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January 11, 2012

Professor Jeffrey E. Lewis, Chair
Standards Review Committee
Saint Louis University School of Law
3700 Lindell Boulevard
St. Louis, MO 63108

Dear Professor Lewis:

Thanks as always for the opportunity to contribute to the Standards Review Committee discussions on the accreditation standards. In this letter, we address the most recent draft of chapter 2. SALT will write separately to comment on other matters that are on the agenda at the January 2012 meeting of the Standards Review Committee. We would be happy to follow up with additional detail or proposed language with respect to any of these matters, either with the Committee or with the individual subcommittees.

We note below issues and questions with respect to proposed edits of a number of specific sections. Overall, our concern is that these edits risk undermining the authority and autonomy of deans and faculties vis-à-vis their university regents or governing boards or (for free-standing law schools) their boards of trustees. Based on the discussions at previous SRC meetings, we think the proposals are being offered primarily to provide more clarity and to remove ambiguities, but the changes may have important and problematic consequences for law schools. We hope the Committee will be cautious in modifying chapter 2 to avoid such unintended consequences.

Our first set of concerns relate to the provisions that directly address the role of the dean and faculty in governance of law schools:

The current language of Standard 205(b) says the “dean and faculty shall formulate and administer the educational program of the law school,” establishing the authority of the dean and faculty over the law school program. Proposed standard 201(b) would say instead that the “dean and faculty shall have primary responsibility for planning, implementing and administering the educational program of the law school.”

We are concerned about the use of the word “primary” because it suggests that someone other than the dean and faculty have responsibility for the law school educational program. While others (e.g., law school staff) may assist in aspects of

administering the program, we think it critical that the role of the dean and faculty as those who “shall formulate and administer” the educational program be maintained, and that the chapter addressing the relationship of the law school to its governing authority make that clear.

We have similar concerns with respect to proposed standard 201(c), which says the dean and faculty “shall have primary responsibility for the selection of members of the faculty.” While we understand that governing authorities may have authority to approve hires (reflected in the current language), we are concerned that the role of individuals outside the law school could expand under the proposed language. The “selection of members of the faculty” (deciding who is qualified for faculty positions) should remain in the hands of the dean and faculty, and that role is not guaranteed by the proposed language.

Proposed interpretation 201-1 would change the current requirement that students not be admitted “without the approval of the dean and faculty of the law school” to a ban on admitting a student “in contravention of the law school’s admissions policies.” In conjunction with the proposed 201(b), we think this might allow central administration or the governing board of an independent law school to impose its admissions desires (e.g., admitting the child of a major donor) over the objections of dean and faculty, if the law school policies did not themselves require approval (or lack of objection) from dean and faculty. While perhaps designed to recognize that faculty members are no longer involved as directly in admissions decisions, appearing as it does in the chapter on the relationship between law school (dean and faculty) and governing authority, the reference to not contravening admissions policies does not seem enough in view of the changes in standard 201(b) discussed above, indicating that someone other than dean and faculty might have a role in creating admissions policies and procedures.

Current interpretation 204-1 mandates that the governing board of a law school that is not part of a university authorize the dean to serve as chief executive and/or chief academic officer of the law school. In the proposals, this provision would be removed, leaving only standard 207 (old standard 204), which says a law school not part of a university shall be governed by a governing board composed of individuals dedicated to the maintenance of a sound program of legal education. Standard 207 does nothing to ensure an appropriate relationship between dean and governing board, and we urge the Committee to explore with deans of independent law schools what additional protections would enhance their ability to maintain their authority while acknowledging that they report to the governing board. We do not understand the justification for removing the requirement that the dean of an independent law school be given the status of either chief executive or chief academic officer of the school.

