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# Society of American Law Teachers SALT

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July 7, 2009

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

Dear Dean Polden:

In response to the ABA Standards Review Committee's [SRC's] invitation to affiliates to submit comments at any point during the current review of the accreditation standards, the Society of American Law Teachers [SALT] Committee on Issues in Legal Education submits this letter, containing a draft of a proposed standard on outcome measures and related commentary. We also attach an Addendum with additional discussion about how law schools might apply such a proposed standard and demonstrate compliance with it. We ask that you please distribute this to members of the SRC.

SALT applauds SRC's interest in shifting accreditation standards toward an outcome measures approach, while acknowledging the difficulty of the task. As revised standards are developed, SALT encourages the SRC to recognize as it proceeds that, unlike our medical school counterparts, legal educators have as yet done only minimal work identifying learning outcomes and developing valid and reliable assessments to measure those outcomes. SALT suggests that the SRC consider proposing an interim standard that will encourage experimentation and give schools the experience necessary to develop more specific outcome measures that can serve as models for additional accreditation standards in the future.

In developing even an interim outcome measures standard, the SRC must recognize that law schools have different missions and goals.<sup>1</sup> It is equally important,

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<sup>1</sup>For example, some law schools may have a mission of inculcating a sense of social justice in its students; others' goals may include increasing diversity in the bench and bar; some may consider training cross-disciplinary lawyers a critical component of their legal education program, while others want their students to graduate with a deep jurisprudential perspective.

as AALS President Rachel Moran noted in her recent President's messages in the AALS Newsletter, to ensure that a focus on outcomes does not emphasize a limited set of skills, which might discourage schools from focusing on other attributes of "citizen-lawyers" who work for the common good as well as for their individual clients.<sup>2</sup>

An outcome measure in and of itself is meaningless unless there is a way to determine progress toward achieving the stated outcome. With regard to student learning outcomes, achievement of an outcome is inextricably linked to ongoing assessment of student progress, whether through formal testing or through the use of other more informal assessment techniques.<sup>3</sup> For example, a student learning outcome measure might focus on students' ability to communicate clearly, appropriately and accurately with clients, judges and colleagues. To act effectively as an outcome measure for the institution, this would require evidence that students are assessed on their progress toward achieving that capability. The adoption of assessment strategies by a school would be evidence of the school's progress toward a stated outcome. With those considerations in mind, SALT has drafted a proposed outcome measure standard. We have also provided comments explaining the proposed standard and attached an addendum suggesting ways to measure compliance with the standard.

*Proposed Standard: A law school shall identify the learning and other outcomes it seeks for its graduates and for its program of legal education, shall develop ways to measure achievement of those outcomes, and shall gather and provide data demonstrating progress toward achieving the outcomes it has identified. In identifying learning outcomes, a school shall include basic competencies in the following areas: discipline knowledge, ethical attitude, communication skills, problem-solving and reasoning, information literacy, and interpersonal skills.<sup>4</sup>*

*In developing ways to measure student achievement of outcomes, a school must link its assessment of student progress to the school's stated objectives with respect to student learning outcomes. Consistent with sound pedagogy, students should be given repeated opportunities to receive feedback on their skill and knowledge development with respect to a full range of lawyering tasks in both individual courses and as they progress through a law school program.*

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<sup>2</sup>See Rachel F. Moran, President's Message, *Transformation and Training in the Law: Serving Clinical Education's Two Masters*, AALS Newsletter, May 2009; Rachel F. Moran, President's Message, *Transformative Law*, AALS Newsletter, April 2009.

<sup>3</sup>See, e.g., Thomas A. Angelo and K. Patricia Cross, *Classroom Assessment Techniques: A Handbook for College Teachers* (2d ed. 1993).

<sup>4</sup>The competencies listed here are from Sally Kift, *Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: A Legal Education Study* available at: <http://www.aare.edu.au/02pap/kif02151.htm>. That article is attached for the convenience of the SRC. For other ideas on broad capability categories, see, e.g., A.B.A., *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT--AN EDUCATIONAL CONTINUUM, REPORT ON THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992), commonly known as "The McCrate Report"; Marjorie M. Schultz and Sheldon Zedeck, *FINAL REPORT IDENTIFICATION DEVELOPMENT AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING*, <http://www.law.berkeley.edu/files/LSACREPORTfinal-12.pdf>.

