

AALS Section on Teaching Methods

Fall 2016



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Message from the Chair

Karin Mika
Cleveland-Marshall College of Law

There is no doubt that the nature of legal education is changing. Although for years the bar has called for more skills training in

law schools, legal education, in many respects, has remained the same since law schools first existed in the United States. Many classroom experiences are still focused primarily on the skill of “thinking like a lawyer.” Although “thinking like a lawyer” is an important skill (if not THE most important skill) in learning about the practice of law, the ABA has acknowledged that it is equally important that students learn how to apply their legal thinking to real world skills tasks and to be able to quantify what skills students have mastered

The ABA recently established multiple standards in an attempt to transform the legal education experience into one that teaches skills beyond legal thought. Standard 302 requires schools to establish “learning outcomes” for competency in substantive and procedural law. Standard 304 establishes a requirement for simulation or experiential learning in and outside of clinic work/courses. Standard 314 requires an institutional commitment to “Assessment of Student Learning.” Standard 314 specifically states: “A law school shall apply a variety of formative and summative assessment methods across the curriculum to provide meaningful feedback to students.”

Various innovative teachers are attempting to teach the teachers just how the classroom can be transformed into one that achieves the critical balance between teaching thought and teaching skills. This newsletter is dedicated to sharing ideas from dedicated professionals who have given great thought to how the law school classroom can be transformed for the needs of the 21st century student and attorney.

Section Leadership 2016

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2017 Section Program

We are pleased to announce our Section program for the 2017 Annual Meeting. The title of our program is, *Using Technology to Unlock Engagement and Learning*, and will be presented on Wednesday, January 4 from 10:30 a.m.-12:15 p.m. Here's a description of the program:

Legal educators the world over are experimenting with innovative ways of using technology to achieve their teaching objectives better. This program is not about using technology for technology's sake but instead showcases four real-life examples of different uses of technology in legal education for unlocking student engagement and learning. Each panelist will describe the problem they sought to solve and demonstrate for the audience their technology solution. These solutions range from wearable cameras in the classroom for increasing student awareness of various perspectives; to an online, self-paced, interactive mini-course; to student and instructor-made videos for increasing engagement between students and with expert commentators from all over the world. There will be ample opportunity for audience Q&A. A goal for this program is for all attendees to leave a bit more inspired and empowered to develop or use technology solutions to improve student engagement and learning.

Essays on Implementing ABA Standards



Lori Shaw, University of Dayton School of Law

“Take out a piece of paper; write your name in the corner; and number the lines from one to ten.” How many times have you heard those instructions? The quiz was a critical component of your education. It was quick, no fuss, and provided you and your teacher with an excellent snapshot of the state of your knowledge and skills. In sum, it did everything that a formative assessment is intended to do. Since the ABA amended Standard 314 to mandate that law schools use formative assessment methods, I have observed a certain amount of panic among some colleagues in the academy. They often equate the requirement that we provide “meaningful feedback” with a requirement that midterms be added to courses.

While midterms can provide meaningful feedback, assuming that they provide the only or even the best form of formative assessment is a mistake. The most valuable formative assessments are short, simple, and fit into the course in a way that is organic. Quizzes can perfectly fit the bill.

I routinely incorporate quizzes into my doctrinal courses. My assessment of choice is a 5-question, 10-minute quiz administered at the end of each unit of study. I most often use MBE-style multiple-choice questions, which test both knowledge and application skills. By semester’s end, I have gathered more data than I would had I given a midterm, and students have had multiple opportunities to improve their performance.

The quizzes encourage students to study along the way. They count towards the grade, which gives the students “skin in the game,” but the point values for any one quiz are small, minimizing stress. Students view the quizzes as a learning tool, not busy work. A surprising number visit my office to discuss their performance.

I use a testing system called the Immediate Feedback Assessment Technique (IF-AT). IF-AT forms resemble lottery tickets. Students scratch off what they believe to be the correct answer (i.e., A, B, etc.). If they choose correctly, they uncover a star and receive full credit. If they select the wrong answer, they have the opportunity to try again for partial credit. (The system offers a number of different forms, so students cannot memorize the answer sequence.)

The theory behind this system is that students continue to learn while they are taking the quiz. Students typically take the last answer they gave with them—even if it is incorrect. The system compels students to stop and ponder why the answer was wrong. At least some students soon recognize the need to devote more thought to each question before they select any answer. So, they improve their test-taking skills as well as their knowledge.

Most students love the IF-AT system. The fact that they earn some points even if they are a bit off in their analysis lessens stress, and they soon grasp the benefits of thinking through the answer. I love the system, too. This new twist on the old-fashioned quiz makes providing meaningful formative assessment simple.



Kirsha Trychta, West Virginia University College of Law

Two Minute Drill

I recently started teaching a new course: Expert Evidence. In an effort to assess early on in the semester whether students were actually learning what I wanted them to learn (and also to allow the students to self-assess the same), I created a quick, football inspired formative assessment tool: the “Two Minute Drill.”

When we finish a particular unit, I conduct a mini, fast paced review session. To prepare for the review session, I create a list of roughly 15 to 20 fill-in-the-blank questions. I then group and sort the questions across five pigskin themed PowerPoint slides: punt return, first down, midfield, field goal range, and touchdown. Next, I animate each question to appear one at a time. Once the slides are created, it is time to play the game!

