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October 14, 2010

Steven C. Bahls, President

Augustana College

639 38th Street

Rock Island, IL 61201

Dear President Bahls:

SALT appreciates the opportunity to once again submit comments about the draft outcome measures standards. The outcome measures subcommittee has done a commendable job of reaching out to various constituencies, inviting comments and being responsive to those comments. Although this has made the revision process longer and more complex, it has resulted in improved standards that reflect the thoughtful engagement of diverse groups within the academy. The model used by this subcommittee exemplifies what should be happening with all the proposed standards revisions. We applaud the subcommittee's efforts to engage the academy in the revision process.

At the outset, we want to stress the importance of having standards that are strong and clear enough to ensure that law school compliance will lead to quality legal education. Although many schools develop programs of legal education that far exceed the standards' mandates, other schools seem to do only what is minimally required. Thus, the content of all the standards, including the outcome measures standards, clearly make a difference in terms of the quality of legal education. We therefore view with concern the pressure to remove specificity from the standards and rely instead on more general exhortations of quality that schools may interpret as they see fit. We fear that this push towards deregulation would not simply permit schools to experiment and change (which they are already free to do); making the standards ever more general threatens to undermine the structure that ensures quality. Like other provisions, those that establish the outcome measures standards must be specific and prescriptive enough to ensure that schools adopt learning outcomes that will prepare their students adequately for the challenges they will face as attorneys. Providing too minimal a list of required outcomes will not satisfy this need.

Before addressing some specific issues raised by the current draft of the outcome measure standards, we also want to stress the importance of maintaining and indeed strengthening the role of faculty—including clinical and writing faculty—in governance of law schools, something threatened by recent drafts of proposed standard changes. The role of faculty, especially clinical and writing faculty, in shaping law school programs will be particularly critical in the move to outcome measures. The shift towards deregulation, and especially the suggestions that tenure is not required for any faculty, that the mandated governance role of faculty be reduced, and that security of position can be guaranteed simply by guaranteeing academic freedom, threaten to undermine meaningful implementation of outcomes measures, which will depend so heavily on the time, energy, and expertise of faculty to develop and apply. The outcome measures standards require law faculty to engage in serious communal conversation to identify the knowledge, skills, and values they want the school’s graduates to have, to ensure the curriculum as a whole and their individual classes map onto those learning outcomes, and to identify measures to assess the achievement of those outcomes. That kind of reflective process about teaching and assessment requires faculty with a long-term commitment to an institution and its students, and is best done by faculty who feel free to voice opinions that may differ from those of the school’s current dean. Thus, SALT respectfully suggests that the Standards Review Committee consider how other proposed changes to the standards are likely to impact on the feasibility of the move to outcome measures. If the SRC truly seeks to encourage faculty to engage in the work required to meaningfully identify and assess the skills, values and doctrine that new law graduates should possess, there must be serious attention paid to what kind of faculty input and commitment it will require and whether meaningful standards can be developed by a contract faculty with no meaningful voice in faculty governance issues. There is a reason why the current standards embrace tenure and alternative security of position. Moving to a regime that does no more than declare everyone has academic freedom would critically undermine the move to outcomes assessment and weaken all aspects of academic quality. We hope your subcommittee as well as the rest of the SRC considers the implications of the full range of proposed changes as well as the specific outlines of the particular outcome measures provisions.

Suggestions on the Proposed Outcome Measures Standards

We now turn to suggestions on specific aspects of the most recent draft of outcome measures provisions.

1. The standards need to clearly articulate that compliance will be based on process, not results

The draft standards your subcommittee has developed require schools to demonstrate only that they are measuring student learning outcomes and working towards improving the school’s overall results, not that all students are achieving the chosen learning outcomes. However, requiring even that form of measurement is a daunting prospect to schools that have not even begun to consider how to conduct such measurements. Deans and faculty have thus expressed great concern about the cost, in

time and money, of complying with the proposed standards and fear that they will be unable to demonstrate compliance.