**Comments:** In order to ensure that all schools are adequately educating their students and providing them with the breadth of legal knowledge and ability they will need to be effective, it seems important to establish some outcomes standards that will apply to all law schools. At this stage, however, it would be difficult for the SRC and Council to determine precise standards even for basic competencies because there are few models to use from the legal academy. Moreover, new and specific outcome measures standards would impose burdens on law schools without first giving them a reasonable opportunity to adapt and incorporate student learning outcomes into their self-evaluations and planning. It seems wise, therefore, to use general categories, such as those listed here, and invite each school to identify its own learning outcomes within those broad categories and apply them to its own program. After schools and the SRC, Council, and Accreditation Committee obtain more experience in crafting and applying learning outcomes, the SRC might consider adopting more specific learning outcomes standards that would apply to all law schools.

In proposing a standard that ties outcomes to assessment, SALT recognizes that law schools lag behind other professional schools in the development and implementation of assessment methodologies.<sup>5</sup> Moreover, traditional multiple choice, essay and short-answer question exams emphasize knowledge acquisition rather than the integration of knowledge with the performance of actual lawyering tasks, and these assessment methods examine students' skills and capabilities development with respect to a narrow set of tasks. Although some students (notably those in clinic courses) are assessed on some additional lawyering skills, students generally are not assessed on the wide range of competencies effective lawyers need, nor are they offered opportunities for feedback on their ability to use their knowledge and skills in the myriad tasks, situations and contexts in which practicing lawyers operate.<sup>6</sup>

In medical schools, performance-based assessments measure different competencies than those that are measured by more traditional testing methods and thus are important components in assessing medical students' overall competency.<sup>7</sup> Unlike medical schools, where assessment research has provided innovations such as computer-based case simulations and standardized patients,<sup>8</sup> law school assessments have remained relatively static for over 50 years. This is due, at least in part, to the fact

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<sup>5</sup>See, e.g., Roy Stuckey, et al, BEST PRACTICES FOR LEGAL EDUCATION 236-263 (2007)(critiquing the predominant existing methods of assessing law students and suggesting alternatives); accord, William M. Sullivan et al, EDUCATING LAWYERS, PREPARATION FOR THE PROFESSION OF LAW 162-180 (2007).

<sup>6</sup>See Sally Kift, *supra* note 4 at 11.

<sup>7</sup>See, e.g., Ronald A. Edelstein, et al, *A Comparative Study of Measures to Evaluate Medical Students' Performances*, *Academic Medicine*, Vol. 75, No. 25-33 (Aug. 2000).

<sup>8</sup>For more information about these two types of tests, see Edelstein, *supra* note 7. For information about the use of a standardized client model to assess law students, see, e.g., Karen Barton et al, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 *Clin. L. Rev.* 1 (2006); Lawrence M. Grosberg, *Standardized Clients: A Possible Improvement for the Bar Exam*, 20 *Ga. St. U. L. Rev.* 841, 842, 851-66 (2004) ; Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client*, 51 *J. Legal. Educ.* 212 (2001). Use of this assessment model at U.S. law schools is in its infancy. As far as SALT knows, only the Daniel Webster Scholars' Program at Franklin Pierce regularly uses the Standardized Client as a law student assessment tool.

that frequent assessments of a variety of lawyering competencies is time-consuming and may not be recognized or rewarded by law schools. Given competing demands on faculty time, schools are unlikely to engage in a widespread shift in assessment techniques unless the ABA mandates a move toward more pedagogically sound assessment practices. Because of the link between assessment and achievement of student learning outcomes, if outcome measures are to be adopted, revisions to the Standards will have to encourage, if not require, both more frequent assessments and the development and implementation of more performance-based assessments.

A shift to a standard requiring outcome measures and linking these to assessment methodologies should be accompanied by consideration of the fact that few schools have even begun to identify learning outcomes, let alone examine the relationship between those outcomes and the school's assessment practices.<sup>9</sup> SALT believes that the adoption of an interim standard of the sort proposed here will give law schools the responsibility for developing outcome measures along with the freedom to experiment with assessment techniques and models that they believe can be used to demonstrate progress toward achievement of those outcomes. Active participation of law faculty, administration, and other teaching staff in developing outcome measures and assessment strategies will have the added benefit of focusing institutional attention on how and what students learn.

