SHARING THE TUNA PLATTER: A UNIFORM SYSTEM OF ASSESSMENT FOR CLINICAL EDUCATION

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Legal education's current methods for the measurement of student achievement in clinics, and the measurement of a clinic course's effectiveness, are often unsatisfying, unreliable, and incomplete. This article presents a methodology for uniform and integrated systems of assessment across clinical programs that can provide more reliable evaluation of student progress and achievement, and better feedback to clinical programs on their effectiveness. It also shares how Touro University Jacob D. Fuchsberg Law Center's Clinical Program applied these strategies with both success and challenges.

Introduction

As the tuna sandwich platter is passed around another clinic faculty meeting, the subject turns to grades. One clinician marvels that the clinical program was recently accused at a full faculty meeting as the covert source of pernicious grade inflation. The clinics have now been deemed responsible for the student body's mistaken belief that they are prepared to take the bar exam. Meanwhile, another clinician wishes he didn't have to assign grades at all, as the students are indistinguishable. An immigration professor has a different problem, that the comparison is apples-to-oranges: "How can I compare students who won asylum for their client to students whose client was convicted of fourteen felonies and who spent the semester going to three prisons just to interview their client?" An adjunct wonders whether, if he gives any grade other than an "A," he will tank his course evaluations and not be asked back. "Speaking of the school's course evaluations," says yet another, "why are we being judged based on whether we taught doctrine effectively? That's not my job!" One clinic faculty member, a distinguished professor with tenure, didn't attend the meeting at all because he has his staff attorney assign grades.

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Legal education's present methods for the measurement of student achievement in clinics, and the measurement of a clinic course's effectiveness, are often unsatisfying, unreliable, and incomplete.[1] This article presents a methodology for uniform and integrated systems of assessment across clinical programs that can provide more reliable evaluation of student progress and achievement, and better feedback to clinical programs on their effectiveness. It also shares how Touro University Jacob D. Fuchsberg Law Center's Clinical Program applied these strategies with both success and challenges.

Legal education has long been criticized for a failure to clearly and systematically articulate educational goals.[2] This failure has also been attributed specifically to clinical legal education. The authors of *Best Practices for Legal Education* warned "we need to improve our methods for determining whether supervised practice courses are achieving their goals."[3]

This imperative is twofold: we must be able to identify whether students are achieving appropriate learning outcomes in clinic courses *and* whether the clinic courses themselves are adequately staffed, resourced, and designed to provide the appropriate learning opportunities. This fundamental problem has not been remedied in the years since the publication of *Best Practices.* We can begin to address it through intentional and systematic inter-clinic collaboration in standardized assessments of clinic student performances and standardized assessments of the effectiveness of clinical courses. In this way, I build on arguments I have made in prior scholarship that clinics have become unnecessarily siloed.[4] However, I do not argue for elimination of the wonderful course and faculty-specific assessments and feedback methods that clinicians use in their courses. Rather, I advocate that clinical programs add to these assessments a program-wide scheme that mirrors advances

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[1] As used in this article, "clinics" refer to individual clinic courses that are offered within a broader "clinical program" that contains multiple such clinics.

[2] *See* Roy Stuckey and Others, Best Practices for Legal Education: A Vision and a Road Map 40 (2007) ("The educational goals of most law schools in the United States are articulated poorly, if at all.").

[3] *Id.* at 193; *see also* Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 Clin. L. Rev. 807, 807-08 (2007) ("After more than thirty-five years of growth and diversification, [clinicians] have failed to articulate and demonstrate the important learning that occurs uniquely or can be accomplished best in clinical courses. Consequently, it is questionable whether most clinical teachers are focusing their time and energy on achieving educational goals that can be most effectively and efficiently accomplished through clinical courses."); *but cf.* Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 Vand. L. Rev. 321, 325 (1982) (providing an independent "andragogical" justification for clinical education as an adult teaching methodology distinct from any explicit learning outcomes that might be articulated).

[4] *See generally* Melina A. Healey, *Opening Up the In-House: A Model for Collaborative Holistic Services and Education in Law School Clinical Programs*, 25 Wash. U. J. L. & Pol'y 152 (2024).

in clinical education from other disciplines. Finally, I share experiences developing, executing, and analyzing these standardized assessments and evaluations in the clinical program I direct.

I. Program-wide Standardized Assessment of Students: A Tool for Improving Clinical Education and Illustrating Its Essential Role

Clinicians resist standardized assessment of student performance,[5] yet most will ultimately assign a final grade to all students at the semester's end.[6] Unlike most law school courses, which involve prepared simulations, doctrinal multiple choice and essay exams, or final papers, the majority of a student's work in clinic is based on a real client's present needs and goals.[7] This work is commonly regarded as too subjective and "idiosyncratic"[8] to permit uniform evaluation of performances. Complicating matters, clinicians, and law faculty generally, receive no

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[5] *See* Stuckey and Others, *supra* note 2, at 193 ("The authors do not know if there is a typical way in which students in [clinical] courses are graded."); *id.* at 238-39 ("In many in-house clinics and externships, grades are based mostly on the subjective opinion of one teacher who supervises the students' work. Grades in these courses tend to reflect an appraisal of students' overall performance as lawyers, not necessarily what they learned or how their abilities developed during the course.").

[6] Robert R. Kuehn, Margaret Reuter & David A. Santacroce, *2019-20 Survey of Applied Legal Education,* Ctr. for Stud. Applied Legal Educ. (CSALE) 35 (2020), https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f8e46e59e39d4dc82e70a54_Report%20on%202019-20%20CSALE%20Survey.10.19.20.pdf ("Sixty-nine percent of clinics award a mandatory letter/number grade for casework, while 24% awarded mandatory pass/fail grades, 4% give students the option of a pass/fail or letter/number grade, and 3% give mixed pass/fail and letter/number grades."). This article does not address the merits of assigning a letter or number grade to clinic students. However, grading on a scale has historically helped clinicians gain ground in the academy. *See, e.g.,* Stacy L. Brustin & David F. Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 Clin. L. Rev. 299, 307 (1997) ("[G]rading is also used to recognize exceptional performance, to penalize unacceptable performance, and to provide employers with a way of distinguishing among students."); Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 Clin. L. Rev. 505, 572-75 (2012) (observing that "grading can serve political purposes within an academic institution" but cautioning against discussing any specific quantitative grade during mid-semester feedback sessions because "evaluation sessions are about growth, not grades.").

[7] *See* ABA Standard & Rules of Proc. for Approval of L. Schs. 2023-2024 Standard 304(b) (2023) [hereinafter ABA Standard 304(b)] ("A law clinic provides substantial lawyering experience that . . . involves advising or representing one or more actual clients or serving as a third-party neutral.").

[8] *See* Margaret Martin Barry, Martin Geer, Catherine F. Klein, Ved Kumari, *Justice Education and the Evaluation Process: Crossing Borders*, 28 Wash. U. J.L. & Pol'y 195, 227 (2008) ("[T]he clinical experience is often idiosyncratic, and this can make the application of specific criteria problematic."); Stuckey, *supra* note 3, at 808 ("Clinical teachers in the United States have not focused much on assessment issues, and the methods that most of us use for assigning grades are neither valid nor reliable.").

systematic training on how to provide feedback and grade.[9] Moreover, there are no national standards against which clinical competence in lawyering is assessed[10] that can be used as a template for clinic assessment.[11]

Clinicians can remedy these deficiencies at the program level, and by doing so lead the way toward more effective assessment and licensing systems that better measure a lawyer's competency for practice. The adoption of uniform clinical program-wide rubrics to evaluate students is a valuable first step. Uniform and universal clinical program student assessments facilitate consensus among the program's clinicians about the basic learning outcomes that all clinics should achieve. The use of any assessment scheme in turn influences what is taught and how much value students and institutions attribute to the various *types* of work the students engage in.[12] In acknowledgment that clinical teaching is intended "for transfer,"[13] student achievement of lawyering skills can benefit from our collaboration across practice areas to develop these uniform program-wide assessment tools. This collaboration also helps ensure that, in addition to basic lawyering skills, core clinical principles such as "justice education,"[14] social justice[15] lawyering, anti-racist

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[9] *See* Barry et al, *supra* note 8, at 196. For an example of an exception, *see* Mlyniec, *supra* note 5, at 568-79 (describing the training of clinic fellows at the Georgetown University Law Center in the art of evaluation, feedback, and grading).

