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# Teaching and Assessing Soft Skills

Sophie M. Sparrow

## Introduction

It is our job as legal educators to put our law graduates in the best position to succeed as new lawyers.<sup>1</sup> And to succeed, law graduates must possess certain qualities or character traits that will enable them to thrive within legal organizations.<sup>2</sup> Despite many calls for reform in legal education to include more practice-related skills, including professionalism, many law professors teaching doctrinal courses are reluctant to incorporate teaching professional competencies and behaviors.<sup>3</sup> They are unwilling to do so even though they have long decried students' lack of professional skills.<sup>4</sup> Professors complain that students show up late for classes and are unwilling to work hard. They criticize students for failing to persevere when faced with challenges or

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1. AM. BAR ASS'N, *Standard 301(a): Objectives of Program of Legal Education*, in STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017 15 (2016) [hereinafter ABA STANDARDS], [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2016\\_2017\\_aba\\_standards\\_and\\_rules\\_of\\_procedure.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf) (“A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”).
2. ALLI GERKMAN & LOGAN CORNETT, FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT (2016) [hereinafter THE WHOLE LAWYER], [http://iaals.du.edu/sites/default/files/reports/foundations\\_for\\_practice\\_whole\\_lawyer\\_character\\_quotient.pdf](http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf).
3. There are exceptions. Professor Paula Schaefer shows why and how to integrate professionalism in doctrinal courses. Paula Schaefer, *A Primer on Professionalism for Doctrinal Professors*, 81 TENN. L. REV. 277 (2014). Compare Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57, 71-99 (2012) (showing the ways in which professionalism is taught in law schools and noting that most legal writing programs teach professionalism); Bridget McCormack, *Teaching Professionalism*, 75 TENN. L. REV. 251, 257 (2008) (stating that most professionalism in law school happens in clinical courses).
4. Sophie Sparrow, *Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 113, 131 (2007).

critiques, respond to professors' emails, engage in teaching exercises, listen to their classmates, closely read assignments, or follow directions. Professors note that students' attention spans are too short and they are addicted to their phones. It follows that the same student behaviors we see in the classroom transfer to practice. If these behaviors impair our students' performance as attorneys, we should take steps to remedy the problem by teaching and assessing the qualities and character traits necessary to succeed throughout the law school curriculum, including in the first-year and other doctrinal classes.

### I. The Foundations for Practice Project—The Whole Lawyer and The Character Quotient

In 2014, *Educating Tomorrow's Lawyers*, an initiative of the Institute for the Advancement of the American Legal System, launched "Foundations for Practice," a groundbreaking project designed to, among other things, "identify the foundations entry-level lawyers need to launch successful careers in the legal profession."<sup>5</sup> Between 2014 and 2015, 24,137 lawyers in fifty states responded to *Educating Tomorrow's Lawyers* survey—across practice settings, specialties, and geography—to uncover the essential attributes of success for lawyers as they launch their careers.<sup>6</sup> In 2016, *Educating Tomorrow's Lawyers* published the results of the survey in *The Whole Lawyer and The Character Quotient* (the Whole Lawyer). A year later, in a subsequent report, *Hiring the Whole Lawyer: Experience Matters* *Educating Tomorrow's Lawyers* summarized the Whole Lawyer survey results, noting that new lawyers "are successful when they can demonstrate much more than their intelligence and legal competency."<sup>7</sup> Strikingly, the authors found that "characteristics (such as integrity and trustworthiness, conscientiousness, and common sense), as well as professional competencies (such as listening attentively, speaking and writing, and arriving on time), were *far more important* in brand new lawyers than legal skills...."<sup>8</sup> In fact, as identified by survey respondents, the top ten "foundations"—the term used collectively to refer to "characteristics, . . . professional competencies and legal skills..."<sup>9</sup>—important for new lawyers were 1) keeping client confidentiality, 2) being on time, 3) honoring commitments, 4) having integrity, 5) treating others with respect, 6) listening attentively, 7) responding promptly, 8) being diligent, 9) having a strong work ethic, and 10) paying attention to detail.<sup>10</sup> This article will refer to these as "foundation skills."

5. THE WHOLE LAWYER, *supra* note 2, at 1.

6. THE WHOLE LAWYER, *supra* note 2, at 4.

7. ALLI GERKMAN & LOGAN CORNETT, *HIRING THE WHOLE LAWYER: EXPERIENCE MATTERS 1* (2017) [hereinafter *HIRING THE WHOLE LAWYER*], [HTTP://IAALS.DU.EDU/FOUNDATIONS/REPORTS/HIRING-WHOLE-LAWYER-EXPERIENCE-MATTERS.PDF](http://iaals.du.edu/foundations/reports/hiring-whole-lawyer-experience-matters.pdf).

8. THE WHOLE LAWYER, *supra* note 2, at 3.

9. *HIRING THE WHOLE LAWYER*, *supra* note 7, at 1.

10. THE WHOLE LAWYER, *supra* note 2, at 26.

The Whole Lawyer Study is significant for several reasons. First, it confirms many of the results of other studies about effective lawyers' attitudes, skills, and traits, and similarly notes the need for integrity, honesty, diligence, relationship building, listening, and other skills in addition to legal skills.<sup>11</sup> Second, it is the most recent comprehensive survey about what U.S. legal employers seek from new lawyers.<sup>12</sup> Third, the Whole Lawyer Study reinforces previous calls for changes in legal education to more fully prepare graduates for the practice of law.<sup>13</sup> Fourth, its results show a disparity between what law schools teach and what law students need to learn.<sup>14</sup>

11. Susan Daicoff, *Teaching Relational Skills: The Evidence*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 314, 314-22 (Deborah Maranville et al., eds., 2015). Daicoff summarizes findings from nine published empirical studies and surveys on lawyer effectiveness, including Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993); Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513, 523-25, 548-51 (2009); John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11 (1988); Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 622-24 (2011); John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327, 329-31 (2000).
12. THE WHOLE LAWYER, *supra* note 2, at 4 (noting that “a total of 24,137 attorneys—with office locations in all 50 states and representing most types of work settings and practice areas—submitted valid responses”); ALI GERKMAN & LOGAN CORNETT, FOUNDATIONS FOR PRACTICE: SURVEY OVERVIEW AND METHODOLOGICAL APPROACH (2016), [http://iaals.du.edu/sites/default/files/reports/foundations\\_for\\_practice\\_survey\\_overview\\_and\\_methodological\\_approach.pdf](http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_survey_overview_and_methodological_approach.pdf).
13. *E.g.*, ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 60 (2007) [hereinafter BEST PRACTICES] (asking law schools to teach students professionalism: “A professional lawyer will be trustworthy and honest, work cooperatively with opposing counsel, judges, colleagues, and clients, perform on schedule, keep promises, respond promptly to telephone calls, [and] answer questions courteously....”); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 145 (2007) (noting that legal education is “severely unbalanced, . . . [and that] the relentless focus . . . on the procedural and formal qualities of legal thinking . . . is sometimes to the deliberate exclusion of the moral and social dimensions and often abstracted from the fuller contexts of actual legal practice.”); Melissa H. Weresh, *Fostering a Respect for Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum*, 21 TOURO L. REV. 427, 435 (2005) (“[F]ew would dispute that instruction in the areas of ethics, professionalism, legal analysis, and written communication [is] essential, if not the bare minimum, [to] a legal education.”); ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 199 (1992) (the “MacCrate Report” named for Robert MacCrate, Esq., chairman of the task force) (noting twenty-five years ago that effective lawyers need to “be familiar with the skills, concepts, and processes required for efficient management, including appropriate allocation of time, effort and resources; timely performance and completion of work; cooperation among co-workers; and orderly administration of the office”).
14. Daicoff, *supra* note 11, at 315 (“[D]ata documenting societal dissatisfaction with lawyers suggests a need for attorneys to improve their intrapersonal and interpersonal skills—skills often overlooked in legal education and professional development.”).