It is our view that one of the most important benefits of moving to outcome measures is the resulting need for faculty to engage in the process of (1) identifying and articulating what learning outcomes they seek in their teaching (individually and collectively) and (2) sharing ideas on how to measure student learning effectively. We believe that the standards would more likely be accepted by faculty, and would be most effective, if schools were reassured that, at least initially, accreditors would be judging schools on whether they are engaging thoughtfully in such conversations and moving towards better definition of student learning outcomes and more effective measurement, not on whether individual students have achieved particular outcomes or even on what overall level of achievement the school has attained. Thus, it may be useful to include an interpretation of standard 301 or a consultant's memo that states something like the following:

As part of the rigorous educational program law schools must maintain, a law school must engage effectively in the process of identifying student learning outcomes and in developing ways to assess whether its students have achieved those outcomes. In the initial phases of implementation of the outcome measures standards set forth in standards 301-305, compliance will be assessed based upon evaluating the seriousness of the school's efforts to establish and assess student learning outcomes, not upon achievement of a particular level of achievement for each learning outcome. Among factors to consider in assessing compliance with these standards are: whether a school has demonstrated full faculty engagement in the identification of the student learning outcomes it seeks for its graduates; whether the school is working effectively to identify how the school's curriculum encompasses the identified outcomes, and to integrate teaching and assessment of those outcomes into its curriculum; whether the school has identified when and how students receive feedback on their development of the identified outcomes, and to the extent the school has identified areas in which students need more opportunities for feedback and assessment, whether the school has a plan in place to provide those opportunities; and whether the school is engaging in an ongoing process of gathering information about its students' progress toward mastery of identified outcomes and whether it is using the information gathered to regularly review, assess and adapt its program of legal education.

2. The list of outcomes in standard 302 should include self-reflective learning, multicultural competence, and the ability to work cooperatively

SALT understands the subcommittee does not want to be overly prescriptive of the skills required for all law schools. Nonetheless, SALT reiterates its position that some skills are so critical to the effective, ethical, and responsible participation in the legal profession that all law schools should be required to teach and assess students on the acquisition of those skills. Also, as stated earlier, the standards must be strong, clear and specific enough to ensure that law school compliance will lead to quality legal education.

The skills listed in proposed standard 302(b)(2)(i) are no different than the skills currently taught at virtually all law schools. They are the same skills that have been taught for decades. Yet, the world has changed radically in recent years, and the importance of skills-training has been repeatedly highlighted in report after report about the quality of legal education.¹ Thus, the minimum required of law schools should also change. We urge the committee to consider adding the skills of multi-cultural competence, collaboration and self-reflective learning to the mandatory skills list. We also encourage the subcommittee to consider other skills that may be universally necessary for all law graduates. Certainly, over time, as schools gain more experience identifying skills, the list should be revisited to see if additional skills should be mandated.

As explained in earlier submissions by SALT² and the Ad Hoc Working Group,³ 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. The significance of this skill is reflected in the requirement that a law school engage in institutional self-reflection by monitoring and assessing its program, evaluating its effectiveness, and making appropriate changes to improve the program. Likewise, the ability to communicate effectively with people from diverse backgrounds is an essential skill in our multicultural nation. Finally, all lawyers must know how to work collaboratively.

Thus, SALT urges the subcommittee to revise 302(b)(2)(i) to read:

(2) competency in the following skills:

(i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context, **self-reflective thinking and analysis, multicultural competence, and collaboration**

3. Standard 303(a)(3) Should Be changed to require multiple experiential learning courses

Standard 303(a)(3) as currently drafted, provides that law schools must require one appropriately supervised learning experience after the first year that engages students in performances of professional skills involving a type of case or problem that practitioners encounter. The learning experience shall be (i) a simulation course, (ii) a live client clinic, or (iii) a field placement complying with standard 305(e).

SALT reiterates its concern that Standard 303(b)(1) requires too little of law schools. One course, especially one simulation course, is not sufficient to prepare students for effective, ethical and responsible participation in the legal profession. If the ABA Council is serious about requiring real skills development in legal education—and it must be—the standard should at least be revised to say “multiple” rather than “one” appropriately supervised learning experience. It would be better, and

¹ See e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

² SALT Letter to Dean Polden, October 2, 2009; SALT Letter to Dean Polden and Mr. Bahls, March 8, 2010.