I pick a starting person, and then systematically work my way around the room, requiring each student to fill in one blank. I read each prompt aloud for the aural learners, while the slideshow helps the visual and read/write students follow along more easily. As the students fill in the blanks, it quickly becomes a race against the clock to see how much material we can review in just two minutes. If three students in a row fumble on a particular question, I punt and move on to the next question. (After the drill, I go back and revisit the question.) Because of the limited amount of material that can be covered in just two minutes, the exercise focuses primarily on key concepts, rules, and definitions. I typically save the more complex questions for the final slide to ensure that one question does not derail the whole exercise.

Although I prefer a PowerPoint format for this game, the drill could easily be done orally with no visual aid or with a simple paper handout. One downside to the handout is that students may start to look ahead at the upcoming questions instead of focusing and actively playing along.

The students enjoy the exercise because it allows them to participate silently (assuming it is not their turn) and to self-assess how many of the blanks they were able to complete. The drill also allows me to see how efficiently and accurately the class is able to answer the questions. I plan to run the drill a few more times to work out any kinks, and then post the PowerPoint template to the College of Law’s webserver for other professors to use and adapt.



Olympia Duhart, Nova Southeastern School of Law

Bringing Games into the Classroom as an Effective Formative Assessment Tool

The hot new term is called “gamification.” But Mr. Balbi, my fifth grade teacher, just called it flashcard Friday.

When he taught us multiplication tables at Shadowlawn Elementary, Mr. Balbi would hand out flashcards with different numbers and give us a few minutes to raise the correct card in response to a math problem he put on the board. We were having fun in school. And learning math. For someone like me – an English nerd terrified of numbers – the novelty of flashcard Friday transformed a dreaded math lesson into a chance to compete. I learned to multiply because I wanted to win.

Mr. Balbi was using gamification as a successful form of low-risk formative assessment to help us master critical math concepts. We were able to quickly show our answers, and he could give us prompt feedback. We could take risks. We made mistakes and moved on. We practiced to improve our performance. Pedagogically, these concepts are all essential to student success.

So it is good thing that the ABA Section of Legal Education and Admission to the Bar recently expanded its objectives for legal education. Specifically, Standard 314 states that law schools “shall apply a variety of formative and summative assessment methods across the curriculum to provide meaningful feedback to students.” That means that like Mr. Balbi, law professors now have strong incentives to implement formative assessments to help students learn the material we are teaching. Gamification – the importation of game elements such as scoring and competition – is a valid formative assessment tool that can be employed in several classrooms. Whether in math or legal doctrine, students want to win.

In my Constitutional Law class, for instance I offer students the chance to win “a really awesome prize” (read: \$5 Starbucks gift card) for working in teams to draft multiple choice questions on the Commerce Clause and the Spending Clause. After we’ve covered both units, I give them class time to draft two questions. I review the “game rules,” break them into teams of two, dangle the prize in front of them and set the timer. As they work on the questions, I run a playlist of music about money to keep the mood upbeat. Think “For the Love of Money” and “Money (That’s What I Want)”.

I then review the questions in one night. The workload isn’t too burdensome; feedback is better when it is prompt. As I review the questions, I can see what kind of misconceptions students have about the Commerce Clause or Spending Clause. If a concept is misstated several times in one class, I know I need to revisit the issue in front of the whole group. Formative assessment not only gives the students an idea about where he or she stands, but allows the instructor the opportunity to address problems before the course is over. Transforming this exercise into a “game” satisfies the assessment objectives of Standard 314 and brings a new energy into a 1L course.

And Mr. Balbi would be proud.



Eunice Park, Western State College of Law

Establishing Learning Outcomes Under ABA Standard 302: Cultural Competence

ABA Standard 302 comments identify “cultural competency” as one of the “other professional skills needed for competent and ethical participation as a member of the legal profession.” Legal writing courses provide an ideal setting for raising awareness of the importance of sensitivity to diverse cultural mores. One way is by creating an assignment that demonstrates how viewing determinative facts from a strictly Western lens might lead to an unfair outcome.

In writing a recent appellate brief problem, I introduced cultural competence as a learning outcome by integrating culturally-sensitive legally significant facts into the assignment. The central issue was whether the shack was curtilage under the Fourth Amendment. One of the elements of curtilage is the nature for which the area is used. *United States v. Dunn*, 480 U.S. 294, 301 (1987). This element posed the opportunity for exploring the legal significance of cultural issues, since what is considered a home-like activity may vary depending on cultural framework. Our appellant was a practicing Buddhist. It was not obvious from the obscure surname that he was Tibetan, although the shack was separated from the rest of the property by a string of Tibetan prayer flags. The sparsely furnished shack held no furniture other than a table; law enforcement agents observed floor cushions and a straw mat. The appellant did not wear shoes in the shack, which he used for meditating, sometimes sleeping, and for taking recreational drugs.

The creative license permitted in drafting a fictional appellate brief problem allows for melding multiple customs, creating ample opportunities for integrating cultural issues. This colorful appellant was also a motorcycle gang leader and practicing nudist, and law enforcement officers represented multiple ethnicities.

