

TO: Standards Review Committee,
ABA Section of Legal Education and Admissions to the Bar

FROM: An Ad Hoc Working Group on Outcome Measures

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DATE: September 29, 2009

RE: Outcome Measures for U.S. Law Schools

We support the Committee's efforts to improve the accreditation of law schools through outcomes-focused standards and commend the Subcommittee for its thoughtful and well-considered approach. We believe this project is very important for the future of legal education, and we would like to help the Committee in any way possible. We respectfully submit some suggestions for changes to the Subcommittee's proposals that we believe are fully consistent with the goals of the Subcommittee and reflect the guiding principles that animated the Subcommittee's work.

The members of this ad hoc group are law professors who support the Committee's efforts to draft outcomes-focused accreditation standards. Individually, we have long-standing commitments to outcomes measurement, and many of us have researched, implemented, spoken, and written about learning outcomes. We include two former members of the Standards Review Committee, an associate and an assistant dean, doctrinal teachers, skills teachers, clinical teachers, directors of legal writing and externship programs, professionalism experts, and winners of awards for teaching, scholarship, and service. Our relevant biographical information is at the end of this memo.

In the following pages, we offer suggestions for changes to the Subcommittee's draft proposed Standards and Interpretations, with accompanying Comments that explain why we suggest the changes. Thank you for considering these suggestions. We hope you will find them helpful in reaching the goals articulated by the Subcommittee.

Bios of the Ad Hoc Working Group

Carol Chomsky, Professor, University of Minnesota Law School

Teaches Contracts, Sales, Legal History, and Judicial Externship. Professor Chomsky co-directs the University of Minnesota Law School's Structured Study Group Program (the academic support program for 1Ls). She was Faculty Coordinator for the University of Minnesota Early Career Teaching Program: Pursuing Excellence in a Multicultural University from 1999-2004 and led the University of Minnesota's Multicultural Teaching and Learning Fellows Program from 2003-2008. Among other publications, she is the author of *Teaching Students How to Read Statutes Critically*, a chapter in *Friedland & Hess, Teaching the Law School Curriculum* (with Christina L. Kunz), and of *Introducing Negotiation and Drafting into the Contracts Classroom*, 44 *St. Louis U.L.J.* 1545 (2000) (with Maury Landsman). She has delivered workshops on learning assessment at the University of Minnesota New Faculty Orientation and to a variety of other audiences.

Andrea A. Curcio, Professor, Georgia State University College of Law.

Teaches Civil Procedure and Evidence, and co-directs Georgia State's externship program. Professor Curcio sits on the Advisory Board of Georgia State University's Center for Teaching and Learning, chairs the Society of American Law Teachers' Committee on Issues in Legal Education, and was recently appointed to the Committee on the Professional Legal Education Continuum of the ABA Section of Legal Education and Admissions to the Bar. In 2008, she was awarded Georgia State University's Teaching Effectiveness Award and was named the Georgia State University College of Law Professor of the Year. She has published numerous law journal articles on various law teaching and assessment issues.

Eileen Kaufman, Professor, Touro College, Jacob D. Fuchsberg Law Center

Teaches Torts, Constitutional Law, Sex Discrimination, and Comparative Individual Liberties. Professor Kaufman is the immediate past Co-President of the Society of American Law Teachers (SALT) and serves as SALT's liaison to the ABA Council on Legal Education. She served as Chair of the AALS Committee on Bar Admission and Lawyer Performance (2005-2007), was a member of the New York State Judicial Institute on Professionalism in the Law (2001-2005), and currently serves on the Committee on Legal Education & Admission to the Bar of both the New York State Bar Association and the Association of the Bar of the City of New York. She was the 2004 recipient of the Ruth G. Schapiro Award of the New York State Bar Association. From 1988-2006, Professor Kaufman was the reporter for the New York Pattern Jury Instructions Committee. Her scholarship is primarily in the area of civil rights.

Pamela Lysaght, Associate Professor, University of Detroit Mercy School of Law

Teaches Applied Legal Theory and Analysis, UDM's required first-year legal writing and research course, Criminal Law, and Selected Topics in Criminal Law Seminar. She is an associate professor of law and Director of Writing Programs at Detroit Mercy. Professor Lysaght has co-authored a legal writing book and authored a research book. She co-chairs UDM's Curriculum, Strategic Planning, and Assessment Committee. Professor Lysaght served on the Communications Skills Committee of the ABA Section of Legal Education and Admissions to the Bar (2002-2008), and she is a co-author of the ABA Sourcebook on Legal Writing Programs, Second Edition. She has served on several ABA site-team inspections. Additionally, Professor Lysaght has for several years represented the Association of Legal Writing Directors at ABA Council meetings.