Common responses to suggestions that law professors could and should teach professional competencies and behaviors—often pejoratively called “soft skills”<sup>15</sup>—are that students should have already learned these skills; if students have not yet learned these skills, it is too late to learn them; professionalism skills and traits are inherent, not learned; and law professors do not have the time to teach these skills in addition to other course material. But if confidentiality, timeliness, commitment, integrity, respect, listening, responsiveness, diligence, strong work ethic, and attention to detail—the top ten foundation skills—are important for new lawyers, law schools should be educating students about all of them, and explicitly teaching and assessing at least some of these skills to help students develop them.<sup>16</sup> Just as we need to teach students entry-level competence in legal knowledge, analysis, problem-solving, written and oral communication, ethical behavior, risk management, self-direction and self-knowledge, and cross-cultural awareness, among other practices,<sup>17</sup> we need to explicitly identify and teach the Whole Lawyer Study’s most important foundations.<sup>18</sup>

15. Defined in contrast to “hard skills,” which are more technical in nature, soft skills “cover multifarious abilities such as communication and interpersonal skills, emotional intelligence, team skills, negotiations skills, social grace, time management skills, business etiquettes, etc. Soft skills are becoming essential for professional success.” Raj Kumar, *BASIC BUSINESS COMMUNICATION: CONCEPTS, APPLICATIONS AND SKILLS* 249 (2010); Daicoff, *supra* note 11, at 316 n.14 (noting that soft skills “include intra- and interpersonal competencies that are often associated with the social sciences . . . [a phrase] not resonant for many in the law.”).
16. Kehner, *supra* note 3, at 60 (“[E]mpirical evidence supports the view that professionalism education in law school is not a waste of time and effort; a person’s character is molded and changed beyond the teenage formative years, based on one’s experience and reflection.”) [citation omitted].
17. *BEST PRACTICES*, *supra* note 13, at 54 (identifying the components of entry-level competence for law graduates);

Standard 302. LEARNING OUTCOMES:

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: . . .

(d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Interpretation 302-1

For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.

AM. BAR ASS’N, *Standard 302: Learning Outcomes*, in *ABA STANDARDS*, *supra* note 1, at 15.

18. See Beth Hirschfelder Wilensky, *Assignments with Intrinsic Lessons on Professionalism (or, Teaching Students to Act Like Adults Without Sounding Like a Parent)*, 65 J. LEGAL EDUC. 622, 628-32 (2016) for an effective way to teach and have students incorporate professionalism.

This article first briefly argues that we should teach some of these top ten foundation skills in large-enrollment doctrinal<sup>19</sup> or “podium” classes. This article then identifies a few basic principles to follow when teaching one or more foundation skills. It subsequently suggests ways in which law professors can assess their students’ foundation skills.

## II. Why Teach Lawyering Foundations in Large Doctrinal Classes?

In the ideal world, we would teach and assess the top ten lawyering foundations throughout the law school curriculum. This would create and support an institutional culture conveying the foundations’ importance. As with the arguments in support of teaching writing, research, ethics, clinical skills, diversity skills, and academic support across the law school curriculum,<sup>20</sup> having students repeatedly learn about, practice, and get feedback on foundations such as timeliness and showing respect would also help students develop awareness and competence<sup>21</sup> in these areas.

In fact, many law schools already focus on important lawyering foundations, often placing them in the category of “professionalism.” Professionalism usually includes more than the top ten Whole Lawyer foundation skills, incorporating the important concepts of ethics, morals, public service, social justice, lifelong learning, professional identity, and a commitment to self-development.<sup>23</sup> Law schools emphasize the top ten foundation skills when

19. As others have noted, characterizing law courses as teaching doctrine or skills suggests a false dichotomy. See, e.g., Linda A. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. LEGAL EDUC. 181, 187 (2014) (noting that “doctrinal” courses also teach important lawyering skills).
20. Miriam R. Albert & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises Will Enrich Learning in First-Year Courses*, 5 DREXEL L. REV. 165, 169 (2012) (arguing that “law schools must rise to the challenge of introducing a broad range of practical skills and ethical values across the curriculum and throughout the three years of law school.”); Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 OKLA. L. REV. 503, 508 (2008) (advocating for teaching research across the curriculum “to adequately prepare law students for their future careers as attorneys”); Timothy W. Floyd et al., *Beyond Chalk and Talk: The Law Classroom of the Future*, 38 OHIO N.U. L. REV. 257, 258 (2011) (arguing for including writing exercises in courses to prepare students for practice); Jeff Giddings, *Why No Clinic Is an Island: The Merits and Challenges of Integrating Clinical Insights Across the Law Curriculum*, 34 WASH. U. J.L. & POL’Y 261 (2010) (encouraging law schools to use clinical skills throughout the curriculum”); Vernellia R. Randall, *Teaching Diversity Skills in Law School*, 54 ST. LOUIS U. L.J. 795, 798 (2010) (“we should be teaching diversity skills across the curriculum.”); Louis N. Schulze, Jr., *Alternative Justifications for Academic Support II: How “Academic Support Across the Curriculum” Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 4 (2012).
21. See Judith Welch Wegner, *Contemplating Competence: Three Meditations*, 50 VAL. U. L. REV. 675 (2016) for a thorough and thoughtful analysis of the complexities of the term “competence”.
22. Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 415 (2001) (noting the importance of practice and feedback in learning lawyering skills).
23. As Professor Susan Daicoff notes,

they provide individual courses on professionalism, require students to participate in orientation and other professionalism programs, and provide smaller, skills-based law courses, externships, and clinics.<sup>24</sup> Indeed, teaching foundation skills is well-suited to these experiential learning environments; professors have fewer students than in large-enrollment doctrinal classes, can regularly provide individualized instruction, observation, and feedback, and can provide students with authentic<sup>25</sup> learning experiences. But explicitly teaching and assessing foundation skills in large doctrinal classes is also vital. It signals the importance of these practice-based competencies and skills to colleagues<sup>26</sup> and students. It indicates that these foundation skills matter in multiple, if not all, settings.

### III. Teaching Foundation Skills in Large Doctrinal Classes

We should show law students that the Whole Lawyer Study foundation skills are important by identifying them, modeling them, giving students opportunities to practice them, providing students with feedback, and assessing one or more of these skills. If we do so, most students will show that they understand and can apply them.<sup>27</sup> It is probably unrealistic to suggest

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While it is a nebulous term, “professionalism” has been used to mean several different things. First, it is often used to set apart a profession from a trade or occupation by way of characteristics such as advanced educational and licensing requirements, regulation by government or by profession itself, and a stated commitment to public service for which financial remuneration is incidental. Second, it can refer to a set of ideals with which the members of a profession conform on a voluntary basis, that are not enforceable or actionable if breached . . . . In a broader sense, professionalism refers to those goals, values, and attitudes which exemplify the nobler aspects of the practice of law and that enhance the public image of lawyers and the legal profession.

Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1343 (1997) (footnotes omitted). Professor Paula Schaefer defines professionalism: “Professional lawyers (1) fulfill duties to clients, (2) meet their obligations to the bar by complying with professional conduct rules, and (3) exhibit core personal values essential to being a good lawyer.” Schaefer, *supra* note 3, at 282.

24. Kehner, *supra* note 3, at 71-99.
25. MARY J. ALLEN, ASSESSING ACADEMIC PROGRAMS IN HIGHER EDUCATION 8 (2004) (“Authentic assessment involves real-world activities that professionals in the discipline encounter.”).
26. McCormack, *supra* note 3, at 254 (“[T]he second-class role of clinical programs in the law school curriculum undermines the importance of the pedagogy of professionalism.”). Law professors notice what their colleagues teach, with skills and clinical courses often being considered less significant than doctrinal courses. Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN ST. L. REV. 1119, 1137 (2012) (identifying the “stubborn caste system in legal academia, with podium faculty members teaching substantive law at the top and the skills faculty members near the bottom, just ahead of adjuncts and the staff”); see also Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N L. WRITING DIRS. 12 (2002).
27. Daicoff, *supra* note 11, at 322 (noting that other graduate schools teach relational skills and “[t]here is no reason why the teaching methods used so successfully in other professions cannot be imported into legal education”).

that a law professor teaching a large-enrollment doctrinal course teach and assess all the top ten Whole Lawyer Study foundations without significant help.<sup>28</sup> And some of the top ten foundation skills, such as timeliness and responsiveness, are considerably easier to teach and assess in large courses than such a foundation skill as preserving client confidentiality. Given these challenges, it makes sense for us to initially focus on one or two of the top ten foundation skills that may be more easily taught and measured in a doctrinal class, such as being on time, responding promptly, being diligent, or paying attention to detail. This is not to suggest that we can teach and assess every facet of one or more of these four foundation skills in all their complexity in a large class, or that these four foundation skills are the only ones that we should teach large classes. But even if we choose to focus on only one or two foundation skills, and teach and assess them imperfectly, we can identify their importance and help our students prepare for their legal careers.

#### *A. Identify the Learning Goals for the Course*

In designing a course<sup>29</sup> to address any of the Whole Lawyer Study's foundations, we first need to identify our learning goals.<sup>30</sup> These goals need to be specific and concrete, with measurable, tangible outcomes. For example, we could phrase a learning goal for being on time as, "By the end of this course, students will identify and appreciate the importance of timeliness in the legal profession, be present and on time for class, complete and submit all assignments on time, and adhere to all deadlines." We could similarly formulate other learning goals, starting each with, "By the end of this course, students will" and followed by the actions the professor desires students to learn,<sup>31</sup> such as,

28. For examples of ways to include teaching assistants in assessment, see Rogelio A. Lasso, *Is Our Students Learning? Using Assessments to Measure and Improve Law School Learning and Performance*, 15 BARRY L. REV. 73, 95 (2010); Herbert N. Ramy, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 865-72 (2013).
29. For an overview of the course design process, see MICHAEL HUNTER SCHWARTZ, SOPHIE M. SPARROW & GERALD F. HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* 33-58 (2d ed. 2017) [hereinafter *TEACHING LAW BY DESIGN*].
30. Experts in teaching, learning, and assessment have repeatedly noted the need for teachers to articulate concrete learning goals at the beginning of the course design process. GRANT WIGGINS & JAY MCTIGHE, *UNDERSTANDING BY DESIGN* 17 (Expanded 2d ed. 2005) (naming one of the three features of "backwards design" under the heading "Identifying desired results" as "What should students know, understand, and be able to do? . . . What enduring understandings are desired?"); L. DEE FINK, *CREATING SIGNIFICANT LEARNING EXPERIENCES* 63 (2013). Expert educator L. Dee Fink further notes that "learning goals for a course should include but also go beyond content mastery . . . [This] will make the learning experience inherently more worthwhile and at the same time make it more interesting for learners." *Id.* at 38; BARBARA E. WALVOORD & VIRGINIA JOHNSON ANDERSON, *EFFECTIVE GRADING: A TOOL FOR LEARNING AND ASSESSMENT* 7 (2d ed. 2010) [hereinafter *EFFECTIVE GRADING*].
31. *EFFECTIVE GRADING*, *supra* note 30, at 7.

. . . recognize the importance of treating others with respect. Students will show respect for all members of the course, including classmates, professor, teaching assistants, and support staff. Students will use a respectful and polite tone in responding verbally or in writing, and refrain from interrupting others, having side conversations during whole-class discussion, and making disparaging remarks about others. Students will recognize the importance of apologizing for disrespectful behavior and apologize as appropriate.

. . . value the significance of listening attentively to all members of the course. When listening, students will be open to what others are trying to communicate, and will show that they are trying to understand others' perspectives and points of view. Students will encourage and allow others to talk, ask follow-up questions to gain understanding, and be proactive in ensuring that they understand what others are saying.

. . . respond promptly and professionally to inquiries and requests. When contacted by another member of the course, students will respond as soon as is professional and possible, even if the response is that the student will have to provide a more thorough response later. In general, students will respond within one business day to a request from another member of the course.

. . . appreciate the value of being diligent. Students will consistently work hard and effectively in preparing for class, participating in class discussions, and completing assignments. Students will be ready to engage with course material during class, and seek to extend their knowledge and skills. Students will maximize their engagement, stay on task during class, and persevere in completing learning tasks.

. . . pay attention to detail. Students will closely follow all directions on assignments and exercises. Students will follow all course requirements in the course syllabus. Students will discriminate between important and less important details.<sup>32</sup>

As an alternative to our selecting specific foundation skills and generating their associated learning goals, we can enlist student input in identifying which foundation skills to focus on in the course and collaborate with our students in designing the related learning goals.<sup>33</sup> Regardless of how we arrive

32. These are just examples of how we might fashion some of these foundation skills into learning goals (also referred to in educational literature as learning objectives or learning outcomes). Note that these goals overlap—being respectful includes listening attentively to others—and that there are many ways to word them.
33. Having the professor select foundation skills and design related learning goals may be more efficient than taking the time to solicit, review, and discuss student input, but having students weigh in on designing aspects of the course makes the course less teacher-centered, empowers students to be in control of their learning environment, and actively engages them in their learning. Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, but Our Course*, 47 *WASHBURN L.J.* 367, 375 (2008) (noting that “[s]elf-determination theory, intrinsic motivation, autonomy support, and learner-centered teaching suggest that students

at our learning goals, we need to share them with students, as we do with any course learning goal.<sup>34</sup> We need to articulate these goals in writing and include them in the course syllabus or other important course materials, and verbally reinforce the learning goals in class, just as we should with legal doctrine and skills.

When identifying the foundation skills we want students to learn, we also need to provide students with the context on why these foundation skills matter, as students learn more effectively when they understand the significance of what they are learning.<sup>35</sup> We can help students learn the foundation skills by sharing the evidence gathered from the many surveys of lawyer effectiveness, connecting the foundation skills to practicing law. Showing the quantity and variety of the respondents for the Whole Lawyer Study is powerful evidence of what legal employers seek in new graduates.

