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July 7, 2009

Dean Donald Polden
Santa Clara Law School
Santa Clara University
500 El Camino Real
Santa Clara, California 95053

Dear Dean Polden:

In response to the ABA Standards Review Committee's [SRC's] invitation to affiliates to submit comments at any point during the current review of the accreditation standards, the Society of American Law Teachers [SALT] Committee on Issues in Legal Education submits this letter, containing a draft of a proposed standard on outcome measures and related commentary. We also attach an Addendum with additional discussion about how law schools might apply such a proposed standard and demonstrate compliance with it. We ask that you please distribute this to members of the SRC.

SALT applauds SRC's interest in shifting accreditation standards toward an outcome measures approach, while acknowledging the difficulty of the task. As revised standards are developed, SALT encourages the SRC to recognize as it proceeds that, unlike our medical school counterparts, legal educators have as yet done only minimal work identifying learning outcomes and developing valid and reliable assessments to measure those outcomes. SALT suggests that the SRC consider proposing an interim standard that will encourage experimentation and give schools the experience necessary to develop more specific outcome measures that can serve as models for additional accreditation standards in the future.

In developing even an interim outcome measures standard, the SRC must recognize that law schools have different missions and goals.¹ It is equally important,

¹For example, some law schools may have a mission of inculcating a sense of social justice in its students; others' goals may include increasing diversity in the bench and bar; some may consider training cross-disciplinary lawyers a critical component of their legal education program, while others want their students to graduate with a deep jurisprudential perspective.

as AALS President Rachel Moran noted in her recent President's messages in the AALS Newsletter, to ensure that a focus on outcomes does not emphasize a limited set of skills, which might discourage schools from focusing on other attributes of "citizen-lawyers" who work for the common good as well as for their individual clients.²

An outcome measure in and of itself is meaningless unless there is a way to determine progress toward achieving the stated outcome. With regard to student learning outcomes, achievement of an outcome is inextricably linked to ongoing assessment of student progress, whether through formal testing or through the use of other more informal assessment techniques.³ For example, a student learning outcome measure might focus on students' ability to communicate clearly, appropriately and accurately with clients, judges and colleagues. To act effectively as an outcome measure for the institution, this would require evidence that students are assessed on their progress toward achieving that capability. The adoption of assessment strategies by a school would be evidence of the school's progress toward a stated outcome. With those considerations in mind, SALT has drafted a proposed outcome measure standard. We have also provided comments explaining the proposed standard and attached an addendum suggesting ways to measure compliance with the standard.

*Proposed Standard: A law school shall identify the learning and other outcomes it seeks for its graduates and for its program of legal education, shall develop ways to measure achievement of those outcomes, and shall gather and provide data demonstrating progress toward achieving the outcomes it has identified. In identifying learning outcomes, a school shall include basic competencies in the following areas: discipline knowledge, ethical attitude, communication skills, problem-solving and reasoning, information literacy, and interpersonal skills.*⁴

In developing ways to measure student achievement of outcomes, a school must link its assessment of student progress to the school's stated objectives with respect to student learning outcomes. Consistent with sound pedagogy, students should be given repeated opportunities to receive feedback on their skill and knowledge development with respect to a full range of lawyering tasks in both individual courses and as they progress through a law school program.

²See Rachel F. Moran, President's Message, *Transformation and Training in the Law: Serving Clinical Education's Two Masters*, AALS Newsletter, May 2009; Rachel F. Moran, President's Message, *Transformative Law*, AALS Newsletter, April 2009.

³See, e.g., Thomas A. Angelo and K. Patricia Cross, *Classroom Assessment Techniques: A Handbook for College Teachers* (2d ed. 1993).

⁴The competencies listed here are from Sally Kift, *Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: A Legal Education Study* available at: <http://www.aare.edu.au/02pap/kif02151.htm>. That article is attached for the convenience of the SRC. For other ideas on broad capability categories, see, e.g., A.B.A., *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT--AN EDUCATIONAL CONTINUUM, REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992), commonly known as "The McCrate Report"; Marjorie M. Schultz and Sheldon Zedeck, *FINAL REPORT IDENTIFICATION DEVELOPMENT AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING*, <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>.

Comments: In order to ensure that all schools are adequately educating their students and providing them with the breadth of legal knowledge and ability they will need to be effective, it seems important to establish some outcomes standards that will apply to all law schools. At this stage, however, it would be difficult for the SRC and Council to determine precise standards even for basic competencies because there are few models to use from the legal academy. Moreover, new and specific outcome measures standards would impose burdens on law schools without first giving them a reasonable opportunity to adapt and incorporate student learning outcomes into their self-evaluations and planning. It seems wise, therefore, to use general categories, such as those listed here, and invite each school to identify its own learning outcomes within those broad categories and apply them to its own program. After schools and the SRC, Council, and Accreditation Committee obtain more experience in crafting and applying learning outcomes, the SRC might consider adopting more specific learning outcomes standards that would apply to all law schools.