Richard R. Neumann, Jr., Professor, Hofstra University School of Law

In a teaching career beginning in 1975, has taught Contracts, Civil Procedure, simulation courses, legal writing, drafting, and live-client clinics. He authored or coauthored three widely used textbooks, all published by Aspen, and serves on Aspen's editorial board. He also served on Standards Review for three years, the last as vice chair, as well as about a dozen site teams. He chairs his school's curriculum committee during a multi-year review of its entire curriculum, and he has researched accreditation of medical and architecture schools.

Michael H. Schwartz, Associate Dean and Professor, Washburn Univ. School of Law

Teaches Contracts, Remedies, and Insurance. He is the Associate Dean for Faculty and Academic Development at Washburn. He is also the co-director of the Institute for Law Teaching and Learning, the immediate past chair of the Balance in Legal Education Section of the AALS, and the secretary of the Academic Support Section of the AALS.

Professor Schwartz is the author or co-author of multiple books, including *Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam* (2009) (applying learning theory, teaching theory and instructional design principles to law school teaching); *Expert Learning for Law Students* (2d ed. 2008) (the first law school text to articulate a vision of self-regulated learning skills; adopted at more than a dozen law schools); *Pass the Bar!* (adopted at more than a dozen law schools); *Contracts: A Context and Practice Casebook* (2009) (a contracts text that implements the recommendations of *Educating Lawyers* (2007), *Best Practices for Legal Education* (2007) and instructional design principles); *What the Best Law Teachers Do* (Harvard University Press, forthcoming 2011); and *Techniques for Teaching Law II* (Carolina Academic Press, forthcoming 2010). He is also the designer of a series of casebooks (approximately 25 under contract so far) and other books based on the model reflected in his contracts text. He was a contributing author to *Best Practices for Legal Education* (2007).

Professor Schwartz has delivered 40 presentations at national and regional conferences presentations regarding law school teaching, learning, and curriculum design topics, including 9 plenary sessions, and he has delivered 37 presentations at law schools about these topics.

Lori E. Shaw, Assistant Dean and Professor, University of Dayton School of Law

Teaches Civil Practice & Procedure and Criminal Law and has taught Advanced Criminal Law, Legal Profession I and II and Judicial Externship. Professor Shaw is the Assistant Dean for Student Affairs and Professor of Lawyering Skills at Dayton. She also serves as Dayton's Assessment Coordinator, is a member of the University of Dayton's Assessment Committee, and represents Dayton on the Legal Education Reform Project's Committee on Assessment. She is a past winner of the The West Education Network award for Innovation in Teaching. Professor Shaw is a co-author of the second edition of *Federal Grand Jury: A Guide to Law and Practice*. She is also a contributing editor for the *ABA Student Lawyer* for which she writes a bi-monthly column on professionalism.

Sophie M. Sparrow, Professor, Franklin Pierce Law Center

Teaches Torts, Remedies, and Legal Writing. She has conducted more than 50 workshops and presentations on assessment, teaching, professionalism, and writing to professors, judges, and lawyers. She has been involved in many levels of assessment for the past ten years; she co-authored *Teaching Law By Design* (2009), authoring the chapter on assessment. During 2004-2006 she was a Co-Chair for Franklin Pierce's self-study for the New England Association of Schools and Colleges. In 2004 she won the Inaugural Award for Innovation and Excellence in Teaching Professionalism and in 2008 became an approved candidate on the Fulbright Specialists Roster. She previously directed Franklin Pierce's legal writing program, helped design New Hampshire's alternative to the bar exam, and served as one of the founding members of Phoenix School of Law.

Roy Stuckey, Professor Emeritus, Univ. of South Carolina School of Law

Taught doctrinal courses, simulation-based skills courses, in-house clinics, and externship courses in his 34 year career. Professor Stuckey is the principal author of *Roy Stuckey and Others, BEST PRACTICES FOR LEGAL EDUCATION* (2007). He served on the Council of the ABA Section of Legal Education and Admissions to the Bar from 1988-94, served on the Section's Standards Review Committee from 1991-95, and served on and chaired or co-chaired the Section's Skills Training Committee from 1984-96. He was a member of the MacCrate Task Force. He has taught as a visitor at six law schools and has served on more than 15 site inspections. He was the founding director of the NMRS Center on Professionalism at the University of South Carolina.

SUGGESTIONS SUBMITTED BY THE AD HOC WORKING GROUP ON OUTCOMES MEASURES

The Subcommittee's draft is in bold below. Our suggested changes and additions are in underline and strikeout. The Comments explain our reasoning.

