LIGHTING THE FIRES OF LEARNING IN LAW SCHOOL: IMPLEMENTING ABA STANDARD 314 BY INCORPORATING EFFECTIVE FORMATIVE ASSESSMENT TECHNIQUES ACROSS THE CURRICULUM

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I. INTRODUCTION

"Education is not the filling of a pail, but the lighting of a fire."[1]

Many of today's law school professors were taught in large lecture halls where their professors stood at the podium and combined a lecture with the Socratic method.[2] Students were expected to learn from reading cases before class and reviewing the material on their own after the class.[3] The lecture provided substantive material that students were required to master, and the Socratic method engaged a handful of students in each class with one-on-one questions and hypotheticals to teach them how to "think like a lawyer."[4] Students who were not called upon to answer questions in a Socratic classroom were expected to learn from listening to the dialogue.[5]

In these traditional law school courses, there are not many opportunities during the semester for students to practice the skills or test their knowledge of the concepts taught from the podium. Instead, students take a single exam at the end of a course and receive a grade as a summative assessment of their mastery of the material and satisfaction of the goals of the course.[6] Although professors typically provide written feedback (usually with sample answers for the class as a whole), that feedback comes

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[1] The quote is attributed by some to William Butler Yeats and believed by others to be a paraphrase of Plutarch. Robert Strong, *'Education Is Not the Filling of a Pail, but the Lighting of a Fire': It's an Inspiring Quote, but Did WB Yeats Say It?*, IRISH TIMES (Oct. 15, 2013), https://www.irishtimes.com/ news/education/education-is-not-the-filling-of-a-pail-but-the-lighting-of-a-fire-it-s-an-inspiring-quote-but-did-wb-yeats-say-it-1.1560192.

[2] Steven I. Friedland, *Rescuing Pluto from the Cold: Creating an Assessment-Centered Legal Education*, 67 J. LEGAL EDUC. 592, 599 (2018).

[3] *Id.*

[4] WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 50–51 (2007).

[5] *Id.* at 48–49.

[6] "The traditional, but still outsider, pillar of assessment has been one lengthy final examination after the classroom learning has concluded." Friedland, *supra* note 2, at 599. Friedland goes on to note:

> No specific and measurable deliverables often are required during the classroom phase of a course other than to be generally prepared to discuss the readings. No advance criteria or structure of the discussion are usually offered; the students learn about the direction of the discussion when they engage in it.

Id. at 599 n.48.

well after the course has ended, with no opportunity for students to implement the feedback within the same course, and little, if any, indication of how to apply that feedback to the students' performance in subsequent courses.[7]

These law school pedagogies focus primarily on "teaching," where the professor fills the students with knowledge from the lectern, but does not focus on "learning," where all students are encouraged to take an active role in their learning.[8] Instead of encouraging learning by "lighting a fire" within the students to engage with the material, these methods often lead to students' anxiety during class and at the end of the semester as they prepare for the summative exam.[9]

Many of today's faculty succeeded as students in classes using this pedagogical approach, performing well in the Socratic class dialogue and on cumulative exams. As a result, many of the same traditional aspects of law school have continued into the twenty-first century.[10] However, in 2007, the Carnegie Foundation for the Advancement of Teaching advocated for law schools to begin using "[f]ormative practices directed toward improved learning [as] primary forms of assessment."[11] In an attempt to improve learning, the American Bar Association ("ABA") now requires law schools to expand and improve upon some of these traditional pedagogical approaches,[12] and creative faculty are searching for new methods to shift the classroom focus more on learning than on teaching. Formative assessments are one technique that faculty can use to create effective learning environments within the classroom and to assess the students' achievement of learning outcomes for the course before the end of the semester.

Beginning in the 2016–2017 academic year, new accreditation standards promulgated by the ABA went into effect and included an explicit requirement in Standard 314 that a law school use "both formative and summative assessment

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[7] SULLIVAN ET AL., *supra* note 4, at 164–65.

[8] *Id.* at 48–49.

[9] "Teaching and learning remain the core elements of law school. While it is easy to slip into conflating the two as a single entity, they are generally separate activities. Just because teaching is taking place does not mean learning is occurring as well." Friedland, *supra* note 2, at 596. Friedland notes that in the traditional law school classroom, the spotlight in the class is on the professor, not on students or on any assessment of their learning. *Id.* at 599.

[10] SULLIVAN ET AL., *supra* note 4, at 166.

[11] *Id.* at 189.

[12] ABA, ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016–2017, at 15–27 (2016) [hereinafter ABA STANDARDS].

methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."[13] Also implemented in 2016 were ABA Standards 301, 302, and 315, which require law schools to establish and publish learning outcome goals for their students and engage in ongoing evaluation of their "program of legal education, learning outcomes, and assessment methods."[14]

As the Managing Director's Guidance on ABA Standard 314 makes clear, there is a direct connection between the identification of discrete learning goals for law students and implementation of assessment measures:

> Learning outcomes clarify what students are expected to learn or master. Assessment should measure the level of attainment of those learning outcomes being achieved by students. This requires schools to collect evidence that demonstrates the level of attainment. . . . Because determining the level of attainment requires some subjective judgments, multiple methods of assessment will more likely produce an accurate portrayal. As noted in Interpretation 315-1, the sources of this evidence may encompass different constituencies, including students, alumni, attorneys and judges in addition to faculty.[15]

Standard 314 exhorts law schools to employ both formative and summative assessment tools, but the primary mode of assessment in most law school courses has traditionally been summative, rather than formative, in nature.[16] Peer reviews and self-assessments are formative assessment tools that can provide evidence of

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[13] *Id.* at 23.

[14] *Id.* at 15–16, 23–24.

[15] ABA, Managing Director's Guidance Memo: Standards 301, 302, 314 and 315, at 5 (2015), https://www .americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governan cedocuments/2015_learning_outcomes_guidance.pdf.

[16] As Interpretation 314-1 explains:

> 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.

ABA STANDARDS, *supra* note 12, at 23. It has long been the practice of most law school courses to assess students based almost entirely, if not entirely, on a single exam at the end of the course, which is a purely summative form of assessment. *See, e.g.*, Olympia Duhart, *The "F" Word: The Top Five Complaints (and Solutions) About Formative Assessment*, 67 J. LEGAL EDUC. 531, 532–33 (2018).

student progress towards learning objectives consistent with the ABA's new standards.

Educators in other fields have forged ahead of legal educators in incorporating formative assessment techniques across their curricula, recognizing the breadth of evidence supporting the positive impact of formative assessment on learning.[17] In the law school setting, clinical and legal writing faculty have also long used formative assessment as a primary focus of their pedagogy, incorporating peer reviews and self-assessments as formative assessment tools to enhance student learning.[18]

This Article suggests that peer reviews and self-evaluations can be effectively used across the law school curriculum to deepen student understanding, encourage student cooperation, and develop students' abilities to be self-regulated learners in law school. In Part II, we provide background on the power of formative assessment in general as a teaching and learning tool. In Part III, we focus specifically on peer reviews and self-evaluations, explaining the nature and essential components of these formative assessment tools in teaching and learning contexts and discussing research supporting their usefulness in enhancing learning across multiple educational contexts and disciplines. In Part IV, we provide specific examples of how both peer review and self-evaluation exercises have been used in clinical and legal practice courses and make specific suggestions regarding how these tools can be used across the law school curriculum as effective formative assessment tools, serving the goals of Standard 314 without creating an undue burden on faculty even

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[17] *See* David J. Nicol & Debra Macfarlane-Dick, *Formative Assessment and Self- Regulated Learning: A Model and Seven Principles of Good Feedback Practice*, 31 STUD. HIGHER EDUC. 199, 200–01 (2006) (discussing cognitive science research relating to the impact of formative assessment on learning); *see also* Barry J. Zimmerman, *Becoming a Self-Regulated Learner: An Overview*, 41 THEORY INTO PRAC. 64, 64–67 (2002) (reviewing research on efficacy of self-regulated learning). *See generally* Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview*, 49 J. LEGAL EDUC. 367 (1999) (advocating for legal education to adopt the seven principles for good practice in undergraduate education published in 1987, which include encouraging cooperation among students, active learning, and prompt feedback).

[18] *See, e.g.*, DIANA DONAHOE & JULIE ROSS, LEGAL WRITING PEDAGOGY: COMMENTING, CONFERENCING, AND CLASSROOM TEACHING, ch. 3, 5 (2013); Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 LEGAL WRITING 175 (1997); Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 LEGAL WRITING 1 (2003); Jo Anne Durako, *Brutal Choices in Curricular Design: Peer Editing: It's Worth the Effort*, 7 PERSP. 73 (1999); Lissa Griffin, *Teaching Upperclass Writing: Everything You Always Wanted to Know but Were Afraid to Ask*, 34 GONZ. L. REV. 45 (1998); Michael Meltsner & Philip G. Schrag, *Scenes from a Clinic*, 127 U. PA. L. REV. 1 (1978).

in large classes that rely primarily on a lecture or Socratic dialogue format. In Part V, we conclude that incorporating formative assessment across the law school curriculum will benefit teachers and learners alike and that law schools should create express incentives for faculty to develop and implement peer review and self-evaluation exercises across the curriculum.

II. THE FOUNDATIONS OF FORMATIVE ASSESSMENT AS A POWERFUL LEARNING TOOL

Much progress has been made over the past four decades in developing theories of learning that are grounded in evidence-based research and that provide concrete guidance for teachers. One recurring component of modern learning theory is the role that formative assessment plays in enhancing student learning and supporting students' ability to become self-regulated learners.[19] The growing body of both quantitative and qualitative evidence from studies across the globe, in the context of K–12 education and post-secondary education, confirms that formative assessment is a powerful tool for raising levels of student achievement and developing students' ability to regulate their own learning.[20] Formative assessment has been described as

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[19] *See* Duhart, *supra* note 16, at 539 (discussing researchers' conclusions that "formative assessment produces significant improvement in student learning, compared with the measurement of student learning without formative assessment"); *see also* GERALD F. HESS ET AL., TECHNIQUES FOR TEACHING LAW 2, 5–6, 12 (2011); Graham Mowl & Rachel Pain, *Using Self and Peer Assessment to Improve Students' Essay Writing: A Case Study from Geography*, 32 INNOVATIONS EDUC. & TRAINING INT'L 324, 324 (1995) (discussing success of projects using self and peer assessment for essays in geography course; success evaluated based upon student and staff feedback); 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, 176 (2012). *See generally* Elizabeth M. Bloom, *Teaching Law Students to Teach Themselves: Using Lessons from Educational Psychology to Shape Self-Regulated Learners*, 59 WAYNE L. REV. 311, 338–48 (2013) (explaining importance of self-regulation in learning theory and role of active learning and formative assessment in developing self-regulation skills).

