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APPENDIX A STUDENT LEANRING OUTCOMES

Summary of Comments and List of Issues
May 17, 2011

Executive Summary

In May 2007, the Accreditation Policy Task Force of the ABA Section on Legal Education and Admissions to the Bar recommended that a Task Force be appointed to "examine ways to revise the accreditation process to rely, to a greater extent than it currently does, on output measures."[1] A Special Committee on Output Measures was appointed in October 2007 and was charged as follows:

> "This Committee will determine whether and how we can use output measures, other than bar passage and job placement, in the accreditation process. The Committee may consider approaches taken by other accrediting agencies, evaluate criticism of existing measures, and analyze relevant information and studies. The Committee also should consider methods to measure whether a program is accomplishing its stated mission and goals. The Committee should find appropriate output measures and make specific recommendations as to whether the Section should adopt those measures as part of the Standards."[2]

The Special Committee gathered extensive information about approaches used by other accrediting agencies and examined the current state of thought about law school pedagogy and approaches to accreditation. The Special Committee focused on two recent studies of legal education,[3] examined international legal education, gathered insights from law practice, and studied accreditation standards from other professions. It concluded that the current Standards focus more heavily on inputs than outputs and that the move to output measures is long overdue.

The Special Committee issued its comprehensive Report on July 27, 2008[4] and recommended that the Section, through the Standards Review Committee, "re-examine the current ABA Standards and reframe them, as needed, to reduce their reliance on input measures and instead adopt a greater and more overt reliance on output measures."[5]

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[1] ABA Section on Legal Education and Admissions to the Bar, *Report of the Outcome Measures Committee* 1 (July 27, 2008) available at http://www.abanet.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf
[2] Id.
[3] WILLIAM M. SULLIVAN, ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (*CARNEGIE REPORT*); ROY STUCKEY, ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007) (*BEST PRACTICES*).
[4] Id.
[5] Id.

Report of the Outcome Measures Committee

The Report of the Outcome Measures Committee proceeds in three parts. First, it discusses the general topic of outcome measures by examining recent reports on legal education, the experience of legal educators in other countries, and by looking at legal practice in this country. The first part, then, goes on to discuss the implications for legal education. The Report next discusses the use of outcome measures in Accreditation Standards. Finally, the Report helps frame the issues regarding the Accreditation Standards and the appropriate use of outcome measures.

The Report defines "outcome measures" as "accreditation criteria that concentrate on whether the law school has fulfilled its goals of imparting certain types of knowledge and enabling students to attain certain types of capacities, as well as achieving whatever other specific mission(s) the law school has adopted."[6] The Report notes that other fields of professional education have adopted outcome measures for many years.

From the *Carnegie Report* and *Best Practices*, the Committee identified three issues concerning outcome measures in legal education: "(1) What outcomes may be regarded as central to the legal education field in the hole? (2) How effective are the existing measures for assessing these outcomes? And, (3) What other outcome measures might be developed?"[7] The Report then lists several professional tasks that students should learn and lists multiple outcome measures currently used in professional education.

The first part of the Report ends by recognizing that the general outcome measures used in business as well as professional education, track well with the Carnegie list of "apprenticeships in legal education." In short, outcome measures should be used to examine three general categories of (1) knowledge, (2) skills, and (3) values/ethics. In this regard, the Report also referenced the MacCrate Commission study.[8]

In the second part, the Report discusses the role of outcome measures in the current Accreditation Standards. Standard 301(a) directs schools to have a program "that prepares its students for admission to the bar, and effective and responsible participation in the legal profession." The Preamble to the Standards amplifies these goals as well, and the Report examines the Preamble at some length before noting that Standard 302(a) shifts the focus from outputs to inputs by providing a list of subjects to be studied. The Report notes that Standard

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[6] Id. at 3.
[7] Id. at 6.
[8] Section of Legal Educ. & Admission to the Bar, Am. Bar Ass'n, *Report of the Task Force on Law Schools and the Profession, Narrowing the Gap* (1992).

