CONTROL-ALT-INCOMPLETE?
Using Technology to Assess “Digital Natives”

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Law students matriculating today were “born digital.” As digital natives, they have never known a world without digital technology, and therefore, they think and process information differently than previous generations.

Although law school student bodies have changed, law school assessment methods have remained static, with students nearly universally being evaluated entirely by one exam at the end of the course. Best Practices, the Carnegie Report, and more recently the ABA, have acknowledged that this system of evaluation is contrary to learning theory and that periodic assessment of student learning is crucial to improving the performance of both students and teachers. Nevertheless, change has yet to occur.

It is time to change. Using technology to assess student learning is one way to begin effectuating this change. Digital natives are comfortable with technology and expect to have it integrated into the curriculum. Moreover, incorporating technology as a means to assess student learning will help prepare future lawyers for the realities of law practice today. Technology also allows law professors to conduct meaningful assessments of large numbers of students more efficiently. This article therefore introduces several examples of how to use a number of today’s technologies—both inside the classroom and outside the classroom—in the hopes of initiating further exploration into effective means of using technology to assess student learning at the course level.
Today's method of teaching law students is not a model of maturation and modernization; it is older than the telephone, the game of basketball, blue jeans, and Coca-Cola. ¹ Legal education’s assessment systems are . . . outdated.²

INTRODUCTION

Students matriculating at law schools today are “digital natives”³—"‘native speakers’ of the digital language of computers, video games and the Internet.”⁴ The only world that they have ever known has been digital.⁵ Unlike the law students of the past, law students today “have always had cable, have never really thought of ‘cookies’ and ‘spam’ as just food items, have never ‘dialed’ a telephone, have never had to use a bottle of ‘White Out’—much less had to retype an entire page—before handing in a paper,” “have always used ‘Google’ as a verb, have probably never ‘rolled down’ a

² Id. at 343.
³ Marc Prensky, Digital Natives, Digital Immigrants, ON THE HORIZON, Oct. 2001, at 1, 1, available at http://www.marcprensky.com/writing. Other terms that have been used are N-[for Net]-gen or D-[for digital]-gen. Id.
⁴ Id. “Digital Natives” are those that were “born after 1980, when social digital technologies, such as Usenet and bulletin board systems, came online.” JOHN PALFREY & URS GASSER, BORN DIGITAL: UNDERSTANDING THE FIRST GENERATION OF DIGITAL NATIVES 1 (2008). In comparison, those born before the advent of the digital age are “Digital Immigrants,” who “will always retain [their] accents.” FRANCES JACOBSEN HARRIS, I FOUND IT ON THE INTERNET: COMING OF AGE ONLINE viii (2005); see Prensky, supra note 3, at 1-2.
⁵ PALFREY & GASSER, supra note 4, at 4. Between 1999 and 2009, computer use by children and teenagers tripled. Media Use Statistics, MEDIA LITERACY CLEARINGHOUSE, http://www.frankwbaker.com/mediause.htm (last visited June 27, 2012). Between 2004 and 2009, the percent of eight to eighteen year olds who owned an iPod or other type of MP3 player jumped from eighteen percent to seventy-six percent. Id. Similarly, cell phone ownership increased from thirty-nine percent to sixty-six percent. Id.
car window, and have never thought that ‘off the hook’ had anything to do with a telephone.”

Growing up as native speakers of modern digital languages, law students today “think and process information fundamentally differently from their predecessors.” They struggle to learn information in a passive, lecture format. Rather, they prefer to learn through interactive mediums and expect immediate feedback. Moreover, they like to work collaboratively and embrace new technologies.

Despite the fundamental differences of law students today, law school assessment methods have remained static. Every year, in law schools across the country, law students are evaluated entirely by one exam that is given at the end of a course. Generally, the examination consists of hypothetical essay questions and multiple-choice questions that students must resolve by applying legal principles that they have memorized. Students have a mere three hours to complete the examination that is the decisive assessment of their grade in the course. Moreover, students generally receive no feedback about their performance on the exam.

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8 See infra Part V(A) (describing digital natives).

9 See id.

10 See id.

11 See GREGORY S. MUNRO, OUTCOMES ASSESSMENT FOR LAW SCHOOLS 34 (2000); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 236 (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 162 (2007); Stephen H. Nickles, Examining and Grading in American Law Schools, 30 ARK. L. REV. 411, 414 (1977); Sonsteng et al., supra note 1, at 346 (“Law school assessment is infrequent, consisting of only one or two exams per semester.”). Legal research and writing classes are the exception, providing multiple assessment opportunities throughout the course. Cf. STUCKEY ET AL., supra, at 239 (“[E]xcept perhaps in legal writing and research courses, the current assessment practices used by most law school teachers are abominable.”).

12 See MUNRO, supra note 11, at 34; STUCKEY ET AL., supra note 11, at 236; SULLIVAN ET AL., supra note 11, at 162; Nickles, supra note 11, at 432.

13 See MUNRO, supra note 11, at 34; STUCKEY ET AL., supra note 11, at 236; SULLIVAN ET AL., supra note 11, at 162.

14 See MUNRO, supra note 11, at 35; Douglas A. Henderson, Uncivil Procedure: Ranking
Although the single end-of-the-course exam without any feedback has been the almost universal practice in law schools since the mid-nineteenth century, the process is contrary to learning theory. Rather, learning theory suggests that periodic assessment of student learning is crucial to improving the performance of both students and teachers. Periodic assessment throughout a course increases academic achievement because it increases the amount of feedback that students receive. As stated by Arthur W. Chickering and Zelda F. Gamson in the Seven Principles of Good Practice in Undergraduate Education,

Knowing what you know and don’t know focuses learning. Students need


15 See MUNRO, supra note 11, at 36 (“The irony in the fact that legal education has chosen the bluebook essay exam as its primary means of evaluation is that the instrument itself lacks a sound basis in educational or assessment principles.”); Henderson, supra note 14, at 412 (“[R]eflection on subject matter—and better yet, periodic assessment combined with reflection—provides essential feedback for the learning process.”); Nickles, supra note 11, at 412 (“[T]he typical process of evaluation in our law schools is composed of procedures and techniques which have been discredited by research in education and psychology.”). The current one exam at the end of the course approach “function[s] less as a means for measuring student learning than as a means for sorting and ranking students and for ‘weeding out’ students who are not developing the requisite knowledge, skills, and values to pass a bar examination.” STUCKEY ET AL., supra note 11, at 236.


17 See SULLIVAN ET AL., supra note 11, at 171. Assessment methods and requirements have a greater influence on how and what students learn than any other single factor. Id. at 243 (quoting ALISON BONE, ENSURING SUCCESSFUL ASSESSMENT 2 (Roger Burridge & Tracey Varnava eds., 1999), available at http://www.ukcle.ac.uk/resources/assessment-and-feedback/bone/ (last visited June 27 2012)). Assessment has been defined as “a coordinated set of formative practices that, by providing important information about the student’s progress in learning to both students and faculty, can strengthen law schools’ capacity to develop competent and responsible lawyers.” SULLIVAN ET AL., supra note 11, at 171.

18 See Ron M. Aizen, Four Ways to Better 1L Assessments, 54 DUKE L.J. 765, 777 (2004); Robert C. Downs & Nancy Levit, If It Can’t Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices, 65 UMKC L. REV. 819, 823 (1997) (“A single examination followed by a course grade prevents professors from giving students repeated feedback, which many theorists say is essential to deep learning.”); James D. Gordon III, How Not to Succeed in Law School, 100 YALE L.J. 1679, 1692 (1991) (“Studies have shown that the best way to learn is to have frequent exams on small amounts of material and to receive lots of feedback from the teacher.”).
appropriate feedback on performance to benefit from courses. When getting started, students need help in assessing existing knowledge and competence. In classes, students need frequent opportunities to perform and receive suggestions for improvement. At various points . . . students need chances to reflect on what they have learned, and what they still need to know, and how to assess themselves.  

Frequent and varied assessment of student learning is essential to the learning process because it allows the professor to determine whether the students “are learning what [the professor] want[s] them to learn,” which in turn “can strengthen law schools’ capacity to develop competent and responsible lawyers.”

Despite the abundance of literature regarding learning theory and the role of assessments, law schools still rely on the end-of-the-course exam. Therefore, “[a]ssessment, as defined for purposes of improving student learning and enhancing institutional effectiveness, is woefully inadequate in law schools.” Accordingly, law schools are failing in their mission of fostering learning and “mak[ing] sure students are learning the skills they need to think, perform, and conduct themselves as competent lawyers.”

Recognizing this disconnect, the American Bar Association (“ABA”) is currently addressing assessment in law schools. Specifically,  

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20 STUCKEY ET AL., supra note 11, at 236.
21 SULLIVAN ET AL., supra note 11, at 171.
22 MUNRO, supra note 11, at 33; see Andrea A. Curcio, Assessing Differently and Using Empirical Studies to See If It Makes a Difference: Can Law Schools Do It Better?, 27 QUINNIPIAC L. REV. 899, 899 (2009) (“These assessment methods have repeatedly been critiqued as an inadequate and inaccurate way to develop and assess the skills and values that new lawyers need to practice law competently.”).
23 Rogelio A. Lasso, Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance, 15 BARRY L. REV. 73, 75 (2010) [hereinafter Students Learning]; see MUNRO, supra note 11, at 68-69 (noting the primary purpose of law school is student learning); HERBERT L. PACKER & THOMAS EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION 22 (1972) (asserting law schools purpose is to prepare students for the legal profession); SULLIVAN ET AL., supra note 11, at 22 (stating the aim of professional education is to teach novice practitioners to perform like professionals). Every legal institution asserts that preparing law students for practice is one of its principal objectives. See, e.g., John O. Mudd, Beyond Rationalism: Performance-Referenced Legal Education, 36 J. LEGAL EDUC. 189, 191 (1986). Some commentators even suggest that preparing students to become good lawyers is the primary role of legal education. See, e.g., Robert B. Stevens, Law School: Legal Education in America from the 1850s to the 1980s 720 (1983); Paul Brest, Plus Ça Change, 91 Mich. L. Rev. 1945, 1945 (1993) (stating the “primary aim [of law school] is to prepare students to become skillful and responsible practicing lawyers, policymakers, and judges.”).
24 See Susan Hanley Duncan, The New Accreditation Standards Are Coming to a Law
the ABA Section on Legal Education and Admissions to the Bar Standards Review Committee is in the process of proposing revisions to the Standards for Approval for Law Schools (“Accreditation Standards”) that would emphasize outcome measures. An emphasis on outcome measures would require law schools to in essence abandon the one exam at the end of the semester approach as the only means of assessment and to assess student learning and provide feedback to students throughout the course. While the ABA has not yet changed the Accreditation Standards, it is highly likely that the ABA will revise the Accreditation Standards to require some sort of assessment planning in the future.

This article argues that in light of these projected revisions and the recognition that the twenty-first century law student has been reared almost entirely on digital information, legal educators should use technology to assess student learning. Specifically, this article focuses on the use of technology to assess student learning throughout the semester rather than simply administering one exam at the end of the course.

Part II provides School Near You—What You Need to Know About Learning Outcomes & Assessment, 16 LEGAL WRITING: J. LEGAL WRITING INST. 605, 608 (2010).


26 See Standards Review Documents, supra note 25; Student Learning Outcomes, supra note 25.


28 This article, however, is not arguing that professors should only use technology to assess student learning. See infra Part IV (discussing various technologies that professors can use to assess student learning and provide feedback). This article does not engage in the debate regarding the use of technology to teach students. See, e.g., Paul L. Caron & Rafael Gely, Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning, 54 J. LEGAL EDUC. 551, 551 (2004). Rather, the focus here is on pedagogically appropriate ways to use technology to assess student learning in an effort to improve student learning.
some background about law schools’ emphasis on input measures and the push to move to outcome measures. Subsequently, Part III discusses assessment of student learning at the course level. Part IV addresses why law professors should use technology to assess student learning and provide feedback. Part V then offers a discussion of some approaches to using technology to assess student learning at the course level. Finally, Part VI provides a brief conclusion.

I. LAW SCHOOLS’ FOCUS ON INPUT MEASURES AND THE PUSH TO EMPHASIZE OUTCOME MEASURES

The prevalence of one exam at the end of the semester with little or no feedback is, in part, a reflection of law schools’ traditional focus on input measures at both the institutional level and student level. At the institutional level, this is reflected by the ABA’s current Accreditation Standards’ focus on the resources that law schools invest to attain the goals set forth in both the school’s mission and the Accreditation Standards. At the student level, the law schools’ input-based model focuses on the topics covered and the types of instruction provided rather than on what students should have learned by the time they graduate.

This traditional focus of law schools on inputs at the student level is inconsistent with learning theory that advocates focusing on outcome measures. Unlike input measures, which focus on the material provided to students, outcome measures focus on what the students have learned from the educational experience. Accordingly, pursuant to outcome measures,


31 See Robert B. Barr & John Tagg, From Teaching to Learning, CHANGE, Nov.-Dec. 1995, at 13, 16, 19-20; Fisher, supra note 25, at 228. Pursuant to the traditional input measures, the purpose of law school is to transfer information from professor to student. See Barr & Tagg, supra, at 13, 19-20.

32 See Barr & Tagg, supra note 31, at 20. It is inconsistent with learning theory because a focus on input measures does not “provide for, warrant or reward assessing whether student learning has occurred or is improving.” Id.