[20] *See* SUSAN A. AMBROSE ET AL., HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 206 (2010); ORG. FOR ECON. CO-OPERATION & DEV., FORMATIVE ASSESSMENT: IMPROVING LEARNING IN SECONDARY CLASSROOMS 13–17, 22 (2005) [hereinafter OECD FORMATIVE ASSESSMENT STUDY]; Ruth Colker et al., *Formative Assessments: A Law School Case Study*, 94 U. DET. MERCY L. REV. 387 (2017) (describing natural experiment regarding formative assessment in constitutional law courses and concluding that study supported some causal relationship between some forms of formative assessment and student learning); Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139, 171 (2017) (summarizing natural empirical study of impact of individualized feedback on success of first-year law students and concluding that the study's results "clearly demonstrate that providing students with individualized feedback in a core doctrinal class improves their ability to produce high-quality law school exam answers in general" and that individualized feedback in one course has a distributive effect in improving learning in other courses, but leaving open the question of whether it is the most effective way to enhance learning of specific skills that professors seek to teach and recommending that law schools ensure that all first-year

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"perhaps one of the most important interventions for promoting high-performance ever studied."[21]

In an often-cited book that summed up two decades of research, Susan Ambrose and her co-authors laid out seven research-based principles to guide college teachers in designing their courses to maximize student learning.[22] These principles are founded on the concept of learning as a process that is not something that teachers do to students, "but rather something students themselves do."[23] Among these seven principles was the principle that: "[g]oal-directed practice coupled with targeted feedback enhances the quality of students' learning."[24]

In contrast to summative assessment, which evaluates the final product of students' work on a particular subject or task, formative assessment intervenes in the midst of a student's learning process. In its ideal form, it is comprised of "frequent, interactive assessments of student progress and understanding to identify learning

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students get individualized feedback in one core course). In fact, some countries have passed legislation recognizing the power of formative assessment as a teaching and learning tool and adopted mechanisms for promoting its use across the curriculum. OECD F ORMATIVE A SSESSMENT S TUDY, *supra* note 20, at 31–40 (noting legislation in Denmark and Italy promoting the use of formative assessment in their school systems and efforts in Denmark, Finland, Canada, New Zealand, Italy, England, and Scotland to promote formative assessment by using: summative data for formative purposes, embedding guidelines on effective assessment practices into national curricula and teaching materials, providing tools and resources such as rubrics and exemplars, and investing in professional development aimed at encouraging use of formative assessment).

[21] OECD F ORMATIVE A SSESSMENT S TUDY, *supra* note 20, at 22.

[22] *See generally* A MBROSE ET AL ., *supra* note 20, at 4–6 (identifying the following principles of learning: (1) "Students' prior knowledge can help or hinder learning"; (2) "How students organize knowledge influences how they learn and apply what they know"; (3) "Students' motivation determines, directs, and sustains what they do to learn"; (4) "To develop mastery, students must acquire component skills, practice integrating them, and know when to apply what they have learned"; (5) "Goal-directed practice coupled with targeted feedback enhances the quality of students' learning"; (6) "Students' current level of development interacts with the social, emotional, and intellectual climate of the course to impact learning"; and (7) "To become self-directed learners, students must learn to monitor and adjust their approaches to learning.").

[23] *Id.* at 3.

[24] *Id.* at 5–6 (identifying and briefly explaining principle #5). The premise that goal-directed practice with specific, targeted feedback enhances learning is echoed in studies of the "new science" of expertise. *See generally* A NDERS E RICSSON & R OBERT P OOL , P EAK : S ECRETS FROM THE N EW S CIENCE OF E XPERTISE 97–100 (2016) (describing the traits of deliberate practice as a tool for improving performance in any mental or physical skill, including having "well-defined, specific goals" and incorporating "feedback and modification of efforts in response to that feedback").

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needs and adjust teaching appropriately."[25] Its primary purpose is "to improve student learning, not to assign grades."[26] In fact, providing grades on student performance—which inherently focuses students on competition with peers—has been shown to be less effective in students' learning than providing formative feedback that tracks the individual student's progress towards clearly stated, objective learning goals.[27] A premise underlying formative assessment is that it is not just acceptable for students to make mistakes, but that making mistakes and using them to gain a deeper understanding of the material is, in fact, essential to learning.[28]

The use of formative assessment allows students to learn from the cycle of working on a task, receiving feedback, discussing that feedback, and continuing to work on the task based on the feedback.[29] It also allows students to remain conscious of three main questions identified as essential to ownership of their own learning process: "Where am I going? Where am I now? What strategy or strategies can help

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[25] OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 2.

[26] HESS ET AL., *supra* note 19, at 261; *see also* Olympia Duhart, *"It's Not for a Grade": The Rewards and Risks of Low-Risk Assessment in the High-Stakes Law School Classroom*, 7 ELON L. REV. 491 (2015).

[27] *See* OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 47–48, 50 (citing studies concluding that grades "may actually undermine the positive help of specific feedback on tasks"); Paul Black & Dylan Wiliam, *Developing the Theory of Formative Assessment*, 21 EDUC. ASSESSMENT EVALUATION & ACCOUNTABILITY 28 (2009) (noting that giving grades or focusing on judgment or competition as a part of feedback "can inhibit the learner's attention to any substantive advice on improvement [and] can actually have a damaging effect on the learning orientation of the learner . . . .").

[28] *See* OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 56; ERICSSON & POOL, *supra* note 24, at 155–57 (describing how Benjamin Franklin worked as a young man to improve his writing by identifying articles written by authors he admired, trying to reproduce portions of them while focusing on different aspects of writing such as clarity of expression or structure and logic, then correcting his work based on the original and learning from his mistakes). This approach to learning transcends a student's level of schooling and has long been recommended for professional education. *See, e.g.*, DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS 17 (1987) ("Perhaps, then, learning all forms of professional artistry depends, at least in part, on conditions similar to those created in the studios and conservatories: freedom to learn by doing in a setting relatively low in risk, with access to coaches who initiate students into the 'traditions of the calling' and help them . . . to see on their own behalf and in their own way what they need most to see.").

[29] *See* HESS ET AL., *supra* note 19, at 12 (describing formative feedback as an "essential part of the learning loop" in which students "engage in learning activities, demonstrate their learning in writing, orally, or behaviorally, and then get feedback on how to improve their performance and, perhaps even more importantly, their approaches to learning"); Daniel Reinholz, *The Assessment Cycle: A Model for Learning Through Peer Assessment*, 41 ASSESSMENT & EVALUATION HIGHER EDUC. 301, 304 (2015).

me get to where I need to go?"[30] When done effectively, formative assessment techniques can create "a dynamic process that shifts the classroom focus from instruction to learning."[31]

So, how is formative assessment done effectively? While the literature offers a range of suggestions, research shows that the primary criteria for successful formative assessment include:

- clear guidance from teachers about the specific teaching goals of both the course and the particular task;

- feedback that is designed to "feed forward" such that it applies to future work by the student in the class rather than solely to work that has been completed in the past;

- teacher assistance in helping students to identify their own, individual learning goals for the course or for the particular task, often grounded in feedback on past tasks;

- express guidance on how students can become better evaluators of their own work product; and

- engagement of both teacher and student in consistently asking questions that will motivate learning.[32]

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[30] CONNIE M. MOSS & SUSAN M. BROOKHART, ADVANCING FORMATIVE ASSESSMENT IN EVERY CLASSROOM 8 (2009) (ebook); *see also* Black & Wiliam, *supra* note 27, at 4 (discussing three primary processes in learning and teaching identified by Ramaprasad in 1983—"[e]stablishing where the learners are in their learning, [e]stablishing where they are going, [and] [e]stablishing what needs to be done to get them there"—and noting that teachers, learners, and their peers all play a role in this process); Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N.U. L. REV. 227, 232–35 (2015) (summarizing components of effective formative assessment and importance of feedback in context of law school education).

[31] *See* MOSS & BROOKHART, *supra* note 30, at 14; *see also* OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 23–24 (noting that formative assessment builds "learning to learn" skills by emphasizing the process of learning, actively involving students in understanding their own learning, developing strategies for reaching goals, and building students' skills in both peer- and self-assessment); MICHAEL H. SCHWARTZ ET AL., WHAT THE BEST LAW TEACHERS DO 211 (2013) (explaining that in a study of exceptional law professors, almost all teachers expressly believe that students learn best when they are actively engaged, which includes self-reflection, writing, speaking, and working with peers).

[32] *See* MOSS & BROOKHART, *supra* note 30, at 17 fig.1.3; *see also* HESS ET AL., *supra* note 19, at 12, 263–65 (describing four characteristics of effective formative feedback: it is "specific; corrective; positive; and timely"); OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 15–16, 44–51 (identifying and discussing international case study findings regarding six elements of formative assessment: (1) establishing classroom cultures that encourage formative assessment interactions; (2) establishing and

Effective formative assessment requires not only that teachers create a learning environment that incorporates formative assessment tools, but also that individual learners and their peers actively participate in that learning environment and take ownership of their own and their peers' learning.[33] As summed up in its review of multiple international case studies on formative assessment, the Organization for Economic Co-Operation and Development Centre for Educational Research and Innovation ("OECD") has stated:

> Students who are actively building their understanding of new concepts (rather than merely absorbing information), who have developed a variety of strategies that enable them to place new ideas into a larger context, and who are learning to judge the quality of their own and their peer's work against well-defined learning goals and criteria, are also developing skills that are invaluable for learning throughout their lives.[34]

The interactions between teacher, peer, and learner in implementing an effective formative assessment process are conceptualized in Figure 1:[35]

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tracking student progress toward learning goals; (3) using varied instruction methods; (4) using varied assessment approaches regarding student understanding of the material; (5) providing feedback on student performance and adapting instruction to meet needs; (6) encouraging active involvement by students in their learning process); SCHWARTZ ET AL., *supra* note 31, at 260 ("The exceptional teachers we studied integrate feedback and assessment to help students learn complex course material."); Black & Wiliam, *supra* note 27, at 5 fig.1 (describing five "key strategies" in conceptualizing formative assessment: (1) clarifying learning goals and criteria for evaluating them; (2) designing learning tasks that elicit evidence of student understanding; (3) providing "feedback that moves learners forward;" (4) "activating" students as learning resources for one another; and (5) engaging students to assert ownership over their own learning).