[10] Lawyers in the United States do not receive any clinical competency screening as part of their licensure, and clinicians play very little role in defining the competencies that lawyers must achieve to be licensed for practice. Bar exams in every jurisdiction across the country currently test only for knowledge of substantive law. *See Jurisdiction Information*, National Conference of Bar Examiners, https://www.ncbex.org/jurisdictions (last visited Feb. 20, 2025). However, the National Conference of Bar Examiners, responsible for most of our nation's bar exams, has announced that it will incorporate certain lawyering skills into exams starting in 2026, which presents new and urgent opportunities for clinicians to contribute to licensure standards and gain essential standing in legal education by clarifying the goals and metrics of clinical education. *See* Cynthia L. Martin, Hulett H. (Bucky) Askew, Diane F. Bosse, David R. Boyd, Judith A. Gundersen, Anthony R. Simon & Timothy Y. Wong, *Overview of Recommendations for the Next Generation of the Bar Examination*, National Conference of Bar Examiners 1, 4 (2021), https://perma.cc/XP5Y-HRD9.

[11] *See* William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, Educating Lawyers: Preparation for the Profession of Law (Carnegie Foundation for the Advancement of Teaching 2007) (hereinafter cited as "Carnegie Report") (contrasting legal education with medical education, which has national standards).

[12] A course's method of evaluation, in turn, influences what is taught and what is retained from the classroom. *See* Lawrence M. Grosberg, *Should We Test for Interpersonal Lawyering Skills?* 2 Clin. L. Rev. 349, 350 (1996) (calling on law schools to focus their assessment on lawyering skills and noting that "[b]ecause of the impact of exams on grades, what is tested in the exams inevitably affects what is learned in the classroom. Each necessarily affects the success of the other.").

[13] *See* Shaun Archer et al., *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. Legal Educ. 258, 269 (2014).

[14] *See* Barry et al, *supra* note 8, at 200 ("By exploring how to make our goals for justice education a more explicit aspect of what and how we evaluate, we can establish them as functional aspects of our teaching agendas.").

[15] For discussion of the importance and history of the social justice mission in clinics, see Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. Rev. 1461 (1998);

lawyering, and cross-cultural competence,[16] among other "relational competencies,"[17] are presented universally[18] in clinical programs. At the program level, uniform assessments can also identify where the program suffers from gaps in providing students with exposure to or ability to achieve those commonly accepted learning outcomes.[19] This gives clinical programs actionable information to ensure they are providing quality education. It also helps clinicians participate more fully in the important task of school-wide development of institutional learning outcomes and curriculum mapping.[20]

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see also Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 Clin. L. Rev. 37, 38 (1995) (observing that "a complete legal education and, in particular, a complete clinical educational experience, should include lessons of social justice" and that "[c]linical teachers should accept as part of their role the exposure of clinical students to experiences and reflective opportunities that will lead to social justice learning."); Spencer Rand, *Teaching Law Students to Practice Social Justice: An Interdisciplinary Search for Help Through Social Work's Empowerment Approach*, 13 Clin. L. Rev. 459 (2006) (proposing use of social work education models for fostering social justice in law clinic students); Stephen Wizner, *Beyond Skills Training*, 7 Clin. L. Rev. 327, 327 (2001); *but see* Praveen Kosuri, *Clinical Legal Education at A Generational Crossroads: X Marks the Spot*, 17 Clin. L. Rev. 205 (2010) (challenging social justice and public interest norms as primary justifications for clinical education and proposing "greater ideological neutrality" in providing "real life, practical" workplace skills through clinical education).

[16] *See* ABA Standards & Rules of Proc. for Approval of L. Schs. 2024-2025 Standard 303c (requiring law schools to "provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation."); *see also* Susan Bryant & Jean Koh Peters, *Reflecting on the Habits: Teaching about Identity, Culture, Language, and Difference*, *in* Transforming the Education of Lawyers: The Theory and Practice of Clinical Education 349-374 (Susan Bryant, Elliott S. Milstein, & Ann C. Shalleck eds., 2014) (presenting teaching strategies for the authors' "5 Habits" approach to cross-cultural lawyering and suggesting new habits that address implicit assumptions and racial bias when they arise in client work).

[17] *See* Susan L. Brooks, Marjorie A. Silver, Sarah Fishel, & Kellie Wiltsie, *Moving Toward a Competency Based Model for Fostering Law Students' Relational Skills*, 28 Clin. L. Rev. 369 (2022).

[18] *See generally* Susan Bryant, Elliott Milstein, & Ann Shalleck, *Learning Goals for Clinical Programs*, *in* Transforming the Education of Lawyers: The Theory and Practice of Clinical Education 13, 30 *supra* note 16 (enumerating the learning goals of clinical programs, including professional identity formation, understanding of structural inequality, methodologies for new situations, contextual analysis, self-reflection, collaboration, and self-knowledge and self-regulation, and noting that while "[each] clinic will not be able to fulfill all of the many aspirations of clinical education," "the inquiry about our goals helps all see the many possibilities for transforming the project of legal education.").

[19] Ensuring that clinics provide sufficient opportunities and exposures is consistent with established goals of clinical education. Anthony Amsterdam articulated "one of the more insightful statements about the general goals of clinical education" by proving objectives for clinical education in terms of "exposing" students or "provid[ing] opportunit[ies]" for lawyering challenges and experiences rather than describing outcomes through a "teaching" and "learning" lens. Stuckey and Others, *supra* note 2, at 169.

[20] *See id*. at 93. A curriculum map gathers the faculty's institutional learning outcomes and is a "wide angle view of a program of instruction," identifying "where in the curriculum students will be introduced to the skill, value, or knowledge: where in the curriculum the students will practice it; and at what point in the curriculum students can be expected to have attained the desired level of proficiency." *Id.*

Inter-clinic faculty assessment also improves the quality of the assessment of individual students. Multiple assessors enhance the reliability of assessments and reduce the effect of bias. Finally, clinicians can turn to these universal assessments, with common learning outcomes and measurements, to underscore the critically important role clinic plays in the development of professionals[21] and perhaps even contribute to necessary reforms in attorney licensure.[22]

Working together as a clinical faculty to develop learning goals and rubrics, and then complete the rubrics, is critical to the valid and reliable assessment of clinic students. This article refers to this approach as "collaborative assessment," and includes development of assessment tools and participation in using those tools through a team approach. This team can include the voices of clinical faculty, affected third parties, such as clinic peers, judges, and clients, as well as students through solicitation of their individual learning goals and self-assessments.

A. Collectively Developing Clearly Defined Learning Objectives and Standardized Program-Wide, Criteria-Based Rubric Assessments

Experiential learning, like all programs of legal education, must identify (1) clear learning objectives and (2) how students' achievement of these objectives will be measured. To accomplish this, "both faculty and students must be aware of and share a common set of instructional goals and objectives, which should be explicit, published, and widely disseminated."[23] However, clinicians have historically experienced difficulty coming to a consensus on the goals of clinical

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[21] *See* Gerald P. López, *Transform-Don't Just Tinker with-Legal Education*, 23 CLIN. L. REV. 471, 478 (2017) (explaining that "clinical programs already embody--certainly, at their best--an entirely alternative vision of legal education, of law practice, of continuing education for the bar.").