33 See BARBARA E. WALVOORD, ASSESSMENT CLEAR AND SIMPLE 3 (2004); Barr & Tagg, supra note 31, at 13.
the professor’s role is not simply to deliver information.\textsuperscript{34} Rather, the professor’s role is “to design effective learning experiences so that students achieve the course outcomes and to monitor student learning in order to continuously improve their experiences.”\textsuperscript{35} This translates into providing multiple assessment opportunities throughout the semester rather than a single exam at the end of the semester.

Although law schools have only just begun to think seriously about outcomes and assessment,\textsuperscript{36} a focus on outcomes “is neither new [n]or a fad.”\textsuperscript{37} A few groundbreaking undergraduate institutions began redesigning their curriculum to embrace assessment practices and outcomes nearly forty years ago.\textsuperscript{38} Educators and the public recognized the benefits of assessment in higher education by the mid-1980s.\textsuperscript{39} By 1995, over 90\% of undergraduate institutions employed some type of assessment.\textsuperscript{40}

Consideration of effective assessment practices and a focus on outcome measures is not only prevalent in undergraduate institutions. In addition to undergraduate education, other fields of professional education focus on outcome measures and embrace assessment practices.\textsuperscript{41} Accreditors of legal education in foreign countries also employ outcome measures.\textsuperscript{42}

While legal education in the United States has lagged behind other fields of professional education and legal education in other countries, in recent years it has started to concentrate on the topic of outcome measures

\textsuperscript{34} See Barr & Tagg, supra note 31, at 24.

\textsuperscript{35} \textit{Id.}

\textsuperscript{36} See MUNRO, supra note 11, at 50 (“There is little evidence that legal educators in this century have thought seriously about outcomes.”).

\textsuperscript{37} \textit{Id.} at 5.

\textsuperscript{38} See CATHERINE A. PALOMBA & TRUDY W. BANTA, ASSESSMENT ESSENTIALS 1 (1999). The undergraduate institutions include Alverno College and the University of Tennessee at Knoxville. \textit{Id.}

\textsuperscript{39} \textit{Id.}

\textsuperscript{40} \textit{Id.}


Currently, the majority of professional education accrediting bodies employ outcome measures in their standards. \textit{See id.} (noting professional education accrediting bodies employ outcome measures in standards in the following fields: allopathic and osteopathic medicine, dentistry, veterinary medicine, pharmacy, psychology, teaching, engineering, accounting, and architecture). In 1988, dental education accreditors were the first to adopt outcome measures. \textit{See id.} at 20.

\textsuperscript{42} See STUCKEY ET AL., supra note 11, at 45 (noting that Scotland, Northern Ireland, England, and Wales have adopted outcome measures).
The publications of *Educating Lawyers: Preparation for the Profession of Law*, written by the Carnegie Foundation for the Advancement of Teaching (“Carnegie Report”), and *Best Practices for Legal Education: A Vision and a Road Map* (“Best Practices”) in 2007 fueled this change in focus. Both reports assert undeniably that the current system of legal education in the United States needs to change because “most law school graduates are not as prepared for law practice as they could be and should be.” Accordingly, these reports put forward an extensive array of suggestions on how legal education in the United States can be improved to better prepare students to practice as competent and ethical lawyers. One change is to move from a focus on input measures to a focus on outcome measures with numerous opportunities for assessment of student learning rather than reliance on one end-of-the-course exam.

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43 See STUCKEY ET AL., supra note 11, at 235-74; SULLIVAN ET AL., supra note 11, at 162-84.
44 SULLIVAN ET AL., supra note 11. In the Carnegie Report, the authors propose that legal education should focus on three apprenticeships: (1) knowledge, (2) skill, and (3) identity and purpose. See id. at 12-14, 27-28.
46 See Outcome Measures Report, supra note 41, at 5-6.

*Best Practices* stresses that changes are necessary in legal education because “most law school graduates lack the minimum competencies required to provide effective and responsible legal services.” STUCKEY ET AL., supra note 11, at 1-2. In the Introduction, *Best Practices* continues by stating that “[l]aw schools do some things well, but they do some things poorly or not at all. While law schools help students acquire some the essential skills and knowledge required for law practice, most law schools are not committed to preparing students for practice.” Id.
49 See STUCKEY ET AL., supra note 11, at 235-73; SULLIVAN ET AL., supra note 11, at 162-84; see also Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DePaul L. REV. 851, 881 (2009) (discussing negative repercussions of employing a single end of the course exam as the only assessment measure).

The authors of the Carnegie Report explain that “[f]rom our observations, we believe that assessment should be understood as a coordinated set of formative practices that, by
The recommendations of the Carnegie Report and *Best Practices* make plain that the push to switch the focus to outcome measures in law schools is not entirely new. Nevertheless, as a general rule, law schools to date have not been required to change their traditional ways, and therefore, few, if any, have implemented the changes recommended by the Carnegie Report and *Best Practices* regarding assessment practices. There is much speculation as to why law schools and its faculty members are resistant to switching to a learning-outcomes approach. Some reasons include concern about academic freedom, trepidation that it will lead to faculty members being blamed unfairly, resistance to changing the status quo, and hesitation over making a change that would require them to work harder, to name a few.

The push to switch to outcome measures and a culture of assessment is finally gaining some traction with the Council of the ABA Section on Legal Education and Admissions to the Bar, the national accrediting agency of law schools. Currently, the accreditation process is being used to incorporate assessment into legal education. The first thing that the Chair of the ABA Section on Legal Education and Admissions to the Bar did, in 2007, was to appoint the Special Committee on Outcome Measures and charged them to determine whether and how we can use output measures, other than bar passage and job placement, in the accreditation process . . . consider providing important information about the students’ progress in learning to both students and faculty, can strengthen law schools' capacity to develop competent and responsible lawyers.”


*See* MARY J. ALLEN, ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION 7 (2004); *WALVOORD, supra* note 33, at 8-9.

*See* ALLEN, *supra* note 51, at 7; *WALVOORD, supra* note 33, at 8-9; Duncan, *supra* note 24, at 609.

*See* id. at 609-10 (listing numerous objections). Some faculty members “find the call to student outcomes assessment threatening, insulting, intrusive, and wrongheaded.” ALLEN, *supra* note 51, at 13; see WALVOORD, *supra* note 33, at 9-10 (articulating that professors “might question whether the real goals of higher education can be measured or argue that student learning is affected by factors beyond faculty control”).


*See* VanZandt, *supra* note 27, at 314; *infra* notes 57-71 and accompanying text (addressing recent activities of the ABA regarding assessments).
methods to measure whether a program is accomplishing its stated mission and goals . . . and define appropriate output measures and make specific recommendations as to whether the section should adopt those measures as part of the standards.\textsuperscript{57}

After conducting extensive research, the Outcome Measures Committee filed its report in July 2008.\textsuperscript{58} In this report, the Outcome Measures Committee recommended “that the Section on Legal Education and Admissions to the Bar reexamine the current ABA Accreditation Standards and reframe them, as needed, to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures.”\textsuperscript{59}

The ABA’s Section on Legal Education and Admissions to the Bar’s Standards Review Committee responded to this Outcome Measures Committee recommendation by creating the Student Learning Outcomes Subcommittee. This subcommittee was charged with the task of drafting revisions to Chapter 3 of the Accreditation Standards.\textsuperscript{60} Looking to the Report of the Outcome Measures Committee\textsuperscript{61} for guidance, the Student Learning Outcomes Subcommittee drafted proposed revisions to the Accreditation Standards and Interpretations that would shift law schools’ focus from teaching to student learning and from curriculum to outcomes.\textsuperscript{62}

As of February 2012, the proposed revisions to Chapter 3 of the ABA Accreditation Standards would compel law schools to “identify . . . learning outcomes it seeks for its graduating students and for its program of legal education,”\textsuperscript{63} “offer a curriculum that is designed to produce graduates who have attained competency in the learning outcomes,”\textsuperscript{64} “apply a variety of formative and summative assessment methods across the curriculum to provide meaningful feedback to students,”\textsuperscript{65} “conduct regular, ongoing assessment of whether [their] learning outcomes, curriculum and delivery, assessment methods and the degree of student attainment of competency in

\textsuperscript{57} Outcome Measures Report, supra note 41, at 1.
\textsuperscript{58} See generally id. In drafting its report, the Committee looked to the material on outcome measures in the Carnegie Report and Best Practices. See id. at 5-6. In addition, the trend towards outcome measures in undergraduate education and the use of outcome measures in the accreditation process of other fields of professional education prompted the Committee to recommend a shift from the focus on teaching to a focus on student learning. Id. at 5-13.
\textsuperscript{59} Id. at 1.
\textsuperscript{60} See Student Learning Outcomes, supra note 25.
\textsuperscript{61} Outcome Measures Report, supra note 41.
\textsuperscript{63} See Standards Review Documents, supra note 25, at Standard 302.
\textsuperscript{64} Id. at Standard 304.
\textsuperscript{65} Id. at Standard 305.
the learning outcomes are sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly as entry level practitioners in the legal profession,” and finally, to “use the results of this review to improve its curriculum and its delivery.”

Currently, these proposed revisions to Chapter 3 of the Accreditation Standards would compel law schools to comply with a four-step process. The first step entails identifying learning outcomes. The second step requires that law schools provide a curriculum that enables students to achieve these outcomes. The third step necessitates the assessment of learning outcomes to ascertain if the curriculum is meeting the learning objectives identified in step one. The fourth and final step then obliges law schools to assess the assessment and revise based upon the feedback gathered. While these four steps apply at the institutional, programmatic, and course levels, this article focuses on the third step—designing and using assessment measures—to assess student learning at the course level.

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66 Id. at Standard 306.
68 See Standards Review Documents, supra note 25, at Standard 302; see Duncan, supra note 24, at 612-16; Gregory S. Munro, How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation, 1 J. Ass’n Legal Writing Directors 229, 232 (2002); VanZandt, supra note 27, at 322-36.
69 See Standards Review Documents, supra note 25, at Standard 304; see also Munro, supra note 11, at 139-51; Stuckey et al., supra note 11, at 105-234; Duncan, supra note 24, at 616-22; Munro, supra note 68, at 233-36; VanZandt, supra note 27, at 336-37.
70 See Standards Review Documents, supra note 25, at Standard 305; see also Stuckey et al., supra note 11, at 235-63; Duncan, supra note 24, at 622-27; Munro, supra note 68, at 236-44; VanZandt, supra note 27, at 337-49.
71 See Standards Review Documents, supra note 25, at Standard 306; see Duncan, supra note 24, at 626-31; Munro, supra note 68, at 244-46; VanZandt, supra note 27, at 349-52.
72 See Linda Suskie, Assessing Student Learning 6-10 (2d ed. 2009) (comparing institutional, programmatic, and course level assessment); Fisher, supra note 25, at 229-42; VanZandt, supra note 27, at 320. Assessment at the institutional or programmatic level is a “process that provides meaningful feedback to faculty, staff, and various publics about patterns of student and alumnae performance on a range of curriculum outcomes.” Munro, supra note 11, at 12 (quoting Alverno College Faculty, Student Assessment-Assessment, at Alverno College 3 (1994)). Student assessment at the course level is a “process, integral to learning, that involves observation and judgment of each student’s performance on the basis of explicit criteria, with resulting feedback to the students.” Id.
II. **Assessment of Student Learning at the Course Level**

Although the proposed revisions to Chapter 3 discussed above indicate that “[a] law school need not apply a variety of assessment measures in each individual course,” assessment of student learning at the course level could transform the manner in which law students receive a legal education in the United States. These revisions could potentially drive the push to dispense with the traditional means of assessing law students based on a single exam at the end of the course. Rather, professors would develop multiple assessment measures to assess student performance and provide feedback consistent with contemporary learning theory.

Assessment of student learning at the course level is the “process of evaluating students’ attainment of defined learning outcomes” in an individual law school course and providing the students with feedback. Assessment of student learning at the course level focuses on student learning—rather than on teaching—concentrating on whether the students in the course are actually mastering the outcomes that have been identified for the course. Pursuant to the four steps set forth above, a professor would (1) identify and define the desired course outcomes; (2) examine course content and develop a strategy to teach the material so that students can accomplish the learning outcomes; (3) design assessment measures to assess whether the students are achieving the learning outcomes; and (4) analyze the assessment data and make any necessary changes based upon the data gathered.

Course-based assessment focuses on the professor’s use of multiple assessment measures to ascertain what students are learning in the course. An assessment measure is “an activity, assigned by the professor, that yields comprehensive information for analyzing, discussing, and judging a learner's performance of valued abilities and skills.” An effective

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73 *See Student Learning Outcomes, supra* note 25, at Standard 304, Interpretation 304-2.

74 *See supra* notes 11-14 and accompanying text (discussing traditional means of assessing student learning in law school).


77 *See supra* notes 67-71 and accompanying text. As noted above, this article focuses on the third step, designing assessment measures to assess whether students are attaining the learning outcomes at the course level.


79 Kristin B. Gerdy, *Teacher, Coach, Cheerleader, and Judge: Promoting Learning*
assessment instrument allows both the professor and the student to determine whether the student is learning the material.\textsuperscript{80}

An assessment measure is only effective if it is valid,\textsuperscript{81} fair,\textsuperscript{82} and reliable.\textsuperscript{83} To be valid, an assessment measure must assess whether the students are learning what the professor is teaching in the course.\textsuperscript{84} A fair assessment is one that is “equitable in terms of both process and results.”\textsuperscript{85} Finally, a reliable assessment tool is one that “accurately rate[s] those who have learned as having learned and those who have not learned as having not learned.”\textsuperscript{86}

To ensure reliable assessment measures, legal educators should avoid norm-referenced assessments\textsuperscript{87} and focus on conducting assessments that are criteria-referenced.\textsuperscript{88} Unlike norm-referenced assessments that simply notify students how they have performed relative to their classmates,\textsuperscript{89} criteria-based assessments assist students in gauging whether

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\textsuperscript{80} See Gerdy, supra note 79, at 69.