[33] *See, e.g.*, Black & Wiliam, *supra* note 27, at 4–5, 7–10.

[34] OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 23–24.

[35] *See supra* notes 28–34 (discussing the components of effective formative assessment that the chart in Figure 1 attempts to synthesize); *see also* MOSS & BROOKHART, *supra* note 30, at 7–19 fig.1.1, 1.2, 1.3 & 1.4; Black & Wiliam, *supra* note 27, at 5 fig.1.
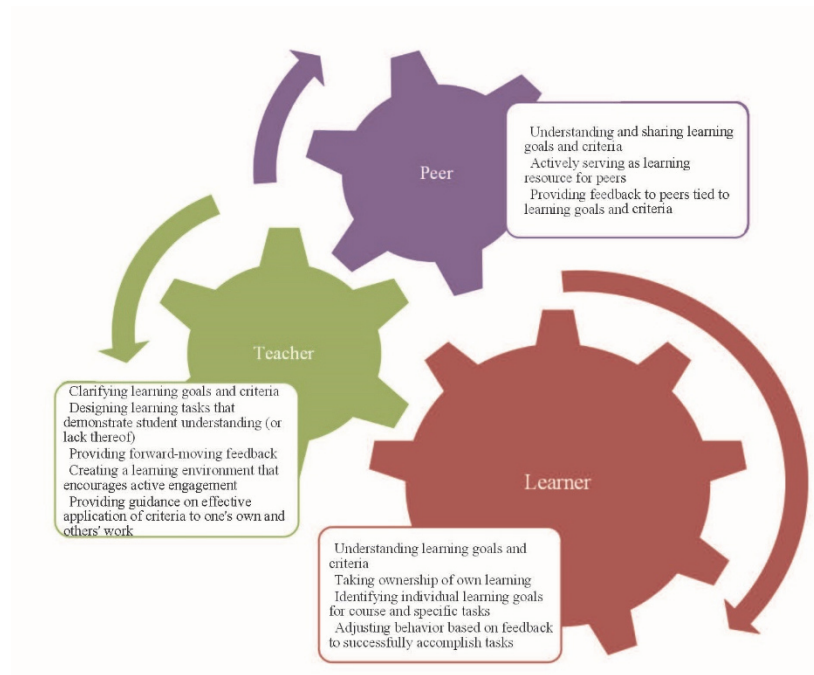
Figure 1: Conceptualizing Formative Assessment Interactions

Feedback, in all of the various forms that it might take, is an essential component of all descriptions of effective formative assessment.[36] However, not all feedback is equally effective—some feedback can interfere with learning if it overwhelms or discourages students, thus undermining their confidence in their ability to effectively implement that feedback.[37] The most effective feedback, regardless of the format through which it is delivered, incorporates "suggestions for

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[36] *See* OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 50 ("Feedback is vital to formative assessment . . . ."); *see also supra* note 32 (listing feedback as an essential component of formative assessment).

[37] *See* OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 50 ("[N]ot all feedback is effective."); Black & Wiliam, *supra* note 27, at 23 ("Unclear negative feedback where there is uncertain self-image can lead to poor performance . . . ."). Research shows that motivation is an important component of learning, and thus feedback that motivates students to discover and employ strategies for improvement will necessarily be more powerful than feedback that discourages students. *See* AMBROSE ET AL., *supra* note 20, at 69–90 (analyzing factors essential to student motivation and recommending strategies that support student motivation).

ways to improve future performance," is timely, and is both specific and "tied to explicit criteria regarding expectations for student performance."[38]

Effective feedback provides students with a strategy for improvement rather than simply identifying what is wrong with the student's performance.[39] This does not mean that teachers should hand answers over to students, or simply "correct" mistakes.[40] Instead, to "scaffold learning," teachers should "provide students with hints rather than answers, so that students have the opportunity to get to the answer themselves."[41] Feedback is closely tied to the notion that students must be given opportunities to practice the tasks and concepts that they will be expected to master during a course, as this will inform students' practice as they move forward in the course.[42]

Effective feedback is also timely—it should be provided as close in time to the student's performance as is feasible and should be followed by sufficient time for the student to implement the feedback into her next assigned task.[43] Feedback on writing should occur in between drafts or before a student writes a new document so she can apply that feedback to the next assignment.[44] Feedback on substantive understanding of a concept should occur right after (or during) instruction relating to that concept and before any summative assessment of the concept takes place.[45]

Finally, effective feedback is both specific and tied to clearly articulated goals and criteria for student performance.[46] General feedback (*e.g.*, "good job" or

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[38] OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 50.

[39] *See* AMBROSE ET AL., *supra* note 20, at 87–88; Black & Wiliam, *supra* note 27, at 26.

[40] *See* AMBROSE ET AL., *supra* note 20, at 139.

[41] *See* OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 64; *see also* David Thomson, *ABA Standard 314—What is Formative Assessment?*, LAW SCH. 2.0 (Feb. 23, 2016), http://www.lawschool2 .org/ls2/2016/02/aba-standard-314-what-is-formative-assessment.html (noting that feedback "should detail what good performance looks like and explain why it is better than what the student did").

[42] *See, e.g.*, AMBROSE ET AL., *supra* note 20, at 125–30.

[43] *See, e.g.*, *id.* at 138–39, 142–43 (noting that feedback should be given "when students can make the most use of it," that is, feedback should be given at a time that affords students an opportunity to practice recognizing and repairing their own errors).

[44] *See id.* at 151–52.

[45] *Id.*

[46] *See, e.g.*, *id.* at 125–30; OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 50.

"unclear") is rarely as effective as specific guidance about why a particular approach is effective or ineffective, tied to previously explained criteria for the task at issue.[47]

Thus, in the law school context, ABA Standard 314 should work hand-in-hand with ABA Standards 301 and 302; the learning goals and outcomes identified for specific courses and the law school's overall program should guide the formative assessment process.[48] To best support formative assessment techniques, those learning goals and outcomes should be described "in terms of something students *do*" and "in such a way that students' performance can be monitored and measured (by instructors as well as students themselves)."[49] The tasks for which feedback is provided should be designed to help the students develop a strategy for improvement and implemented in a timely fashion during the learning process.[50] Clearly articulated goals and explicit criteria for measuring those goals provide a foundation for feedback that helps students "refine their performance or learning."[51] As law schools and individual faculty members move forward in implementing the new ABA standards, stated learning outcomes should be used to guide individualized feedback.

The above foundations for effective feedback in the context of formative assessment highlight the fact that formative assessment does not take place in a vacuum.[52] Learning requires students to build on past knowledge, to tie new concepts to existing schemas, to understand how new information is relevant within the doctrinal area of study, and how it connects to other bodies of knowledge to which the student has been exposed in the past—some of which will be relevant, and some

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[47] *See* AMBROSE ET AL., *supra* note 20, at 127–28, 130–31 (discussing research addressing the benefits of deliberate practice versus generic practice and explaining that deliberate work towards a clearly identified, reasonable, yet challenging, goal with monitoring of success in moving toward that goal will lead to enhanced learning); Richard Higgins et al., *The Conscientious Consumer: Reconsidering the Role of Assessment, Feedback in Student Learning*, 27 STUD. HIGHER EDUC. 53, 56 (2002) ("[S]tudents in our study perceive feedback negatively if it . . . is too general vague to be of any formative use."); Shella W. Valencia, *Getting Formative Assessment to Work*, HOUGHTON MIFFLIN HARCOURT (Oct. 12, 2017), https://www.hmhco.com/blog/getting-formative-assessment-to-work.

[48] ABA STANDARDS, *supra* note 12, at 15, 16–17, 23–24.

[49] AMBROSE ET AL., *supra* note 20, at 129.

[50] *See id.* at 125–30, 138–39.

[51] *See id.*

[52] *See id.* at 13, 180.

of which will not.[53] It requires the teacher to provide sufficient "scaffolding" for a diverse array of student abilities, backgrounds, and learning styles to be able to understand the particular criteria for evaluating their performance that the teacher will employ and upon which formative assessment techniques will rely.[54] It requires students to be motivated to monitor their own learning, to implement the feedback that they receive, and to become self-regulated learners who are active participants in their own learning rather than passive recipients of knowledge.[55]

Formative assessment complements and heightens the success of these other principles of effective teaching and learning. Although there are many forms of formative assessment that can be effective in a variety of educational contexts, this Article will focus on two types of formative assessment that can be particularly effective across the curriculum in law school education: peer review and self-assessment.

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[53] *See, e.g.*, *id.* at 12–39 (explaining research demonstrating how students' prior knowledge can help or hinder learning).

[54] *See, e.g.*, *id.* at 40–65, 156–87 (explaining research comparing novice to expert organization of knowledge, classroom climate, student intellectual and social development, and their impact on learning); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 9–12, 20–24 (2003) (discussing learning styles in law students and making recommendations for course design to accommodate multiple learning styles).

[55] *See, e.g.*, AMBROSE ET AL., *supra* note 20, at 68–90, 95–120, 190–216 (explaining research relating to student motivation, the work students must do to develop mastery of a concept or subject, and the steps students must take to become self-directed learners); MARILLA D. SVINICKI, LEARNING AND MOTIVATION IN THE POSTSECONDARY CLASSROOM 144–76 (2004) (discussing models of student motivation, emphasizing the value of the goal as being influenced by the student's perceived needs, the intrinsic qualities of the goal, the utility of the goal, the student's control and choice over the goal, and the influence of others; also emphasizing the student's expectation that the goal can be achieved as being influenced by the difficulty of and prior experience with the goal, encouragement and the example of others, self-efficacy regarding the goal, and beliefs about success, failure, and learning, among other things). In our own experience, first-year law students are among the most motivated students. However, traditional law school assessment methodology—only one final, summative assessment—tends to suppress that motivation. Instead of focusing on learning specific, clearly identified concepts with the guidance of the professor, students end up trying to "game" the final exam and do not have a clear sense of whether or not they understand key concepts until after they receive their final grade—too late to do anything about it.

