

Society of American Law Teachers SALT

Public Advocacy Center, Room 223

Touro Law Center

225 Eastview Drive, Central Islip NY 11722

631 650 2310

www.saltlaw.org

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

Steven C. Bahls, President
Augustana College
639 38th Street
Rock Island, IL 61201

Dear Dean Polden and Mr. Bahls:

The Society of American Law Teachers commends the SRC subcommittee for its revised draft of the proposed Outcome Measures Standards and its on-going solicitation of comments. The latest iteration of the Draft Standards addresses many issues raised in previous commentary by numerous constituencies and, we believe, moves the project in the right direction. SALT especially applauds the attention to learning about ethical responsibilities through outcomes focused on law graduates' "ability to recognize and resolve ethical and other professional dilemmas" (Standard 302(b)(2)) and "knowledge and understanding of a lawyer's ethical responsibilities as a representative of clients, officer of the courts, and public citizen responsible for the quality and availability of justice" (Standard 302(b)(3)). We are also pleased to see the shift in Standard 304 from requiring a baseline achievement of specified outcomes for all students to embracing a dynamic process of on-going self-evaluation and self-improvement.

In this letter, we propose some changes to the current draft largely to respond to the concerns raised at the AALS conference. Among the most frequently heard critiques at the meeting were that the new accreditation Standards are overly prescriptive, will be a costly administrative endeavor, and will force law schools to reduce everything to a quantifiable measure and thus will be a "race to the bottom." SALT believes that many of these critiques reflect a misunderstanding of the proposed Standards and their goals and a consequent fear that outcomes standards will result in something like a "No Law Student Left Behind" regime. Thus, we think it is critical that the SRC more fully explain, not just the need for and purpose of Outcome Measures, but also how compliance will be assessed. The balance of this Statement contains suggestions of changes to the existing draft to address some of the concerns noted above.

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Suggested Modifications to Standard 302

Specification of Skills to be Learned

A shift to outcome measures offers an opportunity to address a longstanding critique of legal education—that it emphasizes only a subset of the skills new lawyers need and ignores a broader range of skills and values necessary for successful entry into the profession. However, a significant difference of opinion exists regarding whether the standards should identify a common set of fundamental skills for all students at all law schools or whether law schools should be allowed to define the skills to be acquired by the students at their law schools. SALT believes that certain core skills *should* be included in the standards, but the core skills should be those that *all* law students must develop, not just those associated with a particular kind of legal practice. Beyond that core, faculties should be invited to identify additional learning outcomes for some or all of their students based on their judgments about legal education and their own institutional missions or goals, as contemplated in the current draft.

Under the new standards, each school should be expected to create a program of legal education that ensures that their graduates develop core fundamental skills that all lawyers, regardless of practice area, should possess. Outcome Measures accreditation standards should not mandate training in particular forms of dispute resolution, such as trial advocacy, any more than they should require that all law students be trained in a specific subset of substantive legal doctrine. What is necessary for any kind of legal practice is well developed problem-solving skills, communication skills, and an appreciation for the human dimension of lawyering. Lawyers must be able to respond to conflicts and handle mistakes, to work collaboratively, and to engage in meaningful self-evaluation and lifelong learning. They must understand the importance of cross-cultural communication and the obstacles that may impede this communication.

SALT thus suggests a change to Standard 302 (b)(2). In the current draft, the SRC proposes two alternatives. In the first, the standard identifies only the basic skills of legal analysis, reasoning, legal research, problem-solving and written and oral communication, and leaves to individual schools the identification of other skills “necessary for effective, responsible and ethical participation in the legal profession.” In the second alternative, the draft standard identifies an additional list of standard skills that all schools must incorporate (trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, factual investigation, organization and management of legal work, and drafting) and then leaves determination of other necessary professional skills to each school.