[22] Some jurisdictions are exploring the use of law candidates' work "portfolios" as an alternative to the bar exam for attorney licensure. A working group in California has proposed methods for creating valid and reliable assessments for candidates engaged in the disparate types of work that are performed in actual practice settings. The working group's recommendations include grade norming, anonymous grading, and convening a group of "entry-level practitioners, supervisors of entry-level practitioners, educators, and psychometricians to develop rubrics for that scoring." *See* Audrey Ching & Donna Hershkowitz, *Report from the Alternative Pathway Working Group: Request to Circulate for Public Commen*t, STATE BAR OF CAL. 15-16 (Sept. 21, 2023), https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000031526.pdf. The methods suggested by the working group mirror many of the proposals this article advocates for creating universal approaches to different types of clinic work. Clinicians can directly improve methods for attorney licensure by engaging in these kinds of collaboration within programs.

[23] STUCKEY AND OTHERS, *supra* note 2, at 168; *see also* Mlyniec, *supra* note 6, at 577 ("[P]roper evaluation and proper grading will only occur if the teacher and the student are aware of the clinic's goals and expectations, and if the teacher's recorded comments about their interventions and the student's performance are keyed to the goals and expectations that we have conveyed to students at the beginning of the clinic.").

education.[24] Clinicians also have not developed uniform systems for assessing student competence against learning objectives.[25] Clinical faculty can reverse this trend by working together at the program level to develop standardized clinical rubrics[26] for student assessment.[27]

Across professional disciplines, in clinical practice, consistent programmatic-level assessment rubrics complement are critical to assessing student/trainee clinical performances.[28] Rubrics are "detailed written grading criteria, which describe both what students should learn and how they will be evaluated."[29] Clinic rubrics transparently announce to students how they are being assessed, what constitutes different levels of performance in practice, and what they can expect to engage in during their course experience.[30] Rubrics also reduce the effects of

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[24] David Barnhizer complained in 1977 that clinicians at the time had difficulty justifying clinical education because they could not articulate a unified vision of the distinct goals of their methodology. David R. Barnhizer, *Clinical Education at the Crossroads: The Need for Direction*, 1977 B.Y.U. L. Rev. 1025 (finding it unsurprising, given the competing demands on clinicians and the incompatibility of clinical education with traditional methods, "that whatever enthusiasm for reform has remained among clinical educators has often been expressed in a less than articulate and compelling manner"); *see also* Kelly Terry, Gerald F. Hess, Emily Grant, & Sandra Simpson, Assessment of Teaching and Learning: A Comprehensive Guidebook for Law Schools 136 (2021) ("Since program-level assessment has not yet become common in law schools, few examples of outcomes statements for experiential-learning programs have been published."); Stuckey, *supra* note 3, at 807 fn. 23 (sharing the history of clinical education's challenges in identifying specific common learning goals).

[25] While assessing clinical skills that encompass a student's professional responsibility and identity (common clinical learning outcomes among professions) is complex, evidence from medical education suggests that "some basic aspects of professionalism can be assessed and that, moreover, such assessments yield highly significant predictions about which students are likely to exhibit problematic behaviors as practitioners." Carnegie Report, *supra* note 11, at 176.

[26] A rubric is a "learning and assessment tool that articulates the expectations for assignments and performance tasks by listing criteria, and for each criterion, describing levels of quality." Berkeley Ctr. for Teaching and Learning, "Rubrics," https://teaching.berkeley.edu/resources/assessment-and-evaluation/design-assessment/rubrics (last accessed Aug. 3 2023).

[27] *See* Terry et al., *supra* note 24, at 136 (suggesting that, in the absence of common programmatic level assessment, experiential program leaders should gather with full time and adjunct faculty involved in experiential learning to determine the program's learning outcomes); *see id.* at 143-44 for guidance on how to approach this process and a hypothetical example of how that programmatic collaboration can yield benefits for assessment and reform of experiential programming.

[28] *Cf.* Jennifer Furze, Judith Gale, Lisa Black, Teresa Cochran, & Gail Jensen, *Clinical Reasoning: Development of a Grading Rubric for Student Assessment*, J. Physical Therapy Educ. 29, 34-45 (2015) (sharing success of a programmatic level rubric grading tool that measured clinical competency in physical therapy students because they "allow[] students to explicitly view the developmental progression").

[29] Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics-Explicit Grading Criteria*, 2004 Mich. St. L. Rev. 1, 6 (2004).

[30] Mlyniec, *supra* note 6, at 576 (Clinicians "must have concrete descriptions of what a particular grade means and articulable reasons why a student deserves that grade. New teachers need to develop an understandable grading rubric that explains what constitutes a particular grade and must have specific examples of a student's work that demonstrates why their work falls into a particular grade level."); *see also* Anne D. Gordon, *Better Than Our Biases: Using Psychological Research to Inform Our Approach to Inclusive, Effective*

bias,[31] enhance learning[32], and are of particular importance to younger generations of learners.[33]

The explicit criteria of a rubric provide a formal context in which to name and reward good performances by students. Unfortunately, students who perform well in a busy law practice often have their performances dismissed as simply an unqualified "good job."[34] The use of a standardized rubric assessment requires that the instructor instead name the specific ways that the student was successful.[35] This increases faculty accountability for helpful and rigorous feedback.

While difficult to develop at the program level due to the number of faculty voices involved, clinical programs benefit from *criteria-referenced* standard rubrics rather than *norm referenced* assessments. Criteria-referenced rubrics increase the reliability of the assessment.[36] Norm referenced assessments are based on how students perform compared to each other or compared to an elusive and unarticulated standard of competence.[37] Norm-referenced rubrics "do not help students understand the degree to which they achieved the educational objectives of the course."[38] By contrast, criteria-referenced assessments "rely on detailed, explicit criteria that identify the abilities students

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Feedback, 27 Clin. L. Rev. 195, 240 (2021) (defending rubrics by identifying the biased assessments they can avoid and noting that "[i]f a faculty member cannot decide what they want the student to learn, how is the student to know how they're being evaluated (and, non-tangentially, how is the professor making an informed decision about what and how to teach?)").

31 *See* Gordon, *supra* note 30, at 236 (explaining that "[a]mbiguity is particularly detrimental to bias-free evaluations, because it involves intuitive judgments" and that "using a rubric ensures that every student is measured fairly").

32 *See* Sparrow, *supra* note 29, at 6 (reviewing literature from the use of rubrics in other disciplines and concluding that "students learn more effectively when their teachers provide them with the criteria by which they are evaluated.").

33 *See* Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 Clin. L. Rev. 1, 18-19 (2013) (presenting methods for engaging millennial learners in clinic, highlighting that rubrics are helpful because they "set clear expectations for students and become the benchmark for evaluation" that satisfy millennial desire for transparency, and further proposing that clinicians work with individual students to develop "learning contracts" in which each student "elect[s] or prioritize[s] the goals they will primarily focus on throughout the semester"). For a more detailed presentation of the merits of learning contracts in clinic, and how to apply them to student assessment, *see* Jane H. Aiken , David A. Koplow, Lisa G. Lerman, J.P. Ogilvy, and Philip G. Schrag, *The Learning Contract in Legal Education*, 44 Md. L. Rev. 1047 (1985).

34 *See* Cynthia Batt & Harriet N. Katz, *Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*, 10 Clin. L. Rev. 581, 582 (2004) (sharing that one of the authors commonly finds that when she gives a student positive evaluations, her comments "are likely to be brief and casually offered").