Beginning on page 15 is an Appendix showing our suggested changes and additions without Comments.

Standard 301. OBJECTIVES

- (a) A law school shall maintain an educational program that prepares its students for admission to the bar and effective, ethical and responsible participation in the legal profession.**
- (b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school's educational program, co-curricular programs, and other educational benefits.**
- (c) A law school shall strive to produce graduates who are reflective practitioners and who have the capacity and motivation to pursue expertise throughout their careers.**

Comment:

New subsection (c) is drawn from the Carnegie Foundation's report, *Educating Lawyers*. As the report's authors note, "Practical judgment depends on complex traditions of living, which can only come alive through apprenticeship experiences with exemplars of inherited judgment and skill. Thus the apprenticeship of skill takes on aspects of the critical apprenticeship of professional identity and ethical meaning. For this reason, *professional schools cannot directly teach students to be competent in any and all situations: rather the essential goal of professional schools must be to form practitioners*

who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity to pursue genuine expertise.” [p. 173; emphasis added]

Experience in the Daniel Webster Scholars’ Program in New Hampshire reinforces this point. Bar examiners, judges and lawyers assess students enrolled in the Program to determine whether those students have the necessary knowledge, skills, and values to become competent lawyers. As John Garvey, director of that program, reported at the recent Assessment Conference, the first thing that those experts look at when assessing a student’s portfolio is the students’ self-critique and self-reflections, because they recognize that a critical component of an effective and responsible lawyer is the ability to identify what one does not know and the ability and desire to achieve the necessary level of expertise. The proposed addition seeks to articulate that all law schools should seek to develop these attributes in its students.

Standard 302. LEARNING OUTCOMES AND CURRICULUM

(a) A law school shall identify, define, and disseminate the learning and other outcomes it seeks for its graduates and for its program of legal education to enable its graduates students to participate effectively, responsibly, and ethically in the legal profession. The learning outcomes shall be consistent with and support the stated mission and goals of the law school. The learning outcomes ~~and shall include these outcomes:~~

(1) knowledge and understanding of

(i) the substantive law ~~generally regarded as~~ necessary as a foundation for effective and responsible participation in the legal profession;

(ii) the professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(iii) a lawyer's ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;

Comment:

We suggest adding to the Subcommittee’s draft a requirement that learning outcomes should grow not only from the mission but also from the goals of the school because the school’s more specific goals are as or more likely to be a source of learning objectives than will the very general mission statement of the school. The current Standards already recognize that in Standard 203.

We suggest here and below that a school be required to “define and disseminate” its outcomes as well as to “identify” them. In addition to naming (identifying) an outcome, it should be “defined”

(broken explicitly into its component parts, which is the more difficult and also more important part of establishing and implementing a learning outcome) and “disseminated” (made publicly available to the law school community) to make the outcome more useful.

We suggest that Standard 302(a), which sets forth the requirement that schools define learning outcomes, refer to all three components of legal education (knowledge, skills, and values) as set forth in the Carnegie Foundation report. We thus suggest moving the Subcommittee’s language on ethical responsibilities to be within 302(a)(1), the “knowledge” section. Finally, we suggest a rephrasing of (1) because we believe that legal education is designed to create in students the critical and necessary foundation of knowledge upon which their professional efforts will be grounded rather than imparting specific pieces of knowledge that are on an agreed-upon list.

(2) entry-level proficiency in professional skills including:

(i) legal analysis and reasoning, legal research, problem solving, ~~written and~~ oral communication, analytical and persuasive writing, drafting to create legal rights and obligations, counseling, negotiating, the ability to work cooperatively with others as a member of a team, and the skill of self-reflection to maintain life-long learning;

(ii) the ability to recognize and resolve ethical and other professional dilemmas; and

(iii) ~~(ii) a sufficient number of other professional skills generally regarded that the law school identifies as necessary for effective, responsible and ethical participation as an entry-level lawyer in the legal profession;~~ and

Comment:

The Subcommittee’s draft includes a very workable criterion for successful skills learning outcomes — to be able to participate “as an entry level-level lawyer” — but the phrase is tucked away in the Subcommittee’s 302(a)(2)(ii). To make clear that it is the test for successful skills learning outcomes, we suggest moving it up to be the opening words of 302(a)(2).

We recognize that the Subcommittee struggled with whether to list numerous skills or whether to leave it to schools to define the appropriate list of skills. We also recognize that it may be desirable to keep the mandatory list to a minimum to encourage more buy-in. However, we believe that the suggested additions will add greatly to the Standard’s long-range impact upon legal education and should be included in this Standard for the reasons discussed below.

