recognizing the high demands of practice, I knew I was taking somewhat of a risk by relying on busy professionals to assist with the teaching and learning processes. But again, the benefit of integrating the attorneys’ practical experiences and diverse viewpoints into the classroom far outweighed the cost of having to remain flexible as to the

126. See BEST PRACTICES, *supra* note 2, at 157 (stating one of the best practices for delivering instruction is to integrate practicing lawyers and judges into the instructional program).

127. *Id.* at 158.

128. *Id.*

129. See *id.*

130. *Id.* at 131.

131. See *id.*

132. See *supra* Part III.B.1. Because the course intended to provide meaningful feedback to students during each step of the process, I had to limit the number of students in the course. To me, the quality of the learning process for students took priority over my desire to open up the course to a higher number of students. Thus, while the requisite amount of time I would have to spend providing feedback to students through the use of these innovative teaching methodologies was significant, the time was lessened by the limited enrollment for the course.

exact timing and role they would play in the course. Thus, the two-step process of selecting the best teaching methodologies for achieving the instructional goals and objectives for the course was complete. And while a detailed narration of the integration of each methodology is beyond the intent behind this article, the next section provides one example of how including innovative pedagogies into the course actually played out.

2. *An Illustrative Example of Experimenting with Innovative Teaching Methodologies*

Although I typically integrated a variety of pedagogical approaches into each unit,¹³³ the most illustrative example of a small-scale experimentation with innovative teaching methods in the course is the client newsletter unit. In designing and teaching this unit, I relied heavily on all three pedagogical approaches identified above. An examination of how this unit was conducted will thus provide a better understanding of the benefits innovative pedagogical approaches offer for teaching practical skills, such as professional communication skills, to law students.

As mentioned, the primary objective for the course was to help students learn how to communicate with broad audiences in the practice of law—audiences that do not consist of judges or opposing counsel.¹³⁴ Communication with both current and prospective clients through various mediums clearly fell into that category. Thus, one of the tools chosen to assess students' learning and mastery of this skill set was a client newsletter article.

Client newsletters are valuable tools in the practice of law. Keeping clients informed through a regularly published newsletter can be an effective way to strengthen current client relations and build new ones.¹³⁵ The popularity of using client newsletters as a means to retaining and attracting clients has certainly grown in recent years.¹³⁶ In North Dakota, one such client newsletter is the *Employment Law Letter*, published by the

133. See SCHWARTZ ET AL., *supra* note 59, at 28 (encouraging the use of various teaching methods for each instructional unit in an attempt to reach as many different types of student learners as possible).

134. See *supra* Part III.A (identifying the goals and objectives for the course).

135. See Zwicker & Anderson, *supra* note 74, at 21; see also Honey Hastings, *Six Ways to Market Your Solo Practice*, 45 NO. 4 PRAC. LAW. 15, 16 (1999); Susan Saltonstall Duncan, *Building Your Reputation: Promoting Services with Articles and Presentations*, 34 NO. 3 LAW PRAC. 52, 52-53 (2008).

136. See Harrison Barnes, *Role of Newsletters in Attracting and Retaining Clients for Law Firms*, <http://www.lawcrossing.com/article/900009250/Efficacy-of-Client-Newsletters/> (last visited Jan. 27, 2015).

Vogel Law Firm,¹³⁷ which is one of the largest law firms in the state. The newsletter, written and edited by attorneys specializing in labor and employment law, provides legal updates and practical tips related to employment law to employers and human resources professionals throughout North Dakota.¹³⁸ It was, therefore, the perfect tool for teaching client-oriented professional communication skills. Additionally, teaching students the skills involved in writing a client newsletter was the perfect opportunity to integrate practicing attorneys as teaching resources.

In collaboration with the editors of the newsletter, I first defined the overarching instructional goal for the learning unit.¹³⁹ That goal was to develop in students the writing skills for communicating with clients, current and prospective, in the context of drafting a client newsletter.¹⁴⁰ Conveying the goal to the students allowed them to understand the specific intention behind the learning unit. It also allowed students to engage in self-reflection by attempting to place that goal within the larger context of the primary course objective. To assess student learning of this particular skill set, students had to write a client newsletter article on a topic selected for them by the editors of the newsletter.¹⁴¹

With the context and goals for the unit identified, I turned to designing the individual class sessions and examining the effectiveness of each of the three pedagogical approaches discussed above.¹⁴² I began by introducing the unit to the students. That introduction included an explanation of the learning objective for the client newsletter unit, as well as the theoretical framework for developing the professional communication skills relevant to client newsletters.¹⁴³ I then defined the parameters and expectations for the particular task before them.¹⁴⁴ In a course informed by composition theory,

137. See generally <http://store.blr.com/ndemp> (last visited Mar. 2, 2015).

138. See *id.*

139. See SCHWARTZ ET AL., *supra* note 59, at 68 (explaining the difference between course goals and objectives and individual learning units' goals and objectives).