The extent to which students appeared to recognize cultural issues and explain the impact of the facts and application of the law was evaluated in a summative assessment conducted alongside grading the appellate briefs. The rubric assessed whether students recognized or discussed cultural issues on a scale ranging from No Awareness, Awareness, Competence, to Excellence. A student with No Awareness did not reference any cultural issues that may affect the facts or law, nor did the student demonstrate any knowledge that cultural issues may affect the facts or law. A student with Awareness referenced a few cultural issues and demonstrated superficial knowledge that cultural issues exist, but did not explain how they may affect the facts or application of the law. A Competent student referenced and explained the significance of cultural issues and how they may affect the facts and application of the law. A student whose brief demonstrated Excellent cultural competence included many cultural issues, fully explained the significance of those cultural issues and how that may affect the facts and application of the law, and fully integrated cultural issues through the argument.

Without sacrificing substantive coverage, this assignment established, implemented and assessed cultural competency as a learning outcome, in order to prepare our students “for competent and ethical participation as a member of the legal profession.”



Christina Chong, University of San Francisco

For most professors, a tall stack of exams is daunting. But, imagine a stack of decent-quality finals that are easier to grade. This article covers two formative-assessment techniques professors can implement to improve their students' skills.

The Rewrite and Self-Assessment Rubric

Students often complete practice exams without reviewing their answers. Professors are reluctant to review essay answers because grading poor-quality responses is time consuming and unmotivated students skim comments and repeat their mistakes. Requiring a **rewrite** *before* giving feedback resolves these problems because students must compare their response to the model answer and make adjustments to their issue-spotting, analysis, organization, and/or substantive law understanding before the professor reads the answer. This process teaches students to assess their own skills and makes the professor's review of the rewrites faster. Feedback on the rewrite includes line comments; a check, check+, or check-; or global comments at the end.

Similar to the rewrite, requiring a **self-assessment** forces students to evaluate their skills by making them the grader. An effective rubric separates parts of the answer so students can identify their skill deficiencies, such as missing the issue, rule, facts, inferences, or counter arguments. The rubric must also include a point or grading system for students to quantify their performance, such as 10 points, needs improvement, excellent, no, yes, and sort of. Feedback on a self-assessment is completing the same rubric and requiring students to compare their assessment to yours.

Successful Implementation Requires Four Things

First, professors must create the model answer and self-assessment rubric. Professors cannot use student work because students make mistakes. The assignment is more effective when the model answer and rubric are actually perfect. Second, the assignment must be linked to the student's grade as a required homework or in-class activity. Optional assignments result in negligible participation because students do not understand the benefits of rewriting and self-assessment. Third, professors must thoroughly review the answer in class before students complete the assignment. Students learn differently and many need a discussion to ask questions about the skills and professor's expectations. The class time required depends on the number of problems offered and their complexity. Finally, each assignment should include a specific **learning outcome**. A vague goal is less effective because students rewrite and self-assess without knowing where to focus their energy. For example, an issue-spotting assignment includes subtle facts to test reading comprehension and the ability to connect facts and law. An analysis assignment includes gray facts that require inferences, reasonable assumptions, and counter arguments.

The process of rewriting and self-assessing gives students **meaningful feedback** because it signals to students the quality of their work product and helps them discover areas for improvement. These techniques also **simulate** real-world situations because supervisors usually provide an example for associates to follow without much guidance. The rewrite and self-assessment teaches students how to revise their work, with minimal handholding, until it is acceptable. These are only two of the techniques I implement in my first-year courses and Legal Analysis. If you are interested in learning more about these techniques, peer assessment, clickers, or in-class analysis deconstruction, then please contact me.



David Delaney, Indiana University Maurer School of Law

Preparing Students for National and Homeland Security Careers

This past spring I continued an exercise I began last year: crafting no more than five learning outcomes for my national and homeland security law course through which I can effectively prepare JD, MA, and LLM students to work in the field. Because a subset of last year's students took the course to prepare for Georgetown Law Center's National Security Crisis Law Simulation, the challenge was to identify outcomes that suited their unique needs. Here was my first attempt:

1. Identify, discuss and analyze legal and policy issues arising in significant U.S. court cases and historical events.
2. Assess, critique, and debate theoretical national security issues.
3. Advise clients and colleagues on legal and policy options and recommend courses of action.
4. Collaborate effectively as a member of a team.
5. Develop solutions to complex questions of national security law and policy.

Those familiar with Benjamin Bloom's revised taxonomy of learning objectives will recognize the progression in cognitive processes and knowledge dimensions that I am bringing to Standard 302. I map these outcomes to graded course activities—journal entries and other pre-class assignments, class participation and group activities, and a final exam—to discuss with students the primary and secondary ways they will be evaluated. I provide attendance reports, assignment scores, and written feedback on journal entries through the Canvas course management platform. The journal entries serve two functions—to assess performance on outcomes 1-3 and identify students who may need help writing high-quality exam essays.

Outcomes 2-5 touch on group activities involving teamwork, ethics, and leadership. The JD students are building knowledge and skills in these areas from a foundation established in a 1L course titled "The Legal Profession." They learn their Belbin workplace behavior types, study professional ethics, and are exposed to different practice environments. My course revisits some of the course's foundational materials—Chapters 5, 7, and 8 of Susan Wheelan's *Creating Effective Teams: A Guide for Members and Leaders* (Sage 3d ed. 2010)—so all graduate students have a common base of teamwork knowledge. Videos and readings place students in national security scenarios to focus on context-specific teamwork, ethics, and leadership

issues. When a formal simulation is not possible (the circumstance this year), this range of work can be enhanced to satisfy Standard 304 on experiential learning. Law schools can also sequence basic, intermediate, and advanced learning outcomes in professionalism-focused courses like The Legal Profession with substantive/doctrinal courses like mine. This might satisfy Standard 314 by giving students multiple assessment methods across the curriculum.