302(a) can be reframed in terms of outcome measures by focusing on the lessons students should learn rather than subjects they should study.

The Special Committee studied other fields of professional education as part of its analysis of the use of outcome measures in accreditation.[9] All ten of the professional accrediting bodies that the Committee studied applied standards based on outcome measures. The Committee found three basic accreditation models. In the first model, accreditation agencies listed specific criteria and measurement devices. The second model suggested specific measurement criteria but gave schools freedom to devise and justify their assessment approaches. Finally, some accreditation agencies delegated to the schools responsibility for developing and supporting assessment measures to fit the school's mission.

As an overall assessment, the Committee found two trends in professional accreditation. First, the accrediting body should measure a school's performance against the school's own stated missions. Second, accreditation standards are performance-based and attempt to evaluate student learning. Additionally, the Committee noted that institutions engaged in planning processes to help them choose appropriate outcome measures. The Report provided detailed lists of the types of outcome measures used by the other accreditation agencies. Among types of measurements were included licensure, portfolios, written examinations, peer review, and surveys. From its study of other professional accreditation systems, the Committee concluded that other disciplines allow schools to play a significant role in defining the nature of professional education and the focus is clearly on student performance outcomes as opposed to input measures.

Part Two of the Report closes with a discussion of the growing importance of regional accreditation processes for law schools.

The Report concludes with the overall recommendation that the current accreditation standards be re-examined and reframed "to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures."[10] The Committee then identified several issues for consideration. First, in reconsidering the Standards, the SRC should determine the degree of specificity with which to identify outcome measures and the degree of flexibility left to law schools to select and define outcomes. The Committee recommended that the standards afford "considerable flexibility to individual law schools to determine the outcomes the school seeks to effect . . ."[11] thus allowing law schools to further their special missions and engage in innovation and systemic improvement. Second, the Committee identified Standards that would benefit from a shift to outcome measures with recommendations for the types

[9] The Committee compared allopathic and osteopathic medicine, dentistry, veterinary medicine, pharmacy, psychology, teaching, engineering, accounting, and architecture.
[10] *Outcome Measures Report* at 54.
[11] Id. at 55.

revisions that should be made in Standards 202 and 203 and Standards 301, 302, and 303.[12] Third, the Committee recommended that the SRC consider outcome measures as they particularly relate to current bar examination requirements. The fourth issue for consideration concerned developing a sound process and timetable for refashioning standards to an outcome-oriented approach.

Standards Review Committee

The Standards Review Committee engaged in several discussions concerning student learning outcomes. Student learning outcomes have been the subject of discussion at an executive session of the AALS, a legal education conference at the Denver School of Law, an international legal education conference in Madrid, Spain, an annual meeting of the Southeastern Association of Law Schools, at regional meeting with law deans, the Accreditation Committee, and the Special Committee on the Professional Education Continuum. Additionally, the Committee has invited accreditation agencies from other professions as well as an expert in regional university accreditation to its meetings to inform itself about other accreditation practices. A Subcommittee on Student Learning Outcomes was formed to examine this topic more thoroughly.

The Subcommittee was guided by the ABA's *Report of the Outcome Measures Committee* and paid particular attention to the *Statement of Principles of Accreditation and Fundamental Goals of Legal Education* of the ABA's Section of Legal Education and Admissions to the Bar which states:

> "Applying the lessons learned and practiced in other disciplines' accreditation review processes, legal education programs and institutions should be measured both by essential program quality indicators (e.g. sufficiency of faculty and adequacy of faculty in light of missions and student body) and by learning achieved by their students. In the past, most accreditation measures have been on "input" factors and very little attention has been given to "output" factors. Accreditation review in law, like other disciplines, most moved law schools toward articulation and assessment of student learning goals and achievement levels." [13]

The Subcommittee determined that the following goals should guide its work:

- Standards should enhance how a law school will "prepare students for admission to the bar, and effective and responsible participation in the legal profession" by

[12] Id. at 56-58.