### B. Choose Teaching and Learning Methods

Teaching these critical foundation skills presents challenges. First, there is an understandable (and sometimes accurate) assumption that students enter law school with a firm grasp of these skills so teaching them seems superfluous<sup>36</sup> and even condescending.<sup>37</sup> Second, some of these skills are more ephemeral and subjective compared with legal doctrine and skills. For example, “treating others with respect” is a concept that students will understand in the abstract but perhaps not as it applies to their own behavior, which can offend others in class. Most students may listen attentively to others much of the time, but midsemester may start to obviously tune out when a more vocal student starts to speak.

In addition, some students only partially grasp what any one of the foundation skills may mean. For example, students may believe that they are

and teachers will benefit when they collaborate in designing a course.”). For a discussion of students’ part in the assessment process see Cassandra L. Hill, *The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn*, 56 *How. L.J.* 447 (2013).

34. BEST PRACTICES, *supra* note 13, at 29:

In addition to clarifying what we are trying to teach, it is important that we explain our teaching objectives to our students. Part of the stress and confusion that first year students experience is caused by our failure to explain why we are having them read appellate cases and wrestle with questions that do not seem to have any correct answers. This is a problem that can be easily cured by developing transparent teaching objectives and helping students understand what we are trying to accomplish.

35. *Id.*

36. For the past ten years, students in almost all my courses have identified and set course guidelines for the behaviors that make for a successful learning environment. In generating guidelines, students quickly and routinely state that everyone should arrive on time, be prepared for class, treat one another with respect, and listen to one another, indicating that students are aware of what constitutes effective professional interaction. (student-generated guidelines and course notes on file with the author).

37. Wilensky, *supra* note 18, at 625.

diligent, and are showing it by reading the assigned pages in a casebook to prepare for class. But if students have been taught more effective and efficient ways of preparing for class, such as going beyond reading to briefing cases, preparing outlines, drafting questions, and generating examples,<sup>38</sup> then being diligent would suggest not only that they studiously read for class, but that they prepare effectively by engaging in a number of other more active learning tasks. If we want students learn certain foundation skills, we need to explain the specifics of what we want them to learn, and give them opportunities to practice those foundation skills during the course.

We can use a variety of teaching and learning methods to teach foundation skills.<sup>39</sup> As a threshold matter, we need to model the foundation skills we seek from our students.<sup>40</sup> (Because these foundation skills are so important to new lawyers' success, we should model all of them). We teach not just by what we say, but by what we do.<sup>41</sup> We send strong messages when we are not available when we said we would be, fail to respond to students' emails, and treat staff and colleagues without respect. We need to apply our specific learning goals to ourselves. For example, if we are going to focus on foundations such as diligence and timeliness, then we need to model them, such as by starting and ending classes on time, and being diligent in preparing and conducting our classes. If we are going to hold students accountable for the foundation skill of responsiveness, then we need to be responsive in turn.<sup>42</sup>

In addition to modeling the foundation skills we seek to teach, we need to help our students understand exactly what our learning goals mean. We can assign reading in advance, then can explain our learning goals through an in-class or video microlecture. For example, in a few minutes, we can clarify what we mean by "paying attention to detail" and provide examples about

38. See Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 459-60 (2003) (discussing learning strategies and practices law students can take to prepare effectively).
39. For ideas about applying a variety of teaching methods to law school courses, see TEACHING LAW BY DESIGN, *supra* note 29, at 97-120.
40. See, e.g., Leah M. Christensen, *Going Back to Kindergarten: Considering the Application of Waldorf Education Principles to Legal Education*, 40 SUFFOLK U. L. REV. 315, 327 (2007). "Professors who use behavior that is rude or disrespectful not only prevent their students from learning, but they also reinforce the worst stereotypes about attorneys." *Id.* (footnote omitted).
41. For examples of effective modeling, see MICHAEL HUNTER SCHWARTZ, GERALD F. HESS & SOPHIE M. SPARROW, WHAT THE BEST LAW TEACHERS DO 114-17, 140-42 (2013). For an excellent essay on showing students respect, see Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. LEGAL EDUC. 247 (1993).
42. This is not to suggest that the professor should be on alert twenty-four hours a day or respond to students outside of business hours. Instead, a professor can identify ways to be contacted. Modeling these foundation skills does not mean that we lower our expectations for their performance. We can still call on students and require that they participate in class. We can and should set high standards. Okianer Christian Dark, *Principle 6: Good Practice Communicates High Expectations*, 49 J. LEGAL EDUC. 441 (1999).

the consequences of attorneys not paying attention to detail<sup>43</sup> in practice. We can explicitly reinforce the need to pay attention to details when we engage students in analyzing texts and applying rules to hypotheticals, and can use ourselves as examples. We can talk about incidents in which we failed to follow directions or overlooked details, or those in which we benefited from paying attention to details. We can invite guest speakers to class to further illuminate select foundation skills and their significance in practice.<sup>44</sup>

But we need to do more than have students read about and listen to us talk about the foundation skills. To deepen students' learning we need to use teaching methods that actively engage the students.<sup>45</sup> For relatively low time-intensive<sup>46</sup> activities, we can show students video clips of attorneys and ask students to identify and evaluate how well the attorneys do in executing specified foundation skills. We can engage students in small-group and whole-class discussions about professional choices attorneys appear to have made in the cases they read about for class.<sup>47</sup> We can ask students to reflect and write about the foundation skills.<sup>48</sup>

With a more significant investment of time and energy, we can engage students in complex real-world problem-solving simulations, such as using case studies as professors routinely do in medical and business schools.<sup>49</sup> These

43. See, e.g., *O'Connor v. Oakhurst Dairy*, 851 F.3d 69, 70 (1st Cir. 2017) (basing decision on lack of serial comma in Maine's overtime law).
44. Schaefer, *supra* note 3, at 304-05.
45. Charles C. Bonwell & James A. Eison, *Active Learning: Creating Excitement in the Classroom* iii (ASHE-ERIC Higher Educ. Rep. no. 1, 1991) (noting that throughout the 1980s, research studies showed that active-learning strategies were "superior to lectures in promoting the development of students' skills in thinking and writing."); TEACHING LAW BY DESIGN, *supra* note 29, at 105-08.
46. Time-intensive refers both to a professor's investment in designing the active-learning exercise as well as the time spent in class on the exercise. For suggestions about incorporating a range of active-learning exercises in law school, see TEACHING LAW BY DESIGN, *supra* note 29, at 97-120.
47. See Schaefer, *supra* note 3, at 299-301 (showing how to use discussions about case law to teach professionalism).
48. JOHN C. BEAN, ENGAGING IDEAS: THE PROFESSOR'S GUIDE TO INTEGRATING WRITING, CRITICAL THINKING, AND ACTIVE LEARNING IN THE CLASSROOM xvi (2d ed. 2011) (noting the value of learning through writing); Wilensky, *supra* note 18, at 628-35.
49. The idea is to shift from producing doctors who have memorized a lot of information to those who are excellent at what they do and are skilled critical thinkers. At Indiana University School of Medicine, meeting a competency like "professionalism"—which encompasses such concepts as respect for patients, families and other professionals and commitment to serving others—entails, for example, treating donor cadavers with dignity and writing papers on what it means to be a good doctor. Preceptors use checklists of professional behavior to do evaluations. Beth Howard, *5 Ways Medical Schools Aim to Teach the Doctors of Tomorrow*, U.S. NEWS (Mar. 18, 2015, 9:15 AM), <http://www.usnews.com/education/best-graduate-schools/top-medical-schools/articles/2015/03/18/5-ways-medical-schools-aim-to-teach-the-doctors-of-tomorrow>; for an example of the business school case method, see *The HBS Case Method*, HAR. BUS. SCH., <http://www.hbs.edu/mba/academic-experience/Pages/the-hbs-case>

give students multiple opportunities to engage with their classmates and practice foundation skills like treating others with respect, listening attentively, responding promptly, being diligent, and paying attention to detail.