³ Memo from the Ad Hoc Working Group, September 29, 2009

appropriate, to require true clinical work for all students. Just as medical students cannot become doctors without working with real patients, so law students should not be able to become attorneys without working with real clients. Recognizing the concerns that law schools have about the costs of requiring live-client work for all law students (though not conceding that the costs have to be prohibitive), we urge your subcommittee and the SRC to at least mandate multiple experiences with real-world problems, and perhaps propose phasing in a requirement of live-client work in the future.

4. Standard 304 on assessment should remain as drafted

In your presentation at the last SRC meeting, you asked whether the draft of Standard 304, the assessment standard, should be changed to require psychometrically valid and reliable assessments. SALT believes that, for now, it would be unwise to require schools to have psychometrically valid and reliable assessments. Law professors and legal education scholars have only begun to explore how to better assess law students. At this stage, the SRC may need to restrict the standard to compelling law schools to work seriously on developing assessments beyond those already used rather than demanding psychometrically valid assessments. Schools should be asking themselves questions such as: how are law professors assessing students; do those assessments actually measure what professors want students to learn; are the assessment methods giving students feedback about their progress towards the schools' stated learning outcomes; are there assessment methods that might improve student learning? For now, the standard should focus on the process of reflection by faculty members about their individual assessments and how those assessments comport with the institution's overall learning outcomes. SALT believes the currently drafted standard is the proper assessment standard at this point, with perhaps an additional interpretation or a consultant's memo noting that compliance will be evaluated by looking at the process faculty have engaged in to determine whether students are getting meaningful feedback rather than demanding particular forms or levels of assessment.

5. The standards need to retain some input measures

At the last SRC meeting, you asked whether the standards need to retain input measures, and in particular, whether they should require that all students take a professional responsibility course. SALT thinks that the standards should continue to require some input measures primarily because it is too early in the transition to outcome measures to depend upon them entirely. Especially while law schools develop their chosen outcome measures and work towards effective assessment of those outcomes, continuing to require certain inputs is necessary. Even after the transition, it seems likely that some input measures will remain, as they remain in the standards of other professions that have moved to output measures. It matters both whether students take particular kinds of courses *and* what they learn in whatever courses they take. Indeed, that is the reason for requiring students to take multiple experiential learning classes rather than depending solely on requiring that students become proficient in certain skills. It remains reasonable to think that having particular courses available matters in ensuring adequate learning. Certainly, until we can be certain that the outcome measures are working effectively, identifying what kinds of experiences students must have may be the best way to ensure effective legal education.

In particular, SALT agrees with the proposed standard's requirement that all students take a professional responsibility course, at least at this stage. Requiring this course sends an important message to students about the value the profession places on ethics and professionalism and ensures attention to professional responsibility issues in each student's education. At some point in the future it may be possible to rely exclusively on an outcome measure of student acquisition of the knowledge and values of professionalism, but for now it seems imperative to require each student to take a course that addresses those concerns.

6. The expense of implementation of outcome measures and their impact on innovation

You have also raised the question whether implementation of outcome measures standards will greatly increase the cost of accreditation compliance and whether these standards will stifle innovation. In part, the answer to these questions lies in how compliance will be measured. To the extent that law schools follow the path taken by undergraduate institutions in which every skill is divided and subdivided into a chart and checklist, and faculty are required to identify and document the teaching of each skill in every course, the entire endeavor will be costly and so time-consuming that both faculty and law schools will spend their time developing charts and checking boxes rather than engaging in innovative teaching and assessment. But that should not and does not have to be the path to adopting outcome measures.

Thus, SALT urges the SRC to ensure that a consultant's memo is released with the proposed standards that gives schools a sense of how compliance will be evaluated and that accreditation compliance be focused, at least initially, on whether schools demonstrate that they have engaged the full faculty in conversations about how their teaching and assessments relate to what the faculty members, and the school, hopes its graduates will learn. Faculty *should* think about how their courses address the school's identified learning outcomes, but doing so, and ensuring that the school's courses as a whole offer sufficient opportunity to learn the full range of learning outcomes, need not involve extensive bureaucratic record-keeping. For a suggestion on some compliance criteria, see page 3 of this letter, *Proposed Interpretation to Standard 301*.

We again thank the subcommittee for its solicitation of input and we hope these comments are helpful.

Sincerely,



Raquel Aldana
Co-President



Steven Bender
Co-President