At AALS, there were complaints about both alternatives. Some argued that the list of skills was overly prescriptive and would homogenize law schools to an undesirable extent. Others argued that leaving the designation to individual schools was insufficiently prescriptive and would result in schools making no changes in their curriculum or pedagogy. SALT suggests a middle ground: the standards should expand the core set of skills beyond analysis, research, problem-solving, and communication, making that list more reflective of the universal set of skills that all lawyers, regardless of practice area, should possess, but leaving schools the flexibility to further define their learning outcomes in accordance with their own goals and missions. Thus, we suggest that subsection (2)(iii) read:

Standard 302(b)(2)(iii) – SALT Proposal

The learning outcomes shall include . . . :

(iii) a sufficient depth and breadth of other professional skills that the law school identifies as necessary for effective, responsible and ethical participation in the legal profession, in keeping with the law school's mission and goals; the skills identified shall include at least the ability to: engage in meaningful self-evaluation and life-long learning; understand and communicate effectively with people from diverse ethnic and cultural backgrounds; respond to conflict and handle mistakes; work collaboratively; counsel clients; engage in fact development; and apply law and policy to facts.

As explained in earlier submissions by both SALT¹ and the Ad Hoc Working Group,² perhaps the most important skill law students should develop is the ability to be reflective in a way that will allow them to improve their skills and their performance as lawyers. This life-long learning skill is especially important given the dynamic and ever changing nature of the profession. Likewise, the ability to communicate effectively with people from diverse backgrounds is an essential skill in our multi-cultural nation, and should be a skill all lawyers, regardless of practice area, possess.³ Today's lawyers also must be able to work collaboratively, and responsibly handle conflicts and mistakes. Finally, SALT suggests that all lawyers must have the ability to understand the importance and relevance of facts, to identify what they need to know to pursue a matter, to probe facts, and to integrate their understanding of facts and law together, all encompassed within the skill of fact development and application of law to facts. Although there are numerous other skills that could be added to this list, the relevance of many of those skills, such as trial advocacy, depend upon a graduate's practice area and also a school's self-designated mission and goals.

Specification of Knowledge Outcomes

In the current draft, Standard 302(b)(1) requires schools to ensure their students possess "knowledge and understanding of the substantive law generally regarded as necessary to effective and responsible participation in the legal profession." SALT questions whether there is, in fact, a body of knowledge that is "generally regarded as necessary" for law graduates. Is knowledge of the law of evidence necessary? Must contracts and torts and property be taught as bodies of doctrine, and if so, what aspects of those doctrines are essential? Emerging variations in the required curriculum from one school to another show the existence of differences of opinion as to what is a necessary part of the "canon." SALT proposes that this standard instead require each school to identify what *it* considers to be the core, so that the

¹ SALT Letter to Dean Donald Polden, October 2, 2009.

² Memo from Ad Hoc Working Group to SRC, September 29, 2009.

³ Other disciplines, such as Medicine and Architecture, recognize the need for their graduates to be able to communicate effectively with people from different cultures and they include developing students' cultural competence in their accreditation standards. See e.g. Accreditation Standards of the Liaison Committee on Medical Education at ED 21 (requiring medical schools to document objectives relating to the development of skills in cultural competence) Available at www.lcme.org/functionslist.htm. See also, 2009 "Conditions for Accreditation," The National Architectural Accrediting Board (listing cultural diversity as one of its student performance criteria) Available at www.naab.org/accreditation/2009_Conditions.aspx.

“[l]earning outcomes shall include . . . knowledge and understanding of the substantive law the school identifies as necessary to effective and responsible participation in the legal profession.”

Suggested Change to Standard 303

SALT believes, and the Carnegie Report confirms, that regardless of a school’s individualized mission and goals, legal education is a progressive course of study and one in which students should be challenged to integrate doctrine, skills and values in various and increasingly complex settings that replicate the kind of real-life problems practitioners face.⁴ Requiring such a progressive development and integration of doctrinal analysis, skills and values should be a critical component of the Standards. The current draft Standard 303 attempts to address this issue by mandating that schools 1) require each student to complete at least one complex simulation or clinical or field placement experience and 2) provide substantial opportunities for students to participate in live client clinics or other real-life practice experiences.

