January 14, 2014

The Honorable Solomon Oliver, Jr.,
Council Chairperson Barry A. Currier,
Managing Director of Accreditation and Legal Education
American Bar Association
321 N. Clark Street, 21st Floor
Chicago, IL  60654

Sent via email to JR Clark (jr.clark@americanbar.org)

Dear Chief Judge Oliver and Mr. Currier,

I write in support of proposed Standards 302, 314, and 315. I also provide two suggestions for improvement of the proposed Standards.

As the Standards Review Committee has stated, the proposed Standards would shift the assessment of law schools from input measures to outcome measures. They would require law schools to: identify their desired learning outcomes; use assessment methods to measure and improve student learning and provide feedback to students; and evaluate their academic program, learning outcomes, and assessment methods.

Suggestion #1: The Rigorous Assessment of Student Learning Gains

The proposed shift in approach has the potential to transform legal education through the rigorous assessment of student learning at the institutional level. This type of rigorous institutional assessment could take two forms. First, a law school could seek to establish that its program of legal education results in graduates possessing basic competency in the school’s desired learning outcomes. Second, a law school could seek to establish that its program of legal education produces positive learning gains for the student population as a whole.

I urge the Committee to consider articulating and requiring both forms of institutional assessment. In this way, a law school would be precluded from recruiting a student body whose members possess basic competency in desired areas, with no obligation to improve student skills in any measurable way.

Studies in the area of legal reasoning underscore the need for both forms of assessment. The empirical research to date indicates that the traditional case dialogue method of law teaching does not produce learning gains. Thus, one could argue that law schools that rely primarily on traditional teaching methods simply recruit students who already have basic “competency” in legal reasoning and then rank them in terms of their pre-existing abilities.
In contrast, my research and that of others indicates that supplementing the traditional method with mid-term writing assignments accompanied by formative feedback produces significant learning gains for the group as a whole. Law schools should have an obligation to establish that their program of education results in student growth in the outcome areas that they decide to pursue, not simply basic competency. (It should be noted that my research endeavors have not been costly, requiring only partnerships with education researchers and minimal administrative resources.)

Suggestion #2: Flexibility for Law Schools

The Committee has stated that outcomes Standards should provide law schools substantial flexibility in identifying outcomes that are consistent with their missions. This is an important aspect of the proposed Standards that may result in significant differentiation among law schools. However, proposed Standard 302, as currently worded, will fail to provide the desired flexibility.

The proposed Standard begins by stating that a law school shall establish learning outcomes that shall include all of the following. The provision continues with three lists of mandated outcomes (sections a., b., and c.) that one could argue lie at the core of a minimally adequate legal education. But the provision does not end there and includes a fourth category of mandated outcomes: “other professional skills” (section d.). Proposed Interpretation 302-1 provides a rather long list of outcome areas that fall within the definition of “other professional skills.” If the Committee’s intent is to include “other professional skills” as mandated outcomes, it will leave little or no room for flexibility. Every law school will be overwhelmed as they pursue and try to assess a long laundry list of mandated learning outcomes.

I urge the Committee to consider not including “other professional skills” as mandated outcomes, and instead, including them only as a list of possible desirable outcomes from which law schools can select. This would allow law schools to choose some outcomes rather than others, thus distinguishing themselves with their choices, and hopefully, with success in achieving the outcomes they have chosen.

Overall, the proposed outcome Standards are an exciting development for legal education at a time when legal educators are experiencing a crisis in confidence. The Standards could foster rigorous studies of, and scholarship about, law teaching. They could establish the worth of a legal education in a way that has not been done in the past. All of this could justify higher levels of support for legal education, in terms of both social and financial support. Accordingly, I fully support the Committee’s work in this area and I greatly appreciate your consideration of my comments.

Sincerely,

David J. Herring
Dean and Professor of Law