The doctrinal and professional foundation for my course is my experience in military and civilian national security positions. But I would not be prepared to address learning outcomes without expertise from Indiana University's Center for Innovative Teaching and Learning. I encourage law schools to fully engage former practitioners, education experts, and even executive coaches as faculties implement the ABA requirements. The sustained collaborative work is challenging, but faculties and students alike have much to gain.



Amanda Smith, Widener University Commonwealth Law School

Live-critique conferences of practice exams and papers are formative assessments that satisfy Standard 314 because they measure and enhance student learning. Here is how one student described the impact of these conferences: "My first semester started out rocky in this course. My first few writing assignments were terrible. However, I really listened to the feedback in my conferences with Professor Smith and learned what I was doing wrong. At that point, a light went off in my head and I began to understand how to write better. I paid attention and when I was confused about something, I asked."

Prior to a live-critique conference, a student writes the answer to a practice exam or an ungraded, legal-writing assignment. Students take these practice assignments seriously because they know that they will receive meaningful feedback that they can apply to their final exams and papers. Students appreciate the opportunity to make mistakes, from which they can learn, without the pressure of a grade attached to the exercise. To prepare for a conference, the student reviews what she has written. She also evaluates her work with a rubric or by answering reflection questions.

During a conference, I meet with a student one-on-one, or in small groups of three to four students, depending upon the size of my class. Generally, I read only three to four pages of an exam or paper out loud because I can highlight the strengths and weaknesses in that amount of writing. A conference can take twenty minutes to an hour, depending upon the assignment and the depth of the critique. We begin with the student reviewing her evaluation of her work with me. The student's insights help me to tailor my feedback to areas that will be of most benefit to her. I read the paper out loud, sentence-by-sentence. I pause after each sentence or group of sentences to provide my reaction to what I have read. Sometimes, after listening to her writing being read out loud, the student will identify a problem before I can react. I use a rubric checklist to keep the conference focused and mark the checklist as I read through the document. I write on the student's paper as well.

Conferences are conversations between myself and students, as we work together to discover how best to improve the students' work in the future. Students leave with their marked-up papers, completed rubrics, and audio recordings of the conferences. Students often listen to these recordings several times after the conferences as they work on their next assignments.

Live-critiques measure student learning and deliver individualized, meaningful feedback that impacts students' final work in a course. Live-critique conferences provide the ability to tailor feedback to what students are ready to receive; clarify feedback when students do not understand the critiques, and receive feedback from students about their learning so adjustments can be made to future teaching.



Susan Smith Bahkshian, Loyola Law School

Assessing Professionalism in a Large Class: Email Assignments

In all of my classes, large or small, I have included developing professionalism as one of my goals for the class under Standard 302(d). The challenge was to create formative assessments for large classes to satisfy Standard 314 without creating undue grading burdens. Email assignments do exactly that by teaching professionalism and providing meaningful feedback under Interpretation 314-1.

How it Works

Students are told that they will receive random emails over the semester. They do not know when or how many assignments they will receive, so students need to check their email daily. Each email is a short assignment drawn from topics recently covered in class and is set as though the student is a junior attorney. Students are limited to 250 to 300 words in their email responses.

Anonymous Grading is Not a Problem

I randomly select 15 to 20 students at a time to receive an email and my assistant sends out the emails. I cannot see who received the assignment but I do see what time it went out so I can assess how promptly students respond. Email responses are not sent to me or to my assistant. Instead, students upload their email responses on TWEN with a "from" line that uses a student identification number.

Word of Mouth Did Not Defeat the Assignment

Students were unable to simply tell each other that an email assignment was out because the entire class was not emailed at the same time. Students have to build professional habits on their own and cannot rely on a syllabus or friends to determine the deadlines.

Grading 160 Assignments Doesn't Have to be a Burden

Even when sending out 10 different emails (2 per student) for 80 students, the grading is more manageable than expected. By grading only 16 emails at a time, the grading is no more than 90 minutes

per assignment. I graded the assignments on a “check plus,” “check,” or “check minus” system. A “check plus” required a timely, accurate, and complete response. A “check” required a timely response with only minor errors. A “check minus” was an assignment that was untimely or did not answer the question posed. I also commented on inaccuracies in the law, tone problems, and other writing errors to complete the feedback.

Results were Surprising

Some students’ responses reflected the quality I would expect from a terrific young lawyer. Other students had problems with accuracy or timeliness. These are professionalism lessons better learned in law school than at their first job. Email assignments, along with CALI exercises and bar exam style essays, are 25% of the course grade which allows for lessons to be learned without being overly punitive.

Bonus Feature: Ready Made Review Class

All of the emails were reviewed in the last class session so that everyone saw all of the assignments and the two best responses. This let us review the course material that was relevant to providing a proper answer. Next year, I am adapting the assignment to use in my legal writing class with emails asking for everything from a quick research answer to help editing a short excerpt of a brief.