To help the SRC envision how to move from the abstract to the more concrete, in the attached addendum, SALT sets out methodologies that might be used to develop more specific learning outcomes as well as methods that could be used to assess a school's progress toward achievement of various outcome measures. The methods and criteria outlined in the addendum are for illustrative purposes only. The addendum is meant simply to serve as a starting point for a further in-depth discussion of an outcome measures standard and compliance criteria.

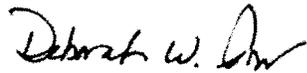
Finally, because the shift toward outcome measures involves a re-examination of how law students are taught and assessed, SALT recommends that the Standards Review Committee encourage ABA institutional support to help faculty and schools identify resources and develop research that will facilitate this shift in accreditation criteria. SALT thus hopes the Standards Review Committee will propose that the ABA Section on Legal Education develop research study grants for outcome measures and assessment research as well as a resource website that serves as a central clearinghouse of information about outcome measures, including on-going assessment research.

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<sup>9</sup>One program that is linking learning outcomes to student assessment and developing methods to demonstrate student progress and ultimate proficiency in a wide range of lawyering skills is the the Daniel Webster Scholars Program at Franklin Pierce Law School. For information about this program of legal education, see John B. Garvey and Anne F. Zifkin, *Making Law Students Client-Ready, A New Model in Legal Education*, forthcoming Summer, 2009, Duke Forum for Law and Social Change. SALT also understands that the University of the District of Columbia School of Law has developed competencies to guide program delivery and assessment and that Charlotte Law School, Hamline Law School and Willamette Law School, among others, are engaged in developing outcome measures criteria for their programs of legal education.

Once again, SALT applauds the ABA Standards Review Committee's attempt to move law school accreditation toward an Outcome Measures approach and offers its support in developing workable and effective criteria to accomplish that end.

Sincerely,

A handwritten signature in black ink, appearing to read "Deborah W. Post". The signature is fluid and cursive, with the first name being the most prominent.

Deborah Waire Post  
Co-President, Society of American Law Teachers

Andrea (Andi) Curcio  
Chair, SALT Committee on Issues in Legal Education

Carol Chomsky  
SALT Liaison to the Standards Review Committee

## SALT ADDENDUM TO STANDARDS REVIEW COMMITTEE COMMENTS JULY 7, 2009

This addendum is offered to assist the SRC in conceptualizing how a school might develop specific outcomes and comply with the proposed outcome measures standard. We realize that this is relatively uncharted territory and so we are providing a starting point, but only a starting point, for conceptualizing the way outcome measures might work.

The SALT Proposed Standard places responsibility on schools to identify learning outcomes and collect data to demonstrate student progress on those outcomes. Consequently, we address two issues here: (1) defining learning outcomes and (2) criteria to measure and judge whether a school is making progress in its efforts to achieve those learning outcomes.

### **I. Development of specific measurable outcomes in light of the general categories delineated in Revised Standard 301**

This section provides an example of how a school could further define and refine the general categories of law student capabilities and outcomes set forth in SALT's suggested Proposed Revised Standard. These are taken directly from Sally Kift's article, "*Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: A Legal Education Case Study*".<sup>1</sup> Schools could use such models or develop their own.

#### **A. General Graduate Capabilities and Outcomes**

1. **Discipline Knowledge:** Graduates should possess detailed and comprehensive knowledge of U.S. legal principles and statutory regimes, a knowledge of legal systems and influences outside the U.S., and a fundamental knowledge of extra legal factors impinging upon the development of substantive law
2. **Ethical Attitude:** Graduates should possess a sense of community and professional responsibility and be able to identify and offer appropriate solutions to professionalism issues and ethical dilemmas
3. **Communication:** Graduates should be able to clearly, appropriately and accurately communicate both orally and in writing, with the ability to use the appropriate language in a variety of contexts
4. **Problem Solving and Reasoning:** Graduates shall possess critical thinking and problem solving skills, which enable effective analysis, evaluation and creative resolution of legal problems.
5. **Information Literacy:** Graduates should be able to use current technologies and effective strategies for the retrieval, evaluation and creative use of relevant information as a lifelong learner.

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<sup>1</sup> See Kift, *supra* note 4.

6. **Interpersonal Focus:** Graduates shall be able to work both independently and as a productive member of a team, practice critical reflection and creative thinking, be socially responsible and inclusive and be able to work effectively and sensitively within the local and global community in continually changing environments.