We are deeply concerned that without more specific requirements about the skills to be learned, some schools will be tempted to make only cosmetic changes in what students are learning and thus not really prepare students for entry-level professional work. An overly general standard will thus turn out to be a weak standard. The skills we suggest represent the bare minimum needed for entry-level competence.

We suggest specifying both writing and drafting because they are separate both analytically and as skills. The current Standards already distinguish between them. Compare current Standard 302(a)(3) with current Interpretation 302-2. Analytical and persuasive writing includes, among other things, office memos and appellate briefs. Drafting to create legal rights and obligations includes contracts, statutes, regulations, settlement documents, wills, trusts and the like. To draft is to create rules that govern the parties or the public. A student who takes the typical required legal writing courses has *not* learned how to draft, which requires unique skills. Competency in the practice of law requires both.

We suggest adding counseling and negotiation because these skills are essential to competence in virtually every imaginable legal job. For thirty years this has been pointed out over and over again, beginning with the Crampton Report, which recommended in 1979 that law students be required to learn these skills.¹

We suggest adding “the ability to work co-operatively” in recognition of the key role that teamwork plays in the profession. In a survey of Arizona lawyers, the ability to work cooperatively with others as a member of a team was considered an essential lawyering skill by 90% of the responders. [Best Practices at p. 79]

The idea to add the skill of self-reflection for life-long learning is taken from the Subcommittee’s language for the Standard on clinics and externships. We hope the Committee will insert this requirement into the professional skills section because, as explained in our Comment to Standard 301, this skill is essential if a lawyer is to learn and improve after graduation.

We suggest adding the ability to recognize and resolve ethical and professional dilemmas. This suggestion was taken directly from the MacCrate Report [pp. 140 and 203] and because of its importance to the profession, we suggest highlighting it in the proposed Standard.

(3) a commitment to the profession’s

(i) values of justice, fairness, candor, honesty, integrity and respect for the rule of law;

(ii) responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them; and

(iii) responsibility to enhance the capacity of law and legal institutions to do justice;

Comment:

We urge the Committee to include a commitment to professional values among the outcomes it requires all law schools to achieve.

¹ REPORT AND RECOMMENDATIONS OF THE ABA TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 3 (1979)

The primary source of the suggested values language is the MacCrate Report [values 2.1, 2.2 and 2.3, pp. 140-41 & 207-21] and the Best Practices report [pp. 79-92]. We did not include some of the fundamental values identified in the MacCrate Report [Value 1, Provision of Competent Representation, Value 3, Striving to Improve the Legal Profession, and Value 4; Professional, Self Development] and in the Best Practices report because they seem less appropriate for law schools to teach or new lawyers to embody.

We recognize that individuals will differ on what justice, fairness, and other similar values demand. This Standard would not mandate any particular conception. Instead, it would promote discussion in law schools about what those professional commitments mean.

Some may argue against adding values outcomes to the Standards on the basis that a commitment to values cannot be measured. We disagree. Surveys of graduates can assess acquisition of values. Instructional designers assess acquisition of values by asking questions that require graduates to rate, along a Likert-style scale, their likelihood of engaging in certain behaviors that evidence adoption of a particular value.² For example, a question could ask the graduates how likely they are to devote 10% of their time to pro bono work every year. Employers and clients could also be surveyed.

Even if the Committee is persuaded that measuring a commitment to values is impossible or too difficult, schools should nonetheless be required to try to instill a commitment to professional values in their students.

(4) other outcomes the school identifies as necessary or important to meet the needs of its students and to accomplish the school's mission and goals. The additional learning outcomes may be targeted for all students or only for students choosing particular courses of study.

Comment:

We suggest a new subsection (4) above to emphasize the Subcommittee's point that the list of outcomes in the Standard is simply the starting point and that a school should further identify its learning outcomes based the school's mission and goals. This subsection also recognizes that although the learning outcomes identified in subsections (1) – (3) are applicable to all students, a school may designate learning outcomes that relate to a particular group of students engaged in a particular course of study. For example, if a school holds itself out as having a special commitment to developing students' ability to engage in ADR or in business or international practice, then outcomes should be designed around those areas. The proposed Standard recognizes that students choosing to focus on one course of study, such as ADR, would have at least some different outcomes than those choosing to focus on another course of study, such as business practice.

(b) A law school shall offer a curriculum that:

(1) is designed to produce graduates who have attained ~~affords each student the opportunity to achieve the learning outcomes identified~~

² PATRICIA L. SMITH AND TILLMAN J. RAGAN, INSTRUCTIONAL DESIGN (2005).

pursuant to in section (a);

(2) requires at least one rigorous writing experience in the first year and at least one additional rigorous writing or drafting experience after the first year;

(3) requires substantial instruction in the history, goals, structure, values and responsibilities of the legal profession and its members; and

(4) offers opportunities for small group work through seminars, directed research, small classes, or collaborative work.