\textsuperscript{81} See STUCKEY ET AL., supra note 11, at 241; infra note 84 and accompanying text (describing valid assessment measures).

\textsuperscript{82} See Munro, supra note 11, at 105; infra note 85 and accompanying text (describing fair assessment measures). An evaluation is fair if it assesses whether students have accomplished the course objectives. See BARBARA GROSS DAVIS, TOOLS FOR TEACHING 240-41 (1993); LUCY CHESER JACOBS & CLINTON I. CHASE, DEVELOPING AND USING TESTS EFFECTIVELY: A GUIDE FOR FACULTY 5-8 (1992); Gerald F. Hess, Listening to Our Students: Obstructing and Enhancing Learning in Law School, 31 U.S.F. L. REV. 941, 944 (1997).

\textsuperscript{83} See Munro, supra note 11, at 107-09; Smith & Ragan, supra note 67, at 97; STUCKEY ET AL., supra note 11, at 243; infra note 86 and accompanying text (describing reliable assessment measures).

\textsuperscript{84} See GERALD F. HESS & STEVEN FRIEDLAND, TECHNIQUES FOR TEACHING LAW 289 (1999); PATRICIA L. SMITH & TILLMAN J. RAGAN, INSTRUCTIONAL DESIGN 95 (2d ed. 1999); STUCKEY ET AL., supra note 11, at 241 (stating a valid assessment tool is one that “evaluates what was taught”); Munro, supra note 68, at 237 (“Validity means it must effect or accomplish that for which it was designed or intended.”); Greg Sergienko, New Modes of Assessment, 38 SAN DIEGO L. REV. 463, 465-55 (2001) (“Validity is the ability of the test to correspond to the items the test is meant to address.”). An essential facet of validity is congruence: “the goals of the test must agree with the goals of the instruction.” STUCKEY ET AL., supra note 11, at 241; see SMITH & RAGAN, supra, at 85.

\textsuperscript{85} Munro, supra note 11, at 109.

\textsuperscript{86} STUCKEY ET AL., supra note 11, at 243; see SMITH & RAGAN, supra note 84, at 97. Moreover, to be reliable, an assessment measure must yield consistent results. See Munro, supra note 11, at 107.

\textsuperscript{87} See infra note 89 and accompanying text (discussing norm-referenced assessments).

\textsuperscript{88} See infra note 90 and accompanying text (describing criteria-referenced assessments).

\textsuperscript{89} See STUCKEY ET AL., supra note 11, at 243. Frequently, professors use normative
they have accomplished the educational objectives of the class.90 Accordingly, the traditional single timed, end-of-the-course exam without any feedback that is graded on a curve falls short on all these criteria and is not well suited for course-based assessment.91

Assessment measures used to assess student learning at the course level can be direct or indirect.92 A direct assessment measure is one in which students exhibit what they have learned.93 Direct assessment measures include, among other things, exams,94 clinical performances,95 or capstone performances.96 In contrast, an indirect assessment measure consists of the opinion of either the students themselves97 or that of another observer.98 Accordingly, an assessment measure may supply quantitative or

assessment measures to adhere to grading curves. See id. The curve limits the number of students that can receive a particular grade. See Leslie M. Rose, Norm-Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way, 17 LEGAL WRITING J. LEGAL WRITING INST. 124, 124 (2011). Norm-referenced grading pursuant to a curve has been criticized because at its root is the assumption that there is nothing that teachers can do to advance a student’s abilities. Id. In addition, norm-referenced grading “increases student stress, interferes with deep learning, and does not adequately inform students whether they have reached a level of competence.” Id.; see also Leah M. Christensen, Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement and the Declining Self-Efficacy of Our Law Students, 33 L. & PSYCHOL. REV. 57, 81 (2009); Peggy Cooper Davis, Slay the Three-Headed Demon!, 43 HARV. CIV. RIGHTS-CIV. LIBERTIES L. REV. 619, 622 (2008); Zimmerman, supra note 49, at 897; see generally Rose, supra (providing a discussion of norm-referenced grading).

90 See STUCKEY ET AL., supra note 11, at 243. In contrast to norm-referenced assessments, “[c]riteria-referenced assessments rely on detailed, explicit criteria that identify the abilities students should be demonstrating . . . and the bases on which the instructor will distinguish among excellent, good, competent, or incompetent performances.” Id. at 244; see also Sophie Sparrow, Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria, 2004 MICH. ST. L. REV. 1, 6-15. Criteria-referenced grading increases the reliability of assigned grades. See STUCKEY ET AL., supra note 11, at 24; N.R. Madhava Menon, Designing a Simulation-Based Clinical Course: Trial Advocacy in A HANDBOOK ON CLINICAL LEGAL EDUCATION 181 (N.R. Madhava Menon ed., 1998). See Rose, supra note 89, at 127-28 for a discussion of criteria-referenced grading.

91 See MUNRO, supra note 11, at 143; STUCKEY ET AL., supra note 11, at 238; Munro, supra note 68, at 237. Relying on one test at the end of the course to assess a student forecloses the ability for a test to provide any meaningful feedback. See Christopher T. Matthews, Essay, Sketches for a New Law School, 40 HASTINGS L.J. 1095, 1104 (1989).

92 See ALLEN, supra note 51, at 6.
93 See id.; Fisher, supra note 25, at 232.
94 See ALLEN, supra note 51, at 7; SUSKIE, supra note 72, at 21.
95 STUCKEY ET AL., supra note 11, at 267; SUSKIE, supra note 72, at 21.
96 STUCKEY ET AL., supra note 11, at 267; SUSKIE, supra note 72, at 21.
97 See ALLEN, supra note 51, at 103.
98 See STUCKEY ET AL., supra note 11, at 267. These types of indirect assessments
Direct assessment measures that professors employ to evaluate student performance can be formative, summative, or both. Formative assessments measures are designed to help students learn and to impart timely and helpful feedback to the students throughout the learning process. Accordingly, formative assessment measures do not need to be graded and are not calculated into the final course grade. In a nutshell, formative assessments are “designed to provide feedback that enhances [a student’s] capacity to build on what [he or she] knows and to address areas of misunderstanding.”

In contrast, the focus of summative assessment measures is not to help students learn. Rather, summative assessment measures focus on assigning a grade. This has been the primary form of assessment in legal education, with little or no feedback given on the final end-of-the-course exam. Summative assessment measures can also perform a formative function if professors hand them back with extensive feedback that explains how students can enhance their performance.

Whether formative or summative, professors should use multiple and varied assessment measures during a course to assess student learning. In addition, professors should provide students with timely qualitative information.

include follow-up surveys of graduates or employers or feedback from focus groups. See id.; see also ALLEN, supra note 51, at 118.

99 See ALLEN, supra note 51, at 8. Quantitative information is conveyed via numerical scores, while qualitative information is explained verbally. Id.

100 See STUCKEY ET AL., supra note 11, at 255.

101 See MUNRO, supra note 11, at 72-73. In addition to providing feedback to the students, formative assessments provide the professor with feedback, conveying “what works and what does not.” Duncan, supra note 24, at 623; see ALLEN, supra note 51, at 11.

102 See STUCKEY ET AL., supra note 11, at 255.


105 See MUNRO, supra note 11, at 73; supra notes 11-15 and accompanying text (discussing traditional assessment methods in law school).


107 MUNRO, supra note 11, at 74 (“Effective adult student evaluation schemes have three characteristics: multiple, varied, and fair.”); see DAVIS, supra note 82, at 239-47, 252-54; JACOBS & CHASE, supra note 82, at 1-3; Duncan, supra note 24, at 626 (“Law professors need to assess student attainment of the learning outcomes through multiple measures.”); Steven Friedland, A Critical Inquiry into the Traditional Uses of Law School Evaluation, 23 Pace L. Rev. 147, 188 (2002); Hess, supra note 82, at 944; Nickles, supra note 11, at 461-62. These assessment measures can include document drafting exercises, short essay assignments, practice exam questions, group discussions, and multiple-choice questions.
feedback on the assessment measures. Unlike one exam at the end of the course that “prevents the test from providing any educational feedback,” numerous assessments coupled with timely feedback fosters educational development. Students and teachers can monitor progress throughout the course and adjust what they are doing accordingly to improve performance.

In addition to providing numerous opportunities for feedback, multiple summative assessment measures, rather than a single exam at the end of the course, render the final grade more accurate because they allow the professor to adequately assess a student’s aptitude. They also help students prepare for the final exam and minimize the stress associated with one final exam that represents the entire grade in the course. Finally, multiple assessment opportunities boost enthusiasm and encourage student efforts.

These multiple assessment measures, whether conducted in class or outside of class, can be instructor-based, student-based, or peer-based.

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108 Professors should also use a rubric. A rubric sets forth in writing the grading criteria that the professor will use to assess a student’s performance. See RUBRICS: A HANDBOOK FOR CONSTRUCTION AND USE ix (Germaine L. Taggart et al. eds., 1998). The rubric describes not only what knowledge and skills the students should learn but also the criteria upon which the professor relies in determining whether the student has demonstrated success. See Sparrow, supra note 90, at 8. There are numerous benefits to using rubrics. Id. at 16-27. For example, rubrics (1) focus student learning and what the law professor teaches; (2) expose a class’s intricacies; (3) supply constructive feedback to students; (3) assist students in becoming conscious of their learning; (4) convey high expectations; and (5) are intellectually engaging. Id.

109 Matthews, supra note 91, at 1104.

110 See MUNRO, supra note 11, at 151; STUCKEY ET AL., supra note 11, at 256 (noting numerous formative assessments along with timely feedback “ought to be the primary form of assessment in legal education”).

111 See JACOBS & CHASE, supra note 82, at 2-7; Hess, supra note 82, at 944. Multiple assessment measures with timely feedback throughout the semester convey to the students what the professor expects and provides the students with a chance to practice before the final exam. See JACOBS & CHASE, supra note 82, at 5-8.

112 See SCHWARTZ ET AL., supra note 104, at 155; Duncan, supra note 24, at 624; Hess, supra note 82, at 944; see also DAVIS, supra note 82, at 241 (asserting using a variety of assessment measures helps student perform to the best of their ability).

113 See JACOBS & CHASE, supra note 82, at 4-7 (noting student performance on final exams improves with frequent assessments); Hess, supra note 82, at 944.

114 STUCKEY ET AL., supra note 11, at 260; Friedland, supra note 107, at 188; Henderson, supra note 14, at 412.

115 See Friedland, supra note 107, at 188 (noting multiple assessment measures “increase motivation, reduce test anxiety, increase facility with course material, and stimulate student efforts”); Henderson, supra note 14, at 412.

116 See infra notes 117-128 and accompanying text (discussing different types of assessment measures).
The traditional form of assessment is instructor-based assessment, where the professor reviews and provides the student with a grade, feedback, or both. Somewhat surprisingly, students prefer instructor-based assessment over assessment by their peers. These instructor-based assessment measures can be either formative or summative.

Student self-assessment is another means to provide students with assessment opportunities and to help students build essential self-learning skills. In contrast to instructor-based assessment, student-based assessment is formative and the student evaluates their own work and progress. These self-assessment skills are essential, as “[a]n indispensable trait of the truly competent lawyer, at whatever stage of career development, is that of knowing the extent and limits of his competence: what he can do and what requires the assistance of others.” Professors can create effective self-assessment measures by providing students with explicit criteria to use to evaluate their own performance and by presenting the students with a means to compare their assessment of their work with that of their professors. Despite the benefits, some of the drawbacks of self-assessment measures are that they can be unreliable and biased.

Finally, peer-based assessment is generally formative and entails students reviewing and providing feedback on their classmates’ work. There are several benefits to incorporating peer-based assessment versus self-assessment or instructor-based assessment. First, peer-assessment diminishes the bias of self-assessment. Second, peer-assessment allows...

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117 See Sergienko, supra note 84, at 475.
118 See id. at 483-84.
119 See supra notes 101-106 and accompanying text (defining formative and summative assessment measures).
120 See Stuckey et al., supra note 11, at 254; see also Munro, supra note 11, at 124 (“Throughout an attorney's professional life after law school, her success in practice will depend on the ability to self-assess professional performance, behavior, and attitudes.”); see generally Michael Hunter Schwartz, Teaching Law Students to be Self-Regulated Learners, 2003 Mich. St. L. Rev. 447 (2003) (discussing the value of student reflection).
121 See Sergienko, supra note 84, at 479.
123 See Munro, supra note 11, at 124; Lasso, Students Learning, supra note 23, at 96-97.
124 See Sergienko, supra note 84, at 480-82.
125 See id. at 482-83; see generally id. (discussing peer assessment).
126 See Jacobs & Chase, supra note 82, at 212 (recognizing that peer assessments, rather than self-assessments, tend to more closely correlate to instructor assessments); Sergienko, supra note 84, at 482. Peer assessments, however, can be biased if students decide to be forgiving in the hopes that their peers will be lenient with them in the future. Jacobs & Chase, supra note 82, at 212; Sergienko, supra note 84, at 482-83. On the other hand, students may assess their peers ruthlessly to make themselves feel better about their
for a more impartial review than self-assessment because “the peer assessor
does not know what the person being assessed was trying to say or do.”\footnote{127}
Identifying issues in a peer’s work may also enable the student to better
identify the same deficiencies in his or her own work.\footnote{128}

III. **WHY LEGAL EDUCATORS SHOULD EMPLOY TECHNOLOGY TO
ASSESS STUDENT LEARNING AT THE COURSE LEVEL**

Law professors can effectively and efficiently use technology—
defined as “anything that was invented after you were born”\footnote{129}—
to build multiple instructor, peer, and self-assessment opportunities into their
courses, consistent with the proposed revisions to the Accreditation
Standards and established learning theory. The explosion of technology
since the millennium has been staggering: the array of technological tools
now available to legal educators is in some senses overwhelming.
Currently, technological tools that legal educators can draw on to assess
student learning include wikis, email, podcasts, screencasting, text
annotation systems, digital video annotation software, online discussion
boards, blogs, and computer assisted instruction, to name only a few.\footnote{130}

If technological advances continue at the current rate, the array of
 technological tools available to the legal educator will increase
exponentially over the next ten years. Recognizing the promise of
technology and that students matriculating today have grown up digital,
legal educators can effectively use many of these technological tools to
assess student learning.