In addition, our students benefit from having multiple opportunities to practice foundation skills.<sup>50</sup> For example, if we want students to show that they can apply the foundation skill of responding promptly, we could ask students to post a response to a professor's question about course material to a course website within a specific time frame. We could give students a choice of responding directly to our question or building upon or challenging a classmate's response. Students could also choose to add a question that advances the online discussion. We can also ask students in posting to the course website to thoughtfully refer to readings, class discussions, other course material, or outside research; to name assumptions; or to identify how cultural and historical contexts affect their analysis of the professor's prompt. Asking students to post several times during the course would give them opportunities to practice the foundation skill of responding promptly.

### III. Assessing and Evaluating Students' Foundation Skills

Once we have identified our learning goals for foundation skills, and planned multiple teaching methods to help students learn selected skills, how do we assess<sup>51</sup> and evaluate (grade) students' foundation skills?<sup>52</sup> It may be

method.aspx; Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 19-20 (2002); for discussions about problem-solving in law school, and how that approach helps students prepare for practice in multiple ways, see generally, e.g., Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233 (2008); Larry O. Natt Gantt, II, *The Pedagogy of Problem Solving: Applying Cognitive Science to Teaching Legal Problem Solving*, 45 CREIGHTON L. REV. 699, 756-60 (2012); Joseph William Singer & Todd D. Rakoff, *Problem Solving for First-Year Law Students*, 7 ELON L. REV. 413 (2015); Kathleen Elliott Vinson, *What's Your Problem?*, 44 STETSON L. REV. 777 (2015).

50. TEACHING LAW BY DESIGN, *supra* note 29, at 43-44.

51. Standard 314. ASSESSMENT OF STUDENT LEARNING:

A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.

*Interpretation 314-1*

*Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning.*

AM. BAR ASS'N, *Standard 314: Assessment of Student Learning*, in ABA STANDARDS, *supra* note 1, at 23.

52. Barbara Glesner Fines, *Outcomes Assessment for Improving Student Learning*, in BUILDING ON BEST PRACTICES, *supra* note 11, at 94, 94 (noting the difference between grading and assessment and identifying assessment as "ameliorative—designed to improve student learning and faculty teaching.").

counterintuitive to assess and grade foundation skills because of their “soft” nature, but we can, and should do so.

First, we should assess foundation skills because assessment *is* teaching; one of the main goals of assessment is to increase student learning.<sup>53</sup> Second, grading is a highly effective teaching and learning tool.<sup>54</sup> If we grade select lawyering foundation skills, we denote that these are important, much like other learning goals in the course. Students pay attention to how they earn their grades,<sup>55</sup> and if we want our grades to reflect how well students meet our learning goals, then that performance must become part of their final course grade. In designing a large-enrollment course, we can designate a percentage of points to students’ performance on foundation skills. Having ten percent to fifteen percent of the course grade based on student performance of foundation skills is sufficient to give most students an incentive to pay attention to them.<sup>56</sup>

53. “Assessment is the systematic collection of information about student learning, using the time, knowledge, expertise, and resources available, in order to inform decisions that affect student learning.” BARBARA E. WALVOORD, *ASSESSMENT CLEAR AND SIMPLE: A PRACTICAL GUIDE FOR INSTITUTIONS, DEPARTMENTS, AND GENERAL EDUCATION 2* (2d ed. 2010) [hereinafter *ASSESSMENT CLEAR AND SIMPLE*]. As Dr. Walvoord notes,

The goal of assessment is information-based decision making. To put it another way, *the end of assessment is action*. Assessment helps the organization determine how well it is achieving its goals and suggests effective steps for improvement.

That means you should conduct assessment for yourselves and your students, not just for compliance with accreditors.

*Id.* at 4.

54. See, e.g., MARYELLEN WEIMER, *LEARNER-CENTERED TEACHING: FIVE KEY CHANGES TO PRACTICE 12* (2d ed. 2013); Jordan Cohen, *Foreword*, in *MEASURING MEDICAL PROFESSIONALISM v, v* (David Thomas Stern ed. 2006) (“[Students] don’t respect what you *expect*; they respect what you *inspect*.”). As Drs. Walvoord and Anderson note:

Grading infuses everything that happens in the classroom. It needs to be acknowledged and managed . . . Trying to keep students from caring about grades is futile. Trying to pretend that grades are not important is unrealistic . . . Grades are the elephant in the classroom. Instead of ignoring the elephant, we want to use its power for student learning.

EFFECTIVE GRADING, *supra* note 30, at 1.

55. Students do this all the time when they ask, “Will this be on the exam?” Grading a foundation skill identifies its significance much like a topic on an exam.
56. As others have noticed, having students focus on grades, rather than mastering learning, can present problems by reducing students’ self-regulated learning and self-efficacy. See, e.g., Jason S. Palmer, “*The Millennials Are Coming!*”: *Improving Self-Efficacy in Law Students Through Universal Design in Learning*, 63 CLEV. L. REV. 675, 693-94 (2015). However, as long as law schools continue to give grades, students will pay attention to how they earn their grades, and we can make grading more relevant to practicing law by having those grades reflect more than legal analytical knowledge and skills.

Regardless of how much weight we assign to students' foundation skills, we need to gather information about how students are performing. Effective assessments—according to research<sup>57</sup>—need to evaluate and grade a student's foundation skills by assessing students in multiple ways,<sup>58</sup> and give students opportunities for practice and feedback.<sup>59</sup> This does not necessitate that we construct complicated new assessments for each foundational skill; instead we can build upon actions we already take as professors. We can assess students using direct<sup>60</sup> measures—those based on students' performance—such as in-class observations, or out-of-class student performance using email, a course website, or other medium.<sup>61</sup> We can also use indirect measures<sup>62</sup> based on students' perceptions about their learning, such as student self-assessment through surveys, questionnaires, and short essays.<sup>63</sup> Using a combination of direct and indirect assessments deepens our understanding about what students are learning and provides us with ideas about how to change our teaching to improve their learning.<sup>64</sup> This combination also benefits the students by enhancing their self-awareness and reflection capabilities while getting concrete benchmarks from us.