Susan Nauss Exon, University of La Verne College of Law

Civil Procedure Assessment of Complex Issues

ABA Standard 314 requires “formative and summative assessment methods to measure and improve student learning and provide meaningful feedback to students.” Special consideration is needed to engage 1L students as they muddle through the esoteric, abstract subject of Civil Procedure. For example, students are challenged by the legal concepts of aggregation and supplemental jurisdiction in connection with subject matter jurisdiction. My fall 2015 class was no exception.

Midway through the semester, I gave students a one-issue analysis assignment to test their ability to write in the IRAC format. The facts of the assignment included two airline passengers with distinct damage issues. One suffered personal injuries, claiming damages far in excess of \$75,000. The other suffered property damage, seeking to recover \$10,000 for an uninsured painting. The two plaintiffs filed a joint complaint in federal court. Students were required to analyze diversity of citizenship jurisdiction, including sub-issues of aggregation and supplemental jurisdiction. This essay focuses on aggregation.

Most students accurately stated the rule of law for aggregation—one plaintiff may aggregate as many claims as he has against one defendant; multiple plaintiffs may aggregate claims against a single defendant where plaintiffs possess a common and indivisible interest. Of 30 students, 14 accurately stated

the correct rule of law. Yet only one student engaged in a proper analysis. Five of the 14 students opined that the two plaintiffs could aggregate their claims because they arose from the same incident; another student thought that the plaintiffs had common and indivisible interests because they both alleged strict liability. Of the remaining 16 students, three stated a wrong rule of law, four mentioned aggregation as part of a conclusory analysis with no corresponding rule of law, and nine students failed to mention aggregation at all.

As an educator, I felt that this was an unacceptable result. I thought I had drilled the concept of aggregation to a great extent and provided many examples in class. Yet, only one student actually understood the concept. I had a huge challenge to conquer.

I provided extensive feedback to the students, using a rubric and writing copious comments on their papers. I posted a generalized list of kudos and problem areas to TWEN. Finally, I discussed the legal concept again in class and had my TA reinforce it in his review session.

To measure the effectiveness of my feedback, I included an aggregation issue on the next formative assessment—an assignment to draft a complaint. In that assignment, I provided students with a fact pattern that required them to analyze personal jurisdiction, venue, and subject matter jurisdiction concerning multiple parties, including a need for aggregation. In that assignment, all but two students correctly applied the rule of aggregation. The same success rate carried through to the final exam where I tested aggregation in two multiple choice questions. Coincidentally, 93.33% of my students (all but two) answered both questions correctly. I was justifiably proud of my students and gratified to see the positive results that could be accomplished through formative assessments with meaningful feedback.



Angela Mae Kupenda, Mississippi College of Law

Students learn more when they prepare for class, participate in class, and review/rewrite notes after class. This method worked for me, even as a first generation law student. Thus, for years now in my Constitutional Law and First Amendment courses, documented oral class participation is a component of final grades. Yes, assessing participation can be difficult. But, I use a method that works well and provides students with both formative and summative assessment. In my classes, students submit weekly business letters documenting their class participation and discussing cases they briefed orally in class or other participation during the week.

For decades I had made class participation a component of the grade. My current method of assessing this participation evolved several years ago while attending an AALS Annual Meeting. There a Judge on a panel exclaimed, “Can’t you law professors please just teach students some practical skills. Maybe just teach them how to write a business letter?!” I found the Judge’s idea a doable, practical, and beneficial way to enhance learning and provide formative and summative student assessment.

In my courses, students are assigned reading in advance of class. At the beginning of class, I use a copy of my seating chart to list all the students who affirmatively state they are prepared for the ENTIRE assignment. Every student on the list gets called on, even if for participation in a review. Students then submit a business letter on the next Monday documenting their class participation and discussing the related materials. In the course syllabus, I give them a model to follow for a business letter. I briefly look over the letters each week for difficulties following the form and process.

The time spent evaluating the letters is not onerous, and is actually enjoyable. Further, I only have to do this twice a semester. Once mid-semester, I provide formative assessment. For each student, I prepare a folder that includes the student's letters with my comments, a tally sheet of raw scores, and a class ranking of raw scores to give them some idea of the quantity and quality of the student's participation compared to classmates. I take the folders to class for their review. I do another assessment at the end of the semester to finally calculate points; and, I share these results with them on the last day of class. Students then know how hard they must work for the final exam to earn the grade desired. Some semesters, documented class participation counts 50 percent of their grades!

Students tell me, that after writing weekly, they feel more confident in drafting correspondence, like cover letters in job searches. Plus, they say it helps them review weekly and encourages them to come prepared.

Assessment of students can facilitate growth. As to the Judge who asked can't we at least teach them to write a business letter?! Well, I'm proof that even a Con Law professor can teach that skill and satisfy an ABA Standard Learning Outcome or two in the process.



Diane Klein, University of La Verne College of Law

Formative and Summative Assessment (Standard 314) in Teaching RAP

Elsewhere, I have written about why I teach RAP to first-year Property students, as part of a 4-unit course in the second semester. Here, I will say a few words about how I do it, particularly in the context of formative and summative assessment.

The Eberly Center at Carnegie Mellon differentiates “formative” and “summative” assessments this way:

“The goal of formative assessment is to monitor student learning to provide ongoing feedbackMore specifically, formative assessments help students identify their strengths and weaknesses and target areas that need work [and] help faculty recognize where students are struggling and address problems immediately. Formative assessments are generally low stakes, which means that they have low or no point value.”