A caveat: While there are many reasons to use technology as a
means to assess student learning, professors should not integrate technology
into the curriculum for its own sake.\footnote{131} In fact, student learning may be

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\footnote{127} Sergienko, supra note 84, at 483.
\footnote{128} Sergienko, supra note 84, at 483.
\footnote{129} See id. There is an additional benefit for professors. Compared to instructor-based
assessment, peer-assessment measures—and self-assessment measures, for that matter—
involve a minimal amount of work on the part of the professor. See id. In essence, the
professor need only delineate the standards that the students should use in assessing their
peer’s work or their own work. See id.
\footnote{129} EDUCATION AND TECHNOLOGY: CRITICAL PERSPECTIVES, POSSIBLE FUTURES 194
\footnote{130} See discussion infra Part IV (discussing technologies that professors can use to
assess student learning).
\footnote{131} See PALFREY & GASSE, supra note 4, at 247 (“The technology should only be
applied in support of our pedagogy, not for its own sake.”); Francis J. Carney, *A Few
Words of Caution About Computer Presentations*, 15 UTAH BAR J. 14, 14 (2002); Molly
85, 89-90 (1998); Kathleen Elliott Vinson, *What’s on Your Playlist? The Power of
hindered by the inappropriate use or misuse of technology in the classroom. Legal educators should employ technology in a pedagogically appropriate manner that is consistent with learning theory.

There are three reasons why legal educators should use technology as one means to incorporate assessment opportunities into the curriculum beyond one end-of-the-semester exam. First, students matriculating at law schools today are digital natives who are extremely comfortable with technology and expect to have technology integrated into the curriculum. Second, incorporating technology as a means to assess student learning will help to prepare future lawyers for the realities of law practice today. Finally, technology provides an effective and efficient way to provide multiple assessment opportunities to a large number of students.

A. Law Students Today are Digital Natives

Law schools should use technology to assess student learning because the majority of students entering law school today are members of


See PALFREY & GASSER, supra note 4, at 246 (“We should figure out, instead, how the use of technologies can support our pedagogical goals”); Lasso, Paper Chase, supra note 7, at 23.

See Marie Stefani Newman, Not the Evil TWEN: How Online Course Management Software Supports Non-Linear Learning in Law Schools, 5 J. HIGH TECH. L. 183, 183-85 (2005); supra notes 3-7 and accompanying text (describing characteristics of digital natives); infra Part IV(A) and accompanying text (discussing attributes of law students today).

See discussion infra Part IV(B) (discussing how the use of technology will prepare students for modern law practice).

See discussion infra Part IV(C) (noting that technology allows professors to efficiently incorporate more assessment measures).
the Millennial Generation and thus digital natives. In contrast to members of previous generations, digital natives have had access to the Internet for nearly their entire life. They are younger than the microcomputer and have grown up surrounded by digital and cyber technologies. This exposure to technology from a very early age means

138 See supra notes 3-7 and accompanying text (defining digital natives).
139 See Kristen E. Murray, Let Them Use Laptops: Debunking the Assumptions Underlying the Debate over Laptops in the Classroom, 36 OKLA. CITY U. L. REV. 185, 195 (2011).
141 See Prensky, supra note 3, at 1. As early as 2002, twenty percent of college students reported that they first started using computers during the ages of five and eight. Steve Jones, The Internet Goes to College: How Students are Living in the Future with Today's Technology, PEEW INTERNET & AM. LIFE PROJECT, 2 (Sept. 15, 2002), http://www.pewinternet.org//media/Files/Reports/2002/PIP_College_Report.pdf.pdf. Moreover, pursuant to one study, ninety-three percent of children in primary or secondary school use a computer, whether at home or at school. Jennifer C. Day et al., U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS: COMPUTER AND INTERNET USE IN THE UNITED STATES 7 (2005). Another study surveyed 7,705 college students in the United States and revealed that just short of one hundred percent of the students possess a computer; almost 95% have a mobile phone; 75% instant message (of which 15% are always logged on); almost 34% use the Internet to access the news; close to 50% browse blogs while 28% maintain their own; and almost 70% have a Facebook account. REYNOL JUNCO & JEANNA MASTRODICAS, CONNECTING TO THE NET. GENERATION: WHAT HIGHER EDUCATION PROFESSIONALS NEED TO KNOW ABOUT TODAY'S STUDENTS 67, 70-80 (2007).

As such, the average law student—by the time they have reached twenty-one years of age—has spent more than 10,000 hours playing video games, sent circa 200,000 emails, and spent 10,000 hours on a cell phone. Kassandra Barnes, Raymond C. Marateo, & S. Pixy Ferris, Teaching and Learning with the Net Generation, INNOVATE: J. ONLINE EDUC. (Apr./May 2007), http://www.innovateonline.info/pdf/vol3_issue4/Teaching_and_Learning_with_the_Net_G
that students matriculating at law schools today have had learning experiences quite different from their law professors.\textsuperscript{142}

As a result of this saturation with technology, digital natives are radically different from the law students of the past.\textsuperscript{143} These students do not think and process material in the same way as members of previous generations.\textsuperscript{144} Some of the distinct characteristics of digital natives\textsuperscript{145} demonstrate the pivotal role that technology can play in providing effective legal education that incorporates multiple assessment opportunities.

Having grown up digital, law students matriculating today have a difficult time absorbing information passively.\textsuperscript{146} Digital natives also tend

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\item \textsuperscript{142} See M.H. Sam Jacobson, \textit{A Primer on Learning Styles: Reaching Every Student}, 25 Seattle U. L. Rev. 139, 151 (2001); Murray, \textit{supra} note 139, at 197. While digital natives have grown up surrounded by technology, many of these students are not digitally literate and do not employ technology “well, appropriately, or optimally.” THOMSON, \textit{supra} note 137, at 28.
\item \textsuperscript{143} PALFREY & GASSER, \textit{supra} note 4, at 4; see NEIL HOWE & WILLIAM STRAUSS, \textit{Millennials Go to College} 59-60 (2d ed. 2007) (describing Millennials as “confident, conventional, sheltered, team-oriented, achieving, special, and pressured”); Murray, \textit{supra} note 139, at 197.
\item \textsuperscript{144} Prensky, \textit{supra} note 3, at 1 (emphasis omitted); see Jay David Bolter, \textit{Hypertext and the Question of Visual Literacy}, in \textit{HANDBOOK OF LITERACY AND TECHNOLOGY: TRANSFORMATIONS IN A POST-TYPGRAPHICAL WORLD} 1 (Reinking et al. eds., 1998); Daniel L. Barnett, “Form Ever Follows Function”: Using Technology to Improve Feedback on Student Writing in Law School, 42 Val. U. L. Rev. 755, 776-77 (2008); Joan MacLeod Heminway, Caught in (or on) the Web: A Review of Course Management Systems for Legal Education, 16 Alb. L.J. Sci. & Tech. 265, 283-89 (2006); Lasso, \textit{Paper Chase}, \textit{supra} note 7, at 1; Craig T. Smith, Synergy and Synthesis: Teaming "Socratic Method" with Computers and Data Projectors to Teach Synthesis to Beginning Law Students, 7 Legal Writing J. Legal Writing Inst. 113, 114 (2001). These differences are more profound than educators appreciate. Prensky, \textit{supra} note 3, at 1 (quoting Dr. Bruce D. Berry of Baylor College of Medicine that “[d]ifferent kinds of experiences lead to different brain structures”). In fact, it has been posited that the digital natives’ brains “are likely physically different as a result of the digital input they received growing up.” Marc Prensky, \textit{Digital Natives, Digital Immigrants Part 2: Do They Really Think Differently?}, On the Horizon, Nov./Dec. 2001, at 1, 6, available at http://www.marcprensky.com/writing); see PALFREY & GASSER, \textit{supra} note 4, at 239.
\item \textsuperscript{146} See Bohl, \textit{supra} note 145, at 785-86; Lasso, \textit{Paper Chase}, \textit{supra} note 7, at 23; Tracy L. McGaugh, \textit{Generation X in Law School: The Dying of the Light or the Dawn of a New Day?}, 9 Legal Writing J. Legal Writing Inst. 119, 133 (2003).
\end{itemize}
to be visual and kinesthetic learners who learn better through interactive mediums.\textsuperscript{147} Feedback is one of the crucial components of an interactive curriculum that actively engages students.\textsuperscript{148} Moreover, digital natives expect immediate evaluations, clear responses, and easy access to materials.\textsuperscript{149} Accordingly, today’s students would respond well to technological assessment tools that actively engage students and provide instant results because “their technology-laced experience has conditioned them to receive information in small, discrete portions, rather than engaging in a lengthy process of learning with results deferred.”\textsuperscript{150}

Another defining characteristic of digital natives is that they tend to gravitate towards working collaboratively.\textsuperscript{151} Therefore, law students today would respond well to technological assessment measures that allow students to work with their peers on a project.\textsuperscript{152} They also have a fascination for new technologies and, not surprisingly, they prefer using a keyboard to working with pen and paper and are more comfortable reading directly from a computer screen as compared to a printout of a document.\textsuperscript{153} As a result of these characteristics of digital natives, legal educators should increase their use of technology in the curriculum to provide more assessment opportunities consistent with learning theory.

Growing up digital and using technology in virtually all facets of their life, twenty-first century law students also expect their law professors


\textsuperscript{148} See Bohl, supra note 145, at 785; Ingraham & Boyle, supra note 147, at 287; supra notes 107-111 and accompanying text (discussing feedback).

\textsuperscript{149} See Harris, supra note 5, at viii; Bohl, supra note 145, at 780 (noting digital natives expect instant gratification); Heminway, supra note 144, at 288; Prensky, supra note 3, at 2 (positing that students today “thrive on instant gratification”).


\textsuperscript{152} See Crist, supra note 151, at 99 (noting technology generates additional chances for collaborative learning).

\textsuperscript{153} See Frand, supra note 140, at 15.
to use technology.\textsuperscript{154} The choice to use technology to assess students not only meets this expectation but also sends a message to the students that their professors are invested in their success.\textsuperscript{155} In turn, students are more motivated when they feel that their professors are invested in their learning.\textsuperscript{156} Integrating technology into the curriculum serves as one means to raise student confidence while simultaneously reducing the frustration that the demands of law school can breed.\textsuperscript{157}

\section*{B. Prepares Students for Modern Law Practice}

Utilizing technology to assess student learning will also provide students with solid technical tools that will prepare them for the realities of law practice today.\textsuperscript{158} Dating back to 1992, the three major reports on the status of legal education all maintain that law schools need to do a better job preparing students for the practice of law.\textsuperscript{159} Law schools have an obligation to produce technologically savvy lawyers because technology is “an ineluctable part of the practice of law,”\textsuperscript{160} and essential to any law practice.\textsuperscript{161}

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\item \textsuperscript{154} See Diana R. Donahoe, \textit{An Autobiography of a Digital Idea: From Waging War Against Laptops to Engaging Students with Laptops}, 59 J. LEGAL EDUC. 485, 486 (2010); Stephen M. Johnson, \textit{www.lawschool.edu: Legal Education in the Digital Age}, 2000 Wis. L. Rev. 85, 101; Sergienko, supra note 84, at 192; Smith, supra note 132, at 253 (“The ‘Internet Generation’ expects us to employ technology.”).
\item \textsuperscript{155} See Lasso, \textit{Paper Chase}, supra note 7, at 58-60.
\item \textsuperscript{156} See id.
\item \textsuperscript{157} See id.
\item \textsuperscript{158} See Johnson, supra note 154, at 101; Richard L. Marcus, \textit{The Electronic Lawyer}, 58 DePaul L. Rev. 263, 264 (2009); Murray, supra note 139, at 193.
\item \textsuperscript{159} The first report, the Report of the MacCrate Task Force on Law Schools and the Profession: Narrowing the Gap, was published in 1992 and recommended that law schools place more focus on enhancing students’ practice skills so that law students would be better prepared to practice upon graduating. \textit{SECTION OF LEGAL EDUCATION AND ADMISSION TO THE BAR, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT-AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP} (July 1992). Subsequently, the Carnegie Report, published in 2007, reaffirmed the need to integrate educational experiences that prepare students for the realities of practice. \textit{SULLIVAN ET AL., supra note 11, at 88.} Finally, \textit{Best Practices}, also published in 2007, echoed this, acknowledging that “one of the basic obligations of a law school is to prepare its students for the practice of law.” \textit{STUCKEY ET AL., supra note 11, at 16.}
\item \textsuperscript{160} THOMSON, supra note 137, at 47.
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Unlike in the past, today nearly 100% of attorneys have a computer in their office and 94.7% of attorneys create some of their own documents using word processing programs. The use of law practice management software that provides a central repository for all of the information connected to a case is widespread. This type of software assists with document management, allowing lawyers to efficiently streamline and search the staggering amount of paperwork associated with the practice of law. It also includes calendar, email, report generating, and electronic billing capabilities.