If we plan to continue to engage in meaningful assessment, however, our assessment methods and materials need to be sustainable.<sup>65</sup> One way to keep assessment workable is to grade students' learning of lawyering foundations

57. For an overview of student learning assessment principles, *see generally* TEACHING LAW BY DESIGN, *supra* note 29, at 155-83; Ramy, *supra* note 28, at 839-67; Fines, *supra* note 52, at 94-99.
58. PEGGY L. MAKI, ASSESSING FOR LEARNING: BUILDING A SUSTAINABLE COMMITMENT ACROSS THE INSTITUTION 156-57 (2d 2010). "Capturing the complexity of our students' learning calls for identifying or designing multiple methods of assessment." *Id.* at 156.
59. Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, 3 AAHE BULL. 2, 4 (Mar. 1987) (Principle 4: "Good Practice Gives Prompt Feedback"); *see generally* Terri LeClerq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418 (1999); for a comprehensive overview applying all seven principles, *see* Gerald F. Hess, *Seven Principles for Good Practice in Legal Education: History and Overview*, 49 J. LEGAL EDUC. 367 (1999).
60. MAKI, *supra* note 58, at 158 (naming direct methods "[p]erformances, creations, results of research or exploration, interactions within group problem solving, or responses to questions or prompts...").
61. If we are willing to invest more effort, we can also use peer observation and feedback when we structure our classes to have students work in teams. For examples of giving structured peer feedback *see* Sophie M. Sparrow, *Can They Work Well on a Team? Assessing Students' Collaborative Skills*, 38 WM. MITCHELL L. REV. 1162 (2012). For ways to structure permanent diverse teams *see* Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153, 196-97 (2012).
62. MAKI, *supra* note 58, at 159.
63. *Id.* (identifying indirect methods "as inventories, surveys, questionnaires, interviews, and focus group meetings...").
64. *Id.*
65. ASSESSMENT CLEAR AND SIMPLE, *supra* note 53, at 5 (noting that one of the pitfalls of assessment is "[m]aking the process too complicated").

on a competency or mastery scale rather than on a curve.<sup>66</sup> Not every learning goal needs to be graded on a curve. Professors could begin a course by letting students know that everyone in the course can earn full points for showing competence in selected foundation skills; students start the course with those points being theirs to lose. For example, assume that students earn fifteen percent of a course grade based on their performance of foundation skills, ten percent on a short writing assignment, twenty-five percent on a midterm exam or project, and fifty percent on a final exam.<sup>67</sup> If the course has a total of 100 points, every student starts the course with the full fifteen points for their performance on foundation skills. Students keep the full fifteen points unless their performance in and out of class falls below articulated criteria<sup>68</sup> and causes them to lose some or all those points.

I have used this approach to grade what I have called “professional engagement” for over ten years.<sup>69</sup> In my experience, most of the students earn full points once they know what is expected of them.<sup>70</sup> They take the time to apologize when they believe they have acted disrespectfully, showed up late for class, or taken other actions that are inconsistent with either the syllabus course expectations or guidelines established by the whole class. Most email me in advance if they know they are going to be late or unprepared. They follow up and seek feedback if they are unsure whether they are meeting the course professional engagement criteria.

66. Much has been written about the problems with most law schools’ process of using grading curves. For example, see generally Jay M. Feinman, *Law School Grading*, 65 UMKC L. REV. 647 (1997) for a detailed treatment of the topic of mandatory grade curves, the relative ranking of law students based upon grades, and resulting inequities. For a variety of reasons, mandatory grading means and curves are unlikely to go away, a discussion beyond the scope of this article.
67. This suggests more assessment than what many law professors do when teaching large classes, but is more effective in terms of promoting student learning. See also FINK, *supra* note 30, at 93 (criticizing professors for conducting ineffective assessment when they give only “two midterms and a final”).
68. For a discussion of the value of criteria-referenced grading in law school, see Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics-Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1 (2004).
69. Naming students’ course contributions as “professional engagement,” rather than “participation” more effectively conveys that the quality of students’ course contributions mattered more than their quantity. While my previous syllabi included many of the foundation skills under the description of “professional engagement,” starting in the fall of 2016, my course syllabi refer directly to the WHOLE LAWYER STUDY.
70. In contrast, students’ performance on other assessments are more varied, yielding a range of final scores. My institution requires large courses to conform to a grading average, and because students’ performance on legal skills varies more than their performance on foundation skills, students’ final grades are largely determined by their performance on legal skills. As I explain to students, though, I have a range of assessments to refer to when writing them letters of recommendation or serving as a reference; when they earn all points for professional engagement I stress that to their prospective employers.

This section applies the four steps in the assessment process,<sup>71</sup> focusing on the second most important foundation skill—being on time.<sup>72</sup> This assessment process involves 1) identifying clear assessment criteria, 2) gathering information about student performance in relation to the assessment criteria, 3) providing students with midsemester feedback (formative assessment) and final evaluations (summative assessment), and 4) using assessment to improve teaching and learning.

### *A. Identify Clear Assessment Criteria*

First, for any learning goal we plan to assess and evaluate, we need to establish and distribute clear criteria for what students need to show to succeed in meeting the learning goal.<sup>73</sup>

In assessing timeliness,<sup>74</sup> we need to articulate what we mean by timeliness and what we want our students to learn about it. Does timeliness mean that all students are present in class by the time class starts? When the teacher is going over administrative matters or summarizing material from the previous class, does arriving one to two minutes late count as being late? Does timeliness mean that students must have a perfect class attendance<sup>75</sup> record aside from absences excused for religious, medical, or other accepted reasons? Do we allow students to miss class or arrive late if they encounter unexpected traffic or weather conditions?<sup>76</sup> What if students know they are going to be late,

71. This four-step process of identifying learning goals, teaching students, assessing student learning, and interpreting and using assessment results is often referred to as the cycle of assessment. See, e.g., LINDA SUSKIE, *ASSESSING STUDENT LEARNING: A COMMON SENSE GUIDE* 4 (2d ed. 2009). Assessment expert Dr. Barbara Walvoord identifies three steps in the assessment process: identifying learning goals, gathering information, and taking action. *ASSESSMENT CLEAR AND SIMPLE*, *supra* note 53, at 3-4. Similar iterations of the assessment process are articulated in *TEACHING LAW BY DESIGN*, *supra* note 29, at 155-56; Glesner Fines, *supra* note 52 and LORI E. SHAW & VICTORIA L. VANZANDT, *STUDENT LEARNING OUTCOMES AND LAW SCHOOL ASSESSMENT* 17-19 (2015). Note that regardless of the middle steps, the assessment process begins with identifying concrete learning goals and ends with using information from assessments to improve teaching and learning. This last step is often referred to as “closing the loop.” *ASSESSMENT CLEAR AND SIMPLE*, *supra* note 53, at 4.

72. *THE WHOLE LAWYER*, *supra* note 2, at 26.

73. See *TEACHING LAW BY DESIGN*, *supra* note 29, at 177-79.

74. We can acknowledge to students that different cultures have various approaches to timeliness, and still let them know that, according to the Whole Lawyer Study, tens of thousands of U.S. lawyers rank being on time as the second most important foundation skill.

75. Tracking student attendance also has the benefit of helping faculty, who regularly interact with students, identify students with potential mental health and substance abuse problems and respond appropriately. Jerome M. Organ, David B. Jaffe & Katherine M. Bender, Ph.D., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 151-53 (2016).

76. With information on weather and traffic conditions being widely available, these are less likely to be legitimate excuses, as students can anticipate these problems. But if all the parking in the area is unexpectedly full due to an event at the school (perhaps something students were unlikely to discover), we should excuse students from being late, so long as

have a good reason, and give us notice before class starts? We also need to think about the consequences of how we measure timeliness. If students are penalized for not being in class at the time it starts, but may be absent for several classes, are we encouraging them to skip class? Will missing class help students learn timeliness?

