March 4, 2014

The Honorable Solomon Oliver, Jr.
c/o jr.clark@americanbar.org

Dear Chief Judge Oliver:

I am told that the ABA Council is about to consider a proposed requirement that would compel students to complete a minimum number of experiential credits, either 6 or 15. I am writing to the Council to urge that the Council reject this proposal. It is likely to harm American legal education.

I strongly support experiential education in law school. Experiential courses can be among the highlights of a legal education. At Yale, we offer a robust and varied slate of in-house clinics that students can begin taking in the spring of their first year. We also offer simulation courses, a small number of closely supervised externships, and a growing number of courses that fuse experiential learning with more traditional classroom instruction. This curriculum has evolved over the years as student and faculty interests have developed. The curriculum responds to the changing character of the legal profession. It has emerged organically rather than by fiat. I believe that allowing each law school to develop its own curriculum in this way best serves our students and our profession.

There must surely be standards for the accreditation of law schools. There must also be standards and proficiencies required for admission to the bar. But the proliferation of increasingly particular and specific requirements proposed by the American Bar Association and by various state bars threatens to constrain innovations in legal education. Overly stringent regulation may prevent schools from providing the educational programs that work best for their particular students.

This is the conclusion of 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/taskforceonthefutureoflegaleducation/taskforcefinalreport/coredrafts.html). The Task Force specifically states 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.” (Draft Report and Recommendations, p. 2).

The proposed revision to Standard 303(a)(3) flies in the face of this conclusion. It does so in an especially harmful way. The Task Force understood that legal education must find ways to tamp down costs, so that graduates will not incur unsustainable debts. Requiring every law school to provide a specific number of experiential credit hours for each student will likely impose significant costs on law schools. In-house clinics, simulation courses, and well-supervised externships are all resource-intensive and relatively expensive.

Inevitably, therefore, the proposed revisions of Standard 303(a)(3) will drive many schools to develop inexpensive, lightly-supervised externship programs. In my view such programs undermine the goal of providing quality legal education. Lending our students to provide what may often be little more
than routine administrative work will not advance the goal of preparing students for practice, and indeed it may displace other more valuable educational opportunities. Yet requiring each law student in the country to complete a significant number of real and effective experiential credit hours would surely increase the cost of legal education at a time when the universal cry is that these costs be lowered. In either case, the proposed revision of Standard 303(a)(3) will certainly inhibit the ability of law schools to develop their own special niche in legal education, which is contrary to the expressed priority of the ABA’s own Task Force.

The proposed revision of Standard 303(a)(3) is also unwise because law students have varied talents, interests, and professional goals. At Yale, we respect the capacity of our students to craft educational programs that will serve them well. The majority of our students plan to become practicing attorneys in settings that range from complex corporate transactions to human rights. But other students dream of working in business, government, or academia. Yet others yearn to make public policy. No one curriculum could possibly prepare students equally well for all these different careers. At Yale we strive to provide the education that is right for each individual student. Fifteen credit hours (or even six) of experiential courses could be extremely valuable for some students, and indeed a substantial number of our students voluntarily take at least this many. But others might find it more useful if they could spend their time in law school pursuing a joint degree, or business training, or additional advanced doctrinal courses. Given the ABA’s prohibitions on course overloads in any given semester, the proposed experiential requirements would likely displace options that particular students would find to be more educationally valuable.

I want to be clear that I strongly support experiential education. But I am equally clear that it is a bad idea to use the blunt instrument of regulation to impose a one-size-fits-all requirement on every law school.

Sincerely,

Robert C. Post
Dean and
Sol & Lillian Goldman Professor of Law

cc: Barry Currier