BEYOND GRADING: ASSESSING STUDENT READINESS TO PRACTICE LAW

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Although law schools, including clinical professors, are largely successful in assessing students’ progress in specific courses, few have taken on the task of doing global assessments of each student to measure the student’s all around success in developing the necessary core competencies to become successful legal professionals. Because clinical law professors often have extensive experience as practicing attorneys and supervise students in the practice of law in actual cases, they are uniquely qualified to assess students on the broad range of knowledge, skills and values necessary to become successful practitioners. This article examines the process used by one clinic at the Drake University Law School to conduct global assessments of students in the broad range of knowledge, skills, and values essential for professional success. The article examines the entire process, beginning with identifying core competencies through the implementation of a series of assessment tools for evaluating the progress of each student on those competencies. As a result of the positive reactions of faculty and students to this novel assessment process, the article concludes with a challenge to other clinical professors to implement an assessment process that goes beyond grading.

INTRODUCTION

When a law school professor or clinician hears the word “assessment,” there is a natural assumption that it refers to tools for grading students or evaluating instructors. Of course, assessments used for grading and instructor evaluation are essential to tracking student progress and teacher success. However, law schools owe more than a course evaluation to their students. Law schools should be engaged in fully preparing their students for entry into the practice of law and erasing the “gap” between legal education and the practicing bar.1

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1 See AMERICAN BAR ASSOCIATION, SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE

335
Law schools cannot assume that just because a student has completed the requirements for a degree, the student possesses the requisite "skills, values and knowledge" necessary to effectively transition to the practice of law. Rather, law schools should adopt an integrative strategy for legal education, focusing on a holistic rather than an atomistic approach. In addition to assessments for grading and instructor evaluation, law schools should provide their students with an assessment of their overall readiness to begin the practice of law. Armed with this assessment, students would be able to tailor the balance of their law school experiences and extra-curricular activities to complete their preparation for a smooth transition into the legal profession. Clinical teachers are particularly well-positioned to conduct this assessment process.

This article describes a process that the Children's Rights Clinic at the Drake University Law School recently developed to assess its students' possession of the knowledge, skills and professional values needed to successfully begin the practice of law. In developing the assessment process, we drew upon established research about the successes and failures of legal education, and we aimed to make students interactive partners in their own evaluations. Our assessment process is in addition to – and separate from — the grading the Clinic has long conducted and, as such, requires additional faculty and student effort. However, we have found the additional assessment process well worth the time. It helps faculty provide a well-rounded clinical experience for each student by directly focusing on the areas where students need individualized improvement and support.

This article proceeds in three parts. Part I of this article surveys the literature on legal education and identifies the core competencies necessary to be a successful member of the legal profession. Part II describes an assessment process implemented by the Children's Rights Clinic at the Drake University Law School to measure students' abilities in the identified core competencies. Part III evaluates the impact of the assessment process used by the Children's Rights Clinic. The article concludes that an assessment process which identifies the progress of each student on core competencies is appreciated by the students and is well worth the time and effort expended on the process.

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I. LAW SCHOOLS AND PREPARATION FOR THE PRACTICE OF LAW

The major, widely respected evaluations of legal education have concluded that law schools do not adequately prepare students to enter the legal profession because they focus on legal analysis to the exclusion of other lawyering skills. The MacCrate Report was issued by the American Bar Association in 1992.4 That report noted that “practicing lawyers believe that their law school training left them deficient in skills that they were forced to acquire after graduation.”5 A decade and a half later, the Best Practices Report6 and the Carnegie Report7 built on the MacCrate Report’s findings, updated the evaluations of legal education, and made recommendations for improvements. The Best Practices Report, written by the Clinical Legal Education Association, bluntly stated, “Law schools are not producing enough graduates who provide access to justice, are adequately competent, and practice in a professional manner.”8 That report was skeptical of the ability of law schools to fully prepare students for the practice of law, stating, “It is not clear whether law schools in the United States can bring students to an adequate level of proficiency to represent clients without supervision in three years.”9 Similarly, the Carnegie Report, prepared by the Carnegie Foundation for the Advancement of Teaching, an independent research and policy center, concluded, “At present . . . a law degree requires no experience beyond honing legal analysis in the classroom and taking tests. In most schools, this leaves direct preparation for practice entirely up to student initiative. Too often, the complex business of learning to practice is largely deferred until after entry into licensed professional status.”10 Other commentators have likewise agreed that law schools usually fail to prepare students to become practicing attorneys.11 As this Part discusses, these critiques recommend that law schools focus on core competencies that all lawyers should share.