140. See *id.* (stating all learning objectives share three basic characteristics: (1) they are learner-centered, (2) they encompass a broad range of professional skills, and (3) they are concrete).

141. Requiring students to write on a previously selected topic closely mirrored the reality of being a junior associate in a law firm, thus allowing students to get immersed into the simulated practice of law.

142. SCHWARTZ ET AL., *supra* note 59, at 72 ("The primary design decision for the body of [each] class is the selection of teaching and learning methods.")

143. See, e.g., THE CARNEGIE REPORT, *supra* note 1, at 109 ("In a contemporary writing course influenced by composition research, students are not told to simply figure things out for themselves. In place of that kind of cold induction, a course is likely to begin with the instructor posing a task to students by giving some general prompts.")

144. *Id.*

one of the pedagogical approaches relied on, the teacher must define the task for the students and must provide the platform of prompts and rules for the instructional activity.¹⁴⁵

To further improve student understanding of what the instructional activity aimed to accomplish and the skills it strived to impart, I also incorporated one of the newsletter's editors as a teaching resource for the unit.¹⁴⁶ That pedagogical approach of integrating experienced practitioners into classroom instruction proved immensely successful here for two reasons. First, the attorney serving as the editor of the newsletter was uniquely positioned to provide students with the practicalities of creating, drafting, and disseminating the newsletter. Students were no longer thinking about the task at hand in an imaginary universe. To the contrary, they were hearing, first-hand, the benefits client newsletters provide to practicing attorneys and law firms, such as attracting new clients and retaining current ones. Students were also being exposed to someone who was intimately involved in the decision-making process concerning the content of the newsletter and who could speak on the considerations involved in that process.

The second reason why integrating practicing attorneys as teaching resources proved to be an effective pedagogical tool for this unit was the fact that students could learn—from the very person who would make the final decision on publication—what makes a newsletter article publishable. As the editor of the newsletter, the practicing attorney could provide more concrete examples of what works and what does not work for the intended audience. She could speak about the audience's expectations and could discuss how the composition of the audience informs the material included in each article. And, if the goal of the unit were to develop the skills for writing a client newsletter, what better way to demonstrate the mastery of these skills than through an actually published newsletter article.

By the end of this initial introduction of the unit, I was certain the objective and expectations for the assignment had been clearly communicated to and understood by the students. I was also certain that, through the combination of my teaching and the instructions provided by the editor on how to write a newsletter article, the students had been given the opportunity to acquire the foundational knowledge for the skill set they

145. *Id.*

146. See BEST PRACTICES, *supra* note 2, at 157-58 (discussing the role practicing attorneys play in enriching the classroom instruction).

were about to begin practicing.¹⁴⁷ It was thus time to shift to the use of another pedagogical approach—iteration.

The iteration process, as discussed above, is the process judges typically use in generating appellate opinions.¹⁴⁸ It is also the process practicing attorneys rely on for producing a variety of legal documents.¹⁴⁹ In the course, the iteration process became the primary pedagogical tool for producing an article for the client newsletter.

In a simulated post-oral-argument conference between the judge writing the opinion and the law clerk, I informed the students they would be writing an article on the topic of employee performance appraisals. The topic was intentionally left broad to allow students room for exploring different ideas and to assess students' abilities to select a subtopic that would both appeal to and benefit the intended audience. I also reminded students of the expectations for producing a publishable quality newsletter article. With this information in hand, students were off to do their research and draft the article. They were given two weeks to produce their first draft.

To assist me with the iterative process, I solicited the assistance of two law clerks.¹⁵⁰ Students were assigned to either one of the law clerks or to me, our function being that of a judge reviewing the initial opinion draft. The students were to submit an electronic copy of the draft to their respective “judge.” The judge could then review and deliberate about the draft prior to the next conference. Having reviewed, edited, and commented on the initial draft,¹⁵¹ each judge met individually, for a thirty-minute conference, with his or her students. During these individual conferences, students received feedback, had the opportunity to discuss the reviewer's comments, and engaged in a brainstorming session of specific strategies on modifying and improving their performance for the next draft.

147. See THE CARNEGIE REPORT, *supra* note 1, at 109 (explaining that, under the pedagogy of composition, after the instructor has defined the task and has provided the framework for it, the students engage in the actual practice of the activity).

148. *Id.* at 98.

