

TO: STANDARDS REVIEW COMMITTEE
FROM: WILLIAM WESLEY PATTON¹,
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DATE: JANUARY 17, 2010
RE: OUTCOME ASSESSMENT STANDARDS
(DRAFT STANDARDS 301 THROUGH 305)

Like many of the professors who have already provided your Committee with comments regarding the move to outcome assessments in *Draft Standards 301 through 305*, I have also written extensively on cognitive psychology and learning theory.² After reviewing all of the letters sent to your Committee, after listening to the presentation, *Requiring Law Schools to Measure Student Learning: A Forum on ABA Accreditation Standards*, at the January AALS Conference, and after reviewing the materials presented at University of Denver Conference on Assessment held September 11-13, 2009, it is clear that it is very premature for the ABA to promulgate assessment standards. Based upon the information provided, *infra.*, I make the following modest proposal:

The ABA should seek funding from the Department of Education and/or other private funding sources to support a series of three-year pilot projects among a selection of volunteer law schools to design, develop, implement, and evaluate assessment instruments. The ABA will review those studies and use them to inform the final drafting of outcome measures to be implemented in ABA Standards 301 through 305. The pilot project studies shall be made available to all ABA law schools for use and comment. In the fourth year the ABA shall hold public hearings on its final drafts of Standards 301 through 305, and if fully approved, those standards shall be in effect in the fifth year of the outcome measures and assessment process.³

For at least the past decade law professors, especially those teaching legal writing, clinical, and externship courses, have developed a number of instruments, procedures, and pedagogical models intended to both better inform students regarding professors' expectations and to assess whether certain pedagogy appears to be effective. Dozens of examples of checklists, scoring rubrics, grading protocols, peer evaluation methods, clinical rating scales, course outline techniques, e-portfolio assessments, summative assessments, formative assessments, feedback analyses, practice problem and examination methodologies, cooperative

¹ During my thirty-year law school teaching career I have been fortunate to teach and administer a variety of law school courses and programs, including: (1) legal writing courses as the Director of the UCLA Legal Writing Program; (2) live-client clinics at UCLA and currently as Associate Dean for Clinical Programs at Whittier Law School; (3) simulation clinical courses; (4) externship courses and administrative functions as the Chair of the AALS Section on Externships and as Director of the Externship Program at Whittier Law School; and (5) numerous substantive courses.

² I am also a lecturer at the UCLA David Geffen School of Medicine, Department of Psychiatry.

³ The Society of American Law Teachers (SALT) has also requested that the ABA "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." SALT letter to the Standards Review Committee, July 7, 2009, at 4.

exercises, self-reflective instruments, maps of lawyer competencies, and comprehensive curricular assessment plans were presented at the University of Denver Assessment Conference. However, almost all of those creative attempts at assessment shared the same weakness – **they lacked sufficient data demonstrating statistical validity and reliability.**⁴ Steve Bahls, Chair of the ABA Student Learning Outcomes Subcommittee, has stated that:

There are a substantial number of schools that have developed outcome measures, many of which have been well documented through publications; however, **most assessment measures within education have not been demonstrate to be valid and reliable in the way that many standardized tests have.**⁵

Unless we can demonstrate that an assessment instrument accurately tests the content and/or processes we intend to test, and unless that measurement is accurate and reliable, the assessment may be more harmful than helpful.⁶ That is why “[c]oncerns about the valid interpretation of assessment results should begin before the selection or development of a task or an assessment instrument.”⁷ We must, before we mandate outcome measure standards, be certain that our methodology is not only valid and reliable, but also that it does not have any hidden variables that might lead to counterproductive pedagogical results. One need only consider the history of the Graduate Record Examination (GRE) to note the significance of unreliable and/or biased assessment tools. For instance, problems with the “predictive validity of the GRE” arose in the late 1970’s and in the early 1990’s “a moratorium was placed on the GRE Validity Study Service” until better empirical methods could help overcome reliability problems. An important research paper from the Educational Testing Service cautioned that “useful validity research information for graduate schools should include summaries of multiple studies, especially summaries of interpretable collections of disciplines and institutions, in order to answer questions of general interest and provide more stable results than can be provided by

⁴ One of the most active organizations in the development of progressive law school teaching models and methods, the Institute For Law Teaching And Learning, has stated that “[a]ssessment methods, in the context of law, are insufficiently developed at this time to predict whether a reliable and valid set of measures will exist so many years down the road.” Letter from Institute For Law Teaching and Learning to the Standards Review Committee, January 13, 2010, at 2.

⁵ Steve Bahls, *Key Issues Considered by the Student Learning Outcomes Subcommittee*, at 3-4, December 15, 2009.

⁶ For an interesting discussion of “fairness” in educational assessment, see, Andrew Davis, *Examples as Method? My Attempts to Understand Assessment and Fairness (in the Spirit of the Later Wittgenstein)*, 43 *Journal of Philosophy of Education* 371 (2009).