A. Three Apprenticeships

All of the major assessments of legal education have identified three distinct areas of expertise that law schools must teach in order to adequately prepare a student for the practice of law: legal analysis,
skills development, and professionalism. The MacCrate Report described those areas of expertise as follows: “If a single public profession of shared learning, skills and professional values is to survive into the 21st century, the law schools together with the bar and the judiciary must all work for the perpetuation of core legal knowledge together with the fundamental lawyering skills and professional values that identify a distinct profession of law throughout the United States.”12 Likewise, the Best Practices Report stated, “In order to develop competent graduates . . . law schools need to emphasize the development of students’ expertise in three different areas: legal analysis, training for practice, and development of professional identity.”13 The Carnegie Report identified the same three areas of expertise as apprenticeships for the legal profession. As it stated, “So we speak of three apprenticeships. The signature pedagogies of each professional field all have to confront a common task: preparing students for the complex demands of professional work – to think, to perform, and to conduct themselves like professionals.”14 Commentators within legal academia similarly identify these three aspects of expertise as part of an essential legal education.15

These studies agree that traditional law school teaching methods, which rely on appellate court analysis and the Socratic method, have been somewhat effective in developing competency in the first apprenticeship – legal analysis. The MacCrate Report concluded, “Many aspects of the skill of legal analysis and reasoning, an important element of professional training, have long been effectively taught through appellate case analysis.”16 The Best Practices Report conceded that the traditional method for teaching students has made inroads on the first apprenticeship, stating, “Law schools in the United States are particularly effective at teaching students how to engage in legal reasoning and helping them develop the skill that is described by many as ‘thinking like a lawyer.’”17 However, the Best Practices Report also encouraged law schools to expand the scope of instruction to provide students with more ways to accomplish this objective.18

The Carnegie Report found the traditional method of teaching legal principles and theory to be initially effective in helping students in the first apprenticeship: “The case-dialogue method is a potent form

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12 MacCrate Report, supra note 1, at 120.
14 Carnegie Report, supra note 3, at 27.
16 MacCrate Report, supra note 1, at 243.
17 Best Practices Report, supra note 2, at 70.
18 See id. at 72.
of learning-by-doing. As such, it necessarily shapes the minds and dispositions of those who apprentice through it. . . . It seems well suited to train students in the analytical thinking required for success in law school and legal practice.”19 However, the Carnegie Report concluded that this traditional method of legal instruction is subject to the law of diminishing returns because students’ interest and effort in the classroom wanes throughout their law school experience.20 Moreover, the Carnegie Report stated that this traditional method of teaching in law schools does little to actually prepare a student for the practice of law, finding “that case-dialogue teaching is not seen by recent law graduates as particularly helpful in enabling them to move from school to professional practice.”21 One law professor has gone so far as to contend that “[t]he traditional model of legal education has been focused so narrowly on this single activity as to be extremely unsuccessful at educating students for any other lawyerly activity.”22 The traditional law school curriculum teaches and measures only the first apprenticeship, often leaving the competencies of skills and professional values up to clinical, workshop, and simulation based courses.23

While there are several methods of teaching skills courses, the use of an in-house legal clinic representing real clients has become increasingly common.24 The reason is obvious. As stated in the Carnegie Report, “Practice requires not the distanced stance of the observer and critic but an engagement with situations. . . . For this reason, we believe laying a foundation for the development of practitioners requires that legal education expand along the continuum to include significant involvement in the experience of performing the tasks of practicing attorneys.”25 According to the MacCrate Report, the clinical experience of serving in the role of a lawyer to a live client is a way to integrate all of the professional skills of a lawyer in the student’s educational process. The report states, “Clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills.”26 The Best Practices Report

19 Carnegie Report, supra note 3, at 74-75.
20 See id. at 77.
21 Id. at 76.
24 See Rebecca Sandefur & Jeffrey Selbin, The Clinic Effect, 16 CLIN. L. REV. 57, 78 (2009) (“Today there may be as many as 1,200 distinct clinics in 170 of the nation’s roughly 200 law schools, a substantial expansion from the several dozen programs just a half century ago.”).
25 Carnegie Report, supra note 3, at 82.
26 MacCrate Report, supra note 1, at 238.
notes that the public’s expectations of training for young lawyers include experience in the actual representation of clients: “Doctor’s patients reasonably expect that their doctors have performed medical procedures multiple times under the supervision of fully qualified mentors before performing them without supervision. Clients of attorneys should have similar expectations, but today they cannot.”

It is almost axiomatic that a student cannot become skilled in the practice of law by reading about skills or watching a lawyer in practice, but must actually repeatedly perform as a lawyer and receive expert feedback. Legal clinics have been termed a “key component” in meeting the skills and values components of a well-rounded legal education. In fact, the Carnegie Report concluded, “[C]linical courses can go well beyond simply filling gaps in students’ legal preparation. If one were to search for a single term to describe the ability they hone best, it is probably legal judgment.”