149. *Id.*

150. Enbar Toledano was then a law clerk for the Honorable Kermit E. Bye, of the Eighth Circuit Court of Appeals, and Ross Pearson was the law clerk to the Honorable Ralph R. Erickson, Chief Judge for the District of North Dakota. I remain indebted to both of them for the amount of time they spent reviewing drafts, providing feedback, and encouraging the students in their overall learning process.

151. I must note, I spent a significant amount of time with both Ms. Toledano and Mr. Pearson discussing the goals and objectives of the assignment and the expectations for providing a meaningful feedback for the students.

The purpose of these individual conferences was to ensure students were accurately assessing their strengths and struggles with this particular skill, by allowing them to become active participants in the assessment process.¹⁵² The focus of the conferences was, therefore, on providing positive,¹⁵³ corrective,¹⁵⁴ and prompt¹⁵⁵ feedback to students. The purpose of the written comments, on the other hand, was to ensure students had both corrective and specific¹⁵⁶ feedback on how to improve their performance.

Similar to a law clerk who, after spending a significant amount of time researching and writing the first opinion draft, leaves the review conference with the judge knowing what precisely she must do next, the students left the individual conferences knowing what worked, what did not, and what exactly they had to do for the next draft. Having incorporated the first round of comments into the second drafts, the students had one more opportunity to receive feedback from each reviewer and to modify their articles in response to that feedback.¹⁵⁷ The final version of the newsletter article, the one that most closely resembled what we had set out to accomplish at the beginning of this process, was then submitted to the editors of the *Employment Law Letter* to consider for publication. And while only one article was selected for publication,¹⁵⁸ the general comments given by the editors were overwhelmingly positive. More importantly, however, the editors' comments served as yet another opportunity for students to receive feedback on their performance and assess their learning of this particular skill. For the students whose article was selected for publication, the reward was even greater. And for me, the instructor, the integration of the various teaching methodologies into the client newsletter unit for the course proved to be a successful, small-scale experimentation.

152. See SCHWARTZ ET AL., *supra* note 59, at 21 (explain “[f]ormative feedback is an essential part of the learning loop” and identifying four characteristics of effective formative feedback—specific, positive, corrective, and prompt).

153. *Id.* at 143 (feedback that allows students to “find out what they are doing well”).

154. *Id.* (feedback that helps students identify their weaknesses and gives them concrete strategies of how to overcome these weaknesses).

155. *Id.* (feedback provided “while the assessment is fresh and in time for the next assessment”).

156. *Id.* (feedback that gives students “information about specific criteria they have or have not met”).

157. See THE CARNEGIE REPORT, *supra* note 1, at 98 (explaining the iterative process occurs in multiple stages, a series of meetings between a judge and her law clerk, “in which they compare, correct, and modify drafts, redrafting in response to each other’s criticism until they reach a final product that reflects, as fully as possible, the judge’s considered decision”).

158. See Joseph Lassonde, Anders Odegaard & Amy Aughinbaugh, *It Bears Repeating: Performance Appraisals Are Good Business*, 18 NO. 11 N.D. EMP. L. LETTER 1 (Dec. 2013).

D. EVALUATING THE COURSE

A rigorous evaluation of a course is one that is “systematic, reflective and continuous.”¹⁵⁹ To be systematic, the evaluation must strive to assess student learning to the full extent possible and in light of the specific learning outcomes articulated for the course.¹⁶⁰ The evaluation is reflective in nature when time is deliberately set aside to reflect upon each class session, as well as the overall results of the assessment.¹⁶¹ Finally, the evaluation is continuous so long as it occurs not only during the semester, but also during every subsequent time the course is being offered.¹⁶²

Both throughout the semester and at the conclusion of the course, I attempted to engage in a critical self-evaluation of whether the course was achieving the learning objectives it had set to accomplish. I spent time after each class session and at the end of each learning unit reflecting on what worked and what I could be doing to improve my teaching. I also devoted significant time and effort at the end of the course to assess how effective the course was in reaching its learning objectives.

First, the course did in fact succeed in helping students learn the professional skills necessary for communicating with broad audiences, including current and potential clients and fellow attorneys, in the practice of law. Through the use of various assessment instruments, I was able to determine that the course successfully imparted in students the communication skills for using social media and other more traditional outlets, like bar journal articles and client newsletters, to communicate with existing and new clients. I was also able to assess student learning regarding the oral communication skills involved in giving a CLE presentation to fellow attorneys or an educational seminar to members of the public—skills quite different from the traditional oral advocacy skills typically taught in law school. Overall, by the end of the course, students had acquired a minimum competency in the professional skills necessary to communicate, orally and in writing, with broad audiences in order to better prepare them for the practice of law.

