January 29, 2014

Dear Chief Judge Oliver, Mr. Currier, and Council Members:

We write to convey to you our concern regarding the proposed revisions to Standard 303(a)(3). We believe that the proposal that students complete a specified number of experiential credit hours, if adopted, would have damaging consequences, both educationally and financially, for law students and law schools.

The proposal is in conflict with the preliminary report of the ABA’s own Task Force on the Future of Legal Education (Draft Report and Recommendations, September 20, 2013, at http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation/taskforcedrafts.html). The Task Force Report states (at page 2) that the current accreditation system reinforces a far higher level of standardization in legal education than is necessary to turn out capable lawyers. The ABA Standards . . . also impose certain requirements that increase costs without conferring commensurate benefits. The Task Force concludes that the Standards would better serve the public interest by enabling more heterogeneity in law schools and by encouraging more attention to services, outcomes, and value delivered to law students. The Task Force thus recommends that a number of the Standards be repealed or dramatically liberalized.

We think that prior to proposing an experiential learning requirement that sharply breaks with precedent, the proposal should have been fully vetted by all of the ABA units involved with legal education, such as the Task Force, and by consultation with all law school faculties, in order better to inform the Council of the implications of a potential recommendation. At the very least, such a consequential proposal should have been circulated over an interval of more than a few months. In our judgment, a more deliberative approach would improve the quality of decision-making.

The proposed experiential learning requirement is at odds with sound educational policy, as well as the ABA’s own Task Force report. It imposes substantial costs without commensurate educational benefits. Law students have varied talents, interests, and professional goals. It is true that the majority of law students become practicing attorneys, but many graduates prefer to
use their legal education for work in business, government, or academia. No one curriculum could possibly prepare students equally well for all these different paths. But whatever the career pattern, students need to be provided with the analytical framework and knowledge necessary for solving complex legal problems and policy issues. In our judgment, 15 credit hours of experiential courses could be valuable for some students, but certainly not all or even most students.

The proposed requirement of 15 credits of experiential learning is equivalent to one semester of course work, given the ABA’s recent restriction on the number of credit hours a student can take in a semester. For most law schools with a first year of required course work, that would permit only three semesters for students to take all of the additional substantive law courses included on the bar examination along with more advanced courses that are the knowledge base for greater expertise. As a consequence, the proposed experiential learning requirement, although aspiring to add to the law school curriculum, is in fact subtracting from the curriculum.

To put the point operationally, has the Council identified which of our well-established curricular offerings should be reduced to make room for 15 credits of experiential learning: business organizations, administrative law, securities regulation, labor and employment law, secured transactions, bankruptcy and corporate reorganization, intellectual property law, family law, taxation (basic, corporate, international, estate and gift), antitrust, insurance law, trusts and estates, criminal procedure, federal jurisdiction, professional responsibility, international law and international business transactions? Which of our enrichment courses should be slighted—jurisprudence, legal history, comparative law, our range of constitutional law seminars? Which of the newly important substantive legal subjects, such as, national security law, health law, human rights law, federal criminal law, corporate finance, mergers and acquisitions, pension and employee benefit law, for which law schools have been working to expand curricular coverage, would you have us curtail? Most students tell us that they have great difficulty selecting among our existing offerings because our curriculum is so rich. Whether or not so intended, the proposed regulation will only diminish, not enhance, law students’ educational experience and the value that legal education adds to their professional opportunities.

In our judgment, the ABA Council should more seriously consider the financial consequences of this proposal. Requiring all law schools to provide 15 experiential credit hours for each student will impose large costs on law schools, costs that would have to be passed on to students. This is another dimension in which the proposal is in conflict with the ABA’s Task Force report, which emphasized that legal education must find ways to tamp down costs. In-house clinics, simulation courses, and properly supervised externships are all resource-intensive and therefore substantially more expensive compared to other law courses. Individual experiential faculty can properly supervise only a small number of students per semester. Providing all law students the means of fulfilling a required 15 credit hours of experiential courses would require a quantum
increase in the number of full-time faculty members teaching such courses. Even a law school with significant financial resources could not afford such an undertaking. Accordingly, the proposal would invariably have to be implemented by placing students in externships, which tend to offer minimal supervision and often provide low-level, unchallenging work. Such a development would be inconsistent with furthering law schools’ educational mission.

We are not at all opposed to experiential education in law school and believe that such courses can be a valuable law school experience. Indeed some of us have taught for years in clinical courses and others assisted in expanding existing experiential learning courses into traditional fields, such as transaction work, that have not been covered by our previous in-house clinical offerings. But we are strongly of the view that the precise mix of experiential and other curricular formats ought not to be prescribed. The needs and resources of our schools and our students are too diverse for the Council’s one-size-fits-all proposal.

The proposed requirement is thus in conflict with the ABA’s basic accreditation objective, furthering the provision of suitably individualized and high quality legal education at reasonable cost. By interfering with the tradition that our law schools be free to engage in educational experimentation and innovation (the process that has created experiential learning courses as well as other frontier academic endeavors), the proposal is striking at a tradition that has made U.S law schools the global leaders in legal education.

Sincerely yours, *

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*All of the Yale Law School Sterling Professors (the endowed chair reserved for the University’s most distinguished professors)