Teaching of skills and professionalism is more time-intensive and requires lower student-to-faculty ratios than courses focusing on substantive law. Some skills are best taught by immediate client contact, while others can be taught through simulation courses. Because of the higher costs of clinical education, it is important for clinical instructors to focus on achieving educational goals that are uniquely met by the clinical experience. Accordingly, this article encourages clinical professors to design an assessment process that measures the success of the law school in teaching identified skills and values and that contains the following key ingredients: validity, reliability, and fairness.

This article is not designed to detail an assessment process for a particular clinic, but rather, is designed to explore a process for examining the accumulation of the entire law school and other life experience in the preparation of the student for the practice of law. Students are concerned about whether or not their law school education as a whole, as opposed to their clinical experience in isolation, has prepared them to enter the practice of law. This article describes how the Children’s Rights Clinic (CRC) at the Drake Legal Clinic assesses the three apprenticeships. The process described in this paper is

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29 MacCrator Report, supra note 1, at 238.  
30 Carnegie Report, supra note 3, at 122.  
31 Id. at 93-94.  
33 See Stuckey, Teaching with Purpose, supra note 15, at 808.  
34 See Best Practices Report, supra note 2, at 239.
layered on top of grading criteria used by individual clinics. We are not attempting to separate skills and values gained in the clinical experience from those acquired by the student elsewhere. In short, we aim to let students know how ready they are to join the legal profession.

B. Establishing Core Competencies

It is fundamental that instructors in clinical education clearly identify and understand the essential skills and professional characteristics that they wish to inculcate in their students. Each of the three apprenticeships involve a number of core competencies. The MacCrate Report itemized ten “Fundamental Lawyering Skills” and four “Fundamental Values” needed by every practicing attorney. The ten fundamental lawyering skills include the following: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute-resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. The four fundamental values include the following: provision of competent representation; striving to promote justice, fairness and morality, striving to improve the profession, and professional self-development.

While these fundamental skills and values may be too comprehensive to cover in any single clinical course because they entail more than could be taught in a single semester, they provide good guidance in setting outcome measures for the entire law school experience. Using these metrics, two legal clinicians identified the following ten areas in which to evaluate the performance of clinic students: attorney-client interactions, theory of the case development and implementation, oral and written advocacy, practice management, professional relationships, professional responsibility, reflective skills development, class participation, simulation participation, and personal development. This list includes not only core competencies, but also classroom objectives such as class participation and simulation participation, which foster engaged learning. An assessment of student readiness for the practice of law examines the student’s abilities in the core competencies, leaving an evaluation of class performance for the grading process.

II. Drake’s Attempt to Assess the Core Competencies

In order to allow the faculty of the CRC to develop a list of core

35 See Stuckey, Teaching with Purpose, supra note 15, at 807.
36 MACCRATE REPORT, supra note 1, at 138-140.
37 Id. at 140-141.
38 See Brustin & Chavkin, supra note 23, at Appendix A.
competencies, we asked the entire Drake Legal Clinic faculty to collectively create a short, concise statement including the fundamental skills and values that should be universal competencies of graduates of the clinical program. This mission statement was developed after all clinical faculty became thoroughly familiar with the *MacCrate Report*, the *Best Practices Report* and the *Carnegie Report*. Our Mission Statement provides,

The Drake Legal Clinic provides an exceptional learning experience for students, applying their legal education to the representation of clients in a first-class clinical setting. We ensure that our students have an understanding of and respect for the cultural and social differences of others. We instill in our students the highest professional and ethical standards as well as a commitment to ensuring meaningful access to justice for all.

During clinic orientation, we tell students about the three apprenticeships delineated by the *MacCrate Report*, the *Carnegie Report* and the *Best Practices Report* and give them a one-page handout that describes “the three dimensions of professional work.” The hand-out states as follows:

**Thinking like a lawyer:** This is what almost all of the first ½ of your law school career is about. At this point, you are able to “think like a lawyer” as a result of the case-dialogue method. Notice how you look at almost every set of facts differently than you did before law school.

**Performing like a lawyer:** This is where you move from “thinking like a lawyer” to “lawyering.” You move from a novice to competence. (Later in practice, you will move to expertise.) You will gain the “wisdom of practice” from being coached, watching (modeling), performing, reflecting, and experiencing (repetition).

**Acting like a lawyer:** This is where you develop a professional identity and purpose. Your identity must be a person who is ethical, professional, honest, dedicated to service to clients and to public service, as well as having a calling to promote justice and public good. You entered law school with many of these characteristics (hopefully) and you can make them an integral part of your identity, again, by being coached, watching (modeling), performing, reflecting, and experiencing (repetition).