In addition, lawyers are increasingly called upon to use technology for other aspects of law practice. For example, lawyers now file electronically and conference and collaborate electronically. More and increasingly insisting that lawyers use technology; Gerdy, supra note 131, at 263 (“Law practice is becoming increasingly technical.”); Johnson, supra note 154, at 14. At this juncture, it is an understatement to say that technology has asserted its dominion within the practice of law. Technology has infiltrated the lawyer’s practice in nearly every area—communication with clients and colleagues, legal research, discovery and handling of electronic evidence, and even courtroom presentation and trial practice. Attorneys who ignore technology’s dominion do so at their peril.


Law practice management software is also referred to as case management software.


See Crist, supra note 151, at 96-97; Gerdy, supra note 131, at 263. For example, increasingly attorneys use wikis to produce documents collaboratively. Broussard, supra note 6, at 909. It has been posited that “[t]hese dynamically and collaboratively produced
more, attorneys use document cameras,\textsuperscript{169} computer presentation programs,\textsuperscript{170} and computer-generated exhibits to present evidence digitally.\textsuperscript{171} Moreover, many attorneys believe that electronic service of process will eventually become commonplace.\textsuperscript{172} Finally, attorneys are blogging about legal issues and generating clients through blogs.\textsuperscript{173}

Despite this vast increase in the use of technology in the practice of law, law schools have generally failed to recognize the impact of the Information Age and do not teach students about the technological tools that can be used to effectively deliver legal services today. Legal educators need to integrate technology into the curriculum to better prepare law students to efficiently and effectively use technology in practice.\textsuperscript{174} Employing technology to assess student learning is but one means to answer this call to prepare law students for practice.\textsuperscript{175}

C. Allows Professors to Incorporate Assessment Opportunities in a Less Onerous Manner

Many legal educators are hesitant to stray away from the “one exam works are going to become a permanent fixture of our media landscape.” Beth Simone Noveck, Wikipedia and the Future of Legal Education, 57 J. LEGAL EDUC. 3, 7 (2007).

\textsuperscript{169} See Michael P. Kenny & William H. Jordan, Trial Presentation Technology: A Practical Perspective, 67 TENN. L. REV. 587, 596-97 (2000) (noting that in light of the ease of use, document cameras are one of the technologies that lawyers use most often at trial).


\textsuperscript{171} See Galves, supra note 161, at 301. The expression “Computer-Generated Exhibits” (“CGEs”) encompasses various kinds of exhibits. See William F. Lee, Using Computer-Generated Evidence at Trial, in HOW TO TRY A COMMERCIAL CASE IN THE 1990S, at 159 (PLI Litig. & Admin. Practice Course Handbook Series No. H4-5214, 1995) available at WL 523 PLI/Lit 159 (explaining types of computer-generated exhibits). For example, the term includes computer projected word-processed documents or illustrations. \textit{Id.} It also includes animated video clips depicting an accident or the 3D re-creation of a crime scene that the lawyer can rotate on the computer to allow the jury to experience the scene from different perspectives. \textit{Id.}


\textsuperscript{174} See Sonsteng et al., supra note 1, at 356.

\textsuperscript{175} See Matasar & Shiels, supra note 147, at 933.
at the end of the course” model and to incorporate multiple assessment opportunities into their course because of concerns about the time and effort that assessment entails. Creating multiple assessments can be time-consuming, particularly when one recognizes that legal educators generally do not receive any formal training in creating assessment measures. Even if the law professor has expertise in constructing assessment measures, providing feedback can be incredibly time consuming because core classes tend to be large. While legal educators may understand the benefits of committing their time to conducting more than one exam at the end of the semester, they may feel constrained to spend the time on writing, as most law schools focus on scholarly output when making tenure decisions.

Recognizing the proposed revisions to the ABA’s Accreditation Standards, legal educators need to consider ways to integrate multiple assessment measures into the curriculum despite these time constraints. Technology provides one solution. Technology allows law professors to conduct meaningful assessments of large numbers of students more efficiently. As fleshed out in more detail below in Part V, using technology to assess digital natives allows for collaborative work resulting in fewer assignments to review, facilitates instantaneous feedback, and lends itself to self-assessment opportunities.

176 See Linda R. Crane, Grading Law School Examinations: Making a Case for Objective Exams to Cure What Ails “Objectified” Exams, 34 NEW ENG. L. REV. 785, 801 (2000) (“Law professors receive little, if any, training or guidance for teaching, drafting, and grading exams in other than the ‘traditional’ ways.”); Friedland, supra note 107, at 178-79 (“The lack of training in the creation of valid and reliable examinations contributes to the overvaluation of examinations as a measuring device.”).

177 See Bethany Rubin Henderson, Asking the Lost Question: What Is the Purpose of Law School?, 53 J. LEGAL EDUC. 48, 64 (2003) (“First-year classes almost uniformly are taught in large sections.”); Patricia Mell, Taking Socrates’ Pulse: Does the Socratic Method Have Continuing Vitality in 2002?, MICH. B.J., May 2002, at 46, 46 (“First-year class sizes rang[e] from sixty students to more than 100 students.”). Some first-year courses are smaller; in particular, legal writing classes likely have fewer than forty-four students. Aizen, supra note 18, at 794.


179 See supra notes 63-71 and accompanying text (discussing proposed revisions).
IV. TECHNOLOGY: TOOLS TO ASSESS STUDENT LEARNING AND PROVIDE FEEDBACK

Legal educators have an array of technological tools that they can use to effectively and efficiently assess students and provide them with timely feedback. The suggestions in this article are not exhaustive; rather, this article discusses several examples of how to use a number of today’s technologies—both inside the classroom and outside the classroom—in the hopes of initiating further exploration into effective means to use technology to assess student learning.

A. Technology to Assess Student Learning in the Classroom

Law professors can effectively use technology to assess student learning in the classroom. While some may be concerned about taking the time during class, incorporating multiple assessment opportunities that are self, peer, or instructor-based is consistent with learning theory. Law professors can easily use technology—audience response systems, document cameras, commercial presentation programs, and interactive whiteboards—in the classroom.

1. Audience Response Systems

Audience response systems provide a means to assess student learning electronically in the classroom. These systems allow audience members to submit answers to interactive questions during a presentation using a hand-held computer device commonly referred to as a “clicker.” Providing for real-time audience response, audience response systems engage the audience, assess student learning, and assemble data. Specifically, prior to class, the professor prepares multiple-choice

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180 These systems are also referred to as student response systems or classroom response systems.
182 See Deal, supra note 181, at 2.
183 See id. at 2, 4.
184 Some audience response software also permits the professor to create questions
questions that are displayed on presentation slides built with the audience response system software. During class, the professor projects each question on a screen at the front of the room. Each student then responds to the question by pressing the button on the clicker corresponding to what he or she believes is the correct answer. A receiver that is attached to the presenter’s computer records each student’s response and the aggregate data is displayed on the screen for the students to review. The responses are anonymous and are displayed as a chart, graph, or score. The professor can also save the responses of each class session for future review and track each student’s performance throughout the course.

Audience response systems allow for assessment at the professor and student level. At the professor level, the professor receives immediate feedback from the students in the class. During class, the professor can see how the entire class has answered the question to ascertain whether the students understand the key points. Accordingly, the professor can immediately clear up any student misperceptions rather than waiting until after the final exam. In addition, if the professor tracks each student, the professor can see how each student has answered a question and whether the student comprehends the material being covered. The prompt feedback that students receive also allows the students to self-assess whether they understand the legal concepts being covered.

Legal educators can use audience response systems in various ways to assess student learning at the course level. First, professors can compose various sorts of questions for their students. For example, after covering a particular case, statute, rule, or regulation, professors can pose a question to illustrate the particular rule. Similarly, the audience response systems can

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185 Deal, supra note 181, at 2.
186 See id.
187 See id.
188 See id.
189 See id.
190 See id.
191 STUCKEY ET AL., supra note 11, at 259; Deal, supra note 181, at 4; Lasso, Students Learning, supra note 23, at 105.
192 See Paul L. Caron & Rafael Gely, Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning, 54 J. LEGAL EDUC. 551, 564-65 (2004) (recognizing that these types of assessments allow professors to ascertain “where there are knowledge gaps and misperceptions”).
193 See Caron & Gely, supra note 192, at 564; Deal, supra note 181, at 4.
194 See STUCKEY ET AL., supra note 11, at 259; Caron & Gely, supra note 192, at 563; Lasso, Students Learning, supra note 23, at 105.
195 For example, in a tax class, the professor can end a discussion of a particular tax code provision with a question about the application of the code provision to a
be used to ask questions about a hypothetical that is being discussed in class. Alternatively, at the end of the discussion of a topic the professor can project some review questions that are exemplary of the types of multiple-choice questions that will be on the end-of-the-year exam. Professors can also place the burden on the students to compose the questions, breaking students into groups and asking the students to compile questions for their peers.

If the professor has assigned a writing exercise, the professor can also compose questions to highlight and address the common issues on the assignment. Finally, professors can provide students with a sample answer to an essay question and, with a rubric, ask students to respond to questions about the sample answer.

2. Document Cameras

Replacing overhead projectors, document cameras—frequently referred to as ELMO projectors—are high-resolution webcams that are placed on arms that hold the webcam over the page and magnify and display whatever is placed on it. The live picture taken by the camera is projected onto a screen. In addition to allowing professors to project any document during class, document cameras also allow the professor to write directly on the document being displayed.

Legal educators can use document cameras in class to provide peer and instructor-based assessment of student work. For example, a professor can assign a midterm or sample essay question. Rather than providing individual feedback on all of the papers, the professor can project a student sample or a sample the professor created to provide feedback on what a good answer would entail. Alternatively, the professor can have the students critique an answer using a rubric in class and then project the sample of

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hypothenical. Alternatively, in a legal methods class, the professor can pose questions about court systems, hierarchy of authority, or citation rules.

196 See supra note 108 (discussing rubrics).


200 See Kenny & Jordan, supra note 169, at 587.

201 See Document Camera, supra note 197.

202 See supra note 108 (discussing rubrics).
the suggested edits for class discussion.

Similarly, professors can use the document camera to assess a writing exercise that is either completed in class or outside of class. For example, the professor can require the students to draft a contract, interrogatory, document request, complaint, answer, statute, demand letter, or will. Then, in class, the professor can project the document, and the professor and students can live-edit the document and provide feedback to the author or authors. While this takes class time, providing feedback to the class as a whole saves time on providing individual feedback on all of the papers.

3. Commercial Presentation Programs

Computer presentation programs are computer software packages that generally display information in slideshow form. Each page or “slide” contains graphics, text, movies, or other objects. The most common computer presentation programs are Microsoft PowerPoint and Corel Presentations.

Computer presentation programs can be used to provide an opportunity for self-assessment and assessment by the professor. First, professors can use these programs to create games that can be used to review or reinforce material that the professor has covered or on which the professor has assigned reading. These games can mimic popular game shows like “So You Want to be a Millionaire,” “Family Feud,” and

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203 Professors can assign a group of students to work collaboratively to complete a writing exercise outside of class via a wiki or email. See infra Parts V(B)(1)-(2).

204 See Reis, supra note 170, at 58.

205 See id.


208 Professors can also use audience response system software, such as TurningPoint that integrates with Microsoft PowerPoint, to create games. See supra note 181 (introducing TurningPoint).
“Jeopardy,” or popular board games like “Bingo.” Once created, these games can be used year after year with minimal updating.

Similar to audience response systems, these games allow the professor to discover what each student has learned by listening to the responses during the game. The professor is also able to ascertain the knowledge of the class as a whole. In their attempt to answer the questions posed in the game, students can also assess their level of understanding of the subject matter. Moreover, even those students that seem to not be taking part in the game can assess their own performance by comparing what their answer would have been to the correct answer.

On a more basic level, professors can assign students, either individually or as groups, to teach a particular topic in class using one of the computer presentation programs. The teacher can then assess the students and provide them with feedback on their presentation. These types of presentations are not only beneficial as an assessment measure; the students giving the presentation gain a deeper understanding of the material from teaching it. They also obtain experience using computer presentation programs that they are likely to use in practice and develop their oral presentation skills.

4. Interactive Whiteboards

Finally, interactive whiteboards—frequently referred to as SMART

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209 Examples of games created using commercial presentation programs include “Research Jeopardy” to review research skills, “Firm Feud” to review client interviewing basics, and “So You Want to be a Citationaire” and “Bluebook Bingo” to assess citation skills. (games on file with author). An array of audio and visuals for these popular game shows are available online. See, e.g., TELEVISIONTUNES.COM, http://www.televisiontunes.com (last visited June 27, 2012); Jeopardy Songs and Sound Effects Free, AUDIOMICRO, http://www.audiomicro.com/jeopardy-songs-and-sound-effects-free (last visited June 27, 2012).

210 There are similar types of games available online for a fee. For example, Karin Mika developed a Game Show Presenter quiz on research sources and case law. Law Game Show, ALMORALE.COM, http://www.almorale.com/law/lawgameshow.html. Game Show Presenter is a quiz making package that allows users to create their own games. Game Show Presenter, ALMORALE.COM, http://www.almorale.com (last visited June 27, 2012); see Karin Mika, Games in the Law School Classroom: Enhancing the Learning Experience, 18 PERSP. 1, 5-6 (2009) (discussing use of Game Show Presenter to create games to use in the law school classroom).