I was also pleased, for the most part, with the results of my small-scale experimentation with innovative teaching methods, the secondary goal for the course. Incorporating practicing attorneys as teaching resources and relying on both the iterative process and the legal writing pedagogy

159. SCHWARTZ ET AL., *supra* note 59, at 63.

160. *Id.*

161. *Id.*

162. *Id.*

informed by composition theory allowed for increased opportunities to reach diverse learners. The mix of teaching methodologies, in combination with the use of multiple assessment instruments, further enhanced student learning by exposing students to the realities of the practice of law. Most importantly, however, experimenting with the iterative process and the integration of practicing attorneys significantly increased both the quantity and quality of feedback students received throughout the course. I am confident this increased focus on providing meaningful feedback to students played a central role in improving student learning.

But the experimentation with assessment instruments and teaching methodologies was not without its challenges. For instance, in my attempt to provide students with multiple assessments, I fear the work required for the course greatly exceeded the two credit hours students received for it. Given the number of assignments and, more specifically, the number of drafts students produced for each assignment, the course should have been designated as a three-credit course. Additionally, while integrating practicing attorneys into the course proved to be a valuable method for improving student learning, the logistics of having successful practitioners participate in the course proved to be somewhat problematic as well. I had to shift class sessions on a number of occasions to accommodate for the ever-changing schedules of attorneys in private practice. And although the benefit of going through with this approach outweighed the cost of the logistical hassle, scheduling does remain a concern.

Lastly, the course proved to be immensely successful in achieving its subsidiary goal of increasing exposure for the law school and fostering collaboration between the School of Law and the practicing bar in the state. The members of the bar were highly enthusiastic about the opportunity to work with the students in the course and to collaborate on projects such as the bar journal article¹⁶³ and the client newsletter.¹⁶⁴ Further, because each

163. Tony J. Weiler, the Executive Director of the State Bar Association for North Dakota, was instrumental in making the bar journal article idea a reality. His office provided the idea for the article, put me in contact with the attorneys behind the story, and selected one student article for publication in the journal. See Magdaleno Gutierrez, Brittany Wollin & Austin Lafferty, *Melvin Webster: Pioneering the Use of Rule 3.1 to Give Back*, THE GAVEL (Fall 2013), at 9, 9 (identifying the article as a joint project between the State Bar Association and the School of Law's Professional Writing and Communication course).

164. Leslie Bakken Oliver and Lisa Edison-Smith, the editors of the *Employment Law Letter*, supported the course both by providing the topic for the article and by presenting to the students in the course how to write an effective newsletter article. See Lassonde, Odegaard & Aughinbaugh, *supra* note 158, at 1 (stating "The Vogel Law Firm enjoys a wonderful working relationship" with the School of Law and expressing an appreciation for the collaboration between the school and the firm on the client newsletter project).

publication noted the collaborative nature of the project, the course succeeded in increasing exposure for the law school among members of the profession. And, in the process of working with members of the bar, the course also provided students with the unique opportunity to showcase the professional communication skills they were learning.

IV. CONCLUSION

While slow to respond to the call for reforming legal education to better prepare students for the practice of law, the ABA's adoption of the new standards on learning outcomes and assessment is a step in the right direction. By shifting the center of legal education from "teaching to learning and from curriculum to outcomes,"¹⁶⁵ the new ABA standards now mandate the adoption of learning outcomes designed to prepare law students, "upon graduation, for admission to the bar and for effective, ethical, and responsible participation" in the legal profession.¹⁶⁶ The standards further require law schools to develop and employ assessments methods "to measure and improve student learning and provide meaningful feedback."¹⁶⁷

As law schools begin to wrestle with implementing the new standards on learning outcomes and assessment measures, they must remember that the central purpose of assessment is one of improvement, not accountability.¹⁶⁸ Law schools must also keep in mind that assessment will be effective only when it occurs at every level of a student's educational experience—the institutional, programmatic, and course levels.¹⁶⁹ Thus, by allowing faculty members to engage in small-scale experimentation at the individual course level—experimentation that includes articulating practice-oriented learning objectives and utilizing a variety of assessment methods to determine whether these objectives are being achieved—law schools can perhaps begin seeing outcomes and assessment as a way to improve student learning and not simply as a means of complying with the new accreditation standards.

165. Warren, *supra* note 23, at 68.

166. ABA REVISED STANDARDS, *supra* note 22, at Standard 301(a).

167. *Id.* at Standard 314.

168. Jones, *supra* note 21, at 91-92.

169. Warren, *supra* note 23, at 72.