These three apprenticeships are discussed by faculty and students during orientation, and a commitment is made to address all three throughout the clinical experience. Clinical faculty agreed that each clinic would develop and implement its own individual assessment process for grading purposes. In addition, the CRC agreed to undertake a process to assess the core competencies of its students in their entirety, looking beyond grading and teacher evaluation to assess the
students’ abilities in the identified core competencies. The rest of the clinical program awaited the outcome of the CRC assessment process in order to determine whether to adopt it throughout the clinical program.

A. Competencies for the Children’s Rights Clinic

The CRC represents children in abuse and neglect (child welfare) cases as well as delinquency cases. The clinic provides seminar instruction in child welfare and juvenile justice law, as well as a live client experience where students serve as guardians ad litem and/or attorneys for youth in the court system. The CRC is a two-semester clinic, with students receiving five hours of credit per semester. Each semester, students are required to devote at least two hundred twenty-five hours of work for their clinical experience, including three hours per week of seminar instruction on substantive and procedural law. The CRC class size is limited to ten students, and is supervised by one full-time professor, one half-time adjunct professor, and one full-time licensed master social worker.

Based on review of the MacCrate, Best Practices, and Carnegie reports, the CRC developed twelve “key skills and learning opportunities” for students in the clinic. They include the following: understanding and application of substantive law, case investigation and preparation, client interaction, development of legal strategies, document preparation, courtroom etiquette and trial advocacy, ethics and professionalism, commitment to equal access to justice for all, collaboration with other disciplines, and self-assessment and reflection. These core competencies are not unique to a particular clinic, but are important to the preparation of all law students for their professional careers. Some of these goals can only be achieved through the clinic, but others can be drawn from other courses, internships, and extracurricular activities. When we give students a copy of these key competencies during orientation, we advise them that these are the same factors they will use for a self-assessment at both the mid-point and at the end of their clinical experience. We also tell them that their faculty supervisor will independently provide an identical assessment at both points in time. By discussing these key skills and values at the beginning of the clinical experience, the focus of both the student and the supervising professor is directed to these areas.

Students are encouraged to privately complete the assessment of key skills at the beginning of the semester to develop their own baseline and to allow them to identify areas where they need the most

30 See Appendix A for a detailed description.
improvement. Students also have an opportunity to consult with their supervising professor to discuss areas where the student believes they need additional experience.

B. Assessments of Student Progress

Research shows that most legal clinical teachers in the United States have not spent enough time on assessment and have failed to develop reliable tools for evaluating the development and progress of clinical students in the three apprenticeships.40 Both the Best Practices Report41 and the Carnegie Report42 contain full chapters dedicated to assessing student learning. The Carnegie Report explained the most basic reason for assessment of students, “From our observations, we believe that assessment should be understood as a coordinated set of formative practices that, by 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.”43 The Best Practices Report goes a step further in stating that assessment methods may have more influence on how and what students learn than any other factor.44 Assessment is a powerful tool because law students uniformly desire to be prepared to become competent lawyers, but, being novices in the legal profession, they are unable to identify core competencies themselves. The CRC designed its assessment process to take account of these insights.

In developing a comprehensive assessment process, the CRC puts all students through a five-step assessment process: (1) a self-evaluation by the student of his or her accomplishments and development in the identified competencies; (2) an evaluation by the faculty supervisor of the student’s accomplishments and development in the identified competencies; (3) an accumulation of a portfolio of documents representative of the student’s accomplishments in clinic; (4) a case study self-assessment; and (5) the student’s assessment of outside attorneys with whom they have interacted while in the clinic.45 Each of these steps will be discussed separately.

40 See Stuckey, Teaching with Purpose, supra note 15, at 808.
41 See Best Practices Report, supra note 2, at Ch. 7.
42 See Carnegie Report, supra note 3, at Ch. 5.
43 Id. at 171.
44 See Best Practices Report, supra note 2, at 235.
1. Self-Assessment of Competencies

As noted earlier, the CRC developed twelve “key skills and learning opportunities” for students in the clinic. Each student is asked to assess their own development of the competencies at two points — at the halfway point and at the conclusion of their clinical experience. Each student must assess their success in terms of degrees. They can choose from the following levels for each skill:

- The student is familiar with the skill/practice, but not able to perform it.
- The student can perform the skill/practice, but requires close supervision.
- The student can perform the skill/practice with minimal supervision.
- The student can perform the skill/practice adequately without further training.
- The student can perform the skill/practice in an outstanding manner with virtually no supervision and could provide assistance to others.

This scale of supervision requirements virtually mirrors the one used by the Law Society of England and Wales and suggested in the *Best Practices Report*. The use of scaled skill levels does not emphasize deficiencies; rather, it focuses on the degree of supervision required, which is more supportive of students. The CRC assessment form contains an area for narrative comment after each key learning skill.

