



October 18, 2010

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Hulett H. (Bucky) Askew
ABA Consultant on Legal Education

Donald J. Polden, Chair
Standards Review Committee
ABA Section of Legal Education and Admission to the Bar

Dear Messrs. Askew and Polden:

The Legal Writing Institute is an organization of nearly 2,700 legal writing professionals. A majority of our members are full-time professors of legal writing, working in every American and several non-U.S. law schools. In addition, a significant number of our members are judges and practicing lawyers who understand the need for clear and precise legal writing to the effective functioning and administration of the legal system, and who have joined LWI in an effort to promote that skill. Many LWI members have served on law school accrediting and re-inspection teams. Members of the Institute had the opportunity to review this letter prior to its submission, and the LWI Board has reviewed and endorsed its contents.

LWI supports and commends to the Standards Review Committee the recommendations of the Association of Legal Writing Directors, contained in its September 30, 2010 letter to the ABA Consultant on Legal Education. Further, we specifically endorse the language proposed by ALWD that modifies the May 5, 2010 draft on outcome measure, and the rationale provided to support those changes.

LWI enthusiastically endorses the broad concept of focusing the accreditation standards on learning outcomes for our students. Indeed, legal writing faculty in most law schools appreciate the importance of articulating outcomes and measuring student achievement of those outcomes. Formative assessment is a conventional pedagogy of the legal writing curriculum. We agree with the variety of experts who promote the shift in accreditation from inputs to outcomes, and we believe this shift will ultimately make legal education more effective. We therefore welcome the opportunity to share with

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colleagues both within and beyond our institutional faculties what we believe to be the benefits associated with clearly articulated student learning outcomes that are assessed on a course as well as institutional level.

Every other year, LWI sponsors a major three-day conference, featuring as many as 80 to 100 break-out sessions, where legal writing professors can meet and share ideas about both the substance and the teaching of legal writing. Many other consortia of law schools sponsor smaller such gatherings at various times and places around the country every year. In addition, the Journal of the Legal Writing Institute, a peer-reviewed scholarly journal, frequently publishes articles about pedagogy and assessment of student work. (For a sampling of such articles, see Michael R. Smith, *The Next Frontier: Exploring the Substance of Legal Writing*, 2 J. ALWD 1 (2004), fn. 13.) Our members have studied, and written about, pedagogy and assessment of student learning for many years.

I have already appointed a committee of distinguished LWI members, chaired by Prof. Susan H. Duncan of the University of Louisville, Brandeis School of Law, and charged it with creating a comprehensive list of resources about learning outcomes and valid assessment methods. Many such resources currently exist, written not only by our members but also by clinical professors and others; we anticipate many more such resources will be created as schools begin to address outcome measures in a more rigorous way. It is our hope to create a continuously-updated clearinghouse of assessment tools, articles and other resources that can assist all ABA-accredited law schools in implementing valid and reliable outcome measures for all courses offered.

In short, LWI members have been working with outcome measures and formative assessments for many years. We have a wealth of expertise to assist in implementing a robust accreditation standard that focuses on student learning outcomes. We join with ALWD in recommending improvements to the May 5, 2010 draft that restores some of the more specific, and therefore guided and transparent, standards reflected in the October, 2009 draft.

It appears that the chief objection to the various proposals that the Standards Review Committee has considered is cost. For example, the Board of Directors of the American Law Deans Association, in its July 14, 2010 memorandum to the Consultant, claims that an outcome measures regime that requires a school to rigorously assess its effectiveness would “necessarily” require a school to “spend a tremendous amount of time and resources assessing its progress.” We believe that this statement reveals a fundamental

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misunderstanding of what “outcome measures” are, and how schools could go about creating them and assessing achievement of them.

We believe that valid and reliable outcome measures are relatively easy to devise and implement, although they may certainly require some effort over a period of time. Moreover, many of the resources necessary to do so are already available at most law schools, since every law school with a well-developed legal writing program already has a group of experts on hand. Many members of the legal writing community stand ready to work with others in the law schools to consider how existing resources and tools can be adapted and adopted in areas beyond legal writing. While the faculty-wide conversation the new standard would require may seem daunting at first blush, it actually is not. In most law schools, there is probably a broad consensus about what abilities and competencies we want our graduates to have.

We also believe that requiring schools to identify outcome measures and assess their effectiveness would not “inhibit innovation and experimentation at the school level,” as the ALDA Board of Directors fears, but would actually encourage innovation and differentiation among schools. The process of a faculty at a law school sitting down together to consider and discuss the desired outcomes for the students at that school, deciding how to bring about those outcomes and then evaluating whether those outcomes are achieved, will lead to rich and productive collaboration among all faculty members. Such a process, done well, can re-invigorate a faculty and help it to focus on its students’ needs. We have seen this happen effectively at some schools already, and believe all schools would benefit from engaging in this process.

In our view, while a good outcomes assessment plan may require some minor reallocation of existing resources, its direct financial impact on any school would be minimal to non-existent. But more importantly, the process of considering and adopting such a plan is worth it, because that would require schools to focus much more clearly on student learning. Drafting and implementing this kind of a plan helps our students in myriad ways, both in school and in practice. And that is exactly what the standards should be all about.

Please share these comments with members of the Standards Review Committee and any other group that is working on the revisions to this standard. We thank you for all of your hard work on this issue and for the opportunity to provide our perspective.

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Very Truly Yours,

A handwritten signature in black ink, appearing to read "Ken D. Chestek". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kenneth D. Chestek
President, The Legal Writing Institute

Cc: Prof. Mary Algero, President, the Association of Legal Writing Directors
Prof. Robert Kuehn, President, the Clinical Legal Education Association