III. PEER REVIEW AND SELF-EVALUATION AS FORMATIVE ASSESSMENT TOOLS

"The ultimate goal of formative assessment is for students to be able to evaluate and revise their own work."[56] Studies support the findings that formative assessment in the form of self-review and peer assessment lead to students' enhanced learning and better understanding of standards and concepts, while developing transferable feedback skills.[57] Researchers have found that the processes of student assessment can "engage students in evaluating their progress, aid in developing their communication skills," and increase their substantive vocabulary.[58] Most of the research has focused on writing, with studies finding a positive relationship between student assessments and the quality of writing, including "more effective handling of sophisticated qualities such as ideas and content, organization, and voice—not just mechanics."[59]

Used separately or in tandem,[60] peer reviews and self-evaluations can satisfy the primary criteria for successful formative assessment: clarifying teaching goals; providing students with feedback that "feeds forward"; helping students to identify individual learning goals to work on; making students better evaluators of their own

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[56] OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 65.

[57] Chie Adachi et al., *Academics' Perceptions of the Benefits and Challenges of Self and Peer Assessment in Higher Education*, 43 ASSESSMENT & EVALUATION HIGHER EDUC. 294, 302 (2018).

[58] Heidi Andrade & Anna Valtcheva, *Promoting Learning and Achievement Through Self-Assessment*, 48 THEORY INTO PRAC. 12, 15 (2009) (quoting Virginia Stallings & Carol Tascione, *Student Self-Assessment and Self-Evaluation*, 89 MATHEMATICS TCHR. 548, 548 (1996)).

[59] *See* Heidi L. Andrade, *Students and the Definitive Source of Formative Assessment: Academic Self-Assessment and the Self-Regulation of Learning*, 25 NE. EDUC. RES. ASS'N 1, 5 (2010) (discussing research by Andrade and Boulay in 2003; Andrade, Du, and Wang in 2008; and Ross, Rolheiser, and Hogaboam-Gray in 1999). Research and studies have also been done on student self-assessments in math, where it has been associated with increased autonomy, math vocabulary, and dramatically higher performances on word problem solutions. *Id.* (summarizing research by Stallings and Tascione in 1996 and Ross, Hogaboam-Gray, and Rolheiser in 2002). In a study of seventh and eighth grade students' writing, researchers found a "positive relationship between student assessment and the quality of writing, especially for girls." Andrade & Valtcheva, *supra* note 58, at 15 (citing Heidi Andrade & Beth Boulay, *The Role of Rubric-Referenced Self-Assessment in Learning to Write*, 97 J. EDUC. RES. 21 (2003)).

[60] *See* MOSS & BROOKHART, *supra* note 30, at 35 ("We advise that even if teachers incorporate peer review into their students' work time, they also allow for self-assessment. Peers can make helpful suggestions, but it is the students' own decisions about their work that lead to learning.").

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work product; and engaging both teacher and student in asking strategic questions that motivate learning.[61]

Peer reviews and self-assessments help students understand the desired performance on a project and accurately evaluate their actual performance.[62] These tools then help the students close the gap between the desired and actual performance.[63] These exercises enhance student learning by "means of reflection, analysis, and diplomatic criticism."[64] Peer reviews and self-assessment provide students with "opportunities to reflect upon their own understandings, build on prior knowledge, generate inferences, integrate ideas, repair misunderstandings, and explain and communicate their understandings."[65]

These formative assessment techniques also help improve students' conceptual understanding, as well as communication and assessment skills.[66] They serve as a complement to professor feedback and allow students to gain both confidence and authority in accomplishing the goals of the course.[67] Implementing formative assessments shifts the focus from professor teaching to student learning, where the students are actively engaged in their own learning process.[68] Peer reviews and self-assessments help students learn from their mistakes through a process that provides clear guidance focused on "feeding it forward" with "scaffolding" that builds from one concept to the next.[69] These tools use a method of asking questions, stimulating

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[61] MOSS & BROOKHART, *supra* note 30, at 17 fig.1.3; Black & Wiliam, *supra* note 27, at 8 (emphasizing that peer reviews and self-assessments are "particularly relevant to the development of students' own capacity to learn how to learn and to learner autonomy").

[62] MOSS & BROOKHART, *supra* note 30, at 17 fig.1.3.

[63] *See* Reinholz, *supra* note 29, at 302–03 (citing D. Royce Sadler, *Formative Assessment and the Design of Instructional Systems*, 18 INSTRUCTIONAL SCI. 119, 121 (1989)) (referring to these three components of self-assessment as "*goal awareness*, *performance awareness*, and *gap closure*").

[64] Nancy Falchikov, *Peer Feedback Marking: Developing Peer Assessment*, 32 INNOVATIONS EDUC. & TRAINING INT'L 175, 184 (1995).

[65] Reinholz, *supra* note 29, at 302.

[66] *Id.* at 301–02.

[67] *See* Boyle, *supra* note 54, at 8.

[68] *See id.* at 3–9 (discussing benefits of active learning strategies and employing metacognition theory, in which control over learning is transferred from teacher to student, in the law school classroom).

[69] AMBROSE ET AL., *supra* note 20, at 40–65; HESS ET AL., *supra* note 19, at 12, 263–65; MOSS & BROOKHART, *supra* note 30, at 17 fig.1.3; OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 64; SCHWARTZ ET AL., *supra* note 31, at 260; Black & Wiliam, *supra* note 27, at 8 fig.1.

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thinking, and putting the burden on the students to take ownership of and regulate their own learning.[70] Effective peer reviews and self-evaluations help students improve both the specific work product that is the subject of the review and their learning process, helping them to develop life-long techniques to evaluate their own and their colleagues' work product.[71]

Self-assessments and peer reviews are important formative assessment tools available to professors and are currently underemployed in the law school curriculum.[72] Many professors perceive barriers to incorporating formative assessments into their classrooms.[73] They feel comfortable with lecture or the Socratic method and are often concerned that large class sizes are not conducive to interactive exercises or formative assessment tools.[74] In addition, many courses cover broad topics involving extensive case law, legal concepts, and policies. With so much to cover, professors worry that they do not have enough class time for formative assessment exercises.[75]

These concerns are not unique to law school professors. Secondary school teachers also protest that it might not be "so easy to use formative assessment with large classes. Nor is it possible to slow the pace of instruction, particularly when trying to guide a class through important and extensive curriculum requirements."[76] However, teachers in case study schools who grappled with these perceived problems reported that formative assessment ultimately helped them save time and improved their teaching repertoire and results.[77]

More specifically, law professors can utilize self-assessment and peer review techniques to improve their students' learning and satisfy the new ABA Standards to

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[70] Keith J. Topping, *Peer Assessment*, 48 THEORY INTO PRAC. 20, 23 (2009).

[71] *Id.* at 21, 23.

[72] Friedland, *supra* note 2, at 600–01.

[73] *Id.*

[74] *Id.* at 599.

[75] *See, e.g.*, *id.* at 600–01, 605 (noting time constraints as an impediment to incorporating formative assessment into the law school classroom, but emphasizing that even in large classes, formative assessments "can be self-executing or simply guided by the professor, minimizing the time allocated," and "can occur after class and not during it, minimizing class time allocated to the important subject of metacognition and improvement opportunities").

[76] OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 69.

[77] *Id.* at 69–80.

complement the Socratic method, even in large classes. In this section, we define the terms "self-assessment" and "peer review" so that law professors can understand these types of exercises and begin to conceptualize using them in their classes. Then, we explain the best practices for these tools so that they can be utilized in an effective manner in a variety of courses.

A. *Defining "Self-Assessment" and "Peer Review"*

Self-evaluations can encompass a wide range of activities, but we focus here on guided exercises that ask students to take a step back from their own work and critically evaluate their understanding of key concepts and skills. When reviewing their work product or performance, students often lack the psychological distance necessary to distinguish between their own work and the "ideal," whether it is a skill such as writing or their understanding of a concept or body of related concepts.[78] By consciously attempting to step into the shoes of a critic of the work product or performance and using expressly-explained criteria to assess their work, students are better able to objectively assess their strengths and weaknesses in accomplishing the task at hand.[79]

> An important skill for lawyers is the ability to monitor their own understanding and performance. Consequently, students need to learn to assess themselves. Teachers can facilitate students' self-assessment by providing students with assessment instruments (such as a practice essay question or a practice oral argument) that include explicit criteria for excellent performance. Rubrics and checklists with detailed performance criteria allow students to measure their own strengths and weaknesses.[80]

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[78] In the context of legal writing, for example, students often have difficulty separating their thoughts about the subject matter from what is actually in the text that they wrote, making it hard for them to see where a reader would have difficulty understanding what they were trying to communicate. *See* Beazley, *supra* note 18, at 175, 181.

[79] *Id.* at 176.

[80] HESS ET AL., *supra* note 19, at 262; *see also* Bloom, *supra* note 30, at 244–45 (discussing self-assessment exercises used in torts and legal analysis courses to facilitate self-regulated learning).

Similar to self-evaluation, peer review[81] is a broadly defined concept that can encompass a wide range of activities.[82] Peer review is itself a learning process that exposes students to the complexities of qualitative judgments of other people's work; in addition, it is a cornerstone of professional inquiry, the mechanism most often used by other professionals to determine competency.[83] Although much scholarly attention has been given to peer grading,[84] we focus here on peer review as a learning tool for students rather than as a mechanism for grading.

Peer review, like self-evaluation, employs a process where students evaluate work in a thoughtful, guided, and collaborative setting, but they use a peer's work product as the vehicle for learning instead of their own.[85] Similar to self-assessments, students learn to objectively critique their peers' work based on criteria established and explained by the teacher.[86] By engaging in a focused review of and providing feedback on other students' work products, individuals can become more adept at assessing the quality of their own understanding of the pertinent concepts.[87]

In addition to the benefits of self-assessment in providing a structured setting and process for evaluating work, peer reviews can also foster collaboration, team building, and trust.[88] These types of "collaborative assessment activities also have a positive effect on student learning."[89] When students are tasked with engaging in

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[81] Peer assessment has been deployed for centuries. For example, George Jardine, a professor at the University of Glasgow from 1775 to 1826, described the methods and advantages of peer assessment of writing. *See* Topping, *supra* note 70, at 20.

[82] *See, e.g.*, Reinholz, *supra* note 29, at 301–15.

[83] George A. Marcoulides & Mark G. Simkin, *The Consistency of Peer Review in Student Writing Projects*, 70 J. EDUC. FOR BUS. 220, 221 (1995).

[84] Reinholz, *supra* note 29, at 301–02 (citing Nancy Falchikov & Judy Goldfinch, *Student Peer Assessment in Higher Education: A Meta-Analysis Comparing Peer and Teacher Marks*, 70 REV. EDUC. RES. 287 (2000)).