The direct self-assessment of identified competencies is designed to implement what the *Carnegie Report* refers to as “intentional learning,” where students are aware of the skills and professional levels they are trying to attain, rather than just trying to pass a test. The gradients of the assessment allow the student to determine the level of expertise attained; levels range from novice, advanced beginner, competent, proficient, to expert. Self-assessments help students see how they progress through the four steps of learning: experience, reflection, theory, and application. The process forces students to focus on the key competencies, engage in self-reflection, develop an awareness of their limitations, and identify a plan for improvement. Like-

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46 See Appendix A.
48 See Best Practices Report, supra note 2, at 246.
50 See Best Practices Report, supra note 2, at 245.
51 See Stuckey, Teaching with Purpose, supra note 15, at 813.
wise, by performing the self-assessment at two points in the clinical educational process, the student is able to recognize their growth in competency that experience, reflection, planning, and repetition help develop.

2. Faculty Assessment of Competencies

The assessments not only give feedback to students on their progress, but also help faculty members know whether or not they have given their students sufficient experience and feedback in each of the key areas identified. Attaining the skills and professional qualities necessary to become a successful practicing lawyer requires not only repeated performance and reflection, but also expert feedback.

Before reviewing the student’s self-assessment, the supervising faculty member conducts an identical assessment of the core competencies. This is done independently of the student’s self-assessment, so that the assessment by one does not influence the other. Afterwards, the student and the supervising faculty member meet and compare their completed assessments of the student’s performance. This process is designed to accomplish several goals. The CRC aims to provide an independent, expert assessment of the student’s competencies, allow an opportunity for the student and instructor to discuss skills and professional development, and provide an opportunity for the student to reflect on the accuracy of the self-assessment.

Prior to the student meeting, the entire CRC faculty meet at the end of the first semester to review each student’s assessment. At that time, faculty discuss the core competencies and develop a plan for enhancing the clinical experience in any areas where a student’s competency has not yet fully developed, or where the student has not had sufficient opportunities to develop a particular skill. The end-of-the semester meeting also helps faculty assign cases for the second semester that will provide experiential opportunities in the areas where a student’s competencies need the most improvement.

3. Student Portfolio

The Best Practices Report sets forth eleven principles and proposals for assessing student learning, including the requirement that students compile educational portfolios. That report defines student portfolios as “... compilations of materials that document a student’s academic achievement and personal development.” Similarly, the

52 See Best Practices Report, supra note 2, at 256.
53 See Stuckey, Teaching with Purpose, supra note 15, at 820.
54 See Best Practices Report, supra note 2, at Ch. 7.
55 Id. at 261-62.
Carnegie Report has described the use of a student portfolio as “...a promising approach to assessing the complex of skills of practice that has been relatively underused in legal education, as compared with other domains of higher education...” Accordingly, the CRC requires students to place copies of a variety of documents in their portfolio, including case management notes from “Darrow” about a court hearing; a memorandum describing a home visit and at least one other case activity; a report to the court drafted by the student and filed in one of the student’s assigned cases; a series of pleadings drafted and filed in court by the student; a research project completed by the student on an assigned case (such as a memo or brief); and a piece of correspondence. Throughout the clinical experience, the student must continually update the portfolio to reflect the “best example” of the student’s work in each category. At the conclusion of the clinical experience, the student portfolio should reflect the very best written work of the student in the clinical course.

The student portfolio is designed to meet several purposes: providing a concrete “product” for the supervising faculty to use for student assessment, allowing the student to reflect on the quality of their work by self-selecting and comparing documents for inclusion into the portfolio, and providing the student the opportunity to see growth in skills throughout the clinical experience. As an added benefit, students are able to provide their portfolio to prospective employers. Students are advised of this benefit, although cautioned that they must respect the privacy of clients by maintaining confidentiality of those documents in an appropriate manner before showing them to anyone outside of the clinic.

4. A Case Study Self-Assessment

The Best Practices Report asserts that “[t]he entire law school experience should help students become expert in reflecting on their learning process, identifying the causes of both successes and failure, and using that knowledge to plan future efforts to learn with a goal of continuous improvement.” In good clinical practice, students learn to develop theories of practice and performance, to analyze their performances, and to learn from their strengths and weaknesses.

Accordingly, at the end of each semester, students must provide a
one-page narrative containing a critical analysis of their performance in one court case they handled. We ask students to critique their attorney-client relationship, their development of case strategy, and their performance in court. Students reflect on what they would have done differently, and what effect, if any, such changes might have had on the case or on the client. The student and the faculty advisor meet to discuss the case study along with the core competencies assessment at the mid-point and end of the clinical experience. This case study is designed to provide an intense reflection by the student on their performance and directly relate the skills of the student to the outcomes for the client.