By contrast, “The goal of summative assessment is to evaluate student learning at the end of an instructional unit by comparing it against some standard or benchmark. Summative assessments are often high stakes, which means that they have a high point value.”

Because estates in land is a “foreign language” for virtually every law student, repeated drilling and practice are essential. I spend about 15 hours on this material (6 2.5 hour classes). Class time combines lecture/explanation by me, and real-time problem-solving by students. Student engagement is enhanced by formative assessment in every session, from the second class on. The formative assessments that I use are short review quizzes given at the beginning of each class. The first quiz covers the interests taught in the prior class (generally, present interests and grantor’s retained interests), and each subsequent quiz is cumulative but focuses on the immediately prior class material. The quizzes are progressively more difficult, culminating in an actual prior final exam question. (In some cases I have instead modified a prior question and use it as a summative unit test.)

The quizzes take 15-20 minutes, and students then exchange quizzes among themselves for scoring. We work through the conveyances as a group, and students share the answer on the quiz before them, whether correct or not. Once the correct answer is identified, students can ask about the sufficiency of the answer before them, and that discussion will generally bring to light all the typical mistakes that might be made, in this doubly low-stakes setting - the quiz scores do not “count” and the answers offered are not their own. I have students total up the scores and share information about overall class performance by asking students if the quiz they scored received above 90%, 80%, and so on. I then collect and review quizzes for insight into what students do and do not understand, and return them in the next class, creating a portfolio of review questions for the student’s own use. Long before the high-stakes summative assessment of the final exam, students have had repeated exposure to the material and to my approach to scoring, both of which greatly increase fluency and reduce anxiety around this notorious topic.



Edith Y. Wu, Thurgood Marshall School of Law

Keeping up with Standard 302

Students are given opportunities to test their knowledge of rules and analytical “competency” through the “**5-Minute Exercise**,” which is designed to improve their “fact development and analysis”¹ skill set. **One exercise** requires students to “**Diagram a Rule**,” without aid (e.g., UCC 2-205). **A second exercise** requires students to “**Read a Case Synthesis**,” then write a rule from questions that force them to “rule check.” **A third exercise** – ***“Rule Questions, With Application” - RQWA** - students tackle a more complex rule, using the question method - paired with a case.

¹ ABA Standard 302 (the professional skills of: legal analysis and reasoning, critical thinking ..., problem solving ..., oral communication in a legal context...).

The Third exercise (RQWA) is discussed herein. **Step one:** Students are given ‘5-Minutes’ to answer several questions that tract the rule’s requirements; it also forces them to write rules under time pressure. After time is called, we spend 30 minutes going through steps two and three: **Step two – Q#1**, students are called on to read their rules, aloud. After 4 to 6 students read their answer/rule for the first question, a designated “*Restatement or UCC Rules Guru*” reads the first portion of the rule (which tracks the first question), here UCC 2-201(1). Each question is treated in the same manner: **Q#2**, student reads answer/rule, the “Rules Guru” reads the rule verbatim, 2-201(2); after each question, students have an opportunity to tweak their rule, fill in gaps; repeat steps for **Q#3**, 2-201(3).

***“5-Minute Exercise” – Rule Questions, With Application (RQWA)**

Q#1. According to UCC 2-201, what are the requirements for the Statute of Frauds (Sale of Goods)?

Q#2. What are the Merchants’ Confirmation Memo requirements?

Q#3. When will “a contract which does not satisfy the requirements of subsection (1) [general requirements], but which is valid in other respects be enforced...” (the exceptions)?

Step three, students apply 2-201(1) – talking through, sequentially evaluating whether the rule is satisfied based on issues and facts from a case, previously briefed in class. I paired UCC 2-201 with *Brookside Farms v. Mama Rizzo’s, Inc.*, (S.D. Tex. 1995)

RQWA assesses students’ knowledge of the rule, allows integration/analysis of key facts from the case with questions (1-3); students literally see the importance of “rule checking” and “fact checking.” This process hones “fact development and analysis” skills. “Live simulation” allows students to apply rules to real facts (from the paired case), forcing them to search for facts to support the portion of the rule each question triggers. Students determine whether the rule was contravened or satisfied.

Finally, I reiterate aspects of the rule and highlight key facts extracted from *Brookside* to show how students **UNCOVERED** the rule through fact searching. For example, a student says, “The party **promised**, but failed to annotate the K.” Discussion follows about the impact---the promise and failure to perform the act; students question the impact of the non-performance and motive. Lightbulbs start to turn on; students see express contract language being overridden by the parties’ subsequent acts.



Ashley S. Lipson, University of La Verne College of Law

MOBILE DEVICE VIDEOGAME TEACHES LEGAL TERMS

As a law professor, I hold dear thick, back-breaking, colorless olde casebooks soaked in ancient Latin phrases. Open just one and generate enough atmospheric dust to cause the next ice age. It's what I love doing. My students, however, prefer their shiny screens. With live fingers attached to zombie bodies, they walk, talk, sit, think, stare, drive and breathe with their so-called "smart" devices. That is, until class begins. Then it's books only. The zombies, however, stay loyal to the devices. I've even seen a student, in a momentary lapse of thought, brush his fingers over a book's page attempting to scroll the type. It's come to that.