[85] *Id.* at 306.

[86] *See, e.g.*, Davis, *supra* note 18, at 3.

[87] *See* MOSS & BROOKHART, *supra* note 30, at 45 (describing how peer assessments help enhance students' ability to view their own work from the perspective of another reader and thus to become better at self-assessment); Bloom, *supra* note 30, at 245–47 (describing benefits of peer review exercises in law school setting).

[88] *See* Davis, *supra* note 18, at 2–3.

[89] Duhart, *supra* note 16, at 540 (citing Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957 (1999)).

collaborative assignments, they are likely to show "gains in academic achievement, motivation, and retention."[90] Studies have shown that "[i]n classrooms featuring cooperative learning, students are encouraged to develop skills for peer-assessment, conflict resolution, leadership and teamwork. They also learn to accept others. Students are able to build cognitive and social skills simultaneously."[91]

Students often create their own peer review environments when they work in study groups or on collaborative projects. However, professors have no oversight or even understanding of these group dynamics. In-class and professor-guided peer reviews can provide more structured formative feedback, maximize the effectiveness of peer feedback, and train students in the "art of critique."[92] In addition, teacher-led collaborative evaluations can lay the foundation for effective peer review by modeling the way in which students should interact with one another.[93] Even the United States Supreme Court has recognized the pedagogical value of peer assessment, noting that when teachers have students assess their peers' work, "[i]t is a way to teach material again in a new context, and it helps show students how to assist and respect fellow pupils."[94] In short, self-assessments and peer evaluations, especially when used in tandem, are effective formative assessment tools because they "help to create a more dynamic learning environment, help students to build social skills, and lay the ground for the development of self-assessment skills."[95]

B.   Key Components of Effective Self-Assessment and Peer Review Exercises

Commentators have enumerated principles for productive assessments, including that they be learner-centered, teacher-directed, and context-specific.[96] Specific conditions for quality assessment exercises include: (1) delineating clear

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[90] *Id.* (citing Kathleen M. Cauley & James H. McMillian, *Formative Assessment Techniques to Support Student Motivation and Achievement*, 83 CLEARING HOUSE 1, 1 (2010)).

[91] OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 70.

[92] HESS ET AL., *supra* note 19, at 262.

[93] *E.g.*, Black & Wiliam, *supra* note 27, at 25.

[94] Owasso Indep. Sch. Dist. No. I-011 v. Folvo, 534 U.S. 426, 433 (2002) (holding that FERPA statute does not preclude teachers from having students engage in peer assessment by correcting one another's tests).

[95] OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 67.

[96] Friedland, *supra* note 2, at 594 (citing THOMAS A. ANGELO & K. PATRICIA CROSS, CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS 7–11 (2d ed. 1993)).

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criteria or goals on which to base the assessment; (2) performing specific tasks, rubrics, or checklists for the assessment; (3) modeling by the professor; (4) providing an opportunity for reflection; and (5) carefully considering the timing of the formative assessment.[97]

1.   Identifying Clear Goals for the Students

Peer reviews and self-evaluations are most effective when students have a clear sense of the standards by which their success in accomplishing the goals of the assignment will be measured and by which they will be evaluating their own and their partners' work.[98] Students can better internalize what a successful assignment requires them to do once the criteria for success are understood, allowing them to provide better self-reflection and feedback to one another and to receive and apply their peers' feedback to improve their own understanding of the material and the expected criteria for summative evaluation.

Professors can develop both overall goals for the course to satisfy the ABA Standards and specific goals for each formative assessment assignment. For example, a first-year contracts course might have primary course objectives of: (1) gaining an understanding of basic United States contract law principles; (2) becoming familiar with the analytical use of case precedent, including careful reading of opinions and applying abstract legal principles to specific factual situations; and (3) understanding how contract law principles impact negotiation of contractual language.[99]

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[97] *See* SCHWARTZ ET AL., *supra* note 31, at 262–63 (describing Professor Cary Bricker's self-assessment exercise for client interview role-play in trial practice course, in which students "do the interview and then first reflection ('What worked?' 'What didn't?' 'Did you connect?'), a series of questions. So, the students have to give feedback on their own performance, and then we will give some constructive ways of really creating that relationship with the client."); Andrade, *supra* note 59, at 4 (suggesting that for effective self-assessment, students need awareness of the value of self-assessment, clear criteria, a specific task or performance to assess, models of self-assessment, direct instruction and assistance with self-assessment, practice, cues for when self-assessment is appropriate, and opportunities to revise and improve the performance or task).

[98] *See* MOSS & BROOKHART, *supra* note 30, at 28. Moss and Brookhart note the connection between understanding where one is headed in a learning task and a sense of belief that one can succeed at the task (referred to as "self-efficacy"), as well as the connection between self-efficacy and persistence in the face of adversity. *Id.* When students understand what is needed to succeed in a task, they develop internal motivation to take the steps necessary to succeed (referred to as "self-regulation"). *Id.*

[99] At Georgetown University Law Center, the learning outcomes for the first-year contracts course include: learning how individuals and businesses make binding agreements and the consequences of doing so and learning the connections between cases studied and the drafting and negotiation of contracts. *See Georgetown University Law Center Curriculum Guide*, GEO. U.L. CTR., https://curriculum.law

With overall course goals like those described above, specific goals of an assignment that could be used for a self-assessment or peer review exercise might include: close reading of several assigned contracts opinions on a specific issue of basic contract law (*e.g.*, consideration); understanding the legal principles explained and applied in those opinions; developing arguments about how the assigned opinions might apply to a hypothetical client case (*e.g.*, where consideration is at issue); and evaluating the strength of opposing arguments about the application of the legal principles applied in the assigned opinions to the hypothetical client case.[100]

As another example, an upper-level Environmental Law course might include the following in its stated learning goals: (1) gaining familiarity with the application and interpretation of specific statutes (*e.g.*, the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, the Endangered Species Act, etc.); (2) understanding the role of executive agencies in implementing those statutes; (3) introducing the mechanisms of enforcement policy and practice and the role of states, citizens' groups, and industry; and (4) preparing students for roles in the environmental law field as transactional lawyers, regulatory lawyers, government counsel, and litigators.[101]

.georgetown.edu/course-search/ (last visited Oct. 30, 2019) (search "First Year Courses" for "Contracts" and review course descriptions for course goals). At Columbia Law School, a first-year contracts course enumerates the following primary goals for the course: "develop an understanding of basic American contract law, including major policy concerns"; "develop skill in doctrinal analysis, including close reading of cases and precedents, and application of abstract law to concrete facts"; and "gain facility in oral advocacy." *See Columbia Law School Course Directory*, COLUM. L. SCH., https://www .law.columbia.edu/courses/sections/23283 (last visited Oct. 30, 2019) (search "L6105 Contracts," "Section 002 Fall 2018," "Prof. Edward R. Morrison," "Learning Outcome Goals," "Primary Goals"). Such course objectives are common across the curriculum at all law schools, whether in first-year courses or upper-level doctrinal classes. For example, the learning goals for Professor Eloise Pasachoff's Education Law course at Georgetown include teaching to students to identify the legal rules and doctrines that apply to the topics covered, apply those legal rules and doctrines to specific contested situations, and evaluate those legal rules and doctrines from different normative perspectives. *See Georgetown University Law Center Curriculum Guide*, *supra* (search "education law" and review course description for course goals).

[100] For an illustration of how these goals might be used to implement a peer review or self-evaluation exercise in a first-year contracts course, see *infra* Part IV.B.

[101] *E.g.*, *Georgetown University Law Center Curriculum Guide*, *supra* note 99 (search "Environmental Law Course Cluster" and review course descriptions for Environmental Law courses taught by Profs. Rumsey & Shenkman and Prof. Buzbee). As another example, a course description at the University of Texas at Austin School of Law for an Environmental Law/Public Health class states that the learning objectives for the course are for students to understand "the historical context and common law; the regulatory system and the institutional framework that governs change; roles and relationships between governmental entities and the judicial system; the importance of public involvement in shaping U.S.

With these more general learning objectives in mind, specific learning objectives for a self-assessment or peer review exercise might be framed within the context of a particular aspect of the substantive areas covered by the course. For example, a unit on the Clean Water Act could be designed to cover substantive law issues arising under the Act, introduce regulatory process, and illustrate how cost-benefit analysis works in practical contexts within the regulatory regime implementing the Act. The specific learning objectives for self-assessment or peer review might be focused on enhancing students' understanding of the regulatory process and of cost-benefit analysis in a specific factual situation, as well as giving them feedback on their presentation or writing skills, depending on the nature of the assignment.[102]

Once these specific goals for an assignment are established by the professor, the assignment can be designed to focus on those goals (*e.g.*, by crafting a hypothetical that students will have to use to analyze a legal issue, requiring students to write a brief piece of analysis or requiring students to prepare a short oral argument or presentation). The next step to designing an effective self-assessment or peer review exercise is to develop a rubric or checklist to guide the students, both as they work on the assignment and as they engage in the assessment of the product of that assignment.

2. Providing Rubrics or Checklists

Self-assessments and peer reviews are most effective when professors provide concrete rubrics or checklists to guide the students during the assessments.[103] Students can either write on the rubric/checklist itself or answer the questions directly on the document they are assessing if the assignment is a piece of writing. Even specific learning outcomes like those described in the examples above from a first-year contracts course or upper-level environmental law course can seem abstract and opaque to students striving to achieve the professor's desired learning

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environmental law; and develop critical thinking, analytical, presentation and writing skills." *University of Texas at Austin School of Law Course Catalog*, U. T EX. S CH. OF L., https://law.utexas.edu/courses/catalog/class-details/20192/28465 (last visited Oct. 30, 2019) (search for "Environmental Law/Public Health," "Prof. Rachael Rawlins," "Spring 2019," and look at Learning Objectives).

[102] For more specific suggestions for developing peer-review and self-assessment exercises tied to these goals, see *infra* Part IV.B.

[103] P ETER E LBOW, W RITING WITH P OWER: T ECHNIQUES FOR M ASTERING THE W RITING P ROCESS 241–49 (1998). Peter Elbow suggests specific questions based on the assignment for better peer review. *Id.* at 240.

outcomes.[104] Although it is perhaps one of the most difficult aspects (from the professor's perspective) of designing effective self-assessment and peer review tools for formative assessment, articulating what we expect students to *do* to achieve our stated learning outcomes both makes our teaching better and yields great benefits in student learning.