5. Student Assessment of Outside Attorneys

Two effective ways for students to learn to be a lawyer are to perform the tasks of a lawyer and to watch practicing lawyers at work.61 At least one commentator has stated that legal clinics are too narrowly focused and fail to give students information about the nature of the practice of law.62 For instance, representing children in child welfare cases may not give the student a full appreciation of the difficulties of representing a parent who may be uncooperative with the attorney or whose conduct is not likely to evoke sympathy. Observing practicing lawyers (as well as judges) gives students a realistic view of the practice of law.63 Likewise, careful observation of experts and reflection on the work of the expert is an important way for a novice to gain proficiency.64 Accordingly, at the mid-year point and at end of the course, CRC students must provide a short analysis of one opposing attorney that the student observed positively and one that the student observed negatively. Each analysis is only one or two paragraphs in length. Students not only critique the outside attorney’s performances in court, but also an analysis of the case, the attorney’s strategy development and implementation, the attorney’s professionalism in dealing with adversaries and court staff, and the attorney’s relationship with their clients. This assessment of outside attorneys is designed to provide an intense reflection by the student on how attorney performance may or may not affect the outcomes for the client. This document also provides a concrete “product” that helps faculty know whether the student is engaged in meaningful reflection and understands the three apprenticeships.

61 See id. at 816.
62 See Johnson, supra note 11, at 1256.
63 See Best Practices Report, supra note 2, at 158.
C. Mentoring and Lifetime Learning

After law school, students who enter private practice join law firms where “mentoring is hit or miss at best.” In fact, the absence of mentoring for most new lawyers has led the Best Practices Report to recommend that licensing authorities require a period of supervised practice before granting full admission to the bar. As part of the inculcation of the three apprenticeships, we remind students in the CRC that even after graduation from law school, they are not ready to practice law without supervision or support. They are told of the importance of finding a mentor upon entering the practice of law, as well as the need for continuing a lifetime of learning. The issue of finding a mentor is emphasized by reference to an Iowa Supreme Court opinion suspending the law license of a young lawyer, in which the Court stated:

He had no real mentor within the profession, and primarily associated with people that provided little professional guidance. The confluence of these circumstances, as well as others, foretold the disaster that would lie ahead. This cataclysm eventually unfolded in an eight-count complaint filed by the Board in 2006.

We have recognized the rigors of the practice of law and the difficulties that can be encountered by attorneys. These difficulties are multiplied exponentially for young lawyers who venture into the practice as sole practitioners.

In the end, this case can be distinguished from the others. Ultimately, it seems to reveal less about an unethical lawyer than one who was confused, alone, and unprepared for the voyage he undertook, and quickly found himself well over his head in the dangerous and sometimes treacherous currents of the practice of law.

[W]e support the concept of mentoring for all new lawyers, especially those who have recently graduated from law school and choose to begin their careers as a sole practitioner. The lack of education and guidance on the intricacies of the practice of law is often, as in this case, a recipe for disaster for new lawyers.

One legal clinician has asserted that the most important goal of a legal education should be to develop lifelong learning skills. This amounts to more than just attending continuing education classes, because there is little evidence that these classes have any effect on law-

66 See BEST PRACTICES REPORT, supra note 2, at 13.
68 See Stuckey, Teaching with Purpose, supra note 15, at 821.
yer competency. Rather, lifelong learning skills involve reflection, identification of successes and failures, and development of plans for improvement. CRC students are reminded that law school is just the first step in a lifetime of learning that is necessary to become, and to continue to be, an outstanding professional. CRC faculty encourage students to view continuing legal education as more than a requirement to remain in good standing with the state licensing authority, but as a tool for continuous development of their character and skills.

CRC is one part of a Center for Children’s Rights at the law school which is visibly active with the organized bar and the judicial branch in providing skills and values training to lawyers and judges by producing a bi-weekly electronic newsletter, hosting numerous continuing legal education events in juvenile law, and providing lectures and materials at virtually every juvenile law seminar in the state. CRC students are provided with all written materials produced for these activities and are encouraged to attend them whenever possible. The clinic’s engagement with practicing lawyers demonstrates to the students the commitment of the CRC to the recommendations of the MacCrate Report of “Striving for Professional Excellence After Law School.”

III. Evaluating the Impact of the Assessment

Because the CRC assessment process is new, it is impossible to evaluate the long-term impact of this new approach. However, some initial observations have surfaced, including the amount of student and faculty time involved in the process, the importance of timing of the assessments in relation to other student activities (such as finals), the receptiveness of the faculty and students to the process, and the value of the process itself. I offer these observations as a way to reflect on the success of the assessment process.

A. Student Time Expended on the Process

Not surprisingly, students were wary about the amount of student time that would be required to comply with the assessment process. Students were anxious to begin working as lawyers and did not want to take time away from their clinical experience to comply with assessment requirements. However, by the end of the first semester, this concern diminished. Students were asked to estimate the time expended on the process.