As a videogame programmer, I'm always trying to think of ways to turn the students' mobile desires and games into educational targets. It's not easy. But there is great value in any game that can break attention away from *Candy Crush* or *Angry Birds* long enough to teach some important legal concepts. A lengthy electronic tutorial with interactive Q & A, pretending to be a game, fools no one, least of all our tech-prepped zombies. On the contrary, a great game must possess certain special "*fun*" elements; then it can seductively provide an addictive challenging diversion. It would have several progressive levels, the first of which would be outrageously simple. Then, once hooked, the student would encounter the real challenges, enticing him or her to spend hours playing and replaying. Ideally, the student's brain would be forced to accept valuable information at an almost-subconscious level. The scores provide instant feedback for both formative and summative assessment.²

Games should *never* be thought of as substitutes for books or lectures. On the contrary. But they may make excellent supplements - better than *Angry Birds*.

Currently, I'm completing a multi-level, mobile-device game designed to teach students important legal definitions. I'll use it for all 1-L classes that I teach. It has a few required buzzers and bells, but the focus is upon key words and their substantive meanings and importance. It's ironic indeed that the study of *Law*, a curriculum so heavily predicated on words and terms, fails to provide separate courses for definitions and terminology. Law profs must presume that first semester students were born knowing the meaning of *attachment*, *levy* and *land patent*, as they suffer their students through *Pennoyer v. Neff*. A definition game might help.³ *Black's Law Dictionary*? Forget it; it will never touched by millennial hands. No dust problems there.

² Interpretation 314-1 for Standard 314 provides: Formative assessment methods are 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. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning.

³The game titled *Multigate Challenge* is nearing completion. Contact me for more information (which exceeds 500 words).



Victoria Sutton, Texas Tech University School of Law

Observations from the study and article, Victoria Sutton, “Asynchronous E-Learning in Law,” (forthcoming).

An asynchronous law course, requires some innovations not only in teaching but in the assessment tools. ABA Rule 314 My own goals in developing an e-learning course are to provide objective, fast and immediate feedback for the students and to teach, asynchronously, a substantive law course through e-learning.

I created a new e-learning course, Emerging Technologies Law, using a variety of assessment methods. Simulating the Socratic method, students were asked five questions following every 10-15 minutes of video-lecture time. This method allowed an assessment of their comprehension as well as provided immediate feedback to the student, nine times a week. This added up to 575 multiple choice questions with immediate results for the students when designed on an e-learning platform like Blackboard.

Discussion boards. Students are given points for simply participating, not particularly on the quality of their contribution. From the first week, students are asked to select any new technology and think about it as we cover each section of the course and how the particular area of law applies to their new technology, e.g., criminal law. Information they have developed throughout the course is scripted into a 6-minute video project. The students are required to watch each other's videos, like class presentations, and then make a comment about the videos. This also provided students' with self-evaluation opportunities (ABA Rule 302).

My concerns that some students might be overwhelmed with writing, shooting, editing and producing a required video for a grade were totally put to rest when they rated the video project as the most useful of all the assessment methods in the course. The lawyers we are preparing today, will need video skills in their future careers. (ABA Rule 302(d)).

The group project was a memorandum writing assignment based on a client issue with emerging technology. While this is not a new assessment method, by each student being responsible for discrete sections of the memo, it did provide an assessment of a student's ability to collaborate in writing (ABA Rule 302).

The E-Journal is a process of self-reflection on the week's video-lectures and reading. It is a free-form place to communicate with the professor about your perspectives, observations, confusion, roadblocks, positive ah-ha moments, etc. The student receives credit just for writing something meaningful (low bar). Thoughtful responses take time, but this time allows you to sometimes get to know your students better than you might in a live classroom where there is much less one-on-one time between student

and professor.

In addition, I used the traditional mid-term and final exam but they counted much less for the total grade than in the traditional law course.

Here are the assessment methods (ABA Rule 314):

1. Reflective Assessments, after every 10-15 min of lecture time. (30%)
2. E-Journal (10%)
3. Class and group exercises (10%)
4. Midterm and Final examination (35%)
 - Midterm (10%)
 - Final examination (25%)
5. Video project (15%)

*ABA Rule306 applies to e-learning.



Timothy Duff, Case Western Reserve University School of Law

LLEAP 3 – Litigation

Standard 304 confirms that a complete law-school education includes learning to do what lawyers actually do. In 2013, Case Western Reserve University School of Law’s faculty approved the creation of a required three-year integrated writing, experiential, and skills-based curriculum known as LLEAP—Legal Writing, Leadership, Experiential Learning, Advocacy, and Professionalism.

LLEAP 3 is a required one-semester, three-credit course for second-year students. Students must choose between LLEAP 3 – Litigation and LLEAP 3 – Transactions. In Spring 2015, I was asked to develop and teach LLEAP 3 – Litigation for 2015-2016, the first year that it would be offered.

The eventual design of LLEAP 3 – Litigation sought to address three main goals: (1) provide a substantive overview of the litigation process; (2) incorporate an experiential portion that permitted students to put into practice what they were learning; and (3) ensure that students had the opportunity to write—a lot.

The course follows several tracks at once. Substantively, the course covers litigation in roughly chronological order: investigation and planning, pleadings, discovery, motions, trial, appeal, and settlement. Substantive matters also include citation form and some background on the rules of professional conduct. Lectures concerning the writing process are interspersed throughout the course, and several sessions, taught by a different professor, are devoted to financial analysis.