From these broad objectives, schools then can identify and list the particular skills that are component parts of the stated outcomes/capabilities and develop ways to ensure the skills are taught, assessed and measured. For example, as Professor Kift's article explains, Problem Solving is a cognitive skill which includes many component parts (e.g. identifying and diagnosing legal problems; generating alternative solutions and strategies; developing a plan of action; implementing a plan of action; revising a plan of action as new information and ideas arise). The article goes on to discuss how these component parts may be subdivided into measurable skills.<sup>2</sup>

Once again, we would like to repeat that this is an example we are providing to show how a system of outcome measures might work. We are not suggesting that the ABA impose detailed or particularized outcomes such as those discussed in this paradigm or that schools be limited to the more detailed approach described here. We present this outline simply to illustrate how this could be done, not to suggest that there is only one way it can be done.

## II. How Can Accreditors Measure Compliance with Outcomes?

This section provides an example of the kind of criteria that could be used to measure compliance with an outcome measures standard similar to that proposed by SALT.

### A. General Programmatic Compliance

\*Does the school have a goals/mission statement?

\* Are all of the school's stated missions/goals addressed in the outcomes the school has identified for its students and its program of legal education?

\* Do the school's student learning outcomes encompass the broad categories delineated by the ABA Standard?

\* Has the school developed a comprehensive list of the components it considers critical to measuring whether its students are developing the broad learning outcomes identified in the ABA Standard?

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<sup>2</sup> For another example of how "problem solving" might be developed into a quantifiable skill and assessed through various exercises and assignments, see e.g. Garvey and Zifkin, *supra* note 9.

\* Does the school have an overall plan for assessing students' and the school's progress toward each outcome it has identified?

\* Has the school provided information that demonstrates its progress in achieving the outcomes it has identified?

### **B. Programmatic Compliance as it Relates to Student Learning Outcomes**

\* Are all students being taught and assessed on all the skills necessary to demonstrate proficiency in all the capabilities and outcomes the school has identified?

\* Where applicable, are the skills identified in specific learning outcomes being taught and assessed in multiple courses in order to facilitate student progress in the development and acquisition of those skills?

\* Has the school identified the methods of assessment used in the school's courses and how those methods relate to the school's identified learning outcomes?

\* Does the school, at least in some courses, provide students with opportunities for multiple assessments and feedback (schools could be out of compliance if over X percent of assessments involve only an end-of-semester exam)?

\* Does the school, at least in some courses, provide students opportunities for performance-based assessments, i.e. assessments beyond multiple choice, short answer or essay exams (schools could be out of compliance if over X percent of assessments involved only these exam formats)?

\* Are students being supplied with feedback so that they can self-assess their progress toward achieving the competencies and outcomes the school has identified?

\* Recognizing that developing performance-based assessments or engaging in multiple assessments, especially in large section courses, takes considerable faculty time and effort, is the school making meaningful efforts to encourage and support faculty engaged in this type of assessment?

### **III. Specific Examples of How a School Could Demonstrate Compliance with Particular Outcomes**

This section provides specific examples of how a school could demonstrate compliance with particular outcomes.

**A. Outcome: Ethical Attitude:** Graduates should be able to identify and offer appropriate solutions to professionalism issues and ethical dilemmas.

**Evidence of Compliance:**

\*Students are assessed on their ability to recognize and resolve ethical issues and professional dilemmas in the following required courses \_\_\_\_\_ [not just designated professional responsibility courses] and the following elective courses \_\_\_\_\_ [list all].

\* The assessments in the following courses \_\_\_\_\_ are done via multiple choice /short-answer/essay questions. The assessments in the following courses incorporate performance based assessment or assessment in more authentic lawyering situations than can be presented in multiple choice/short answer/essay questions \_\_\_\_\_. Formative ethical integration assessments are given in x courses \_\_\_\_\_. These methods relate to and further the school's outcome by (explain).

\* All students take at least \_\_\_\_\_ [# of } \_\_\_\_\_ courses that assess ethics and professionalism via multiple choice/short answer/essay questions; all students take at least \_\_\_\_\_ [# of} \_\_\_\_\_ courses that integrate professionalism and ethics issues into performance-based assessments or lawyering tasks or via formative assessments.