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69 See MacCrate Report, supra note 1, at 311.
71 MacCrate Report, supra note 1, at 336-37.
Assessing Student Readiness

Pended on each portion of the assessment process. Students estimated that the completion of the self-assessment document averaged forty-five minutes. Moreover, students did not recognize any extra time being expended on the compilation of their student portfolios. They viewed this step as part of document preparation (not much different than making a copy for the file).

While the case study self-assessment is limited to one typewritten page, students estimated that this aspect of the process took about two hours per student to complete, the longest time period dedicated to any portion of the process. Faculty encouraged students throughout the semester to make hand-written notes after every hearing concerning the performance of opposing attorneys in the case. Students told us that they simply referred back to those notes to prepare the assessment of outside attorneys, using an average of only one hour to prepare the written document required. Finally, the students spent, on average, one and one-half hours meeting with the faculty team to discuss and compare the assessments and to prepare a plan for the next semester. While the entire process required almost constant reflection and evaluation, the students ultimately viewed the formal process as only adding between five and six hours of extra work for completion.

B. Faculty Time Expended on the Process

It should be noted that the assessment process described in this paper is not designed to measure the success of the clinical experience to the student or to provide a grade for the student. The grading process is separate and distinct from the assessment process. A grading process must, by definition, only assess the skills acquired by the student in the clinical setting. The assessment process described in this article is intended to assess the student’s core competencies regardless of where those competencies were acquired. Therefore, any time expended by faculty members in this assessment process is in addition to the time expended for grading or assessment of the clinical experience itself. The CRC grades are determined by attendance, class participation, writing samples, and understanding substantive laws and procedural rules as evidenced by student performance on assigned cases. Students are graded on a pass/fail basis.

Since the assessment process was implemented solely in the CRC, only three faculty members were involved in the process — the full-time director of the program, an adjunct professor employed part-time in the program, and the full-time master social worker assigned exclusively to the program. All faculty kept notes of student meetings and supervised activities throughout the semester, and those notes were referred to during the assessment process. There were ten stu-
Students enrolled in the Children’s Rights Clinic during our first roll-out of the assessment process. The three faculty members met at the end of the first semester to conduct an initial discussion about each of the students, with that meeting lasting approximately two hours. The director then used notes from that discussion to prepare a draft of the written assessment for each student. The director then spent an average of one hour per student completing the comments section of the written assessment, and then circulated the draft of all assessments to each member of the faculty team. The faculty team members then each individually reviewed the draft, added comments, and gave each student a preliminary rating. Faculty team members estimated that this review and rating took approximately one-half hour per student. The team then met collectively to discuss and finalize the assessments. The final team meeting required approximately three hours for all ten students. Finally, the faculty team spent, on average, one and one-half hours meeting with each student to discuss and compare the assessments and to prepare a plan for the next semester. The director invested approximately three and one-half hours per student for the assessment process. Other team members invested approximately two and one-half hours per student for the assessment process. However, the assessment process substantially reduced the time required for the grading process by including review of the same written work and application of substantive and procedural law by the student. It also enhanced the grading process by expanding the faculty’s focus to additional skills, such as client interaction and courtroom etiquette.

C. Timing of the Assessment Process

Students and faculty members alike wanted the assessment process to be meaningful for students without interfering with other student responsibilities, such as final exams, moot court, or journals. This meant that the process should not interfere with final exams, but needed to be complete so that students entered the second semester with a plan for improvement. Because completion of the student portfolios was an ongoing process, this portion of the assessment process did not raise any timing concerns. As for the case studies and outside attorney assessments, we encouraged students to complete them well in advance of the conclusion of the semester and to hold them until the faculty-student meeting. Since these written reflections are relatively short, students are able to supplement the reflection if a more meaningful example presents itself later in the semester.

CRC required students to complete the self-assessment document by the first week of the second semester, so that they could reflect on the entirety of their prior semester’s experience. The faculty team
completed their portion of the faculty assessment of competencies during the semester break. The meetings of the students and the faculty team were held during the second week of the second semester. For one semester clinical programs, special attention should be directed to the timing of this process.

D. Student and Faculty Receptiveness

Students reported that they began the process at orientation with mixed reactions. They saw the value of the process and were excited about the idea, but they were concerned about the amount of their time that would be required to complete the assessment process. At the same time, third-year law students had begun to focus on their future after law school, and they wanted feedback that would tell them how prepared they were to enter practice. They also were outspoken in their enthusiasm for assembling a portfolio of their best work to use in their job search. After the assessment process was completed, the students unanimously endorsed the entire process. Students said that the process made them take time to reflect throughout the semester. Most believed that they would not have spent as much time in reflection on skills without the assessment process in place. Students also said that they appreciated the opportunity to work with faculty to develop a plan for improving their skills throughout the course.