A primary benefit of rubrics for students is providing explicit guideposts about professor expectations.[105] In addition, using a tool like a rubric or checklist or other sort of feedback guide forces students to answer questions in a specific order, allowing the professor to guide the assessment process. Without such a guide, students might simply read through a document chronologically or respond to a presentation or argument subjectively, based on the students' own preferences drawn from sometimes non-relevant experience. Instead, a rubric or other assessment guide will provide express guidance to students in focusing attention on one element of the work product of the assignment at a time, such as its organization or substantive analysis. As such, rubrics and checklists can help regulate a student's review and assessment process while providing "psychological distance"[106] to allow the student to conduct an objective evaluation of her own or her peer's work.

Using a tool like a rubric or checklist to guide the self-evaluation or peer review is important, but professors can make this tool even more effective by taking time—either in class or through materials provided to students in advance of the self-evaluation or peer review—to demonstrate in concrete terms how to apply the rubric or checklist to a sample assignment.

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[104] We note from years of experience in teaching law students that, although of course students want to learn, they are also quite focused on what they need to *do* to get an A in the course. From the teacher's perspective, we want students to learn and retain the most important information and skills on which our courses focus—and formative assessment tools like peer reviews and self-assessments are effective in helping us to accomplish these goals just as they are effective in helping students to master those goals. However, most of us at most law schools cannot give all of our students A's. This is the "Catch-22" of teaching in an environment where curves are either required or strongly recommended for many courses: If we are successful in adopting strategies that help all of our students to achieve our learning outcome goals for a course, our institutions still ask us to impose a curve. The tension between the goals reflected in the new ABA Standards for improving both teaching and learning at law schools and the existence of institutional grading curves is outside the scope of this Article, but is a topic worthy of future exploration.

[105] Duhart, *supra* note 16, at 537 (citing Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 7).

[106] Beazley, *supra* note 18, at 175.

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3. Modeling Through Discussion of Examples

Before a formative assessment exercise, it is helpful if professors spend some time modeling the assignment by using the required rubric or checklist on a sample.[107] One way to do this is through leading a class discussion of the strengths and weaknesses of a sample, whether it be a document, a different hypothetical, or a video of a presentation, depending on the nature of the assignment. By walking through the rubric or checklist and talking through the professor's answers to the questions on the rubric/checklist as applied to the sample, the professor can show the students what is expected in the formative assessment and give some explanation of the rubric or checklist.

Another way to accomplish this type of modeling (which requires more class time, but is well worth it) is to give students samples of varying quality with respect to the main goals of the assignment and to have them work in small groups to identify which of the samples best accomplishes each goal and why.[108] Ideally, there will be several students or groups of students who can identify the strongest samples and explain how they meet the criteria for accomplishing each of the goals that you have identified for the assignment.[109]

This sort of classroom activity, either through group work or professor-focused discussion, lays a strong foundation for students to complete the initial assignment that will be subject to review and for subsequent self-evaluations and peer review exercises, as it builds from the readings and general discussion to give the students

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[107] MOSS & BROOKHART, *supra* note 30, at 25 (noting "teachers should use strategies that help assess students' comprehension of the meaning of learning goals and their comprehension of what good work looks like").

[108] *See id.* at 26, 28 (suggesting a review and discussion of examples of varying quality as a useful strategy in helping students to understand what they are seeking to accomplish and how to best meet the objectives of an assignment—simply stating the objectives is rarely sufficient). As Moss and Burkhart explain, "Sharing only good examples helps students envision a target. Sharing a range of examples, from good to poor, allows students to develop a conceptual understanding of the criteria." *Id.* at 34.

[109] Moss and Brookhart suggest that students be given several examples from prior students' work and be asked to characterize them as "good," "okay," and "not good," and then to use inductive reasoning from their choices to come up with characteristics that describe each category; the students' collective work can then be used (with guidance from the teacher) to create rubrics for the students to use as they continue work. *Id.* The authors noted, "Even 1st graders can create rubrics in this way." *Id.*

greater context and a more concrete understanding of how they can apply specific concepts to their own work on the assignment.[110]

Even if classroom time is not allotted to modeling, faculty can create samples that students are assigned to review before the exercise, with brief, written explanations of how the rubric or checklist might be applied to the samples, or even a short video with the professor talking through how she would apply the rubric to each sample. Faculty could also push the group work suggested in the prior paragraph out of the classroom to outside-of-class small group meetings or blog postings by students. The goal of modeling is simply for students to more concretely understand how to apply the rubric or checklist to a sample so that they are better prepared to apply it to their own work (in a self-assessment exercise) or to a peer's work (in a peer review exercise). Without such an opportunity, students may not have as clear a sense of professor expectations[111] and may be confused about what a question on a rubric or checklist is intended to address.

4. Providing an Opportunity for Reflection

Once the formative assessment is completed, it is helpful for students to have time to reflect on the assignment, by discussing it with the professor or another student or writing up a reflection piece to evaluate the value of the project. For peer reviews, giving students an opportunity to explain their feedback to one another enhances the learning opportunities for both students.[112] The reflection on the assignment and self-assessment or peer review could be performed in or out of class. Even short group discussions of what students take away from the exercise or brief written reflections that students submit for teacher review can be helpful. Such group discussions or reflections allow students to consciously consider what they take away from the exercise (and ask questions about what criteria they still may not fully understand) and allow teachers to evaluate the success of the exercise and what additional guidance might be needed in subsequent classes to assist students in mastering the specific tasks or learning goals for the exercise.

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[110] *See, e.g.*, *id.* at 29 ("Directed student conversation can be a powerful way for students to develop comprehension of their learning target.").

[111] *See, e.g.*, Reinholz, *supra* note 29, at 306 (explaining that exposing students to "model solutions alone" is not effective in conveying what makes a solution "good" and that giving students opportunities to compare different solutions to the same problem helps students to "develop deeper conceptual understanding" because they can see the strengths and weaknesses in different models).

[112] *See id.* at 312 (noting that "activities that do not include peer conferencing are less likely to help students develop collaboration skills because they provide fewer opportunities for student interactions").

5. Carefully Considering the Timing of the Assessment

Professors should carefully consider the timing of formative assessments. If the substantive unit or project has ended, the students will not have an opportunity to take corrective measures based on the feedback they receive from the exercise, nor will the professor have time to adequately adjust lesson plans to address students' misunderstanding of issues.

The best timing, therefore, is in the midst of covering specific content or in the middle of the process of a project—not at the end. So, for example, if students are writing a document, formative assessment works best in between drafts. Or if a professor in a contracts class is covering consideration or a professor in an environmental law class is covering cost-benefit analysis, a formative assessment works best to help students evaluate their understanding of those concepts before moving on to the next part of the syllabus.

However, even at the end of a unit or after a project is completed, formative assessment can be effective in helping students to identify the effectiveness of their learning strategies and giving them an opportunity to adjust their strategies for the next unit or project. The rubric used for the assessment exercise would simply need to be adjusted to focus students on both process and substance and to include questions that generate reflection about how to adjust learning strategies and apply them to future work in the class.

These key components of formative assessment should inform law professors' choices about how and when self-assessment and peer review exercises can most effectively be incorporated into the design of their courses. By expressly considering learning objectives for each unit or class, and not just for the entire course, professors will not only be able to more readily design effective formative assessment tools but will also be able to better focus and adjust their reading assignments and lesson plans for each class. Applying these specific learning objectives on a class-by-class or unit-by-unit basis will lay the foundation for periodic formative assessment exercises that enhance student learning across the curriculum.

IV. IMPLEMENTING SELF-EVALUATION AND PEER REVIEW AS FORMATIVE ASSESSMENT TOOLS ACROSS THE LAW SCHOOL CURRICULUM TO ENHANCE LEARNING

The more opportunities that students have to give and receive feedback on their understanding of concepts covered in their law school courses, the more exposure they will have to the essential learning factors of "ownership, autonomy, confidence,

and capability,"[113] which will help to guide them beyond their law school years and enhance their continued acquisition of expertise in their professional life. These tools will also help professors assess students' performance on stated learning outcomes before the summative assessment so that the teaching can be adjusted to reach the students at their levels of learning.

ABA Standards already require law schools to establish and publish learning outcome goals for their students and engage in ongoing evaluation of their "program of legal education, learning outcomes, and assessment methods."[114] Law school professors can use formative assessment tools across the curriculum, from clinics and legal practice classes to first-year courses and upper-level seminars, to meet the new ABA Standards, engage the students, and achieve learning outcomes without compromising curriculum coverage.

A. Current Pedagogical Approaches in Law Schools that Incorporate Formative Assessment

Clinicians and teachers of professional skills such as legal writing and analysis and trial advocacy have been at the forefront of formative assessment pedagogy within legal education. These fields have been effectively incorporating peer reviews and self-assessments into their classrooms for years to measure and meet learning outcomes.[115] For these courses, self-assessments and peer reviews can take many forms. They might include student reflections on their own oral and written performances or peer feedback on one another's written work or oral skills through role-playing and videos.

For example, clinical professors often have students perform mock skills in a classroom setting, such as openings, cross examinations, and closing arguments. The students then critique each other's performances. Effective clinical professors provide relevant materials or examples and modeling of these skills and explain the learning outcome goals of the exercises before the students complete the tasks. In addition, clinics typically include reflection as a component of most practice-based exercises, focusing students on the goals of the specific exercise and how the

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[113] Moss & Brookhart, *supra* note 30, at 12.

[114] ABA Standards, *supra* note 12, at 15, 23.

[115] *See, e.g.*, Deborah Epstein et al., The Clinic Seminar (2014); Meltsner & Schrag, *supra* note 18, at 54; Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 Clinical L. Rev. 143 (2006); William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 Akron L. Rev. 463 (1995). *See generally* Beazley, *supra* note 18.

feedback they received will influence their future efforts in the course and in practice.[116] Because the feedback is usually scaffolded, students build upon skills learned earlier in the semester.

Peer reviews and self-evaluations are also effective in clinical teaching when preparing for real client representation.[117] For example, if a student will be engaging in an oral argument on behalf of a client, the professor might moot the student, often with her peers as judges, to provide immediate evaluation and critique. The professor might also ask the student who did the oral argument to critique herself—either after the moot or the real argument (or both). In addition, when students write documents in clinics, peers will often review one another's drafts to provide feedback, learn from each other, and improve the written product before it is submitted on behalf of a client. Some clinical professors also require students to evaluate their own written work before a conference on the document so that the students can begin to self-diagnose and edit.