[13] ABA Section of Legal Education and Admissions to the Bar, *Statement of Principles of Accreditation and Fundamental Goals of Legal Education* available at http://apps.americanbar.org/legaled/committees/Standards%20Review%20documents/Principles%20and%20Goals%20Accreditation%205%206%2009.pdf.

identifying the requisite knowledge, skills and values in which law students should be competent. The Standards should require a law school to improve curricula so students might better achieve competency in the learning outcomes it identifies.

- The Standards should recognize the important role that different types of faculty – doctrinal, clinical, legal writing and others – already play in identifying and assessing student learning.
- The Standards should accommodate different law school missions and should avoid a "one-size fits all" mentality.
- The Standards should allow law schools to designate some or all of the outcomes and measures that relate to their respective missions.
- The Standards should not dramatically increase the cost of legal education to its students. The Standards should not be unduly difficult to administer and should not be inconsistent with the standards of regional accreditation. The Standards should not create what some have called the "blizzard of paperwork" necessary to comply with regional accreditation standards.
- The Standards should be drafted and implemented in a way that builds a consensus as to the importance of the Standards, in a way that maximizes buy-in and the probability that the Standards will not be gamed.
- The Standards should recognize the changes in the legal profession. Given current economic pressures, student and the profession are demanding greater accountability for identifying and measuring student learning outcomes.

The Subcommittee then prepared several drafts of Chapter 3 that related key Standards to each other. Standard 302 directs law schools to identify their desired learning outcomes and provides them with substantial flexibility consistent with each school's mission. Standard 303 provides that law schools offer a curriculum designed to produce graduates that have attained the learning outcomes identified in Standard 302. Further, with few exceptions (e.g. required course in professional responsibility) each school is to determine what its curriculum should be. Standard 304, then, provides that law schools apply a variety of formative and summative of assessment methods across the curriculum to provide meaningful feedback to students. And, Standard 305 provides that law schools review the pedagogical effectiveness of its curriculum and improve it with the goal that all students are likely to achieve proficiency in the identified learning outcomes. Finally, these Standards do not require that law schools determined that each and every law student, as a condition of graduation, be proficient in each and every outcome at the law school determines under Standard 302.

The Subcommittee then considered five specific issues:

1. *Explain the reason for the shift from assessing curriculum to assessing student learning.* As noted in the *Outcome Measures Report*, legal education accreditation is behind other agencies in stressing learning outcomes. Further, although Standard 301(a), which requires full to prepare students for "effective and responsible participation in the legal profession," is written in outcome language, the remaining Standards are input standards such as the regulation of curriculum. The Subcommittee drafted its Standard to enhance the level of student learning through the use of assessment measures.

2. *Are the standards sufficiently flexible to respect the individual missions of law schools?* The Subcommittee rejected a “one size fits all” approach to student learning outcomes. Instead, the Standards were drafted to provide significant flexibility. The Standard requires a law school to identify critical basic learning outcomes that the school must measure and it allows schools to adopt other outcomes consistent with their missions. Except for required courses such as a writing experience, professional responsibility, and those involving a clinical, field placement or simulation experience, the Standard allows schools to design a curriculum to provide graduates with the learning outcomes it has identified. The Standard does not provide specific required assessment measures although they do require schools to apply formative and summative tools across the curriculum. Law schools must assess whether students are attaining learning outcomes and they must work to improve their curricula with that goal in mind.

3. *Is it premature to ask law schools to identify student learning outcomes and seek to measure the progress of their student body in achieving the outcomes?* Considering that is has been over 20 years since the MacCrate commission report and given the work of the Carnegie study group, it is timely to proceed. Proceeding now is especially advisable since the proposed Standard will give significant discretion to the law schools to identify and implement outcome measure appropriate to their missions. Further, the proposed Standards do not require that each law school assess whether each student has achieved competency and in the school’s identified student learning outcomes. Instead, schools have flexibility in their use of qualitative and quantitative measures to assess that their students, as a whole, regarding achievement of learning outcomes.