35 Stuckey and Others, *supra* note 2, at 128 ("It may be more important to praise the positive aspects of students' performances than to point out the negative aspects.").

36 *Id.* at 243-45 ("The use of criteria minimizes the risk of unreliability in assigning grades.").

37 *Id.* at 243-44.

38 *Id.* at 243.

should be demonstrating […] and the bases on which the instructor will distinguish among good, competent, or incompetent performance."[39] This allows clinicians to be explicit about what they are looking for and avoid ambiguous feedback.[40] Moreover, a standardized rubric used across clinics within a program signals to clinic students that the competencies they gain in their clinic are transferable even if their case work experiences and practice areas appear distinct.[41]

Collaboration among the clinic faculty to build these explicit rubric assessments benefits students because it improves the feedback they receive. It is also helpful for individual clinicians and for the program. Developing common learning outcomes and identifying how a specific clinical course aligns with those outcomes allows clinical faculty and leaders of experiential learning programs to identify where there are gaps in students achieving learning outcomes across the clinical program and make necessary reforms or curricular additions.[42] Creation of common programmatic-level rubrics further enables rigorous assessment of program effectiveness,[43] in turn contributing to the ABA's outcome assessment accreditation mandates.[44] Faculty dialogue over learning outcomes and measurements itself yields benefits,[45] which may explain

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[39] *Id.* at 244.

[40] Anne Gordon urges clinicians to provide rubric-based specific feedback to students to avoid the "ambiguity bias trigger" and to enhance the credibility and actionability of the clinician's feedback. *See* Gordon, *supra* note 30, at 247; *see also* Mlyniec, *supra* note 6, at 576 (suggesting that clinicians should define good performances through explicit rubrics and provide specific examples that meet rubric criteria). Roy Stuckey points out that having clear criteria also "increases the reliability of the teacher's assessment by tethering the assessment to explicit criteria rather than the instructor's gestalt sense of the correct answer or performance." Roy Stuckey, *Can We Assess What We Purport to Teach in Clinical Law Courses?* 9 Int'l J. Clin. Educ. 9, 13 (2006).

[41] *See* Deborah Maranville, *Transfer of Learning, in* Revisiting the Characteristics of Effective Education 90, 91 n.9 (Deborah Maranville et al. eds., 2015) (emphasizing importance of teaching for transfer).

[42] *See* Terry et al., *supra* note 24, at 139 (explaining that by using common learning outcomes in experiential learning programs and identifying how their own courses match those learning outcomes, experiential faculty can "look for gaps and patterns in the treatment of the program outcomes" and alter the content of existing courses).

[43] *Id. at* 143 ("If [when reviewing samples of student work from embedded assignments across experiential courses] the course-level criteria do not align with the program-level criteria, then the experiential-learning faculty will need to create a rubric for assessing the students' written work products for program-level assessment and then review the assignments using that rubric.").

[44] For an example of how rubrics can be used in clinic to provide data for institutional outcome assessment requirements of ABA Standard 315, *see* Andrea A. Curcio, *A Simple Low-Cost Institutional Learning-Outcomes Assessment Process*, 67 J. Leg. Educ. 489, 492-510 (2018).

[45] *See* Barry et al., *supra* note 8, at 227 (grading across clinics "underscored the benefits of discussing with colleagues the criteria used and approaches to evaluating them."); *see also* Batt & Katz, *supra* note 34 (sharing results of collaboration and interviews with externship site supervisors on the qualities of professional development they look for in clinic students and based on this collaboration, identifying strategies for how to evaluate and mentor students to achieve these qualities).

other new proposed imperatives from the ABA to align the minimum learning outcomes of required courses.[46]

B. Collaborating Across Clinics to Overcome Siloed Programs

Genuine collaboration among the faculty to create uniform assessment tools is critical. At Touro, when I became Director of Clinical Programs, I convened our clinical faculty over the course of an initial year to meet regularly and collect and review all of the student assessment and feedback tools used in each clinic. Our clinical faculty then gathered and reviewed hundreds of other tools used in clinical law programs, externship programs, and other professions' clinical practice settings, identifying and coding the most common learning outcomes and criteria enumerated in those tools.[47] We reviewed the tools and findings as a clinical faculty and worked together to identify the ones we collectively agreed were most important to measure for our students. I then created our uniform tool. Each year, we review the tool and analyze patterns in our assessment and refine the tool. Ongoing collaboration at least annually by the clinical faculty to refine assessment tools is critical to ensure that the faculty buy into the tool's relevance rather than to ignore it or regard it as a burden. For example, most recently, we had to refine our tool to account for some of the skills we wanted to measure in our growing transactional clinic programs. Last year we also decided to eliminate criteria related to professional attire, acknowledging that standards of professionalism in attire were evolving and traditional expectations for dress and appearance in our profession are rooted in white supremacy, and can harm women, LGBTQ individuals, people with disabilities, and racial and religious minorities.[48]

The dialogue over what is included in a standard program-wide assessment is not easy. It poses particular challenges to clinicians who are often so busy with so many responsibilities to clients, students, and their institution, or when there are differences of opinion within programs about what we expect of our students. The process of collaborative assessment requires that clinicians commit to working across perceived differences and the inherent barriers resulting from commitment to academic freedom. But the enterprise has value in that it forces a

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[46] *See* Bridget Mary McCormack & William Adams, Am. Bar Ass'n, Matters for Notice and Comment: Standards 204, 301, 302, 314, 315, and 403 (Learning Outcomes) and Rules 40-46 (Processing Complaints) (Mar. 1, 2024), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2024/24-march-notice-comment-memo-outcomes-complaints.pdf.

[47] Kathy Gill & Melina Healey, Compiled and Coded Learning Outcomes (Oct. 14, 2021) (on file with author).

[48] *See* Julianne Hill, *Keeping Up Appearances: Slow-to-Evolve Dress Codes Burden Female and Minority Lawyers More*, 109 A.B.A. J. 1 (2023).

conversation. It also helps set standard expectations for in-house clinics[49] that share law practices and office space.

Finally, collaboration in the development of a standard clinic rubric assessment gives clinical faculty an opportunity to develop proficiency in using the standard tool, which, as I discuss more fully in the next section, allows them to provide a second assessment of students in other clinics and thus enhance the reliability of the feedback the student receives.

C. Assessing Students Collaboratively to Enhance Reliability

Any assessment protocol should be both valid (measure the specific learning outcomes that the tool purports to assess) and reliable (accurately and consistently measure those learning outcomes). Individualized feedback to clinic students on their case-specific clinical performances is presumptively valid to the extent that it examines the student's work on actual cases. The feedback can also be made more reliable if multiple assessors and perspectives are obtained[50] and these multiple assessors use the same metrics for evaluation.[51] Indeed, the use of a single standardized tool by multiple assessors has proven successful in health sciences professions by yielding more reliable evaluations, providing trainees more consistent feedback, and helping identify patterns in performance.[52] Multiple evaluators also reduce the impact of subjectivity and personal biases in assessment.[53]

D. Systematically Incorporating Feedback from Peers and Other Stakeholders

Collaboration in assessment should not be limited to clinic faculty. Other attorneys, judges, interdisciplinary partners, and clinic staff such as receptionists, paralegals, and other stakeholders can also enrich the feedback students receive by completing assessments with the same or

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[49] For background on the definition of "in-house," *see* Robert D. Dinerstein, *Report of the Committee on the Future of the in-House Clinic*, 42 J. Leg. Educ. 511 (1992) ("The in-house clinic further supplements the definition of clinical education by adding the requirement that the supervision and review . . . be undertaken by clinical teachers rather than by practitioners outside the law school.").