At the start of the school year, all faculty members committed their best efforts to make the assessment process a success. Although faculty members recognized the need for the process and the value to the students, they were concerned whether the process would live up to expectations. At the conclusion of the process, all faculty members involved believed that it was well worth the time spent.

The CRC is providing faculty members of other clinics at the Drake University Law School with information about the process, including statistical data about the time involved, comparisons between faculty and student ratings, and examples of student plans for improvement. Other clinics have the option of adopting the assessment process. At the same time, CRC is seeking input from students and non-participating clinical faculty about ways to refine the process even further.

E. The Value of the Process

Because the assessment process described in this article has only been used for one year, it is impossible to evaluate the long term impact of the process. Nevertheless, students and faculty alike have unanimously concluded that the process is valuable. Each student has
entered the second semester with clear tools for improving their skills in the three apprenticeships. As the faculty members anticipated at the beginning of the process, law students did not have good insight into their abilities. Exceptional students routinely under-rated their abilities, while less skilled students routinely over-rated their abilities in the self-assessments. However, at the conclusion of the student-faculty meetings, there was general agreement as to the skill level of each student. The process itself, then, contributed a great deal toward student reflection and insight.

CONCLUSION

This article describes a novel assessment process designed and implemented by the Children’s Rights Clinic at the Drake Legal Clinic in light of significant research findings about the state of legal education. Importantly, this assessment process is not a substitute for grading; it is designed to tell students how prepared they are to enter law practice. The author hopes to inspire other law professors to consider developing an assessment process of core competencies in addition to the assessment of clinical performance necessary for grading. The author intends to prepare a subsequent article describing the successes, challenges, and recommended revisions to the process after having implemented the process several years. As we teach our students, reflection is essential.
APPENDIX A

Key Skills and Learning Opportunities for Students in the
Children’s Rights Clinic

1. HOME VISITS: The student attorney demonstrates excellence in meeting a child client at the home/placement, interviewing the client, observing the placement (and recording those observations), and drawing conclusions as to the appropriateness of the placement.

2. CLIENT RELATIONSHIP: The student attorney demonstrates excellence in determining the appropriate number and location of visits to develop a working relationship with the child client, interacting with the child in a professional and yet age-appropriate manner, establishing appropriate boundaries, and developing a trusting and professional relationship with the child.

3. DRAFTING COURT REPORTS AND OTHER COURT DOCUMENTS: The student attorney demonstrates excellence in preparing a guardian ad litem report to the court for each case as well as drafting and filing any other court documents necessary for the case.

4. DEVELOPING APPROPRIATE CASE STRATEGIES: The student attorney demonstrates excellence in evaluating the case, considering the various strategies for representation, and selecting the most effective strategy for the client to be employed at hearings, family team meetings, staffing and other events.

5. GENERAL COURTROOM ETIQUETTE: The student attorney demonstrates excellence in proper deportment in an uncontested hearing, including dress, general courtroom procedure, and the ability to address the court in representing a client in an uncontested hearing.

6. UNDERSTANDING AND PROPERLY APPLYING LEGAL PRINCIPLES: The student attorney demonstrates excellence in understanding Iowa juvenile law and procedure, and properly applying that understanding in legal arguments, legal briefs and motions, and during strategy development.

7. TRIAL ADVOCACY IN A CONTESTED CASE: The student attorney demonstrates excellence in preparation for and performance in a contested court proceeding, including direct examination, cross-examination, legal argument, factual argument, and citing appropriate law to the court. The skill includes properly employing the rules of evidence in contested proceedings.
8. ETHICAL PRACTICE: The student attorney demonstrates excellence in recognizing existing and potential ethical issues, developing strategies to ensure ethical practice, and demonstrating the highest ethical standards in all activities involved in any cases assigned to the students. The skill also involves analyzing the ethical practices of other attorneys involved in assigned cases.

9. PROFESSIONALISM: The student attorney demonstrates excellence in commitment to honesty, integrity and fairness in all matters, including in telephone conversations, emails, letters, personal conversations and pleadings.

10. EQUAL ACCESS TO JUSTICE: The student attorney demonstrates excellence in an understanding of and respect for the cultural, economic and social differences of others as well as demonstrating an understanding of the need to ensure meaningful access to justice for all.

11. COLLABORATION WITH OTHER DISCIPLINES: The student attorney demonstrates excellence in working collaboratively with other professionals (lawyers, social workers and educators) as well as other students to provide the best possible outcome to the client.

12. SELF-ASSESSMENT AND REFLECTION: The student attorney demonstrates excellence in the prompt reflection on performance. This reflection should identify strengths as well as weaknesses in performance and must include alternate strategies that could have been employed to resolve any identified weakness.