Our next set of questions relates to the provisions describing the use of law school resources. Here, we are concerned that by changing the language of various provisions, the proposed standards would undercut the ability of law school deans to ensure that the school’s financial resources are used appropriately and that students are provided the appropriate return on their tuition dollars. We urge caution as the Committee considers changes that might affect the balance of power and persuasion between deans and central university administrations. The specific provisions at issue are these:

The proposed edits would remove standard 210(c), which says the resources generated by a law school part of a university should be made available to the school “to maintain and enhance its program of legal

education,” and replaces it with standard 203(a), which requires only that the resources of the law school be “sufficient to fulfill the requirements of the Standards and carry out its educational program” and standard 203(b) and (c), which say a law school fails to comply with the standards only if its current or anticipated funds are so lacking as to have a negative and material effect on the school’s ability to fulfill the standards or carry out its program. Although we understand (though do not necessarily agree with) the Committee’s choice to focus the standards on the minimum requirements for schools rather than exhorting schools to become better than what is minimally required, we think the deletion of a reference to enhancing programs of legal education is particularly problematic where use of student tuition resources are at issue. Deans should be given the tools they need to fight for resources to help their programs thrive rather than be told that it is enough if the university provides resources sufficient to minimally comply with the standards. We think the substance of standard 210(c) should be retained.

The proposal would eliminate standard 210(d), which provides that law schools be given an opportunity to present recommendations on budgetary matters to university administration before the law school budget is submitted to the governing board for adoption. Although this provision only mandates a procedural step, not an outcome, we are concerned that the omitted mandated process is significant for deans working to obtain the resources they need in the central administration budgeting process.

The requirement in interpretation 210-2 that a law school be given a “satisfactory explanation” for the use of law school resources for non-law school activities and central university services is replaced by proposed interpretation 203-1, which requires only a “transparent” explanation. What is intended by that change? What is meant by a “transparent” explanation? Is the point to require adequate justification for the charges against law school resources (the apparent meaning of “satisfactory” in the current standard)? Or is clarity of explanation all that is sought (perhaps the intended meaning of “transparent,” though we do not think “transparency” communicates that point)? We think Interpretation 210-2 contains important safeguards that should be retained.

We also have concerns about the role of the faculty with respect to selection of deans. The current language in standard 206(d) mandates that the faculty or a representative body of faculty “shall advise, consult, and make recommendations to the appointing authority” in the selection of a dean, while the new language (in renumbered standard 204(d)) mandates that procedures be followed that assure “meaningful involvement by the faculty or a representative body of the faculty.” The current standards, through an interpretation, prohibit appointing a dean “over the stated objection of a substantial majority of the faculty,” except “in circumstances demonstrating good cause.” The proposed standards would move this last provision into standards (rather than keeping it as an interpretation) and allow an exception only “in extraordinary circumstances.” We think the latter change, with respect to appointment of a dean over the objections of the faculty, is strengthened in appropriate ways in the proposed version, but we are concerned that the change noted above in standard 206(d) undermines the ability of law faculties to be engaged in the search and decision process. While the original language of “advise, consult, and make recommendations to the appointment authority” may not be a model of precision, we urge the Committee to consider making clear that “meaningful involvement” mandates procedures that involve the faculty in the search process and that ensure the selection process is

grounded in the recommendations made through the search process, as well as maintaining the “veto power” that continues to be part of the standards.

Finally, we note an issue with respect to the language regarding allocation of authority between dean and faculty, in standard 205. While the proposed language continues to leave the division of authority as a matter for each school to decide, we wonder about the meaning of saying it is a matter for determination by “the law school.” We could not find a definition of “the law school” as used in this context in the standards, so it is unclear how that decision is made. (This is not a new question. The current standard says the allocation of authority is a matter for determination “by each institution,” also undefined.) We hope the Committee will discuss its understanding of this provision and of other references to “the law school” as it moves forward. In addition, we urge you to consider strengthening the final clause in standard 205, which requires that “both the dean and the faculty have a significant role in determining educational policy.” We note that language proposed for chapter 4 would define the necessary role of faculty in law school governance; standard 205 could cross-reference any such provision that is added to the standards, stating that the allocation must accord a substantial role for faculty governance in accordance with the provisions in chapter 4.

Thanks again for the opportunity to comment on the proposals as the Committee continues its work.

Submitted on behalf of the Society of American Law Teachers by

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