4. *Are the standards likely to impose unnecessary costs on law schools?* The proposed Standards have provisions designed to help law schools identify and measure outcomes and a cost-effective way. The Subcommittee, for example, rejected the idea that schools to certify each and every graduate. Additionally, the proposed Standards do not require specific assessment regimes of individual students. Instead, law schools must use of formative and summative assessment methods across the curriculum.

5. *What sort of phase-in period should there be?* The Subcommittee recommends a phase-in period. The phase-in could be a delayed effective date for the Standards as a whole or separate phase-in dates for a law school (a) to identify their outcomes; (b) to assess their student on achieving the outcomes; and (c) to assess their assessment regime.

Comments Received by the Standards Review Committee

The Standards Review Committee has received, and is continuing to receive, several valuable and extensive comments on student learning outcomes from interested individuals, legal and educational organizations, institutions and organizations. Many of the comments addressed issues similar to those identified by the SRC Subcommittee for its consideration. Those comments will be grouped accordingly.

General Comments

Most of the comments on outcome measures supported the direction of the Special Committee in furthering the knowledge, skills, and values competencies as discussed in *MacCrate*, *Best Practices*, and *Carnegie*. Comments differed concerning degrees of specificity, particular skills to be emphasized, the placement of particular items in Chapter 3, and the like. One area of significant discussion concerned whether or not simulation exercises should be included in the requirement of real-life practice experiences for students.

While recognizing the value of simulation exercises to teach skills, some comments opposed including simulation as a “real life” requirement reasoning that a "simulated lawyering experience will not teach students some of the key aspects about law practice that entry-level lawyers need to know." More particularly, "live client and live matter experiences teach the ethical obligations involved in taking responsibility for another, teach how to exercise judgment in the face of the deepest of life's uncertainties and teach students how to learn from the experience of practice in a complex, unpredictable real world." Those favoring the use of simulation exercises in a "real-life" practice requirement argued that a live-client experience for every student was costly, inflexible, and may not be central to a law school's mission.

Generally, though, the move to outcome measures has received favorable comments and supporting the Carnegie goal that "professional schools must [ ] form practitioners who are away or what it takes to become competent in their chosen domain and to acquit them with reflective capacity to pursue genuine expertise."[14] In addition to promoting knowledge, skills, and professional values, general comments also recognized the need to develop outcome measures consistent with the schools more specific goals and mission.

A comment about the Standards in general and student learning outcomes in particular is that innovation and experimentation should be facilitated.

Explain the reason for the shift from assessing curriculum to assessing student learning outcomes.

Several comments noted that legal education lags behind other professions in requiring student learning outcomes for accreditation and recommend using performance-based assessments rather than relying exclusively on traditional testing methods. One organization wrote that "[A] shift to outcome measures offers an opportunity to address a long-standing critique of legal education -- that it emphasizes only a subset of the skills lawyers need and ignores a broader range of skills and values necessary for successful entry into the profession."

Are the standards sufficiently flexible to respect the individual missions of law schools.

One organization submitted proposed Standards and an Interpretation for SRC consideration. The proposal emphasized the need to allow law schools to define the learning outcomes for its graduates and for its program in legal education. Law schools should have flexibility in developing ways to measure the achievement of those outcomes. The proposal listed basic competencies for all law schools such as discipline knowledge, ethical attitude, communication skills, problem-solving and reasoning, information literacy, and interpersonal skills. Additionally, it was recommended that the list of basic competencies include multi-cultural competence and collaboration, and self-reflective learning and recommended that multiple, instead of a single, experiential learning experiences be required. All of these efforts are to be correlated with a law school's mission.

One organization recommended that the Standards provide some required outcomes but recommended that a law school have discretion and flexibility to identify their own outcomes. The organization also noted that while it is a worthwhile goal to use assessments to measure

[14] CARNEGIE at 173.

individual student learning outcomes, emphasis should rather be placed on whether or not the law school assesses its program as a whole.

Do the standards require each law school to measure the level of competency of each student?