Answering these questions assists us in developing criteria and levels of performance for timeliness—creating a rubric<sup>77</sup>—such as in Figure 1, below. We can develop these rubrics by ourselves, with input from colleagues.<sup>78</sup> We can also engage students in discussing what criteria go into constructing the rubric.<sup>79</sup> We should give students these rubrics at or near the beginning of the course, so that they are aware of course expectations and performance criteria.<sup>80</sup>

Unlike timeliness, other foundation skills, like treating others with respect, are hard to define and harder to measure. Depending on the context and our experience, we may have widely different perceptions about what are and are not respectful actions and words. Because of these varying interpretations, it is extremely valuable to engage students in discussing this foundation skill; what is considered respectful behavior may change with the year, course, and group of students.<sup>81</sup> Moreover, having students identify specific behaviors that are respectful in the classroom and in out-of-class course interactions helps everyone in the class better understand their classmates and strengthens the learning environment.<sup>82</sup> In addition, students become active participants in shaping an aspect about the course, which in itself is treating them with respect as adult learners.<sup>83</sup> Even with a whole class of students discussing and arriving at general parameters for respectful behavior, assessing what constitutes respectful behavior is a challenge.

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they explain why they are late.

77. See Sparrow, *supra* note 68, at 32-37 and TEACHING LAW BY DESIGN, *supra* note 29, at 180-82 for the process of developing a rubric in law school. For general information about constructing rubrics see EFFECTIVE GRADING, *supra* note 30, at 39-60; SUSKIE, *supra* note 71, at 148-51. Online searches for rubrics yield a wide variety of samples.

78. EFFECTIVE GRADING, *supra* note 30, at 42; SUSKIE, *supra* note 71, at 149.

79. SUSKIE, *supra* note 71, at 76-78.

80. “A basic principle is that, if you’re using a rubric, it should be shared with students before they begin the assignment or test.” ASSESSMENT CLEAR AND SIMPLE, *supra* note 53, at 19.

81. For example, in the fall of 2016, many academic communities had to address the strong and conflicting responses to President Donald Trump’s election. See, e.g., Laura Krantz, *Some College Students Fear Trump Presidency*, BOSTON GLOBE (Nov. 17, 2016), <https://www.bostonglobe.com/metro/2016/11/17/college-campuses-edge-after-trump-election/hVENgGSGtsNKpQBjFDEsJ/story.html>.

82. TEACHING LAW BY DESIGN, *supra* note 29, at 143-47 (describing how to create effective learning environments).

83. Hess, *supra* note 33, at 375-80.

But just because we assess imperfectly<sup>84</sup> does not mean we should not try. As noted by Dr. Barbara Walvoord, an expert and leading authority on assessment,

[w]e can't fully assess such ineffable qualities, but we can get indications. We are not caught between "objectivity" (in the sense that all judges of a student performance will agree on its quality) and "subjectivity" in the sense of individual whim. Between those two poles stands informed judgment of work in our fields . . . . To get indications about how well our students are achieving ineffable goals, we must rely on student work or student actions that may offer only a small window into the ineffable quality.<sup>85</sup>

### *B. Gathering Information About Student Performance*

Once we have the performance criteria, we can assess students' performance on timeliness in multiple ways. We can use direct assessment to observe students' behavior and indirect assessment to gather information about students' perceptions of being on time.

#### ***Direct Assessment***

To assess timeliness, we can give out sign-in attendance sheets<sup>86</sup> and, assuming all students have assigned seats or usually sit in the same places, distribute attendance sheets of about ten students each that can be circulated, signed, and returned quickly, by the time that class starts.<sup>87</sup> When students are late, the professor can note that separately. Similarly, we can ask students to prepare assignments for class, or post material to a website by a certain time, and note those that are submitted late.<sup>88</sup>

#### ***Indirect Assessment***

In addition to direct assessment, we can gather information about student performance using indirect assessment. Employing surveys, questionnaires, or self-assessments, we can ask students to respond briefly in writing to a few questions about foundation skills. For the foundation skill of timeliness, we can pose questions such as, "In professional settings, what impression does being late convey?" "Why is being on time a sign of respect?" "How does being on time affect your reputation for reliability?" "On a scale of 1-5, with 5 being always on time and 1 being almost never on time, how would you evaluate your behavior?"<sup>89</sup> We can similarly generate questions about other foundations we

84. ASSESSMENT CLEAR AND SIMPLE, *supra* note 53, at 6-7.

85. *Id.*

86. If we have teaching assistants for the course, they can manage tracking attendance and promptness.

87. We could also collect attendance at the beginning of class using electronic clicker devices.

88. This does require a little time and effort to keep records, but taking contemporaneous notes about student timeliness takes only a few minutes.

89. It is interesting to compare what students self-report with their behavior. For example, does a student who is consistently on time underrate her performance? Conversely, does the

teach, asking students to reflect on their behavior and its implications. Students' self-assessments do not prove that they truly value timeliness, make a habit of being on time, or show competence in any foundation skill. But their answers provide evidence of their declared appreciation for the skills. Combined with direct observation, students' responses also provide information about the accuracy of their stated self-perceptions.<sup>90</sup>

### ***Collecting and Recording Information***

The direct and indirect assessment methods above require that we devote some additional time and energy to our teaching, but the amount is minor compared with the importance of the foundation skills and their potential impact on students' performance as effective new lawyers. We already observe students' behavior in our classes; to observe students' timeliness requires only that we observe a few additional actions and record those observations. Taking a few minutes after class, when we are already taking notes about the class and what we might change the next time we teach, we can quickly record information about students' behavior.<sup>91</sup> With indirect assessments we need to read students' written responses to questions or surveys, which we can easily do within an hour. In a few more minutes, we can gather general information about trends in students' responses,<sup>92</sup> make individualized brief notes of our reaction to or appreciation of students' self-assessments, and record students' completion of the self-assessment.<sup>93</sup>

### *C. Providing Students with Midsemester Feedback and Final Evaluations (Formative and Summative Assessment)*

#### ***Formative Assessment***

Once we have gathered information about their performance, to help students learn foundation skills we need to provide them with feedback, or formative assessment, on how well they are meeting the criteria we have established for timeliness. On an informal level, in the interest of reinforcing positive actions, we can provide whole-class feedback focusing on students' effective behaviors and expressing how much we appreciate students being on time. We can also commend specific student actions that are highly effective,

student who is perpetually late rank herself as always on time? This can be the basis of a private conversation with the student.

90. By reviewing the thoroughness of students' responses, we can also use self-assessments to assess other foundation skills, such as diligence and paying attention to detail.
91. I use three-by-five cards to note students' behaviors, having one three-by-five card for each student and making notes of tardiness, absences, and unpreparedness, as well as strong contributions to class conversations and online discussions.
92. Common responses could be noted and shared with the students, for example, "Almost all of you noted that being on time showed that you were reliable".
93. As noted above, we do not need to grade foundation skills according to a curve or required mean. Instead, for indirect assessments such as surveys and self-assessments, we can give students full credit if they satisfactorily answer questions, and subtract from their foundation skills grade only if they fail to do so.

such as noting that students are not just on time for class, but have brought all relevant materials and organized them for effective class discussion.