Throughout the semester, students work on a problem that is made as real as possible. Third-year

students, working off scripts, play the roles of clients and other witnesses associated with the problem. At the beginning of the semester, students are divided into firms and, within each firm, into work groups. The students are then given an assignment memorandum specific to their firm directing them to meet with a prospective client. The students develop facts by interviewing the clients and other witnesses and by obtaining documents—either directly from the clients or through discovery. The students draft an engagement letter, determine potential claims and defenses, prepare an objective memorandum analyzing the case, prepare a litigation plan, draft and respond to pleadings and discovery, draft a properly supported motion for summary judgment, draft a trial brief, keep their client advised of the status of the case, and consider the financial aspects of damages. The engagement letter, discovery requests and responses, and an e-mail keeping the client abreast of the litigation are performed as group work. The remaining assignments are completed individually, including the objective memorandum, a complaint or an answer, the motion for summary judgment, the trial brief, and a judicial opinion. In addition, the students perform two simulations overseen by experienced adjunct faculty. The first simulation is a deposition during which the students both take and defend the deposition of one of the witnesses associated with the problem. The second simulation is a final pretrial that becomes a settlement conference to which the students bring their client. Students also keep time records, which they submit at the end of the semester.

The students are assessed and receive feedback throughout the course through comments on written work, in review sessions, and during one-on-one conferences.



Amy Stein, Maurice A. Deane School of Law at Hofstra University

“If you put forth the effort, good things will come to you.” Michael Jordan

One of the opportunities that the new emphasis on learning outcomes presents is the opportunity to challenge our students to become more active learners. Standard 314 directs law schools to utilize formative assessment methods. Interpretation 314-1 instructs that: “[f]ormative assessment methods are measurements at different points during a particular course . . . that provide meaningful feedback to improve

student learning.” While the primary goal of formative assessment is to provide the instructor with feedback on student performance, I have adopted strategies to encourage students to use formative assessment techniques as a “check up” to ensure they understand what they are learning.

Students in first year legal writing often struggle with simplifying complex sources; this is true for both factual and legal material. A technique that I have used successfully to help students with this process is to give them five minutes in class to write a three sentence description of their current writing assignment. I give them two additional requirements: 1. the description must blend both fact and law; and 2. it must be easily understandable by their non-lawyer best friend. I review them, and start the

next class by drafting the description as a group. Because I have the advantage of having read what they prepared, I can “stack the deck” by calling on students who wrote strong ones. I can also raise some of the common errors and we can discuss why they are problematic. I urge students to tape the class-drafted sample to their computer to help keep them focused while they draft their memo or brief. I also encourage students who are still confused after the group discussion to speak with me privately. Forcing students to think about a complex idea in simple terms forces them to assess the status of their own learning.

Another strategy that I have used assists students in preparing for their oral arguments. We have small group practice sessions before the class engages in oral arguments in front of outside judges. The “golden ticket” each student must bring in order to participate in the practice session is an index card- one side contains the question that they most want to be asked by the judge; the other contains the question that they least want to be asked. I shuffle the cards and make sure that I ask each student one question from each side of an index card other than their own. At the end of the practice session, we critique both the questions and the responses. This focus on articulating good questions, and not just on giving good answers, requires them to have a deeper understanding of the material and better prepares them to give an effective oral argument.

To be successful in law school, students need to master not only substantive legal material; they also need to understand the process of learning. Using formative assessment techniques is an important step in achieving that goal.



Beth Wilensky, University of Michigan Law School

In my Legal Practice class at the University of Michigan Law School, I have recently implemented an assignment that responds to both the “self-evaluation” requirement of Standard 304 and the “formative assessment” requirement of Standard 314. Halfway through the course, I require my students to step back and conduct a self-assessment of their work, taking into account the extensive feedback I have given them.

Here is what I tell them when I give this assignment:

One of the most important things you can do to improve your writing is to learn to use feedback – both explicit and implicit – that others provide you. When you practice law, colleagues and supervisors will frequently review what you have written. They will sometimes give you direct feedback, but often they will simply revise your writing themselves; what you do with that feedback or those revisions will make a big difference in how you develop as a writer. Do you merely make any suggested changes and send along the document as revised? Or do you look over the changes and try to figure out why your supervisor made or suggested them? A related

thing you can do to improve your writing is to occasionally step back and take stock, to critically review your writing development and to work, intentionally, on improving it.

In that spirit, your assignment is to review your own writing from this course and identify between 2 and 4 things that you most need to work on. They can be substantive, organizational, or stylistic. As you review your writing, take into account my feedback and look for patterns.

For example, imagine you see multiple comments from me across your assignments that say things like this:

- “These aren’t the facts of *Smith*. In that case, the facts were _____.”
- “Reread *Jones*. The court *rejected* this argument.”
- “You are focusing too narrowly on this part of *Doe* and ignoring the most important part. The key to *Doe* is _____.”

You might have concluded that you should have done a better job of writing about those particular cases. But if you take a step back, the better conclusion you should reach is that you need to work on reading cases more closely. So that would be one item on your list of things to work on.

When identifying items for your list, you should also take into account what things seem most important to – or are likely to have the biggest impact on – your development as an outstanding legal writer. And I use the term “legal writer” in its most expansive sense. I am not looking only for style, syntax, and grammar stuff, although those things obviously matter; as the above example illustrates, I am interested in how you can improve the *substance* of your writing and analysis.

I then meet with my students individually to discuss their self-assessments and offer advice tailored to the things they identified.