[50] *See* Grosberg, *supra* note 12, at 356-60 (suggesting that clinicians can minimize grader prejudice and maximize reliability through checking for consistency among collaborating faculty, third parties, and self-evaluations)); Gordon, *supra* note 30, at 245 (noting that multiple assessors in dialogue can increase the reliability of assessment and reduce bias through "calibration" or "rater reliability sessions," which are commonly used by large organizations).

[51] *See* Barry et al., *supra* note 8, at 227 (identifying agreement on teaching goals and evaluation criteria as a necessary condition for inter-clinic faculty cross-grading).

[52] *See* Stuckey and Others, *supra* note 2, at 248.

[53] *See id.* at 248.

similar criteria as faculty rubrics. This "team based" approach has been used successfully in medical education for decades.[54] This method asks various patients and healthcare professionals, including nurses, social workers, and attending physicians, to fill out standard assessment forms known as "360-Degree Evaluation Instruments" or "multisource feedback," which evaluate the clinical skills of medical students and residents they work with.[55] This method has been particularly helpful for measuring clinical competencies around interpersonal, communication, professionalism, or teamwork behaviors.[56] Software is then often used to track patterns of these assessments throughout a trainee's educational career (and even links assessment patterns to data on the trainee's ultimate performance on licensing exams).[57]

The rankings by peers and other team members on 360-Degree instruments tend to correlate strongly with faculty feedback when aggregated.[58] Peer assessment can "raise[] awareness of professional behavior, foster[] further reflection, help[] students identify specific mutable behaviors, and [has] been well accepted by students."[59] Client assessments of a clinic student's communication skills are likewise reliable tools for assessing student performance when combined with direct assessment of client communication by faculty.[60] Peer assessment can also play a particularly valuable role in assessment of fellow students team members' collaborative skills.[61] Moreover, the simple act of assessing peers using the same rubric as self-assessments and as the faculty member can be instructive to students in their ability to judge their own work.[62]

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[54] *See* Jocelyn Lockyer, *Multisource Feedback in the Assessment of Physician Competencies*, 23 J. Contin. Educ. Health Professions 4 (2003).

[55] Kevin G. Rodgers and Craig Manifold, *360-Degree Feedback: Possibilities for Assessment of the ACGME Core Competencies for Emergency Medicine Residents*, 9 Acad. Emerg. Med. 1300 (2002) (explaining that "360-degree evaluations" are a way to assess competency and behavior, "consist[ing] of measurement tools completed by multiple people in an individual's sphere of influence").

[56] *See generally* Lockyer, *supra* note 54.

[57] "New Innovations" is a software package that gathers 360-degree evaluations and produces reports on clinical competencies in medical students and resident physicians. *See* New Innovations, *GMA Details*, https://www.new-innov.com/pub/gme_details.html#performance-evaluation (last accessed Jan. 23, 2025).

[58] Li Meng, David G. Metro, Rita M. Patel, *Evaluating Professionalism and Interpersonal and Communication Skills: Implementing a 360-Degree Evaluation Instrument in an Anesthesiology Residency Program*, 1 J. Grad. Med. Educ. 216 (2009).

[59] Stuckey and Others, *supra* note 2, at 249.

[60] *See* Karen Barton, Clark D. Cunningham, Gregory Todd Jones, Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 Clin. L. Rev. 1 (2006).

[61] *See* Sophie M. Sparrow, *Can They Work Well on A Team? Assessing Students' Collaborative Skills*, 38 Wm. Mitchell L. Rev. 1162, 1172 (2012).

[62] *See* Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 Ohio N.U. L. Rev. 227, 245–46 (2015).

Portfolios of student work, which are "compilations of materials that document a student's academic achievement and personal development," are another useful and underutilized assessment tool, and well suited to collaborative inter-clinic program level assessment.[63] Portfolios have, in fact, been used successfully to assess minimum clinical competence to practice law in two pilot jurisdictions in the U.S.[64] Clinical programs should consider incorporating portfolios of student work product or performances that can be reviewed by an in-house faculty panel. This is a particularly good opportunity for collaborative assessment within an in-house clinic program given that there are no confidentiality issues with the reviewers regarding client work.

E. Including Rigorous and Explicit Self-Evaluation Metrics in Rubrics to Invite Student Collaboration in Assessments

Clinics are commonly referred to as "skills" (or worse, "soft skills") courses.[65] The term implies that there is some basic set of tools that can be reduced to a list of criteria against which to judge each individual student. Unfortunately, the "skills" label obscures the more abstract, yet critical, learning goals of clinic education, for students to "learn how to learn from experience."[66] In other words, clinic should help students develop capacity for self-reflection.[67] The ABA has recently formalized the importance of self-reflection and growth in legal education through mandating instruction on "professional identity formation" in new accreditation Standard 303(b)(3).[68]

The goal of self-reflection is achieved if a student is able to plan when confronted with a novel situation, execute their plan, and

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63 *See* Stuckey and Others, *supra* note 2, at 261-263.

64 *See* Deborah Jones Merritt, *Client-Centered Legal Education and Licensing*, 107 Minn. L. Rev. 2729, 2757 (2023) (describing the processes used by New Hampshire's Daniel Webster Program and Oregon's Provisional License Path, in which "examiners review portfolios of work product compiled by the candidates").

65 *See* ABA Standard 304(b), *supra* note 7 (defining clinics and other experiential courses as those which "engage students in performance of one or more of the professional skills").

66 *See* Stuckey and Others, *supra* note 2, at 172 (noting that Anthony Amsterdam cited learning how to learn from experience as "the most significant contribution of the clinical method to legal education").

67 *See* Quigley, *supra* note 15, at 60 ("Self-evaluation is an accepted tenet in clinical methodology in terms of skills training."). Self-evaluation is also effective at engaging learners in understanding their role as a social justice agent, and the impact of culture, bias, and identity on their representation and the structural barriers their clients face. *See* Bryant et al, *supra* note 18.

68 ABA Standards & Rules of Proc. for Approval of L. Schs. 2024-2025 Standard 303(b)(3) (2024) (requiring that "a law school shall provide substantial opportunities to students for . . . the development of a professional identity"). Interpretation 303-5 specifies that "developing a professional identity requires reflection and growth over time." *Id.* at Interpretation 303-5.

meaningfully reflect on the plan and performance.[69] Self-reflection is necessary to a professional's ability to be "megacognitive" about their practice, meaning "aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise."[70] To achieve the learning outcome of self-reflection, the student must develop a methodology in which they learn from their own experiences and "ask themselves appropriate questions that will give them an understanding of their own lawyering processes."[71] If clinic works, the student will be able to confront novel situations with recognition of the biases, cultural contexts, and assumptions that affect the relevant relationships and perceptions,[72] strategize creatively in problem solving, and build a professional identity that they can apply to their careers.[73] They will also be able to continue learning from experience, "an important life-long skill for lawyers to acquire."[74]

Performance of this learning outcome is difficult to standardize and scale.[75] Can a rubric measure how deeply and genuinely the student has examined their own biases, context, and role in legal systems while performing legal work? While challenging, metrics for self-reflection (and other "relational competencies"[76]) should be intentionally and explicitly built into clinic learning outcomes and assessments so that students are aware that their ability to be self-reflective is a key learning outcome for their experience in clinic.[77] Clinicians have developed a number of

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[69] *See* Stuckey and Others, *supra* note 2, at 127 (explaining that self-directed learning "involves a cyclical process in which [learners] appropriately classify the demands of a learning task, plan strategies for learning what needs to be learned, implement those strategies while self-monitoring the effectiveness and efficiency of the chosen strategies, and reflect on the success of the process afterwards").

[70] Carnegie Report, *supra* note 11, at 173.

[71] Amy L. Ziegler, *Developing A System of Evaluation in Clinical Legal Teaching*, 42 J. Legal Educ. 575, 576 (1992).