Similarly, formative assessment has long been an essential component of legal writing courses.[118] Professor intervention during the students' research and writing process allows students to learn from the cycle of researching, writing, receiving feedback, discussing that feedback, and rewriting based on the feedback.[119] Self-evaluations and peer reviews of memos, briefs, oral presentations, and other skills are often incorporated into the course throughout the year.

Like clinical courses, first-year legal writing pedagogy incorporates the key components of effective peer and self-assessments to meet the published goals for the course.[120] General learning outcomes for first-year legal writing courses usually include goals such as interpreting statutes, deriving rules from cases, analogizing and

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[116] *E.g.*, Blaustone, *supra* note 115, at 154–59.

[117] *See, e.g.*, Roy Stuckey, *Teaching With Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 816–20 (2007) (emphasizing the importance of giving students opportunities to perform as lawyers in realistic settings, to receive feedback on their performances, and to engage in self-reflection).

[118] *E.g.*, Anthony Niedwiecki, *Prepared for Practice? Developing a Comprehensive Assessment Plan for a Law School Professional Skills Program*, 50 FLA. L. REV. 251, 252–53 (2016) (noting that the term "formative assessment," although commonly used within undergraduate education, is fairly new to most of the legal academy with the exception of clinical and legal writing programs, whose faculty have employed these assessment methods for years).

[119] *See, e.g.*, Reinholz, *supra* note 29, at 304–07.

[120] *See generally* DONAHOE & ROSS, *supra* note 18, at ch. 6 (illustrating specific examples of peer review and self-assessment exercises for first-year legal writing courses).

distinguishing cases, and incorporating policy discussions.[121] Specific goals are also provided to students for each formative assessment, such as utilizing a clear, large-scale organizational schema, crafting rule synthesis, applying a deductive analytic structure, and applying the law through clear case analogies.

During the rewriting process, students are required to assess their own memos as well as those of their peers through checklists that guide the students through the process and ask specific questions that focus on those learning outcomes.[122] Class time is often spent discussing samples before the formative assessment exercises take place and providing time for class-wide discussion and reflection after the exercise is completed. The learning is scaffolded with concepts that build upon one another with transparency so that students understand the purpose of each formative assessment exercise and can learn from their mistakes through peer and professor intervention along the way.[123]

Formative assessments like these that are currently implemented in clinical and legal writing pedagogy lead to discussions that engage students more actively than the typical Socratic discussion because the interactions include all of the students

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[121] *See Georgetown Law Curriculum Guide*, *supra* note 99 (search "Writing and Analysis" to see list learning goals for first-year legal writing course). Specific items on the list of learning objectives for our individual legal practice course syllabi at Georgetown include: "understanding available choices and creating research strategies for using various research sources for maximum efficiency and accuracy"; "identifying the demands of the legal reading audience, including purpose, organizational schema, form, tone, accuracy, and especially depth of analysis"; "developing an efficient and thorough research strategy, from asking the right questions to knowing when research is complete"; "developing an efficient and effective writing process, which includes prewriting, writing, rewriting, and polishing"; "developing strategies and techniques for writing concisely"; "developing strategies to read written documents with a critical eye"; "becoming independent, competent, and comfortable in legal research and writing skills"; and having the ability to transfer those skills to a variety of legal documents and paradigms. *Id.*

[122] *See generally* DONAHOE & ROSS, *supra* note 18, at ch. 6 (discussing how peer review and self-assessment forms can guide legal writing students' review of their own and their classmates' draft documents).

[123] These formative assessment techniques are not unique to Georgetown. For example, Mary Beth Beazley, an experienced legal practice professor at University of Ohio, uses similar techniques for her upper-class writing courses. In her self-assessment exercise, which she calls the "Self-Graded Draft," she focuses the students on "intellectual locations" such as a rule, authority for that rule, explanation of the rule, how it has been applied in past, and how it should be applied in a pending action. She asks the students to mark up where these exist in their documents and point out how well they are doing what they intend to do. She also focuses the students on "natural positions of emphasis" such as topic sentences, headings, conclusions, and beginnings of sentences, showing that readers pay more attention to these natural positions of emphasis. This self-critiquing exercise helps students improve their focus on these techniques. *See* Beazley, *supra* note 18, at 178–79, 183–84, 187.

instead of the professor and one student at a time.[124] Peer reviews and self-assessment exercises make the students responsible for their own learning, engage them in the process, and help them digest the concepts through active learning. In short, these courses use formative assessment tools so that the "spotlight" is more focused on the student's learning than on the professor's teaching.

B.   Implementation Across the Curriculum

Although peer reviews and self-assessments are a natural fit for writing and clinical courses, they also could be relatively easily integrated into first-year and upper-level doctrinal courses that require written sit-down or take-home exams as the summative assessment format.

First-year courses provide a conducive environment for formative assessment; novice law students often do not fully understand what is needed to demonstrate mastery of a course's stated learning objectives. They need helpful faculty intervention before the final exam and are eager for any feedback. All first-year courses could thus benefit from the use of peer review and self-assessment exercises to help encourage active student learning and to provide guidance to students about their progress toward the stated teaching goals.

For example, in the first-year contracts course referenced in Part III, the overall course learning outcomes include developing an understanding of basic American contract law, developing skills in doctrinal analysis, including a close reading of cases and precedents, and application of abstract law to concrete facts.[125] To meet these goals with respect to a specific doctrinal concept like consideration, the contracts professor could easily incorporate a peer review or self-evaluation exercise into the syllabus. First, the professor could ask students to closely read a number of assigned opinions (which would presumably already be on the syllabus) and a quick hypothetical on the doctrine of consideration (which might be taken from a prior exam). The professor could ask students to write arguments for one side (either as a Word document or even as a blog post) and then require students to evaluate the strengths of a peer's opposing argument on the issue using a rubric or checklist. Most

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[124] EPSTEIN ET AL., *supra* note 115, at 5, 8 (2014). *See generally* DONAHOE & ROSS, *supra* note 18, at ch. 3 (discussing importance of engaging students in classroom learning); *id.* at ch. 6 (explaining how peer review and self-assessment exercises in legal writing classes can be designed to actively engage students in the classroom).

[125] *See supra* Part III.B.1; *see also supra* note 99.

of this formative assessment exercise could be completed as student homework, with some class time allotted for professor-led modeling, discussion, and feedback.

The ensuing class discussion, which presumably would be engaging and interactive because the students would have spent a significant amount of time learning the subject matter as they wrote their arguments and reviewed and discussed the opposing argument with a peer, could substitute for the Socratic method in covering the doctrine relating to consideration.[126] Similar techniques could be used for specific concepts covered in other first-year courses such as torts, criminal law, property, and civil procedure.

Similarly, these techniques could be used effectively in upper-level law school courses. For example, in the environmental law course mentioned in Part III, general learning outcomes for the course might focus on specific environmental statutes, the regulatory system, the roles and relationships between governmental entities and the judicial system, and the importance of public involvement in shaping United States environmental law.[127] The professor in this course could also incorporate formative assessments into the class. First, he could provide the students with a proposed regulation on a specific substantive sub-topic already covered by the course syllabus and ask them to write competing comments on the regulation from the perspective of a specific interest group. Next, students could review one another's comments in a peer review exercise with targeted questions that focus on the substance of the regulation, the policies involved, and the importance of public involvement. The professor might provide model comments on a different regulation (which could focus on an earlier regulation in the syllabus) and discuss that model ahead of the exercise, using the same targeted questions. Again, the bulk of the exercise could occur outside of class time, with the professor leading discussions in class as part of the pre-writing modeling and post-writing reflection.

Upper-level writing seminars are also conducive to written peer reviews and self-evaluations. During the writing process for a required paper in a seminar course, before the professor provides feedback on a draft paper, the professor could first assign students to evaluate the strengths and weaknesses of their own draft, using a rubric as a guide. Either as part of a seminar session or outside of class, students could then evaluate one another's drafts using the same rubric. After the written

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[126] As professors of legal practice, we have noticed how animated the discussion of the law can be in the classes after the students have written a draft document, as opposed to *before* they have written a document and had the time to digest the information in a manner that is conducive to a deep and insightful discussion.

[127] *See supra* Part III.B.1; *see also supra* note 101.

evaluation, professors could assign a peer-to-peer conference (again, either in class or outside of class time) where students could discuss their feedback. These conferences help students step into the reader's shoes as the peer reader, which in turn helps them step into the reader's shoes for their own papers. In addition, the feedback itself helps the writer focus on the paper's strengths and weaknesses. The students could then be given an opportunity to submit a revised draft to the professor before the professor reviews it. These exercises, if timed correctly, often help the students hand in a much improved first draft, making the professor's job of commenting on that draft much easier.[128] Assuming that one of the course objectives of an upper-level writing seminar is for students to understand how to write a substantial legal research paper, devoting class time to exercises that help the students to produce stronger papers is time well spent, even if it means shortening the discussion of some of the substantive issues covered by the course.

Working with one's learning objectives for a course in mind, creative professors can craft effective peer reviews and self-assessment exercises for law school classes of all types and sizes. Below we provide additional, specific ideas for peer reviews and self-assessments that can be used across the curriculum, in large courses as well as small seminars.

C. Specific Exercise Suggestions for Peer Review and Self-Assessment Across the Law School Curriculum

Creating effective peer review or self-assessment exercises need not be an exhausting effort. In some cases, pre-existing material such as old exams or hypotheticals used in past Socratic lesson plans can be repurposed to serve as the vehicle through which students review and evaluate their own work and that of their peers. The possibilities are many; this section identifies a few specific types of exercises that could be implemented in a variety of class types and sizes.

1. Mock Exams

Requiring students to take mock exams in the middle of the semester is a relatively easy and simple, yet effective, type of formative assessment.[129] It can be

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[128] DONAHOE & ROSS, *supra* note 18, at ch. 6. Even if there is only time to have students conduct a self-assessment of their own drafts using a rubric that is discussed in seminar, professors will still see improved drafts, and the rubric can be used to guide professor conferences with students about their draft papers. *Id.*

[129] *See, e.g.*, SCHWARTZ, ET AL., *supra* note 31, at 265–68 (providing specific examples of how different law professors have used practice exams to aid in their students' learning). *See generally* Heather M. Field, *A Tax Professor's Guide to Formative Assessment*, 22 FLA. TAX REV. 363 (2019) (describing multiple formative assessment techniques that could be incorporated into tax law courses, including in-class or out-of-class exercises using old exams, rubrics, and self-assessment).

used as a self-assessment or peer review exercise—or both. Many professors already have old exams on file that they can access for this exercise, and their students are most likely already practicing taking these exams and discussing them informally in study groups, effectively setting up their own peer-evaluation groups. With very little effort, professors can intervene in the process to facilitate active learning by asking the students to take these tests outside of class, read another student's answers for comparison, and then spend part of class time helping the students evaluate their (and their peers') answers. Presumably, the professor has a grading rubric from the past exam that could serve as a checklist with minimum modifications.