SALT respectfully disagrees with this approach because it requires too little of law schools. We suspect that most schools could satisfy the draft Standard by pointing to their existing research, writing and advocacy courses, and schools would not be required to give students any applied learning experiences after their first year. We do not believe this was the SRC’s intention.

If developing student ability to use higher-level analytic and problem-solving skills in realistic settings is an important goal for legal education, then the standards should press law schools to provide curricula that ensure students have the opportunity and incentive to reach that goal. We thus return to the proposal offered by the Ad Hoc Working group to mandate that students “participate in multiple courses in which they perform well-supervised authentic legal work on realistic legal problems designed to encourage reflection by students on their professional experiences, the values and responsibilities of the legal profession, and development of the ability to assess one’s own performances, levels of competence and professional judgments.”⁵ The standard could specify that such courses could include those with a “substantial simulated exercise that engages students in performances of professional skills involving a type of case or problem that practitioners encounter or a live client clinic or field placement,” as articulated in the current draft standard.

SALT understands that mandating that each student participate in multiple courses of this type has cost implications, but there are many ways (not all of them resource-intensive) to comply with such a broadly worded requirement and, like the new outcome-based standards, a standard such as this can be “rolled out” over time, providing schools with the opportunity to consider how best to move towards this goal. If the SRC and Council are serious about requiring real skills development in legal education, there is no way around compelling significant skills-oriented courses of this kind.

⁴ See generally, WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

⁵ This was taken from the Ad Hoc Working Group Statement, *supra* note 2 at p. 9.

Proposed Changes to Standard 304

Standard 304, which deals with assessment of learning outcomes and institutional effectiveness, seems to have produced the greatest controversy at the AALS conference. SALT believes that this controversy is due, at least in part, to a general misunderstanding of what Standard 304 requires. In order to gain more widespread acceptance of the proposed Outcome Measures Standards, SALT urges the SRC and Council to better explain how this Standard would affect the accreditation process. One critique of the Standard is that it would be an administrative nightmare, requiring the hiring of administrators simply to ensure accreditation compliance. Another is that by quantifying learning, we reduce it to its lowest common denominator, measuring only that which can be quantified, and missing the nuanced learning that is critical to a good legal education. Those critiques, however, misread the intention, if not the letter, of the current draft Standard 304, although the fears certainly are understandable given the often burdensome and highly technical requirements of some regional accrediting bodies.

SALT suggests that the Committee make clear that the Standard does not require a mechanistic approach, nor does it mandate quantitative assessment or, indeed, any particular kind of assessment. Rather, the Standard requires faculty to engage in a process of identifying the school's learning outcomes and working to find and improve ways to assess those outcomes in order to improve their teaching and the learning outcomes for students. The Standard recognizes that legal education involves nuanced learning and, as the Interpretation makes clear, law schools can demonstrate progress toward learning outcomes in a wide variety of ways. Thus, we believe that schools will be in compliance with the Standards if they demonstrate that they are actively engaged in the process of identifying and refining learning outcomes, methods of assessing those outcomes (including qualitative assessments), and using information gained from their self-evaluation to improve their program of legal education. Of course, this is something that few law professors or law schools currently do on a regular basis. So, to that extent, the new Standards do require a more self-reflective analytical approach to teaching and legal education. However, that approach need not, and should not, devolve into a "checklist." Rather, it should be an ever-evolving process of planning, evaluating, and improving the school's delivery of legal education that responds to the changing nature of the profession itself. The Standard reflects this in the Interpretation which notes the numerous ways students can be assessed, none of which require a mechanistic application of a checklist of skills.

It may be that in order to help schools understand this, the SRC will need to draft some basic compliance measures so that schools will have guidance as to what they will need to do in order to be in compliance. Thus, SALT suggests the following to serve as the basis for an Interpretation or be part of a Consultant's memo.