There are two measurement issues involved with the standards. One measurement is an individual student achievement; the other measurement concerns a law school's program as a whole. Regarding institutional effectiveness, one organization proposed an interpretation which would require "proof of faculty and administration engagement in an ongoing process of evaluating their delivery of legal education to students." The intent is to require an evolving process of "planning, evaluating, and improving the schools delivery of legal education that responds to the changing nature of the profession itself." In this way, it is anticipated that by focusing on process rather than on quantitative or mechanistic results that accreditation review can be as "uncomplicated as possible so that schools do not feel overly burdened by the compliance criteria but instead can spend their resources and energy on improving the delivery of legal education."

Do the standards strike the correct balance between inputs and outputs?

Comments recognized that the current standards five input measures. While some input measures are likely, and should, be retained, the shift must be to outcome measures. For example, comments recommend that a professional responsibility should be required.

Also, the current Standards contain two input requirements: (1) schools must offer two rigorous writing courses and (2) must provide substantial opportunities for clinical programs. The proposed Standards add two input requirements: (3) all students must complete one supervised experience involving him and a clinic, field placements, or simulation course; and, (4) offer a course in professional responsibility. The proposed Standards, then, require four courses leaving law schools free to design whatever curriculum they think best to assure that students achieve the learning outcomes that they have identified.

One organization recommended that S. 302 adopt a "minimum legal research information literacy" requirement. And another organization, proposed language for Interpretation 302-2, which stated that in addition to problem-solving and legal analysis that "Students must also demonstrate proficiency in some combination of other skills, including legal research, factual investigation, communication, client and other interpersonal relations, counseling and/or negotiation." The idea behind the proposal is to identify a broad set of applicable skills needed for effective law practice. Consistent with this recommendation, the organization suggested that

the S. 302 include requiring the demonstrated ability to identify and resolve ethical dilemmas in clinical or simulated practice settings.

One organization recommended the elimination of the bar passage Standard.

Are the standards likely to impose unnecessary costs on law schools?

Regarding cost, comments recognized the need for flexibility, creativity, and experimentation and suggested that a "one-size-fits-all" approach is not advisable. They also recognized that a live-client experience for all students may be cost prohibitive.

Comments recognize the cost of providing live-client clinical experiences for all law students. In an effort to minimize costs, then, the recommendation was made for multiple experiential learning experiences. Similarly, law schools should not be required to adopt psychometrically valid and reliable assessment tools both because of law schools' inexperience with such methodologies and because of their cost.

Similarly, another organization recognizes that requiring "that each student participate in multiple courses [of real-life practice] have cost implications . . . there are many ways . . .(not all of them resource-intensive) to comply including rolling out the standards over time so that schools have sufficient opportunity to consider how best to achieve compliance.

What sort of phase-in period should there be?

Comments noted that the student learning outcomes represent a significant change in the Standards and, therefore, the change should be approached in a manner that allows schools to become familiar with identifying outcomes and, more importantly, with identifying measurement devices. To this end, comments addressed the need for an interim Standard which would allow law schools to experiment and allow models to be developed. Similarly, an interim Standard was proposed that assesses whether law schools are engaged in identifying learning outcomes and assessment measures, rather than requiring schools to achieve particular outcomes by a certain date.

One organization recommended that the new Standards should be implemented gradually. For example, the Standard could be written such that two or three years after adoption, a law school should be expected to have identified the skills, knowledge and values outcomes in their curriculum. Also during this time, law schools should be expected to develop preliminary assessment tools for the identified outcomes. Following this initial period, then, law school should be expected to assess whether their students have achieved the specified outcomes.

Then, over the course of the ABA's seven-year review process, law schools should be expected to evaluate their own institutional efforts.

Several commentators recognized that assessment methods have not been widely adopted in law schools, are unproven, and may not be valid and reliable. Therefore, caution and flexibility are advised rather than mandating strict requirements for individual and institutional assessments.

An individual comment suggested seeking Department of Education funding to support a series of three-year pilot projects among a selection of volunteer law schools to design, develop, implement and evaluate assessment instruments. After the pilot project, the suggestion continues, the ABA can review those studies and hold public hearings on final drafts of Chapter 3. This comment also recognized the need for assessment measures that are "valid and reliable."