[72] Bryant & Peters, *supra* note 16.

[73] Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 Hastings L.J. 725, 726-727 (1989).

[74] Stuckey, *supra* note 40, at 19.

[75] *See* Alistair E. Newbern & Emily F. Suski, *Translating the Values of Clinical Pedagogy Across Generations*, 20 Clin. L. Rev. 181, 209 (2013) ("Self-reflection by its very nature is abstract."); Stuckey, *supra* note 40, at 19 (acknowledging that it "may not be possible to develop valid and reliable summative assessments of some of our desired outcomes, and autonomy and ability to learn may be among these," but identifying ways to assess whether students understand how to "apply theories of practice to certain situations."); *but cf.* Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9 Clin. L. Rev. 623, 679-81 (2003) (proposing that clinics use a problem-solving checklist that could be deployed when they are failing to progress in a case, to allow students to identify and resolve the impediments to progress).

[76] *See* Brooks et al, *supra* note 17 (proposing that law schools include relational competency as learning outcomes in experiential learning courses).

[77] *See* Carnegie Report, *supra* note 11, at 163 ("What teachers value—what they deem important and essential for students to learn—can be ascertained most directly by what they assess—what they require students to know and be able to do.").

methodologies to evaluate self-reflection.[78] Rubrics can be designed to measure the quality of self-reflection.[79] The inclusion of self-reflection in a rubric makes explicit that this is an important goal of the course and contributes to the more interactive dialogue the clinician and student should have as follow up after a scored assessment.[80] Assessment tools are often important not as much for the written information they contain, but because they are springboards for rich conversations about the student's experience in clinic and provide a foundation for further self-reflection. It is also useful to include a space for students to articulate specific moments when they have had opportunities for self-reflection during clinic.

A student's ability to self-critique is important for their professional lives after law school because graduates "will not always be able to depend on others to provide critique and feedback." Self-assessment provides a formalized opportunity for students to practice self-critique and facilitates feedback from peers and faculty for how effective the student's self-critique is as well.[81]

F. Uniform Program-Level Assessment Schemes Enhance the Institutional Standing of Clinics and Inform Attorney Licensure Reforms

Articulating program-wide learning outcomes and forms of assessment can, in turn, elevate clinical education's institutional standing and impact on legal education. By agreeing on standard learning outcomes and opportunities in clinics, clinicians might collectively influence the reform of currently misguided attorney licensure schemes that depend on testing of memorized information. Armed with real, consensus-built

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[78] For a sampling of clinicians' approaches to evaluating self-reflection in students, *see* Curcio, *supra* note 44, at 523 (providing a rubric for the learning outcome "Graduates will engage in active self-reflection and take ownership of their professional development."); Ziegler, *supra* note 71, at 585-86 (describing three evaluation techniques: (1) "a pretask report and a self-evaluation including a review of the self-evaluation"; (2) a case presentation, and; (3)"an informal contract between the student and me."). For a criteria-based rubric that articulates standards for self-reflection, *see* Terry et al., *supra* note 24, at 118-19; *see also* Gordon, *supra* note 29, at Appendix A & 249.

[79] *See* Melina Healey, Touro Law Center Clinic Assessment – Midsemester, https://docs.google.com/forms/d/e/1FAIpQLSdWIsoHuLRBFO5EmNIr7DiSNiigpI9193On1D5rfN5Qwk5D1g/viewform.

[80] *See* Ziegler, *supra* note 71, at 575-76 (identifying "ongoing dialogue" between clinician and student as a superior methodology for measuring self-reflection).

[81] *See* Stuckey and Others, *supra* note 2, at 128 ("[S]tudents should be given explicit instruction in self critique and provided with opportunities to practice self critique, which then is itself the subject of peer and instructor critique and feedback."); Newbern & Suski, *supra* note 75, at 211 (observing that students should complete self-assessments using a common rubric before they see their teachers' assessments, as this forces students "to reflect on their own learning styles and understand where they can improve in their work.").

rubrics that have been tested and refined at the programmatic level, clinicians can help move toward licensure systems that measure true competence for practice. By demonstrating the value of these valid and reliable forms of assessment, clinicians can show that a clinical pathway to licensure is a viable alternative to bar exams.

Now is a good time to do this work. The National Conference of Bar Examiners (NCBE), the nonprofit charged with developing attorney licensure standards and bar exams, announced that it will place "greater emphasis . . . on assessment of lawyering skills to better reflect real-world practice and the types of activities newly licensed lawyers perform."[82] It will accomplish this through the new "NextGen" bar exam. The NextGen format has not yet been publicly released, but the NCBE has shared that new skills competency content, such as interviewing and negotiation, will be tested with hypotheticals requiring multiple choice or written responses.[83] While this emphasis on clinical skills is a welcome change, medical education and licensure has already demonstrated that these types of professional skills are not adequately measured by tests, and "the best measures of professional behavior lie in the context of clinical activity and involve a conflict that the student or resident must resolve under supervision."[84] Standardized tests to assess clinical skills are not ideal methods to identify practice readiness. Physician licensure, until 2021, formerly required a daylong in-person clinical skills test, Step 2 CS, which involved encounters with trained simulated patients.[85] The Federation of State Medical Boards and the National Board of Medical Examiners eliminated this requirement because the tests were not viewed as a successful measure of clinical competence.[86] They declined to substitute Step 2 CS with another exam, instead emphasizing that medical schools should be responsible for assessing clinical skills readiness.[87] In law schools, clinical experiences, or a "clinical pathway" to licensure, could be a better measure of professional competence than

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[82] Nat'l Conf. Bar Exam'rs, Testing Task Force, Next Generation Bar Examination Task Force Recommendations 2 (2021), https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Next-Gen-Bar-Exam-Recommendations.pdf#zoom=auto&pagemode=none.

[83] *See* Next Gen Bar Exam, *Frequently Asked Questions*, https://nextgenbarexam.ncbex.org/faqs/.

[84] David Stern, *Outside the Classroom: Teaching and Evaluating Future Physicians*, 20 Ga. St. U. L. Rev. 877, 903 (2004).

[85] Stacy Weiner, *What the Elimination of a Major Medical Licensing Exam - Step 2 CS - Means for Students and Schools*, AAMC News (Feb. 9 2021), https://www.aamc.org/news/what-elimination-major-medical-licensing-exam-step-2-cs-means-students-and-schools (last visited Sep 13, 2023).

[86] *See* Brendan Murphy, *USMLE Step 2 CS Canceled: What it Means for Medical Students*, Am. Med. Ass'n (Feb. 4, 2021), https://www.ama-assn.org/medical-students/usmle-step-1-2/usmle-step-2-cs-canceled-what-it-means-medical-students (last visited Sep 13, 2023).

[87] *See id.*

a standardized test because clinical education provides the opportunity for close supervision and review of a trainee's clinical skills and decision making under real life circumstances.[88]

The creation of standardized rubrics and consensus among clinicians regarding which experiences are foundational for lawyers in training enable clinicians to credibly advocate for a clinical pathway.[89] Integrating clinical education, or at least clinical voices, into licensure also elevates the perceived importance of clinical programs within institutions (and the resources for those programs).[90] Uniformity of expectations in clinic and in licensure can also help students understand what is expected of them across their training and post-graduate journeys. It also allows clinic students to be compared across programs and jurisdictions for their practice readiness.[91]

G. Mandatory Program-Wide Clinic Evaluations Improve Clinical Programs

It is difficult to directly measure a clinical program's effectiveness in educating students.[92] Client outcomes can be gathered and empirically reviewed to appraise the program's effectiveness in provision

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[88] *See* Claudia Angelos, Andrea A. Curcio, Marsha Griggs, Deborah Jones Merritt, *INSIGHT: Clinical Education—A Safe and Secure Pathway to Law Licensure*, Bloomberg Law, https://news.bloomberglaw.com/white-collar-and-criminal-law/insight-clinical-education-a-safe-and-sure-pathway-to-law-licensure.