⁷ Barbara M. Moska and Jon A. Leydens, *Scoring Rubric Development: Validity and Reliability*, 7 *Practical Assessment, Research & Evaluation* 1, 4 (2000), available at <http://pareonline.net/getvn.asp?v=7&n=10>. For instance, Moska and Leydens give an example of a history test “in which the questions use complex sentence structures [which] may unintentionally measure students’ reading comprehension skills rather than their historical knowledge. A teacher who is interpreting a student’s incorrect response may conclude that the student does not have the appropriate historical knowledge when actually that student does not understand the questions. The teacher has misinterpreted the evidence – rendering the interpretation invalid.” *Id.*, at 2.

studies done in individual departments.”⁸ **In short, law school outcome measurement and assessment tools will be more valid and reliable if law schools can share from a pool of Pilot Project experiments in designing their own assessment instruments rather than forcing each school to invent its own model in isolation.** The Pilot Program that I outlined in my proposal will permit all law schools access to a vast amount of assessment tool data that will have been tested through validity and reliability filters.

The Student Learning Outcomes Subcommittee did not make a recommendation on the speed of implementing ABA assessment standards, but rather stated:

The Subcommittee supports a phase-in period. The phase-in period could be a delayed effective day, an interim period when law schools could elect to be evaluated under the old rules or new rules, a consultant’s memo or a combination of all three.⁹

Although the Subcommittee was reasonable in determining that the process of switching to an assessment based accreditation standard will require time, the only workable alternative is a complete delay in implementing such accreditation standards until the ABA and law schools have developed statistically reliable and valid data to intelligently design and evaluate assessment instruments. Prior to that time, any consultant’s memoranda directing law school action is not only premature, but may result in a tremendous waste of limited law school resources. Two speakers at the January AALS session, *Requiring Law Schools to Measure Student Learning...*, gave us words of caution against rushing to judgment on mandating outcome and assessment measures as part of the national law school accreditation standards. First, we learned that the process to establish outcome measures for pharmacy schools took **seven years** to discuss and develop. In addition, we were informed that many pharmacy schools wasted precious resources by establishing assessment tools and procedures that were much more extensive than needed, thus unnecessarily increasing the cost of pharmacy education. Second, we were warned that during this time of limited law schools resources and the escalating cost of a legal education that we need to be fiscally practical in implementing assessment accreditation standards. My proposed 3-year Assessment Pilot Project answers these economic problems since all law schools will benefit from those experiments, and that data will enable schools to have a much more measured and accurate response to an ABA call for assessment Standards.

Even some of the organizations and professors who are zealously in support of the proposed ABA assessment standards note that the process of developing and implementing assessment instruments will be difficult and time consuming. For instance, the Institute for Law

⁸ Nancy W. Burton and Ming-Mei Wang, *Predicting Long-Term Success in Graduate School: A Collaborative Validity Study* (2005, Graduate Board Research Report No. 99-14R, ETS RR-05-03 (Educational Testing Service, Princeton), available at <https://www.ets.org/Media/Research/pdf/RR-05-03.pdf>). Medical schools have also found that intuition about the predictive value of assessment tools is often problematic. See, e.g., Michele A. Grooves, Jill Gordon, and Greg Ryan, *Entry Tests for Graduate Medical Programs: Is It Time To Re-Think?*, 186 *Medical Journal of Australia* 120 (2007); Ellen R. Julian, *Validity of the Medical College Admission Test for Predicting Medical School Performance*, 80 *Academic Medicine* 910 (2005).

⁹ Steve Bahls, *supra.*, note 5, at 4.

Teaching and Learning stated that since the shift to outcome measures is a “significant change” in law instruction, the standards should be gradually implemented and should not be used as an accreditation tool requiring that a high percentage of students have acquired the identified outcomes during the “seven – or eight year initial time frame” necessary to develop and implement valid outcome measures.¹⁰ In addition, the Society of American Law Teachers (SALT) agrees that “legal educators have as yet done only minimal work identifying learning outcomes and developing valid and reliable assessments to measure those outcomes.”¹¹

The evidence is clear that it will take several years to develop empirical studies and pilot projects that will yield valid and reliable instruments for outcome measurement in law schools. It is simply unreasonable and a waste of law school resources for the ABA now to implement outcome measure requirements, such as those currently contained in *Draft Standards 301 through 305*, before schools have the empirical data available to intelligently design a systemic model for assessment of their law students.¹² It would be unreasonable for the ABA to draft assessment standards before it, too, has the assistance of the data that will be provided through the funding of pilot projects. Unless our testing instruments and standards are valid and reliable, they are irrelevant in determining whether a law school is enabling its students to attain its defined mission and its articulated learning outcome goals (See, *Draft, ABA Standard 304(a) and (b)*). Therefore, I request that this Committee propose a postponement of the implementation of assessment standards, and that it develop the necessary funding for assessment pilot projects.

¹⁰ Institute For Law Teaching and Learning letter to the Standards Review Committee, January 13, 2010, at 2.

¹¹ SALT letter to the Standards Review Committee, July 9, 2009, at 1.

¹² At the AALS presentation the timeline for implementing outcome measures was described as approximately one year. That timeline is not only inconsistent with the current lack of empirical data on reliable and valid testing instruments, but provides far too few opportunities for interested parties to testify before the various ABA committees.