Proposed Interpretation: Measuring Compliance

Compliance with Standards 302-305 requires proof of faculty and administration engagement in an ongoing process of evaluating their delivery of legal education to students. This will include looking at whether the school has identified the learning outcomes it seeks for its students, whether the process by which it identified those outcomes has engaged the entire faculty, whether the outcomes are consistent with the school's goals, and whether the school has a process in

place to periodically re-examine its learning outcomes. Accreditors also will look at whether schools identify in which courses and programs the learning outcomes are addressed, make efforts to assess student success in reaching the learning outcomes that have been identified for the school's graduates, and are working to develop courses and assessments to fill any gaps they identify. Compliance will also require that the school be engaged in an ongoing process of analyzing the results of its education and assessment process to see what strengths it can build upon and what weaknesses it must address. In essence, compliance criteria will look at whether schools are using outcome measures as a vehicle for an on-going and dynamic education and improvement process.

SALT urges that the compliance criteria focus on process rather than result and that accreditation review 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 their delivery of legal education.

In sum, SALT supports the effort to move the academy in a direction consistent with the insights gleaned from the MacCrate Report, the Carnegie Report, and Best Practices. We think that the suggestions outlined above would move the process closer toward the goal of ensuring that legal education embraces more fully the wider range of knowledge, skills and values needed in the profession and does so in a way that emphasizes the critical importance of contextualized learning. We appreciate the Subcommittee's ongoing solicitation of input and willingness to consider suggestions. We hope that you find these suggestions helpful.

Sincerely yours,



Raquel Aldana
Co-President



Steven Bender
Co-President

SALT recognizes that developing compliance measures that are standardized and transparent is a complex process. However, in order to help schools understand both the underlying goal of the Outcome Measures Standards and to allay concerns about the compliance process, SALT strongly urges the SRC subcommittee to develop some basic compliance criteria. The suggestions below are merely a starting point for that undertaking.

Addendum: Suggestions for Measuring Compliance with Proposed Standards 303 and 304

Defining Learning Outcomes

Has the school identified the student learning outcomes it seeks for its graduates?

[Compliance demonstrated by the list of outcomes]

Has the school incorporated its mission and goals into its learning outcomes?

[Compliance demonstrated by an annotated list of outcomes referring to the school's stated mission and goals or a narrative explaining the connections]

Has the school engaged a wide range of faculty in identifying learning outcomes?

[Compliance demonstrated by documentation of the process used to identify outcomes, showing faculty participation, e.g. minutes from faculty meetings and committee meetings; drafts produced by subcommittees and vetted by larger committees]

Has the school set up a process to engage faculty in an on-going review and refinement of the school's stated learning outcomes and has it complied with its own process?

[Compliance demonstrated by memo and supporting documentation of outcome measures review process]

Building Learning Outcomes into the Curriculum

Has the school determined which courses in the curriculum encompass the school's designated learning outcomes?

[Compliance demonstrated by list signifying which outcomes are taught and assessed in which courses; submission should include whether each course is required or an elective and, to the extent certain outcomes are taught and assessed in elective courses, evidence of the number of students enrolled in those courses]

Has the school determined which outcomes need to be more widely taught to more students?

[Compliance demonstrated by identification of desired outcomes that are not widely taught]

For those learning outcomes that are not widely taught, has the school developed a plan to integrate the teaching and assessment of those outcomes into its curriculum?

[Compliance demonstrated by producing the plan]

Assessing Learning Outcomes

Has the school identified the various methods by which its students are assessed?

[Compliance demonstrated by memo compiling methods used to assess students and connecting the assessments to the school's learning outcomes]

Has the school ensured that students receive ongoing feedback on their skill and knowledge development with regard to the school's stated learning outcomes?

[Compliance demonstrated by report documenting the opportunities students have to receive feedback.]

Process for Evaluating Program of Legal Education

Is the school engaged in an ongoing process of gathering information about its students' progress toward mastery of the identified learning outcomes and using the information gathered to periodically review, assess and adapt its program of legal education?

[Compliance demonstrated by report explaining what is being done and how that information is being used]