(5) requires all students to 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 judgment.

(c) A law school shall offer/~~require to~~ every student at least one learning experience in a live-client in-house clinics, field placements, simulations or other course that includes real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences, and the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performances, and level of competence, and professional judgment.

Comment:

We know that the Committee recognizes, as we do, the value to students of engaging in realistic lawyering experiences with instruction, supervision, and feedback. All members of our working group strongly believe that students must have multiple opportunities to apply the knowledge they are learning to realistic lawyering situations. One course during a student's law school career will not be sufficient for students to develop the knowledge, skills, and values that Standard 302 requires. We think it is critical that students participate in multiple courses in which they perform legal work in realistic contexts. Thus, we suggest that schools be required in Standard 302(b)(5) to give students multiple opportunities to participate in courses that provide such learning experiences. In our suggested Standard 302(b)(5), we do not limit the means through which a school might provide such experiential education.

Our suggested Standard 302(c) would require a school to provide all students at least one opportunity to participate in courses that involve real life practice experiences. This would not include simulation-based courses. We agree with the conclusion in the Carnegie Foundation's report on legal education that not only do well-designed courses that provide well-supervised real-life experiences bring together the multiple aspects of legal knowledge, skill, and purpose, they are critical for helping students become professionals in practice. "Taught well, it is through this experience of lived responsibility that the student comes to grasp that legal work is meaningful in the ethical, as well as cognitive, sense. Or rather, the student comes to understand that the cognitive and practical are two complimentary dimensions of meaningful professional activity that gets its point and intensity from its moral meaning." [p. 121]

Suggested Standard 302(c) does not require mandatory participation of all students in a clinic or field placement course. It only requires a school to give every student who wants to participate in a clinic or field placement course an opportunity to enroll in one.

We suggest adding drafting to (b)(2) for the same reasons we suggested clarifying the meaning of writing in (a)(2)(i). Drafting is most appropriately taught after the first year.

Consistent with our suggestions above, we suggest these interpretations:

Interpretation 302-1

Standard 302 does not delineate all of a school's learning outcomes. Law schools have different missions and goals, and those should shape a school's learning outcomes. Although all law schools must meet the baseline learning outcomes set forth in Standard 302, the Standard requires a school to go beyond those minimum outcomes and identify additional learning outcomes. In choosing what additional outcomes a school should meet, the Standard gives schools autonomy to design a program of legal education and set its own outcome measures in a way that both meets the needs of its students and comports with its mission and goals.

It may be necessary for a school to achieve some of its self-designated learning outcomes for all students while other, additional learning outcomes may not be applicable for all students. For example, a school may want a certain percentage of its students to have achieved a certain level of competency with regard to a variety of substantive areas, such as alternative dispute resolution, international law practice or business practice, or to have jurisprudential perspective. Not all students would have to display competency in all those areas. The Standard is designed specifically to allow schools flexibility in determining what outcomes it designates and whether those outcomes apply to all students or only to students following a particular course of study.

Interpretation 302-2

Providing opportunities for students to practice solving legal problems in real life contexts under supervision is the most effective and efficient way to develop professional competence. To fully integrate knowledge, skills and values, students must have multiple opportunities to apply the knowledge they are learning to real-life lawyering situations. One course or opportunity during a student's law school career will not be sufficient to help students develop the skills Standard 302 requires. Thus, schools are required to provide multiple opportunities for knowledge, skills and values application in context of authentic legal problems and legal work performed in a variety of settings and formats. Well-supervised clinics and externships are an excellent way to provide students with this experience and schools should offer those opportunities to all students.

Self-critique and self-reflection is a critical component of becoming an

effective and responsible lawyer and life-long learner. Thus self-assessment and reflection should be a significant component of the courses designated by the school as satisfying this Standard's requirements.

Comment:

The interpretations suggested above are based upon the comments and suggestions made throughout this draft. Specifically, we believe that schools should be required to engage students in self-reflection and assessment, and that to educate effective, ethical and responsible lawyers, schools should provide students multiple opportunities to combine knowledge, skills and values in real-life lawyering situations.

If the Committee decides to substitute our suggested 302-1 and 302-2 (above), we think it could delete proposed Interpretations 302-1, 302-2, 302-3. We suggest this change to the interpretations to help clarify what we think the Subcommittee has proposed: that a school must designate its own additional learning outcomes, but that not all additional learning outcomes need be met by all students.