A professor need not provide a full exam as the foundation for a peer review or self-assessment exercise. Instead, she can focus on one particular past exam question, asking students to prepare written arguments and then share those answers with another student. For example, Rory Bahadur of Washburn University School of Law gives students a mock exam at the end of every topic where they write the answer under exam conditions and then switch with another student to evaluate the exam using a rubric.[130] Then, together, they come up with a list: "The top ten things I could do to fail Bahadur's essay exam [are] . . . ."[131] Bahadur says they "suddenly understand," and "I never have to tell them what I was thinking because they realize it for themselves."[132]

2. "All Writes" and "Read Alouds"

Another technique that can work well in large or small classrooms is the "all write." Here, instead of posing a question to one student using the Socratic method and engaging with just one student at a time, the professor can pose a question to all students and ask them to write down their answers—ideally providing some sort of rubric that helps students to break the question down into key pieces for purposes of analysis. Students then quietly and actively engage with the material on their own before the class discussion that follows. The feedback is a self-assessment that comes from the subsequent class discussion "permitting individual writers to assess their answer against the context of the discussion. These 'all writes' do not take much more time than eliciting a verbal response, and thus the 'all writes' are efficient feedback tools."[133]

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[130] SCHWARTZ ET AL., *supra* note 31, at 267.

[131] *Id.*

[132] *Id.*

[133] Friedland, *supra* note 2, at 610.

After the "all-write," a professor might choose to ask the students to perform a "read-aloud." Here, students are paired with a peer and they listen as their peer reads their response to the question and provides one-on-one feedback. This peer-review activity asks students to step into the reader's shoes (as opposed to the writer's shoes in the all-write). This tool permits the writer to see how a reader will read the words on the paper or computer.[134] Again, if paired with a simple rubric or guide, the peer conferences help students to discover what they do and do not understand and allow them to ask more focused questions of the professor in a subsequent debrief that enhances their understanding of the material.

These activities can utilize the same amount of time on a subject as the Socratic method, but they involve students working on their own, or in pairs or groups, and the subsequent classroom discussions can be more enriching for all the students. In addition, when done effectively with express and transparent learning outcomes paired with professor feedback, students better digest the material through active engagement in and out of the classroom.

3. Role-Playing

Activities that require student role-playing can also serve as a form of self-assessment or peer review. In a legal practice course, students often perform a mock oral argument. In a trial advocacy or clinical setting, students often learn skills by performing an opening argument or a cross-examination in the classroom with peers assessing the student's performance and professors intervening in the process for a full discussion and feedback. In the contracts class mentioned earlier, the professor might have the students do an out-of-class negotiation exercise; in the upper-level environmental law course, the classroom might be converted into a congressional or agency hearing, with some of the students acting as the representatives asking questions while others serve as corporate representatives or environmental groups testifying.[135]

These types of exercises can be incorporated into other courses as well. Students could play the role of the plaintiff or defendant arguing an issue in a torts class and evaluate one another's arguments based on key concepts identified in a rubric. In an employment law course, half the class might represent a union while the other half represents the workers to try to negotiate an agreement and then

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[134] *Id.* at 610–11.

[135] While professors in some courses might be concerned that role-playing exercises would take up a large chunk of class time, technology can reduce the amount of class time for these exercises. Students can spend time outside of class in a role-play exercise with instructions to record the role-play. Subsequently, they can review the video (of themselves or their peers) on their laptops or phones and evaluate their performances based on a professor-provided rubric.

compare their results and strategies, tied to key substantive concepts covered in a particular portion of the syllabus. In a music law class, students could be assigned to represent either a record label or a recording artist and be asked to either negotiate or evaluate three or four specific terms in a draft contract; debriefing on the results in class allows students to gain a more nuanced understanding of how different "standard" contractual provisions work together and the circumstances under which they might favor one party over the other. In a constitutional law course, students could be given the role of judges in a pending case; paired up in three- or five-judge panels; assigned to read the parties' briefs; and asked to debate the question as a panel and issue a brief ruling with key reasons for that ruling (including any dissenting or concurring views). The subsequent class debrief of the results could help to flesh out the nuances of the issue and the depth of student understanding of the substantive question raised in a real-world case pending before an appellate body. A variety of other forms of peer review and self-assessments have been used by creative professors in a variety of courses and could be incorporated into law school classes across the country.[136]

V. Conclusion

In a law school classroom focused on teaching, professors often use lecture and the Socratic method to fill the students' "pails" with knowledge. In these types of classes, most students are passive learners, either listening and taking notes or watching an exchange between the professor and one of their peers while waiting anxiously to be called on next. In addition, professors rely on final exams to test students' knowledge at the end of the semester, with little guidance or feedback during the semester to adjust the teaching to meet the learners. As a result, most of the active learning takes place outside of the classroom, without professor

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[136] *See, e.g.*, Duhart, *supra* note 26; Neil Hamilton, *Off-the-Shelf Formative Assessments to Help Each Student Develop Toward a Professional Formation/Ethical Professional Identity Learning Outcome of an Internalized Commitment to the Student's Own Professional Development*, 68 Mercer L. Rev. 687 (2017); Niedwiecki, *supra* note 19; 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 (2013). Some examples include designing exercises to teach the skill of issue-spotting, including the abilities to recognize facts that trigger issues, to deal with complicated sub-rules, to spot hidden issues, and to see connections among doctrines. Hess et al., *supra* note 19, at 276–84 (using a prior year's exam in an out-of-class writing exercise with peer discussion based on grading rubric for that exam followed by professor debrief and using multiple choice quizzes, each administered multiple times); Judith Welch Wegner, *Law School Assessment in the Context of Accreditation: Critical Questions, What We Know and Don't Know, and What We Should Do Next*, 67 J. Legal Educ. 412, 440–44 (using case books that provide formative assessment options); *CALI Lessons*, Ctr. for Comput.-Assisted Legal Instruction, https://www.cali .org/lesson (last visited Oct. 31, 2019) (using CALI tools available for most law school subjects).

intervention, when the students read the cases, convert their notes into outlines, and participate in study groups. In this traditional law school environment,

> [t]he spotlight in the class is on the professor—the orchestra conductor of the class, and not the "musician" students or their learning—and certainly not assessment of that learning. . . . No specific measurable deliverables often are required during the classroom phase of a course other than to be generally prepared to discuss the readings.[137]

This focus on teaching and summative assessment is not conducive to learning. As Professor Ambrose stated, learning is "something that students themselves do"[138] and needs to be distinguished from teaching, which is "spotlighted through what the professor does during the course, not what the students do."[139] However, many professors today succeeded in the traditional law school environment and therefore use the same methods to teach their students instead of utilizing new techniques to help engage their students in active learning.

Formative assessments are one tool that these professors can use to inject more learning into their teaching environments. Although some faculty might be concerned that these exercises could be difficult to implement and might take up valuable class time,[140] professors might consider experimenting with just one short in-class (or out-of-class) peer review or self-evaluation per semester. Even a quick exercise will illustrate how they can better help students become active learners by forcing them to engage with the material before they are evaluated and helping them learn from their mistakes along the way.

In fact, faculty who incorporate peer reviews or self-evaluations will no doubt notice how these formative assessment tools help them intervene during the learning process and convert the focus of the classroom from the professor teaching (using a

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[137] Friedland, *supra* note 2, at 599 n.48.

[138] AMBROSE ET AL., *supra* note 20, at 3.

[139] Friedland, *supra* note 2, at 599.

[140] The implementation of self-assessment and peer review "is not easy, and engaging students in those types of activities is challenging to both students and teacher." OECD FORMATIVE ASSESSMENT STUDY, *supra* note 20, at 67.

lecture or the Socratic method) to student learning.[141] We predict they will also benefit from more engaging classroom discussions and better course evaluations as the students become less anxious in class and more motivated and excited about learning. As a result, we hope that these professors will become open to and adept at using these tools more often in these courses and encourage their colleagues to do the same.

Although legal education is a big ship that takes time to change course, the new ABA Standards require law schools to start altering the course of pedagogy. ABA Standards 301, 302, and 315 require law schools to establish and publish learning outcome goals for their students and engage in ongoing evaluation of their "program of legal education, learning outcomes, and assessment methods."[142] In addition, ABA Standard 314 requires that a law school use "both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."[143] However, although the ABA Standards tell law schools that they must begin using formative assessment as a primary form of assessment, they allow law schools to implement the change "through the voluntary efforts of only some of their faculty members."[144] As a result, the ABA has accepted the possibility that meaningful change in law school education may occur only in tiny increments rather than across the curriculum and may put the onus on just a handful of faculty members.

Because research on formative assessment so strongly demonstrates its beneficial impact on learning, law schools should find ways to motivate their faculty to incorporate it into their teaching across the curriculum. Perhaps writing grants should be used to encourage faculty members to develop formative assessment exercises for already existing courses or to develop learning-focused courses that fully integrate these tools into the classroom. Faculty workshops could be organized to illustrate how peer review and self-evaluation exercises could be integrated into more courses, with professors who have already had success in using these tools presenting and sharing their materials for others to adopt. A sharing site could be created for faculty to post rubrics, checklists, and exercises with notes on how they were used. Now that many law school classes are recorded, faculty could give

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[141] Professors who currently have a no-laptop policy to encourage student participation might find that their new method of teaching and learning engages the students in such a way that they can again permit laptops in class without the worry of distraction.

[142] ABA STANDARDS, *supra* note 12, at 15, 23.

[143] *Id.* at 23.

[144] Wegner, *supra* note 136, at 440.

permission for recordings of the actual implementation of these exercises to be shared with other interested faculty.

Our students would benefit from formative assessment across the law school curriculum rather than relying on only on a small subset of courses to satisfy the ABA's goal of improving student learning in law school. We hope that this Article has ignited a spark that will assist law schools in implementing the new ABA Standards and inspire faculty members to augment their traditional pedagogy, which focuses on teaching from the podium, by using peer review and self-assessment as formative assessment tools to light the fire of learning for their students.