211 See discussion supra Part V(A)(1).


213 See supra note 170 and accompanying text (discussing use of computer presentation programs in legal practice).
Boards—can be used in the classroom to assess student learning at the course level. An interactive whiteboard is a piece of equipment that looks like a standard whiteboard but is linked to a computer and a projector. When coupled with the computer and projector, the interactive whiteboard turns into a touch-sensitive version of the computer screen. Accordingly, the presenter does not need to use a mouse to control the computer. Rather, the presenter can manipulate the computer through the interactive whiteboard screen with a stylus or a finger.

With the stylus or a finger, the presenter can retrieve and display any document that can be accessed from the computer. For example, the presenter can access word processing documents, computer presentation programs, photographs, websites, or any other material online. In addition, the presenter can write on the computer applications and save, in digital format, what is written on the interactive whiteboard during class. In turn, the professor can post the saved file to a webpage or distribute the file to students in digital or print format. Therefore, interactive whiteboards can provide an interactive classroom experience.

Legal educators can use interactive whiteboards to assess student learning in the classroom in the same way that they can use document cameras and commercial presentation programs. An added benefit is

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217 Id.

218 Id.

219 Id.

220 Id.

221 Id.

222 Id. Special software also allows users to manipulate the text and images on the interactive white board. Id. For example, the user can rearrange the text and images or alter their size and color. Id.

223 See infra notes 235-239 (discussing course management systems).

224 See discussion supra Part V(A)(2).

225 See discussion supra Part V(A)(3).
that changes can be made to the document in class and the changes can be saved and shared with the students digitally. For example, students can be asked to take a form contract and create a contract based on a hypothetical fact pattern. Then, the professor can project these documents for the class to view. As a class, students or the professor can provide feedback and suggest edits to the document from an organizational, macro standpoint and on a more micro level. After class, the professor can provide the students with a digital or print copy of the edited document.

B. Technology to Assess Student Learning Outside the Classroom

Law professors can also effectively use technology to incorporate assessment opportunities that take place outside the classroom into their curriculum. Unlike assessments that take place in the classroom, assessment measures conducted outside the classroom do not consume valuable class time. Some examples of technologies that law professors can use outside the classroom include wikis, email, podcasts, screencasts, text annotation systems, digital video annotation software, online bulletin boards, blogs, and computer assisted instruction.

Many of these tools are available in a course management system (“CMS”) or can be incorporated into one. Similar to law practice management software, CMSs are packages of software that provide educators with a website and associated tools that they can employ to administer and teach the course. These software packages generally include, among other things: internal webpages where professors can post

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226 See discussion infra Part V(B)(1).
227 See discussion infra Part V(B)(2).
228 See discussion infra Part V(B)(3).
229 See discussion infra Part V(B)(4).
230 See discussion infra Part V(B)(5).
231 See discussion infra Part V(B)(6).
232 See discussion infra Part V(B)(7).
233 See discussion infra Part V(B)(8).
234 See discussion infra Part V(B)(9).
235 Course management systems are also referred to as virtual learning environments, learning management systems, content management systems, or learning content management systems.
237 See supra notes 164-167 and accompanying text (discussing role of law practice management software in law practice today).
238 See Heminway, supra note 144, at 267-68.
announcements, syllabi, assignments, and course-related documents and links; online bulletin boards; email capabilities; assessment mechanisms; places for students to upload their assignments; and wikis. Accordingly, a CMS serves as an easy means to incorporate many of the following technologies to assess student learning.

1. Wikis

A wiki is a type of collaborative software that legal educators can easily use to their advantage to incorporate more assessment opportunities into their curriculum. Specifically, a wiki is a website that allows multiple users to edit, add, or delete the webpage content from their own computer using any web browser. Wikis can be private or public, and the users collaborate in forming the content of the website using an online editor, commonly described as a WYSIWYG (“What You See Is What You Get”) editor. The most well-known wiki is Wikipedia, a collaborative online encyclopedia that is the largest wiki site in the world. Numerous hosted wiki services exist. In addition, most CMSs have built-in wiki capabilities.

There are many benefits—beyond learning the substantive information—to incorporating wikis into the curriculum. First, digital natives like to work collaboratively with their peers, and “[w]ikis are ideally suited to the deliberative and collaborative development of

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239 See id. Some CMSs now also have blog capabilities.
240 The term “wiki” is a Hawaiian word that means quickly. See Noveck, supra note 168, at 4.
242 Noveck, supra note 168, at 4. While some wikis are open and anyone can add content, others are private and only those with permission and a password can contribute. Id. Alternatively, a wiki can be set up to allow some participants to post and limit others to editing the wiki. Id.
243 See Moppett, supra note 241, at 12.
244 Wiki, supra note 241; see Moppett, supra note 241, at 12; John Sirman, The Year of the Wiki, 68 TEX. B.J. 114, 114 (2005).
245 While some of the wiki services are free, other charge a fee. For a comparison of wiki tools, see WIKIMATRIX, http://www.wikimatrix.org/ (last visited June 27, 2012).
246 See supra notes 235-239 and accompanying text (discussing CMSs).
247 See supra note 151 and accompanying text.
knowledge.”²⁴⁸ Second, creating a wiki in law school will help to prepare the students for the use of wikis in law practice today.²⁴⁹

Finally, assigning students to write a wiki with some of their peers affords an efficient means to offer assessment opportunities. Working together on a wiki provides an opportunity for students to get feedback from their peers and to assess how they themselves are performing.²⁵⁰ Professors can also provide students with feedback on the wiki. An added benefit is that projects created by a group of students via a wiki decrease the professor’s workload, as there are fewer assignments that require feedback.²⁵¹

Wikis can be incorporated into the legal curriculum in various ways. For example, law professors can require students to take turns posting the notes for each class on a wiki.²⁵² Through this wiki the students can work with their peers to construct a common understanding of the substantive material in the course.²⁵³ In effect, the students can teach themselves through the collaborative writing and editing of the wiki to explain the material covered in class.²⁵⁴ Moreover, the professor can ascertain whether the students grasp the legal concepts covered in class.

Law professors can also have students draft legal documents, write sample exam answers, or analyze hypotheticals via a wiki. For instance, students can be asked to draft or edit a complaint, answer, will, or contract clause. In addition to the self-assessment and feedback received from peers while creating the wiki, the students can receive additional feedback on the document from their professor²⁵⁵ or from their professor and peers during class through the use of a document camera or interactive whiteboard.²⁵⁶

2. Email

²⁴⁹ See supra note 168 and accompanying text (addressing use of wikis in legal practice).
²⁵⁰ See Noveck, supra note 168, at 8 ("By creating an internal, class-based wiki, students can teach and learn from each other.").
²⁵¹ Id.
²⁵² Id.
²⁵³ Id.
²⁵⁴ Id.
²⁵⁵ For example, the professor could provide the feedback via a podcast, see discussion infra Part V(B)(3), screencast, see discussion infra Part V(B)(4), or annotated PDF, see discussion infra Part V(B)(5).
Electronic mail, commonly called email, is one technological tool that even technophobes can feel comfortable using to assess student learning outside the classroom. In essence, email is a system by which individuals can send and receive electronic messages between personal computers via a computer network. Email is a standard feature of a CMS.

Over the last forty years, email has developed into one of the prevailing methods of written communication with its own conventions and rules. Every week, people send trillions of emails. As such, email is an essential tool in the practice of law as its use has surpassed the use of memos and letters as the predominant means by which lawyers communicate with each other and their clients. Accordingly, law students must be proficient in communicating via email. Therefore, using email as a tool to assess student learning not only provides a means to give students feedback; it also trains students to send professional emails.

In addition to facilitating questions from students too shy to ask questions in class, continuing discussions begun in class, and making it possible to email announcements regarding administrative matters, legal educators can use email to incorporate assessment measures. For example, professors can email students a short-answer question, hypothetical, or sample essay question and require students to submit an answer to the professor—via email—by a particular deadline. Similar to wikis, professors can also employ email to conduct collaborative writing projects. Collaborative writing of these types of assignments via email


258 See supra notes 235-239 and accompanying text (discussing course management systems).

259 Email is the top online pursuit in the United States, with more than 147 million people using email on nearly a daily basis. Email Statistics, POWERPRO DIRECT, http://powerprodirect.com/index.php?option=com_content&view=article&id=132:email-statistics&catid=63:blog&Itemid=50 (last visited June 27, 2012). In 2007, individuals were sending an average of 274 personal emails a week. Id. The number of business emails sent a week was even greater, averaging 304. Id.


262 See Lasso, Students Learning, supra note 23, at 105. Legal educators can either create the questions themselves or simply take the questions from the “Questions” sections in case books.

263 See discussion supra Part V(B)(1) (discussing wikis). Professor I. Trotter Hardy of the College of William and Mary School of Law reported an innovative example of this.
has similar benefits to using wikis, including a decreased workload on the professor, particularly in large classes.\textsuperscript{264}

Email not only provides a vehicle for incorporating assessment measures but also provides a means for providing students with feedback without sacrificing class time. For example, professors can email specific feedback to each student or student group in response to their particular email submission. Alternatively, the professor can email a sample answer to the students in the text of the email or via an attachment of an annotated file,\textsuperscript{265} a screencast,\textsuperscript{266} or a podcast.\textsuperscript{267} The students can compare their answer to the sample answer to assess their own performance.

Finally, student answers can be emailed to other students and the professor can ask students to assess their peers based on a rubric that the professor provides.\textsuperscript{268} Once the student or students have assessed their peer’s work, the professor can post a sample answer as additional feedback for the students. In addition, the professor can assess the knowledge level of both the students who originally created the document and the students who commented on it.

3. \textit{Podcasts}

Put simply, the term “podcast” refers to digital media files that can be listened to on portable media players or a personal computer.\textsuperscript{269} Podcasts are easy to create and make available to students. Anyone can create a podcast by recording an audio file through the use of a digital voice recorder or free digital audio editor and recording programs.\textsuperscript{270} Once the

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Warner, \textit{supra} note 261, at 144-47. He assigned a class of fourteen seminar students to draft a constitution for a hypothetical country, using only email communication. \textit{Id}. \\
\textsuperscript{264} \textit{See supra} notes 248-254 and accompanying text (cataloguing benefits of wikis). \\
\textsuperscript{265} \textit{See discussion infra} Part V(B)(5) (discussing text annotation systems). \\
\textsuperscript{266} \textit{See discussion infra} Part V(B)(4) (discussing screencasts). \\
\textsuperscript{267} \textit{See discussion infra} Part V(B)(3) (discussing podcasts). \\
\textsuperscript{268} Alternatively, the professor can display the document on a document camera or interactive whiteboard and have the students and professor provide feedback in class. \textit{See discussion supra} Parts V(A)(2), V(A)(4); \textit{supra} note 108 (discussing rubrics). \\
\textsuperscript{269} \textit{See Diane Murley, Regular Features: Technology for Everyone . . . : Podcasts and Podcasting for Law Librarians, 99 LAW LIBR. J. 675, 675 (2007); Roy Balleste et al., Podcasting, Vodcasting, and Law Libraries: How to Understand the Newest "It" Technology and Use It in Your Library, AALL SPECTRUM, June 2006, at 8. The term “podcast” originates from a combination of the words “iPod” and “broadcast.” Definition of: Podcast, } \textsuperscript{PCMAG.COM, http://www.pcmag.com/encyclopedia_term/0,1237,t=podcast&i=49433,00.asp (last visited June 27, 2012).} \\
podcast is recorded, the professor can upload it to a thumb drive, media server, CMS, or podcast hosting service. Then, students can easily access the podcast from within a web browser.

Podcasts present yet another technological tool that professors can use to incorporate assessment measures outside the classroom. For example, law professors can require individual students or groups of students to create a podcast that reviews the material covered in class or that introduces a new topic tangentially related to what is covered in class. Subsequently, the professor can listen to the podcast to assess the student’s or students’ knowledge and then post it on the CMS for other students to listen to.

Podcasts are also particularly well-suited to bestowing feedback outside the classroom. For example, professors can assign students—either individually or as a group—to answer a hypothetical or sample exam question, complete a short-answer question, or draft a legal document. The student or students can submit the assignment as a word-processing document on paper or upload it online, via a wiki or via email. Once submitted, the professor can provide individual critique on each of the assignments, placing numbers in the margins that correspond to comments related to the material in that part of the text, with each number corresponding to a numbered audio file. Alternatively, the professor can provide one global comment podcast for each submission addressing what the student or students did well and what needs work.

Podcasts also afford an opportunity for self-assessment on the part of the student or students. Rather than individually commenting on all of the assignments submitted, the professor can create a sample answer. On the sample answer, the professor can place numbered comments that correspond to audio files that discuss why the sample is correct or provide one global comment.

There are additional benefits to using this medium to provide feedback. First, the information is delivered in a manner which appeals to different learning styles. Moreover, podcasts as a teaching tool enhance the law school experience because of their convenience, transportability,

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272 See Vinson, supra note 131, at 410.

273 See id.

274 See discussion supra Part V(B)(1) (discussing wikis).

275 See discussion supra Part V(B)(2) (discussing email).

276 See DeFabritiis, supra note 270, at 7.

277 These numbered comments can also correspond to a rubric that the professor uses to assess the assignment. See supra note 108 (discussing rubrics).