~~Interpretation 302-1~~

~~In addition to the learning outcomes required in Standard 302(a)(1) – (3), a law school may choose to identify and articulate other outcomes that are related to its mission.~~

~~Interpretation 302-2~~

~~Each school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet. For the purposes of Standard 302(a)(2)(ii), a law school shall determine in which other professional skills its students shall have proficiency, in a way that fulfills the mission of and uses effectively the strengths and resources available to the law school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the professional skills that could fulfill Standard 302(a)(2)(ii).~~

~~Interpretation 302-3~~

~~For the purposes of Standard 302(a)(2) (ii), it is not necessary that each law student is proficient in the same set of professional skills.~~

Comment:

We recommend no change in the following interpretations proposed by the Subcommittee, other than to renumber them if our suggestions above are adopted

Interpretation 302-~~34~~

Factors to be considered in evaluating the rigor of writing instruction include: the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of the student's written products; the number of drafts that a student must produce of any writing project; and the form of assessment used by the writing instructor.

Interpretation 302-~~45~~

The substantial instruction in the history, structure, values, rules, and responsibilities of the legal profession and its members required by Standard 302(d)(2) includes instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association.

**Standard 303. ASSESSMENT OF LEARNING OUTCOMES
AND INSTITUTIONAL EFFECTIVENESS**

Comment:

The Subcommittee's draft imposes two kinds of duties on a school: to assess individual student learning outcomes and to assess its own institutional effectiveness. To make that clear, we suggest adding "Institutional Effectiveness" to the Standard title (above)

Below, we suggest a way to reorganize and reformat the Subcommittee's draft in order to clarify the school's separate learning and institutional outcomes measurement obligations. The obligations are more easily identified and clearly understood if they are set out in enumerated and tabulated lists. In doing so, we largely preserved the Subcommittee's wording with some minor adjustments to help the lists flow.

(a) In assessing student learning outcomes, a law school shall

(1) identify, define, and disseminate the methods used for assessment;

(2) employ a variety of valid and reliable assessment methods, consistent with sound pedagogy, systematically and sequentially throughout the course of the students' studies;

(3) provide feedback to students periodically and throughout their

studies about their progress in achieving the institution's identified student learning outcomes; and

(4) use broad-based involvement of the law school's faculty in developing and carrying out assessment activities.

(b) In assessing its institutional effectiveness pursuant to Standard 203, a law school shall:

(1) measure achievement of its identified learning and other outcomes;

(2) gather data demonstrating the degree to which its students, by the time of graduation, have achieved those outcomes;

(3) periodically and systematically evaluate its curricular structure, content, organization, outcomes, and the reliability and validity of assessment methods;

(4) review whether its identified outcomes and its assessment methods are sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly in the legal profession; and

(5) use the analysis of outcome measures and results to improve the curriculum and its delivery as well as the school's methods of assessment.

~~(a) A law school shall develop and carry out assessment activities to measure achievement of the identified learning and other outcomes and shall gather data demonstrating that its students have, by the time of graduation, achieved those outcomes. Consistent with sound pedagogy, the assessment activities must employ a variety of valid and reliable measures systematically and sequentially throughout the course of the students' studies. A law school shall provide feedback to students periodically and throughout their studies as to their progress in achieving learning outcomes with a view towards encouraging proficiency in each student. There shall be broad-based involvement of the faculty of the law school in developing and carrying out assessment activities.~~

~~(b) A law school shall periodically and systematically evaluate its curricular structure, content, organizations and outcomes. As part of the review, a law school shall review whether the outcomes it has selected and the assessment tools it has selected are sufficient to ensure that its students are prepared to participate effectively, ethically and responsibly in the legal profession. The law school shall use the analysis of outcome measures and results for systematic improvement of the curriculum and its delivery.~~

Comment:

The Subcommittee's draft appears to group individual student assessment provisions in subdivision (a) and institutional assessment in subdivision (b). To make that clear, we suggest

adding a phrase to the beginning of each subdivision to clarify what the subdivision covers.

In (b), we suggest adding a cross-reference to existing Standard 203 to clarify that 303(b) refers to the strategic planning process already required by 203.

As noted above, most of the language in our suggested Standard 303 is the Subcommittee's language, reorganized to emphasize the two-part requirement of assessing student learning and using assessment data to improve the law school program. We suggest two substantive changes to the Standard, however.

First, we suggest that schools be required to "identify, define and disseminate" their assessment methods, not simply carry out assessment, as a way of ensuring that schools take seriously their obligation to use a variety of assessment methods that are reliable and valid and so that the law school community and constituencies will understand how assessment is being done.