When students are not meeting the course criteria, however, we should provide them with that feedback as soon as possible, preferably before the next class or within a week.<sup>94</sup> We should communicate to them directly and privately about their behaviors or their responses to self-assessments. By speaking with students in private, we can engage them in a conversation about their less effective actions and how those actions could affect both their future performance as attorneys and their course grade. Through written comments on self-assessments, we can let students know whether their responses are satisfactory, and, if not, what they need to change in their responses to make them more effective. By naming students' less successful behaviors and discussing them promptly, we are more likely to encourage and help students change their actions to meet course criteria.

On a more formal level, all students benefit from having individual midsemester feedback. If we have already had conversations with students about their need to improve their timeliness, we can let them know whether they are on track to meet course criteria, or whether they need to make further changes. When students have consistently been on time, we can support and reinforce their effective actions.<sup>95</sup> We can give students feedback by using a rubric,<sup>96</sup> noting how well they are meeting the established criteria, or developing short forms that provide feedback and refer to the course rubric.<sup>97</sup>

For example, we could use a form that has a place for the student's name and states, "Thank you for your highly effective performance in being on time (see rubric criteria). Legal employers greatly value this behavior in new lawyers, and your actions contribute to a productive and positive classroom environment. I look forward to your continued success over the semester."<sup>98</sup> A

94. Students may not be aware that they are not meeting course criteria. They may believe that being "on time" means arriving in class within the first five minutes, or not be aware that their well-meaning interruptions to seek explanations are conveying disrespect. Intervening early helps establish clear expectations and clarify misunderstandings. Furthermore, students' actions may have been acceptable in other courses and environments, leading them to assume that the same actions are acceptable in law school.
95. Under the stress of law school, as the semester progresses some students may find it harder to show competent foundation skills. Providing them with positive feedback that reminds them of the course goals and criteria supports their success in foundation skills.
96. See Figure 1 below.
97. We could also meet individually with students to orally give them feedback, or, with the help of a faculty assistant, send individualized emails to each student providing feedback. These alternatives might require more time and energy than completing and giving students a form or rubric. As an alternative to providing individual feedback, we could tell students that they should assume that they have retained full points for being on time and treating others with respect, and that we would notify them if that is untrue. We could invite students who were unsure about how well they were doing on foundation skills to contact us to get feedback.
98. In my experience, almost all students would get this form, as they meet course criteria once they become aware of them, and their performance affects their final grade.

different form could note “I greatly appreciate how you are usually on time. Being on time according to our course criteria (see rubric) contributes to a productive and positive classroom environment. To be even more effective in this area, I recommend that you [name specific behaviors that could be improved] during the second half of the semester. Thank you for your efforts, and please contact me if you have any questions.”

### ***Summative Assessment***

Having gathered information about student performance multiple times and in multiple ways, and having given students feedback, we can proceed to summatively assess students—evaluate or grade their foundation skills. As noted earlier,<sup>99</sup> one approach is to begin by giving all students full points for foundation skills, and subtract points only when students’ performance shows that they are clearly failing to meet identified criteria. This method still requires that we make choices about how to calculate points.<sup>100</sup> Does being a few minutes late for ten classes have the same impact on a grade as being ten minutes late for one class? Is a single deeply disrespectful comment worse than several less disrespectful comments? What if students do not meet the course criteria for timeliness at the beginning of the semester, but then, following a discussion with the professor and receiving midsemester feedback, meet the criteria for the remainder of the course? Should we allow each student one or more lapses before subtracting points? Is doing so fair to the students who are working diligently to adhere to course criteria?

Making these decisions about how and when to lower students’ foundation grades is challenging, and we may have to try several different approaches until we have a method that works effectively for us and our students. Regardless of the process we use to assign points or grade students’ foundation skills, we need to communicate and explain our grading process to students, rely on information rather than vague impressions about student behavior, and apply grading criteria consistently. Reviewing our semester long notes about students’ performance, we can subtract points for instances in which students have not met established criteria and then include students’ foundation skills grade as part of the overall course grade. Once we have submitted final grades, we can provide each student with a breakdown of how the final grade was earned, or invite any interested students to contact us to get that information.

### *D. Using Assessment to Improve Teaching and Learning—Closing the Loop*

In the final step of the assessment process, we need to use the information gathered about students’ performance to improve our teaching and student learning. If students are regularly and fully meeting our foundation criteria, we can continue to follow the teaching approaches we are using, as they appear

99. See *supra* notes 65-70 and accompanying text.

100. We may have established grade weights in the rubric, but we still must make judgments about how to apply grading criteria to students’ actions.

to be effective.<sup>101</sup> However, if some students are failing to meet some of the learning goals, or meeting them only partially, then we need to try different teaching and learning approaches<sup>102</sup> and reassess student performance to ascertain whether our new teaching methods correlate with improved student learning. For example, if some students are not meeting the course criteria for timeliness, the next semester we may choose to have more frequent in-class discussions and exercises about the importance of that foundation skill during class. We may also decide to give students more regular feedback, and have more individual conversations with them about their actions and how they affect others in the class. Once we have tried different approaches, we need to track student performance considering our changes, and note whether our changes correlate with improved student learning outcomes. We repeat this assessment cycle, striving for continuous improvement in helping students learn foundation skills.

#### IV. Conclusion

The recent Whole Lawyer Study completed by *Educating Tomorrow's Lawyers* showed that new attorneys need effective “soft skills.” To be successful, new attorneys need to keep client confidentiality, be on time, honor commitments, have integrity, treat others with respect, listen attentively, respond promptly, be diligent, have a strong work ethic, and pay attention to detail. If we are to honor our commitment as legal educators to effectively prepare our students for practice, we should help our students learn these foundation skills. Given the importance of these skills, we should support student learning by teaching and assessing at least some of these skills in doctrinal classes. Even though it can be challenging to assess these skills, we should begin to do so in the interest of better preparing our students for their futures as attorneys.

101. The foundation teaching methods would be effective, for example, when students regularly performed the foundations at a specified level according to explicit criteria semester after semester.
102. Among other approaches, we may need to introduce the foundations differently, allocate more time for students to learn about them in and out of class, provide more or different opportunities for students to practice and get feedback on these foundations, or design other active-learning exercises that may improve student performance.

Figure 1

<b>Foundation Skills–Draft Rubric</b>			
<b>Levels of performance</b>	<b>Highly effective–</b> supervising attorney would find student behavior appropriate for a first-year attorney	<b>Effective–</b> supervising attorney would find that student behavior needs a little improvement	<b>Less effective–</b> supervising attorney would find that student behavior diminishes performance on the job
<b>Timeliness Criteria</b>	<ul style="list-style-type: none"> <li>• Is present and ready to participate when class begins</li> <li>• Is late at most one time and, when possible, provides notice in advance</li> <li>• Once in class, stays through entire class</li> <li>• Submits all assignments on time or early</li> </ul>	<ul style="list-style-type: none"> <li>• Is present and ready to participate when class begins</li> <li>• Is late at most two times and, when possible, provides advance notice</li> <li>• Leaves once during class</li> <li>• Submits one assignment late</li> </ul>	<ul style="list-style-type: none"> <li>• Is present and ready to participate when class begins</li> <li>• Is late at most two times and, when possible, provides advance notice</li> <li>• Leaves two or more times during class</li> <li>• Submits two or more assignments late</li> </ul>