278 See Vinson, supra note 131, at 408.
and simplicity. 278

4. Screencasts

A screencast, 279 also referred to as a video screen capture, is similar to a podcast but with visual aids. 280 In essence, a screencast is a screen capture and screen recording tool that allows a person to create a video of the changes that a user sees on the computer screen, along with an audio narration. 281 The video can contain images of websites, PowerPoint presentations, imported media files, and anything else that can be placed on the computer screen.

During the screencast, the presenter can draw the audiences’ attention to material on the screen by moving the cursor or highlighting material. In addition, the presenter can edit material on the screen during the screencast. To view the screencast the student simply opens the file and clicks play. 282

Pedagogically, there are many benefits to incorporating screencasts into the curriculum. For example, students can view the screencasts at their own pace. 283 Second, conveying information in a screencast allows educators to cover subjects for which there is not enough time to cover in class. Finally, professors can use screencasts as an assessment measure as

278 Id.
280 Screencasts are frequently used for step-by-step software tutorials and product presentations.
281 See Murley, supra note 279, at 858. Users can record the audio narration and video separately. Id.
283 Id.
well as to provide assessment opportunities outside of class.

As an assessment measure, professors can assign a student or group of students to create a screencast on a topic using a commercial presentation program, rather than taking time during class. For example, in a legal research and writing class, professors can assign a student or group of students to create a screencast addressing a citation rule or demonstrating the answer to a difficult citation question—using commercial presentation programs and the online *Bluebook*. Subsequently, the professor can assess the screencast outside of class, and depending on how good the screencast is, the professor can post it on the CMS for students to view.

As a means of providing feedback, screencasts facilitate both self and instructor-based assessments. For instance, professors can assign students to answer a hypothetical or exam question, draft a legal document, or complete a series of multiple-choice questions. If the professor collects the assignments electronically, the professor can create a screencast for each assignment that provides feedback on how each student performed, identifying problems or omissions and making suggested edits. If the professor uses a rubric to assess assignments, the professor can create a dual-screen screencast where the professor provides feedback while referencing the rubric. Alternatively, rather than providing individual feedback, professors can create a screencast that reviews a sample answer or corrects a sample assignment so that students can assess their own performance.

5. **Text Annotation Systems**

Text annotation systems allow the user to easily edit, highlight, and add notes to existing files. If students submit their assignments electronically, users can insert comments and edit the text of both word processing and Portable Document Format (“PDF”) files.

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284 See discussion *supra* Part V(A)(3) (discussing computer presentation programs).
286 An annotation is an explanatory note or comment.
289 A PDF preserves the visual appearance of a document including the layout, fonts,
Similar to typical written margin comments, annotations allow the reviewer to identify and explain—in the margins—why aspects of an assignment are good and to suggest how the student can improve the assignment. The user can also provide a global comment at the end of the assignment. In addition, there is software available that includes comments that are already drafted and that can be inserted into a Microsoft Word document via the click of the mouse.

Annotated PDFs have additional benefits. For example, the student controls how he or she reviews the comments when he or she receives the annotated PDF because the student cannot immediately see the comments. Rather, in Adobe Acrobat Professional, the student has to put the cursor over the sticky note image that identifies the comment in order to read and graphics. Portable Document Format (PDF), TECHTARGET.COM, http://whatis.techtarget.com/definition/0,,sid9_gci214288,00.html (last visited May 17, 2012). Examples of PDF software that allows the user to incorporate annotations include Adobe Acrobat, ADOBE.COM, http://success.adobe.com/en/na/sem/products/acrobatx/1108_8209_acrobatxpro.html?kw=try&ssid=IAZXY&skwcid=TC[22188]adobe%20acrobat][S[e]765629906 (last visited June 27, 2012); Foxit Reader, FOXTARGET.COM, http://www.foxitsoftware.com/Secure_PDF_Reader/ (last visited June 27, 2012); Nitro PDF Reader, NITROREADER.COM, http://www.nitroreader.com/ (last visited June 27, 2012); and PDF-XChange Viewer, TRACKER-SOFTWARE.COM, http://www.tracker-software.com/product/pdf-xchange-viewer (last visited June 27, 2012); and Xournal, XOURNAL.COM, http://xournal.sourceforge.net/ (last visited June 27, 2012). With Adobe Professional, a user can add annotations to a PDF by pointing, clicking, and typing. To add a comment, simply click on the “Review and Comment” button and choose to “Show Commenting Toolbar.” Then, click on the “Sticky Note” option and place your cursor wherever you want the comment to appear. The sticky note format allows comments of any length, but only the first twenty lines will be visible to the reader upon clicking on the sticky note. In addition, there are tools that allow the user to replace selected text, insert and delete text, and highlight selected text.

See Barnett, supra note 144, at 770 (discussing electronic typed comments and editing changes). Users can also create macros to use as their annotations. See Joseph Kornowski, Computer Counselor, Optimizing WordPerfect and Word: Getting What You Need to Ensure Peak Performance L.A. LAW., Dec. 1996, available at http://www.lacba.org/showpage.cfm?pageid=394 (“A macro is a series of word-processing commands that you can combine as a single command to facilitate frequent tasks. Typically, once you have created a macro, you can assign it to a menu item, toolbar button, or shortcut key to use as a built-in word-processing command.”).


see the comment. The student can choose when to read the comments and can focus his or her attention on one comment at a time, combating the overwhelming nature of receiving extensive margin comments on an assignment. In addition, the students are more engaged with the comments because they are compelled to place the cursor over the sticky note image to view a comment.

Legal educators can use annotations to provide instructor-based assessment of assignments that students submit electronically or in print. For example, these assignments can include answering essay exam questions, drafting legal documents such as complaints and answers, or responding to short hypotheticals. The students can submit these assignments individually or collaboratively via a wiki or email and the professor can add comments and suggested edits.

In similar fashion, legal educators can use text annotations to provide self-based assessment opportunities. Rather than individually annotating all of the assignments, the professor can comment on a few papers that exemplify the common problems. Alternatively, the professor can post an annotated sample answer with a detailed explanation so students can assess their own progress.

Finally, annotations also afford a means of providing peer-based assessment. Specifically, rather than annotating the document themselves, professors can require students to provide their peers with detailed feedback on the assignment. To assist in this process, professors should provide a detailed rubric for students to follow.

6. Digital Video Annotation Software

Annotation as a method of providing feedback is not limited to written assignments. Similar to text annotation systems, which provide a means to assess written work, professors can use video annotation tools to

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293 Id. The student can also look at all of the comments at the same time or generate a list of changes. Id.
295 See Romig, supra note 292, at 29 (“kinesthetic act of moving the cursor represents a small but real form of engagement with annotations.”).
296 If students submit their assignments as a Microsoft Word or WordPerfect document, they can be saved as a PDF file. Similarly, if students hand in a paper copy, the assignment can be scanned into a PDF file.
297 See discussion infra Part V(B)(1) (introducing wikis).
298 See discussion infra Part V(B)(2) (discussing email).
299 See supra note 108 (discussing rubrics).
view and assess video and provide students with feedback outside the classroom. Video annotation tools let users “do for video what the red pen does for papers.”

Video annotation software allows users to upload and view a video. These videos can be a student simulation, a clinical rehearsal, or a pre-recorded sample. While viewing the video, the user can stop the video and identify and tag specific segments in the video. In addition, the video annotation software allows multiple people to write comments or annotations that correspond to segments within the digital video recording. Accordingly, there is a direct connection between the feedback and the segments of the video.

The video annotations are then saved in a separate file and can be viewed, along with the video, by other users such as the professor or the student. Once received, the student can effectively and efficiently review the feedback provided because the software allows them to navigate through the various segments to feedback regarding a specific portion of the video with a simple click of the mouse.

Facilitating analysis of video, digital video annotation software is a relatively novel and helpful instrument for assessing students. Video

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301 Video can come from a camera hooked up to the computer or the user can input previously recorded video from a digital video tape.

302 MediaNotes, supra note 300.

303 Id.; see Gerald R. Williams, Larry C. Farmer & Melissa Manwaring, New Technology Meets an Old Teaching Challenge: Using Digital Video Recordings, Annotation Software, and Deliberate Practice Techniques to Improve Student Negotiation Skills, 24 NEGOTIATION J. 71, 80 (2008) (explaining how to use MediaNotes to “facilitate[] written, customizable annotation of events within a digital video recording”). MediaNotes also allows the user to tag events and identify specific skills using a common vocabulary developed in class. See MediaNotes, supra note 300. For example, in an appellate argument the user can tag the parts of the argument, such as the introduction, roadmap, and conclusion.

304 MediaNotes, supra note 300; see also Williams et al., supra note 303, at 80. As with written comments on papers, the commentary can be a standardized feedback point or commentary unique to the specific video. See id. MediaNotes also allows the professor to attach examples of the preferred actions in video format. See id. at 81.

305 See Williams et al., supra note 303, at 80.

306 Moreover, the user can limit the comments that he or she sees to a particular reviewer.
annotation software allows professors to evaluate student performance on a particular lawyering task. For example, video annotation software is well-suited for recording student practice of negotiation, counseling, interviewing, appellate advocacy, and trial advocacy skills and providing students with feedback.

This assessment can occur on many levels. First, professors can assess the students’ performance of the skills being taught using a rubric.\textsuperscript{307} Second, students can annotate their peers’ videos and assess their performance. Finally, video annotation software permits self-assessment. Specifically, students can annotate their own video or professors can annotate a sample of a good student simulation or pre-recorded sample that students can review.

Legal educators can also use video annotation software to incorporate assessment measures. For example, as an assessment measure, professors can ask students to comment on a clinical practice, a pre-recorded video example, or a peer’s recorded simulation. By viewing the student feedback on the annotated video, the professor can gauge the student’s understanding of the material.

7. \textit{Online Bulletin Boards}

Online bulletin boards, often referred to as discussion boards, discussion forums, message boards, or online forums, are another tool that professors can use to enhance assessment opportunities beyond traditional in-class limits. Online bulletin boards are web applications that manage user-generated content.\textsuperscript{308} Specifically, they provide online forums for users to engage in conversations in the form of posted messages.\textsuperscript{309} Most CMSs contain an online bulletin board function.\textsuperscript{310}

Discussion forums on online bulletin boards are hierarchical and can consist of multiple subforums, which in turn may have several topics.\textsuperscript{311} Each new discussion under a topic is referred to as a “thread” and is comprised of a series of messages—or “posts”—about the topic.\textsuperscript{312} Each post by a user—or member—comprises an individual contribution to the

\textsuperscript{307} See supra note 108 (introducing rubrics).


\textsuperscript{310} See supra notes 235-239 and accompanying text.

\textsuperscript{311} See Internet Forum, supra note 308.

\textsuperscript{312} See id. There are three basic display formats: non-threaded, semi-threaded, and fully-threaded. \textit{Id.}
conversation, similar to a single email. The posts can be anonymous or attributed to a member, and the moderator—the professor—can set it up so that messages must be approved before being posted to the thread. To read a message in a thread, the user need only click on it. To add a message to the thread, the user can reply to an existing message or create a new topic and post a message there.

There are numerous benefits to using online bulletin boards. For example, unlike chat rooms, which allow for synchronous communication, online bulletin boards allow for asynchronous communication, allowing the members to read all the posts at a convenient time. In addition, the threads are retained indefinitely and can be printed out. Moreover, shy or withdrawn students may be more likely to participate in a discussion on an online bulletin board. Finally, online bulletin boards provide an environment for instructor, peer, and self-assessment. Professors can post short answer questions, hypotheticals, or multiple-choice questions on the online bulletin board. Students can then post answers and receive feedback from their professor and peers. The discussion can also provide an opportunity for students to assess their own understanding of the material. In addition, professors can gauge whether students comprehend course material by following the discussion on the online bulletin board.

8. Blogs

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313 Id.; see discussion supra Part V(B)(2) (discussing email).
314 See Internet Forum, supra note 308.
315 See id.
316 See id.
318 Synchronous communication is communication all at the same time. Frank G. Evans et al., Enhancing Worldwide Understanding Through ODR: Designing Effective Protocols for Online Communications, 38 U. TOL. L. REV. 423, 432 (2006)
319 Asynchronous communication refers to discussion over time. Id. at 433.
320 See Warner et al., supra note 261, at 148.
321 See Geist, supra note 317, at 169-71.
322 Id.
323 The professor can either draft the questions or use the questions in the casebook. See Geist, supra note 317, at 169-71. Professors can also use online bulletin boards to conduct online lessons. See id. (discussing a Contracts class that covered Statute of Frauds online via “a moderated discussion that included questions posed to the entire class and commentary on the responses received from students”).
325 See id.
In general, a blog, or web log, is a website that contains a writer’s or group of writers’ experiences, observations, insights, and opinions, frequently combined with images and links to other websites. This collection of writings appears in reverse chronological order.

In addition to these blog entries, blogs also have a comment feature where people can make remarks or respond to the blog entries. This interactivity, the ability to comment on blog entries, distinguishes blogs from other static websites. By the end of 2011, there were over 188 million public blogs in the blogosphere.

The blogosphere is comprised of various types of blogs, differing in terms of who can post, the type of content, and the manner in which the content is delivered. For example, in terms of who can post, a personal blog, an ongoing diary or commentary by an individual, is the traditional, most common type of blog. There are also blogs that are authored by multiple authors. In the academic arena, these blogs can be course blogs where all students enrolled in the course can contribute to the blog by posting entries and comments. They can also be group blogs, wherein subsets of students in the course can post blog entries and comments while the remaining students in the course can only post comments. Generally, professors can edit and delete entries and comments.

See Frances Jacobsen Harris, I Found It on the Internet: Coming of Age Online 61 (2d ed. 2010) (defining a blog as a “personal website that consists of brief entries generally written by one person”).