In proposing a standard that ties outcomes to assessment, SALT recognizes that law schools lag behind other professional schools in the development and implementation of assessment methodologies.⁵ Moreover, traditional multiple choice, essay and short-answer question exams emphasize knowledge acquisition rather than the integration of knowledge with the performance of actual lawyering tasks, and these assessment methods examine students' skills and capabilities development with respect to a narrow set of tasks. Although some students (notably those in clinic courses) are assessed on some additional lawyering skills, students generally are not assessed on the wide range of competencies effective lawyers need, nor are they offered opportunities for feedback on their ability to use their knowledge and skills in the myriad tasks, situations and contexts in which practicing lawyers operate.⁶

In medical schools, performance-based assessments measure different competencies than those that are measured by more traditional testing methods and thus are important components in assessing medical students' overall competency.⁷ Unlike medical schools, where assessment research has provided innovations such as computer-based case simulations and standardized patients,⁸ law school assessments have remained relatively static for over 50 years. This is due, at least in part, to the fact

⁵See, e.g., Roy Stuckey, et al, BEST PRACTICES FOR LEGAL EDUCATION 236-263 (2007)(critiquing the predominant existing methods of assessing law students and suggesting alternatives); accord, William M. Sullivan et al, EDUCATING LAWYERS, PREPARATION FOR THE PROFESSION OF LAW 162-180 (2007).

⁶See Sally Kift, *supra* note 4 at 11.

⁷See, e.g., Ronald A. Edelstein, et al, *A Comparative Study of Measures to Evaluate Medical Students' Performances*, *Academic Medicine*, Vol. 75, No. 25-33 (Aug. 2000).

⁸For more information about these two types of tests, see Edelstein, *supra* note 7. For information about the use of a standardized client model to assess law students, see, e.g., Karen Barton et al, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 *Clin. L. Rev.* 1 (2006); Lawrence M. Grosberg, *Standardized Clients: A Possible Improvement for the Bar Exam*, 20 *Ga. St. U. L. Rev.* 841, 842, 851-66 (2004) ; Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client*, 51 *J. Legal. Educ.* 212 (2001). Use of this assessment model at U.S. law schools is in its infancy. As far as SALT knows, only the Daniel Webster Scholars' Program at Franklin Pierce regularly uses the Standardized Client as a law student assessment tool.

that frequent assessments of a variety of lawyering competencies is time-consuming and may not be recognized or rewarded by law schools. Given competing demands on faculty time, schools are unlikely to engage in a widespread shift in assessment techniques unless the ABA mandates a move toward more pedagogically sound assessment practices. Because of the link between assessment and achievement of student learning outcomes, if outcome measures are to be adopted, revisions to the Standards will have to encourage, if not require, both more frequent assessments and the development and implementation of more performance-based assessments.

A shift to a standard requiring outcome measures and linking these to assessment methodologies should be accompanied by consideration of the fact that few schools have even begun to identify learning outcomes, let alone examine the relationship between those outcomes and the school's assessment practices.⁹ SALT believes that the adoption of an interim standard of the sort proposed here will give law schools the responsibility for developing outcome measures along with the freedom to experiment with assessment techniques and models that they believe can be used to demonstrate progress toward achievement of those outcomes. Active participation of law faculty, administration, and other teaching staff in developing outcome measures and assessment strategies will have the added benefit of focusing institutional attention on how and what students learn.

To help the SRC envision how to move from the abstract to the more concrete, in the attached addendum, SALT sets out methodologies that might be used to develop more specific learning outcomes as well as methods that could be used to assess a school's progress toward achievement of various outcome measures. The methods and criteria outlined in the addendum are for illustrative purposes only. The addendum is meant simply to serve as a starting point for a further in-depth discussion of an outcome measures standard and compliance criteria.

Finally, because the shift toward outcome measures involves a re-examination of how law students are taught and assessed, SALT recommends that the Standards Review Committee encourage ABA institutional support to help faculty and schools identify resources and develop research that will facilitate this shift in accreditation criteria. SALT thus hopes the Standards Review Committee will propose that the ABA Section on Legal Education develop research study grants for outcome measures and assessment research as well as a resource website that serves as a central clearinghouse of information about outcome measures, including on-going assessment research.

⁹One program that is linking learning outcomes to student assessment and developing methods to demonstrate student progress and ultimate proficiency in a wide range of lawyering skills is the the Daniel Webster Scholars Program at Franklin Pierce Law School. For information about this program of legal education, see John B. Garvey and Anne F. Zifkin, *Making Law Students Client-Ready, A New Model in Legal Education*, forthcoming Summer, 2009, Duke Forum for Law and Social Change. SALT also understands that the University of the District of Columbia School of Law has developed competencies to guide program delivery and assessment and that Charlotte Law School, Hamline Law School and Willamette Law School, among others, are engaged in developing outcome measures criteria for their programs of legal education.

Once again, SALT applauds the ABA Standards Review Committee's attempt to move law school accreditation toward an Outcome Measures approach and offers its support in developing workable and effective criteria to accomplish that end.

Sincerely,

A handwritten signature in black ink that reads "Deborah W. Post". The signature is written in a cursive style with a large initial 'D'.

Deborah Waire Post
Co-President, Society of American Law Teachers

Andrea (Andi) Curcio
Chair, SALT Committee on Issues in Legal Education

Carol Chomsky
SALT Liaison to the Standards Review Committee