[89] The authors of the Carnegie Report contended that good clinic assessment is a superior form of identifying law student success. Carnegie Report, *supra* note 11, at 173 ("Assessment of the lawyering apprenticeship in law schools, when it is done well, is closer to good practice as understood by experts in the field of assessment than the summative regime in use for the cognitive apprenticeship.").

[90] Merritt, *supra* note 64, at 2739 (2023) (advocating for law schools to focus on client-centered training and noting that candidates will necessarily develop client-centered skills if state courts require them to demonstrate competence in that area for licensure).

[91] *See* Carnegie Report, *supra* note 11 (praising the medical school system's synchronization of standardized national medical student exams with subsequent licensing exams because they "allow a professor to compare local student performance with performance in other schools") (quotation marks and internal citations omitted).

[92] Since there is no direct method to measure how effective professionals are at their job once they complete a program, it is difficult to determine the quality of the program that trained them. This is true in law as well as in other professions. *See* Harvard Law School Center on the Legal Profession, *Teaching Hospitals and Teaching Teachers: Clinical Education Models in Medicine and Teacher Training, Clinical Legal Education*, The Practice (2020), https://thepractice.law.harvard.edu/article/teaching-hospitals-and-teaching-teachers/ ("One challenge in the teaching profession, not unlike the law, is a lack of consensus metrics to measure the quality of teaching in a way that can inform discussions around how to better train teachers for the future."); *See* Daniel J. Givelber, Brook K. Baker, John Debitt Robyn Milano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. Leg. Educ. 1, 21 (1995) ("By and large, we lack any objective measures of the efficacy of our efforts to educate lawyers.").

of legal services.[93] But measuring educational effectiveness is trickier.[94] Evaluations by students of their experiences in clinic courses can certainly yield some indirect information about course success. Unfortunately, typical law school course evaluations that are administered to students at the end of the semester do not provide robust insight into whether the clinic course was effective.[95] This is, in part, because the questions on standard school-wide course evaluations are not tailored to gauge the learning methods and outcomes for clinic.

When evaluating clinic experiences, students should be responding to targeted questions that directly reference the learning objectives of the course and placement.[96] It is not as helpful for students to assess the general quality of their experience without this basic context. Students often find clinic experiences rewarding and fail to realize that there are broader goals that they may not have been provided with an opportunity to achieve. For example, a clinic student might feel gratified that they were able to fill out a child support modification petition using a template, and thereby accomplish something for a client. While the student might be satisfied by this experience, the clinic might also have lacked true depth or opportunity to meet challenging learning outcomes. The personal relationship between the student and clinician, or the inherent thrill of finally doing legal "work" can likewise bias the evaluation toward overly positive results. Conversely, a particularly

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93 *Cf.* Colleen F. Shanahan, Jeffrey Selbin, Alyx Mark & Anna E. Carpenter, *Measuring Law School Clinics*, 92 Tul. L. Rev. 547 (2018) (reporting findings from a large dataset of unemployment insurance cases that compared clinical law students' use of legal procedures and outcomes to those of experienced attorneys in cases in the same court).

94 *See* Yael Efron, *What is Learned in Clinical Learning?* 29 Clin. L. Rev. 259, 261 (2023) (highlighting the dearth of research "showing that what clinical instructors teach is what law students actually learn" and noting that "the literature on [clinical legal education] deals extensively with the contribution and benefits of clinical pedagogy, but often does not base these important insights on systematic examination and scientific analysis."). Efron conducted a five-year qualitative study of the legal clinics in an Israeli law school based on review of personal journal entries and focus groups of participating clinic students, to measure the effectiveness of student outcomes in clinical education against theoretical objectives of clinical education. Efron's analysis found evidence that clinical teaching achieves many of its goals while acknowledging the limitations of her qualitative methodology.

95 *See* Givelber, *supra* note 92, at 21, 46 (conceding that "a student may not be the best judge of whether she has in fact learned well" and pointing out that no empirical work has been done to establish the effectiveness of clinical courses).

96 *See* Carnegie Report, *supra* note 11, at 180-182 (recommending that schools tether evaluation of students and evaluation of faculty directly to goals for student learning for a coherent educational experience); *see also* Barbara Glesner Fines & Judith W. Wegner, *Creating an Institutional Culture of Assessment*, *in* Building on Best Practices: Transforming Legal Education in a Changing World 420 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo Lopez eds., 2015) (noting that most teaching evaluation forms "could be used as devices for student assessment of learning, but with added items that ask students to evaluate the extent to which they think they have achieved selected learning outcomes for the course").

challenging client or a loss in a case might make a student feel negatively about their clinic experience even though it was educationally effective.

II. Touro's Standardized Student Assessments and Program

Touro's universal clinic student assessments have been in place for four years. Using a common software platform, we learned that the assessments show broad agreement between students and faculty on student performances of learning outcomes. They also suggest the need for more rigorous writing assignments in clinic.

A. Use of a Common Clinic-Wide Software Platform for Student Assessment at Touro Yielded Valuable Data

Touro's clinical program uses the Google Forms platform for its standardized program-wide student assessments. This permits aggregation of program level data. Touro can easily identify clinic or program-level patterns among student performances.[97] We can also analyze where there are consistencies and discrepancies between clinic students' views on their performance versus faculty views on their performance.

Student self-assessments are important components of a clinical program's collaborative assessment approach.[98] At Touro, each clinic student receives a mid-semester evaluation filled out by both their clinic faculty and them.[99] Students and faculty use identical rubrics, with the exception that students are asked to articulate their own learning goals for the remainder of the clinic semester. An analysis of several semesters of Touro's administrations of these evaluations has revealed close alignment between the faculty member's ratings of the student with the student's self-ratings across our learning outcomes.[100]

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[97] *See* Joohi Lee, Kathleen Tice, Denise Collins, Amber Brown, Cleta Smith, Jill Fox, *Assessing Student Teaching Experiences: Teacher Candidates' Perceptions of Preparedness*, 35 Educ. Research Q. 3 (2012) (finding that student teachers' self-assessment, conducted at intervals throughout their supervised teaching experience, was helpful to measuring the effectiveness of the teacher training programs in which they participated).

[98] *See supra* notes 65-81 and accompanying text.

[99] For Touro's most recent student assessment, *see* Melina Healey, Example Touro Law Center Clinical Program Student Assessment, https://forms.gle/2tpyrCnyrVaNgHub8 (last updated Feb. 6, 2025).

[100] An analysis of the spring 2023, fall 2023, and spring 2024 semesters' program-wide student assessments (the only semesters for which we collected sufficient data to derive statistically reliable results) revealed that in each of these semesters, faculty and students rated student performances similarly for all learning outcomes across all cumulative student grade point average quartiles. *See* Kathy Gill, Clinic Student Midsemester Assessment Analysis 12.20.24 (Dec. 20, 2024) (on file with author).

Touro's mid-semester clinic assessment also asks students and faculty to mark "N/A" where the student has not yet had an opportunity to demonstrate competence in a particular area. At the individual student level, this metric provides a foundation for further conversation if, for example, the student or clinician has failed to recognize a student's specific encounter with a client as an example of "client counseling." This might yield valuable conversation about what has accounted for the disconnect and what both parties might learn from each other's perspective. Reviewing where the student or clinician has marked "N/A" on individual assessments also gives the clinician a chance to intentionally build case work or simulations into the student's remaining experience to fill that gap.