\* Progress toward achieving this outcome is demonstrated by the fact that X percent of students successfully complete the ethics and professionalism assessments in each of the courses listed above [list course and list student pass rate on ethics assessment for each course].

**Evidence of Non-Compliance:** Students are only assessed on their ability to recognize and resolve ethical issues and professionalism dilemmas in a required professional responsibility course.

***B. Outcome: Developing Students' Sense of Lawyers' Public Service Obligations:***  
Students should graduate with an understanding of, and appreciation for, lawyers' public service obligations.

**Evidence of Compliance:**

\*Data regarding student and faculty pro bono hours,

\* Information about how a school recognizes students who perform substantial pro bono work,

\* Pro bono hours performed by alumni,

\* Alumni employment statistics as they relate to public service (e.g. the number of alumni employed in public service jobs versus other employment),

\* A description of the school's loan forgiveness program and the impact of any loan forgiveness programs on graduates' public service career choices.

**Evidence of Non-Compliance:** The school has not developed any measurement data to assess progress toward achieving this outcome.

#### IV. Sample Chart to Assist with Data Collection

This section provides an example of a data collection format that could be used to compile information on specific courses to demonstrate programmatic compliance as it relates to student learning outcomes. Schools would be in compliance with the ABA standard if they developed data collection methods that would allow them to compile information to show broad programmatic compliance. Schools would be out of compliance if they had not developed a meaningful data collection system that encompassed the data the Standard requires. Data collection of this sort could be accomplished by having instructors use a checklist of the school's identified learning outcomes and components and add information on course-specific methodologies and activities.

Course: \_\_\_\_\_

# of Students \_\_\_\_\_

Semester: \_\_\_\_\_

Identify the skills this course sought to teach and measure	For each skill, identify the components of that skill taught and measured	Identify how this skill and its subsets fit with the school's overall learning objectives and outcomes	Describe all assessment methods used to measure the skills; describe the feedback given to students during the semester to aide in their skills development	What level of proficiency in each skill was expected at the end of the semester; what evidence demonstrates students have reached or not reached that proficiency level
<b>Critical Thinking and Analysis</b>	<ul style="list-style-type: none"> <li>• Responds to questions asked fully and in sufficient detail</li> <li>• Demonstrates understanding of difference between summarizing and analysis</li> <li>• Demonstrates ability to identify key issues and key supporting doctrine</li> <li>• Demonstrates ability to evaluate a line of reasoning and provide own opinion</li> <li>• Reaches a conclusion based upon arguments presented</li> </ul>	<p>This fits into the school's objective of producing graduates who possess critical thinking and problem solving skills</p>	<p>Method 1:</p> <ul style="list-style-type: none"> <li>• One question mid-term essay provided detailed rubric and asked to engage in a self-reflective learning exercise</li> <li>• Ungraded essay question with rubric and self-reflective exercise</li> </ul> <p>Method 2:</p> <ul style="list-style-type: none"> <li>• Essay question final exam</li> </ul>	<ul style="list-style-type: none"> <li>• Proficiency</li> <li>• This was a first year course and thus students should show a basic level of competency in terms of these skills; would expect the vast majority of students to pass and a mean class average (before normalization ) of _____</li> </ul>
<b>Problem solving</b>	<ul style="list-style-type: none"> <li>• Identify and diagnose legal problem</li> </ul>	<p>This fits into school's goal of developing students' problem solving skills</p>	<p>Mock interview with client performed by two teams; transcript provided to students; students required to write a short ungraded memo identifying the legal issues raised by the client; peer graded memo using rubric</p>	<ul style="list-style-type: none"> <li>• Would expect students to have be in the developing and rudimentary stages; evidence was class discussion of the memos as well as peer grading using rubric;</li> <li>• Discovered _____ % correctly identified the relevant legal problems</li> </ul>
<b>Team work</b>	<ul style="list-style-type: none"> <li>• Work with colleagues in cooperative manner</li> </ul>	<p>This fits within school's goal of interpersonal focus development</p>	<p>Students engaged in peer-grading and peer review of various exercises</p>	<ul style="list-style-type: none"> <li>• Would expect students to be in rudimentary stages; evidence includes: student surveys regarding the value derived from peer-graded exercises and feedback provided by peers to each other regarding the helpfulness of the team efforts</li> </ul>