Second, we urge the Subcommittee to change the proposed Standard from one that requires schools to demonstrate that their students have achieved the designated outcomes to a Standard that requires schools to use data about student progress to improve its delivery of legal education. Especially in the early stages of the shift to outcome measures, it seems unwise to require that schools demonstrate that their students have achieved what will be newly defined outcomes using many newly defined assessment methods. Moreover, experience with the federal No Child Left Behind statute suggests that requiring schools to demonstrate student success with the school-defined learning outcomes may encourage schools to be less demanding when defining their outcomes in order to ensure better success. It is more important that schools set comprehensive, realistic, but challenging learning goals and use them to self-evaluate than that they demonstrate that every student, or some designated proportion of students, have achieved those goals. If we want schools to genuinely engage in the process of self-improvement, which is the main purpose behind outcomes measures, we think it is important that schools are judged not on whether all graduates have achieved all outcomes but rather on the genuineness of their efforts to define and measure the outcomes and use that data to improve their program of legal education. We also note that other professions using outcome measure criteria for accreditation do not seem to set a floor for achievement of outcomes but rather look at whether schools are measuring all outcomes and using the data for self-improvement.

***We suggest no changes to the Subcommittee's
draft Interpretation 303-1 and
draft Standards 304 and 305.***

Appendix
Ad Hoc Working Group's Suggestions
Without Commentary

The Subcommittee's draft is in bold below. Our suggested changes and additions are in underline and strikeout.

Standard 301. OBJECTIVES

- (a) A law school shall maintain an educational program that prepares its students for admission to the bar and effective, ethical and responsible participation in the legal profession.
- (b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school's educational program, co-curricular programs, and other educational benefits.
- (c) A law school shall strive to produce graduates who are reflective practitioners and who have the capacity and motivation to pursue expertise throughout their careers.

Standard 302. LEARNING OUTCOMES AND CURRICULUM

- (a) A law school shall identify, define, and disseminate the learning and other outcomes it seeks for its graduates and for its program of legal education to enable its graduates ~~students~~ to participate effectively, responsibly, and ethically in the legal profession. The learning outcomes shall be consistent with and support the stated mission and goals of the law

school. The learning outcomes and shall include these outcomes:

(1) knowledge and understanding of

(i) the substantive law generally regarded as necessary as a foundation for effective and responsible participation in the legal profession;

(ii) the professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(iii) a lawyer's ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;

(2) entry-level proficiency in professional skills including:

(i) legal analysis and reasoning, legal research, problem solving, written and oral communication, analytical and persuasive writing, drafting to create legal rights and obligations, counseling, negotiating, the ability to work cooperatively with others as a member of a team, and the skill of self-reflection to maintain life-long learning;

(ii) the ability to recognize and resolve ethical and other professional dilemmas; and

(iii) ~~(ii)~~ a sufficient number of other professional skills generally regarded that the law school identifies as necessary for effective, responsible and ethical participation as an entry-level lawyer in the legal profession; and

(3) a commitment to the profession's

(i) values of justice, fairness, candor, honesty, integrity and respect for the rule of law;

(ii) responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them; and

(iii) responsibility to enhance the capacity of law and legal institutions to do justice; and

(4) other outcomes the school identifies as necessary or important to meet the needs of its students and to accomplish the school's mission and goals. The additional learning outcomes may be targeted for all students or only for students choosing particular courses of study.

(b) A law school shall offer a curriculum that:

(1) is designed to produce graduates who have attained ~~affords each student the opportunity to achieve~~ the learning outcomes identified pursuant to ~~in~~ section (a);

(2) requires at least one rigorous writing experience in the first year and at least one additional rigorous writing or drafting experience after the first year;

(3) requires substantial instruction in the history, goals, structure, values and responsibilities of the legal profession and its members; and

(4) offers opportunities for small group work through seminars, directed research, small classes, or collaborative work.

(5) requires all students to 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 judgment.

(c) A law school shall offer/~~require to~~ every student at least one learning experience in a live-client in-house clinics, field placements, simulations or other course that includes real-life practice experiences; appropriately supervised and designed to encourage reflection by students on their experiences, ~~and~~ the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performances, ~~and~~ level of competence, and professional judgment.

Interpretation 302-1

Standard 302 does not delineate all of a school's learning outcomes. Law schools have different missions and goals, and those should shape a school's learning outcomes. Although all law schools must meet the baseline learning outcomes set forth in Standard 302, the Standard requires a school to go beyond those minimum outcomes and identify additional learning outcomes. In choosing what additional outcomes a school should meet, the Standard gives schools autonomy to design a program of legal education and set its own outcome measures in a way that both meets the needs of its students and comports with its mission and goals.