See Windy Schweder & Cheryl A. Wissick, Blogging In and Out of the Classroom, 22 J. SPECIAL EDUC. TECH. 63, 63 (2007).


See infra notes 332-334 and accompanying text. Twitter is a microblogging service that allows the user to post short entries of up to 140 characters in length “via the web, text messaging, and a variety of third-party applications.” Harris, supra note 326, at 62.

Harris, supra note 326, at 61 (“Blogs are ‘personal’ only insofar as they reflect an identifiable voice or tone.”).

Id. at 61-62.


Professors can use blogs to implement out-of-class assessment measures into the curriculum. For example, professors can instruct students to keep a personal blog throughout the semester that documents their progress and reflects on the learning process or contains opinion pieces on material covered in class. Alternatively, professors can create a group or course blog and require students to post periodically on various topics such as newly decided cases, news, or ongoing litigation that is relevant to the class.

During the semester, students can receive feedback from their peers and professor through the blog’s comment function. In addition, at the end of the semester the professor can review the blog and provide students with feedback on their reflections and development in the course. Finally, students can assess themselves by reading the comments and the posts of their professor and peers.

9. Computer Assisted Instruction

Having its roots in the behaviorist theories, computer assisted instruction (“CAI”) is an “interactive instructional technique whereby a computer is used to present the instructional material and monitor the learning that takes place.” To improve student learning, CAI features a combination of text, graphics, sound, and audio. While CAI can be used alone to instruct students, the combination of conventional or “face-to-face instruction” and CAI is the most effective in increasing student

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335 See Beldarrain, supra note 327, at 141 (noting that “[e]ach student blog is a reflective piece, documenting the student’s personal and intellectual growth throughout the course”).

336 See Schweder & Wissick, supra note 328 (discussing use of classroom blogs in secondary education).

337 Computer-Based Training, EDUCTECHWIKI, http://edutechwiki.unige.ch/en/Computer-based_training (last modified Aug. 8, 2009). Interestingly, going as far back as 1921, Edward Thorndike wrote, “If, by a miracle of mechanical ingenuity, a book could be so arranged that only to him who had done what was directed on page one would page two become visible, and so on, much that now requires personal instruction could be managed by print.” Id.

338 CAI is also referred to as, among other things, computer aided instruction (“CAI”), computer assisted learning (“CAL”), computer based education (“CBE”), computer based instruction (“CBI”), computer based training (“CBT”), web based instruction (“WBI”), and web based training (“WBT”). All of these terms refer to the use of a computer to provide instruction. Computer Assisted Instruction, WIKIEDUCATOR, http://www.wikieducator.org/Computer_Assisted_Instruction_(CAI) (last modified Sept. 19, 2008, 06:16 AM).

339 See id.

340 See id.
The term CAI encompasses various different pedagogical strategies that have numerous benefits as a teaching and assessment tool.

**a. Pedagogical Strategies**

CAI pedagogical strategies include, among other things, drill-and-practice, tutorials, games, simulations, discovery and problem solving. This article focuses on drill and practice, tutorials, and games because they lend themselves to assessment opportunities. Each of these pedagogical strategies allows professors to incorporate multiple assessment opportunities that take place outside the classroom into their curriculum.

**i. Drill and Practice**

Drill and practice, one of the most common types of educational software, generally denotes an instructional strategy that focuses on reviewing information that has already been learned. This type of software "promotes the acquisition of knowledge or skill through systematic training by multiple repetitions." Similar to an automated flash card, students answer questions one at a time and receive immediate feedback. Professors can easily create self-scoring multiple-choice quizzes. Most CMSs provide the means to create automatically scored quizzes.

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341 What Is Computer-Assisted Instruction?, WISEGEEK, http://www.wisegeek.com/what-is-computer-assisted-instruction.htm (last visited June 27, 2012). CAI is used throughout the educational process, from preschool to professional school, and is also used to train employees. Id. Students who are engaged in CAI exhibit improved attitudes towards the learning process and perform moderately better than students who do not use CAI. Id.

342 See discussion infra Part V(B)(9)(a)(i).

343 See discussion infra Part V(B)(9)(a)(ii).

344 See discussion infra Part V(B)(9)(a)(iii).

345 Simulation software allows the student to learn in a simulation of the real world without the real risks. See Computer Assisted Instruction, supra note 338.

346 With discovery, the student is provided with "a large database of information specific to a course or content area and [the student is] challenge[d] . . . to analyze, compare, infer and evaluate based on their exploration of the data." Id.

347 This pedagogical strategy focuses on developing the student’s problem solving skills. Id.

348 See discussion infra Part V(B)(9)(a)(i).

349 See discussion infra Part V(B)(9)(a)(ii).

350 See discussion infra Part V(B)(9)(a)(iii).

351 See Computer Assisted Instruction, supra note 338.


353 See Computer Assisted Instruction, supra note 338.

354 See supra notes 235-239 and accompanying text (discussing CMSs).
and in addition, independent drill and practice programs exist. The professor or teaching assistant can draft the questions and place the questions online at the beginning of the semester before the course begins. The professor can also assign the students to create questions for the class.

Professors can use drill and practice exercises to address any number of things. For example, the exercise can include questions that exemplify the types of multiple choice questions that students will see on their exam or review key points addressed in the assigned reading. In addition, professors can use these exercises to assess, among many other things, a student’s ability to read an opinion, synthesize a rule, or identify analytically significant facts.

**ii. Tutorials**

While the purpose of drill and practice software is to review information, tutorials are designed to educate the user. Generally, tutorials begin by instructing the student on an aspect of the topic to be covered. Then, the tutorial provides the user with an opportunity to practice the material learned and assess the user’s knowledge. Depending on how well the student performs, the tutorial will remediate by re-teaching the material or move on to provide further instruction. Accordingly, tutorials also “assess the learner.”

Currently, there are numerous free web-based tutorials available for legal educators to use. Most notably, the Center for Computer Assisted Legal Instruction (“CALI”) offers tutorials on many legal fields of

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355 One example is Cyber Workbooks. CYBERWORKBOOKS.COM, http://www.cyberworkbooks.com/ (last visited June 27, 2012). Among other things, Cyber Workbooks has a feature that allows for self-assessment: the platform times, scores, and records student responses. Id.


357 See Sergienko, supra note 84, at 496-505.


359 See id.

360 See id.; Computer Assisted Instruction, supra note 338 (noting tutorials include drill and practice, games, or simulations).

361 See Ward, supra note 358, at 19.

study. Additional examples include LexisNexis and Westlaw, which provide tutorials on legal research and citation. Professors can also craft their own tutorials using free software.

### iii. Games

In light of the omnipresent influence of video games on American culture, educators are striving to harness the motivating facets of this third CAI pedagogical strategy—game software—to facilitate learning and increase assessment opportunities. In essence, game software mimics video games and creates a competitive environment wherein the user is competing against other students or the computer. The objective of the computer game is to reinforce material that the user has already been taught. Currently, there are some law video games available.

As a teaching tool, gaming is particularly effective for adult learners as video games present many of the characteristics reminiscent of a successful learning environment. Specifically, the “[g]ame players...”

363 See id. for a list of topics covered by CALI.
365 For example, CALI provides free software called CALI Author that allows professors to create their own tutorials. Cali Author, CALI, http://www.cali.org/caliauthor (last visited June 27, 2012).
366 See supra note 141 (noting the number of hours that the average law student has spent playing video games).
367 See Sonsteng et al., supra note 1, at 414-15.
368 See Computer Assisted Instruction, supra note 338.
369 See Ward, supra note 358, at 19.
370 For example, there are two games that introduce students to criminal law—Murder One and Drug Bust—that are suitable for an introductory class. See John McClusky, Review of Two CD-ROM’s: MurderOne and Drug Bust, 3 J. CRIM. JUST. & POPULAR CULTURE 127, 127-28 (1995); Sonsteng et al., supra note 1, at 416 (describing Murder One and Drug Bust). Other games include In the First Degree and Ace Attorney. See Sonsteng et al., supra note 1, at 416; Robert Widdison et al., Computer Simulation in Legal Education, 5 INT’L J.L. & INFO. TECH. 279, 297 (1997).
371 See Sonsteng et al., supra note 1, at 415. The United States Army has used game software extensively as a training tool. See id. at 416. Moreover, firefighters and health care workers employ game software to instruct their trainees because it teaches the trainees how to react to pertinent circumstances. Id.
372 See id. at 414-15. Gaming software creates a successful learning environment by “providing clear goals, challenging students, allowing for collaboration, using criterion...”
control their actions, pursue their own goals, challenge themselves to the optimal extent of their abilities, and receive feedback on their performance.” In addition, the leaders in the area of learning-through-game-playing have observed a number of benefits of using video games as a teaching tool as compared to conventional teaching methods. Despite these numerous benefits, legal education has yet to fully harness the potential of game software.

b. Benefits of Computer Assisted Instruction

CAI allows professors to create opportunities for instructor-based assessment and self-assessment of student learning at the course level. Instant feedback allows students to self-evaluate whether they understand the legal concepts covered in the class. The assessment results also permit the professor to gauge whether a particular student or the class as a whole understands a legal concept.

Another benefit of CAI is the manner in which the students receive the feedback. Significantly, students receive instant feedback on their performance. Moreover, this feedback is private, which may help shy or slow learners who fear making an error in class. Another defining characteristic of CAI feedback is that it is individualized and students can proceed at their own pace. For example, with tutorials, students can based assessments, giving students more control over the learning process, and incorporating novelty into the environment.” Id.

373 Id. at 415.
374 See id. Specifically, gaming software allows students to place themselves into a different role and attempt to “solve problems they have not mastered, receive immediate feedback on the consequences, and try again.” Id. Games are more engaging than course books because they permit the student to immediately perform the skill rather than waiting until they have attained expertise. Id. Moreover, games motivate students to better their performance because games “keep things ‘pleasantly frustrating.’” Id.

375 See STUCKEY ET AL., supra note 11, at 255 (noting formative assessment opportunities provided by computerized and automatically scored quizzes).
376 See id.; Lasso, Students Learning, supra note 23, at 97. This instant feedback on multiple assessments enhances student performance. See Newman, supra note 134, at 200. Student performance is also enhanced because students are encouraged to continue working until they comprehend the material being tested. See id.
377 See Geist, supra note 317, at 153-54; Newman, supra note 134, at 200. The professor can then adapt the lectures to correspond with the level of student understanding. See Geist, supra note 317, at 153-54; Sergienko, supra note 84, at 485.
378 See supra notes 148-150 and accompanying text (asserting that digital natives expect immediate evaluations and instant results).
379 See Ward, supra note 358, at 18.
380 See id.; Warner, supra note 261, at 127. Computerized tutorials are “patient drill master[s]” because they allow students to complete the tutorial numerous times in an effort to master the material. Warner, supra note 261, at 127.
review material as many times as they want and repeat the tasks. Similarly, students can retake drill and practice quizzes or play the games multiple times to achieve mastery.

The fact that the computer automatically provides the feedback also benefits the professor in that it reduces the professor’s grading burden. Particularly in larger classes, the reduced burden allows professors to incorporate assessment measures throughout the class. This benefits students in two ways. First, students receive frequent feedback. Second, the frequent assessments force students to keep up with the work in the course.

Interestingly, some studies have shown that students who learn material using CAI learn the material faster than they would with conventional instruction. An active learning process, drill-and-practice exercises, tutorials, and games force students to engage with the information rather than simply sit in class listening to their professors and peers speak. Therefore, students are more likely to pay attention. Moreover, the ability to repeat the material and the step-by-step approach of CAI makes it more likely that students will retain the information.

CONCLUSION

Law schools in the United States are in turmoil. Legal education is subject to tremendous pressure on many fronts. The economic downturn has led to fewer jobs while simultaneously tuition and student debt are rising. In addition, the number of law school applications has decreased significantly and complaints that those attending law school are not receiving the instruction they need to succeed in the legal market are increasing.

In the midst of this turmoil, law schools should at the very least strive to

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381 See JACOBS AND CHASE, supra note 82, at 51-52.
382 Sergienko, supra note 84, at 486; see supra notes 107-111 and accompanying text (discussing feedback).
383 Sergienko, supra note 84, at 486.
384 See Geist, supra note 317, at 153-54; McGaugh, supra note 146, at 136 (noting “[a] simple computer program that requires students to interact with the information by answering simple questions or completing exercises will help keep their attention so they can absorb the information in the reading”).
385 See Geist, supra note 317, at 153-54.
386 See id.
387 See Brian Tamanaha, FAILING LAW SCHOOLS ch. 9 (forthcoming 2012) (addressing the rise in tuition rates, the resulting increase in student debt, and the high percentage of law school graduates who do not obtain jobs as lawyers).
388 See id. at ch. 13 (discussing decrease in law school applicants and ramifications for law schools).
enhance law students’ educational experience. Recognizing that “[l]aw schools and lawyers will find [their] lives breathtakingly transformed by technological change”\textsuperscript{389} and that “assessments put students at the center of . . . education,”\textsuperscript{390} legal educators should strive to use technology to incorporate multiple assessment opportunities into the law school curriculum. In addition to improving the educational experience, using technology to assess student learning at the course level will also teach the students the skills that they need to practice law today. Finally, an increase in assessment may even help to build back the public’s trust in the wake of the current turmoil, because “[a]n institution’s genuine commitment to assessment is a clear public statement of its desire to offer quality programs and improve student learning and development.”\textsuperscript{391}


\textsuperscript{390} See \textsc{Palomba \& Banta}, supra note 38, at 18.

\textsuperscript{391} \textit{Id.}