The "N/A" or "skill not used" rating can also be helpful when reviewed program-wide for patterns. If analysis shows significant proportions of students and faculty across the program rating "N/A" or "skill not used" for particular learning outcomes, the program can also use this information to try to identify why those learning outcomes are not introduced to students and, if they are still deemed important, how to build them into the program.[101]

Students' clinic course evaluations, discussed in the following section, also assist in identifying where there are patterns of deficits in student opportunities to perform in particular learning outcomes.

B. Touro's Program-Wide Clinic Evaluation Helped Identify Areas in Need of Improvement, Such as Incorporation of More Rigorous Student Writing

In contrast to evaluation of clinical programs, site and supervisor assessments have become well established and studied in externship programs.[102] This allows externship programs to identify weaknesses in individual site placements and at the program level. In 2020, I reviewed dozens of externship site evaluation tools, and over a dozen clinic-specific evaluation tools. Having surveyed the available tools, I then developed a mandatory clinical program-wide evaluation tool that is tied

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101 *See id.* Touro's analysis found that students and faculty identified that students did not have the opportunity to demonstrate competence in areas such as "effective development of a case theory." Our faculty rated twenty-five percent of students as not having opportunity to demonstrate this skill in clinic; our students self-reported they did not use this skill in clinic at a rate of thirty-eight percent.

102 For an example of an externship site and supervisor evaluation scheme, and how it can be used for programmatic improvement, *see* Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 Sw. L. Rev. 1 (2010).

to the program's common clinic learning outcomes.[103] All Touro clinic students are required to execute this evaluation tool.[104]

Touro's mandatory program-wide clinic evaluation, like the student assessment, is on a centralized software platform. This has allowed the program to identify clinic-specific and program-wide areas for improvement. For example, the tool asks students to identify "What type of written assignments did you personally complete this semester? Please check all that apply, even if it was part of a simulation exercise."[105] The students are then provided with a list with numerous options, including, for example, journal reflections, letters, transactional legal documents, motions, affidavits, pleadings, briefs, internal memos, and case planning documents.[106]

During the first administration of this evaluation in spring 2021, the results showed that students across the program were not doing much legal writing. Many were just drafting "letters" or "emails" or "journal entries," and only 16% of clinic students identified having received written feedback on their written work.[107] We felt our program needed to teach and expect more from students' writing and provide more ongoing written feedback on this work. Accordingly, we made systematic changes to build simulations and case work opportunities to address these deficits and developed inter-clinic simulations that introduced more challenging writing assignments.[108]

Another benefit of capturing program-wide evaluation data on a single electronic platform is that it enables clinical programs to demonstrate their educational successes. Data on the type of work students

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103 For Touro Clinical Program's Mandatory Clinic Evaluation, *see* Melina Healey, Example Spring 2024 Touro Clinic Course Evaluation, https://tourocollege.pdx1.qualtrics.com/jfe/preview/previewId/cf02e718-ec54-4bca-9e4e-2d8ecd803729/SV_cuy1fuL6aTLfEI6?Q_CHL=preview&Q_SurveyVersionID=current (last updated Feb. 6, 2025).

104 Touro ensures both anonymity and universal clinic student completion of the clinic evaluations. We advise students during clinic enrollment that the evaluation is required for course credit. The course evaluation tool is administered by IT through Qualtrics. IT monitors whether students complete the survey and give the registrar a list of those students who completed it so that they could receive their grade in clinic. No faculty or staff outside of IT, the registrar's office, and Touro's Director of Assessment have access to the list of students who complete the survey.

105 *See supra* note 99 for a link to the self-assessment.

106 *Id.*

107 Melina Healey & Kathleen Gill, Report on 2020-2021 Faculty Innovation Grant (July 21, 2021) (on file with author).

108 Kathleen Gill, 2020-2021 Assessment Findings and Actions Planned – Mandatory Clinic Evaluation, 2022 Touro College and University System Annual Assessment Report (Oct. 12, 2022) (on file with author). For a similar approach in a social work program, where students were asked to identify which types of clinical activities they engaged in, and the program was amended based on the aggregated results, *see* Erin P. Fraher, Erica Lynn Richman, Lisa de Saxe Zerden, and Brianna Lombardi, *Social Work Student and Practitioner Roles in Integrated Care Settings*, 54 Am. J. Preventative Med. 281 (2018).

are able to do each semester can be more easily collected if all clinic students are required to fill out this type of evaluation and it all imports into one centralized location. It can be especially useful to share this type of good news when so much of what clinicians and clinic students accomplish must be kept private to preserve client confidentiality. For example, the spring 2021 administration of the Touro mandatory clinic evaluation showed that program-wide, 99% percent of students agreed or strongly agreed that their clinic professor was a good role model for client representation, 96% percent agreed or strongly agreed that their professor involved them in important decisions and they felt their work was important and valued, and 100% agreed or strongly agreed that they received an appropriate level of direct responsibility for their cases.[109]

Capturing this program-level evaluation data on a single digital platform is also helpful for backwards design in other parts of the law school curriculum by identifying where students may need to develop more advanced skills prior to starting clinic. Touro's course evaluations reinforced what we learned from our program-wide student assessment: we learned that the clinical program was not providing sufficient opportunities for challenging legal writing. These data patterns allowed the faculty to confront the fact that students were arriving in clinic unprepared for the task of advanced legal writing, and permitted clinical faculty to assist in thinking through how earlier curricular offerings could be designed to better prepare students for writing in clinic practice.[110]

One final voice that is critical when evaluating the effectiveness of clinical programs is that of the program's clients. Client satisfaction surveys may have limited reliability when used to evaluate the performances of individual students, but "in sufficient numbers may provide valuable and reliable information about the clinic or program itself."[111] Touro has a universal client survey, also using a common program-wide platform, that captures information about the quality of interactions with our clinic students, faculty, and staff and their satisfaction with our provision of services. We use information from these surveys to identify and promote good outcomes, sometimes in the media with client permission, and to troubleshoot problems in the program.[112]

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109 Healey & Gill, *supra* note 107, at 2.

110 *See* Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 Clin. L. Rev. 489, 512-515 (2013) (recommending law schools build curricula by working backwards from clinic goals and embedding clinic pedagogical methods in earlier coursework).

111 J.P. "Sandy" Ogilvy, *Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs*, 15 T.M. Cooley J. Prac. & Clin. L. 1, 21 (2013)

112 For Touro's example client survey, *see* Client Survey: Melina Healey, Touro Law Clinic Post-Representation Survey, https://tourocollege.pdx1.qualtrics.com/jfe/preview/

Conclusion

Great benefits for clinic clients and students can be gained by collaborating across clinics and assessing students and the clinic at a programmatic level. A uniform system of assessment in clinical programs offers immense benefits for students, faculty, and the broader legal profession. By engaging in this methodology, clinical faculty can create more reliable measures of student learning, improve feedback quality, and enhance the overall effectiveness of clinical programs. Moreover, this collaboration can reduce silos between clinics, elevate the role of clinics within law schools, and contribute to broader reforms in attorney licensure.

Touro's experience demonstrates that standardized assessments of students can provide valuable insights into both student performance and program effectiveness. Program-wide clinical course evaluations further identify gaps in learning opportunities and enable clinical programs and law schools to refine curricula to better prepare students for legal practice.

Of course, much work is left to be done and my experience has shown that, as with so much of legal education, the process is as valuable as the outcome. Evaluation schemes require an iterative process. Ongoing collaboration by clinical law faculty to refine tools helps build faculty trust and buy-in to these tools and ensures ongoing dialogue over the core values of clinical education. I welcome ongoing feedback on the specific metrics that we measure in our clinical program and hope to learn more from colleagues nationwide about what and how we should measure lawyering ability.

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