It may be necessary for a school to achieve some of its self-designated learning outcomes for all students while other, additional learning outcomes may not be applicable for all students. For example, a school may want a certain percentage of its students to have achieved a certain level of competency with regard to a variety of substantive areas, such as alternative dispute resolution, international law practice or business

practice, or to have jurisprudential perspective. Not all students would have to display competency in all those areas. The Standard is designed specifically to allow schools flexibility in determining what outcomes it designates and whether those outcomes apply to all students or only to students following a particular course of study.

Interpretation 302-2

Providing opportunities for students to practice solving legal problems in real life contexts under supervision is the most effective and efficient way to develop professional competence. To fully integrate knowledge, skills and values, students must have multiple opportunities to apply the knowledge they are learning to real-life lawyering situations. One course or opportunity during a student's law school career will not be sufficient to help students develop the skills Standard 302 requires. Thus, schools are required to provide multiple opportunities for knowledge, skills and values application in context of authentic legal problems and legal work performed in a variety of settings and formats. Well-supervised clinics and externships are an excellent way to provide students with this experience and schools should offer those opportunities to all students.

Self-critique and self-reflection is a critical component of becoming an effective and responsible lawyer and life-long learner. Thus self-assessment and reflection should be a significant component of the courses designated by the school as satisfying this Standard's requirements.

~~Interpretation 302-1~~

~~In addition to the learning outcomes required in Standard 302(a)(1)–(3), a law school may choose to identify and articulate other outcomes that are related to its mission.~~

~~Interpretation 302-2~~

~~Each school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet. For the purposes of Standard 302(a)(2)(ii), a law school shall determine in which other professional skills its students shall have proficiency, in a way that fulfills the mission of and uses effectively the strengths and resources available to the law school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the professional skills that could fulfill Standard 302(a)(2)(ii).~~

~~Interpretation 302-3~~

~~For the purposes of Standard 302(a)(2) (ii), it is not necessary that each law student is proficient in the same set of professional skills.~~

Interpretation 302-~~34~~

Factors to be considered in evaluating the rigor of writing instruction include: the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of the student's written products; the number of drafts that a student must produce of any writing project; and the form of assessment used by the writing instructor.

Interpretation 302-~~45~~

The substantial instruction in the history, structure, values, rules, and responsibilities of the legal profession and its members required by Standard 302(d)(2) includes instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association.

Standard 303. ASSESSMENT OF LEARNING OUTCOMES AND INSTITUTIONAL EFFECTIVENESS

(a) In assessing student learning outcomes, a law school shall

(1) identify, define, and disseminate the methods used for assessment;

(2) employ a variety of valid and reliable assessment methods, consistent with sound pedagogy, systematically and sequentially throughout the course of the students' studies;

(3) provide feedback to students periodically and throughout their studies about their progress in achieving the institution's identified student learning outcomes; and

(4) use broad-based involvement of the law school's faculty in developing and carrying out assessment activities.

(b) In assessing its institutional effectiveness pursuant to Standard 203, a law school shall:

(1) measure achievement of its identified learning and other outcomes;

(2) gather data demonstrating the degree to which its students, by the time of graduation, have achieved those outcomes;

(3) periodically and systematically evaluate its curricular structure, content, organization, outcomes, and the reliability and validity of assessment methods;

(4) review whether its identified outcomes and its assessment methods are sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly in the legal profession; and

(5) use the analysis of outcome measures and results to improve the curriculum and its delivery as well as the school's methods of assessment.

~~(a) A law school shall develop and carry out assessment activities to measure achievement of the identified learning and other outcomes and shall gather data demonstrating that its students have, by the time of graduation, achieved those outcomes. Consistent with sound pedagogy, the assessment activities must employ a variety of valid and reliable measures systematically and sequentially throughout the course of the students' studies. A law school shall provide feedback to students periodically and throughout their studies as to their progress in achieving learning outcomes with a view towards encouraging proficiency in each student. There shall be broad-based involvement of the faculty of the law school in developing and carrying out assessment activities.~~

~~(b) A law school shall periodically and systematically evaluate its curricular structure, content, organizations and outcomes. As part of the review, a law school shall review whether the outcomes it has selected and the assessment tools it has selected are sufficient to ensure that its students are prepared to participate effectively, ethically and responsibly in the legal profession. The law school shall use the analysis of outcome measures and results for systematic improvement of the curriculum and its delivery.~~

*We suggest no changes to the Subcommittee's
draft Interpretation 303-1 and
draft Standards 304 and 305.*