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A P P E A R A N C E S

Section of Legal Education and Admissions to the Bar

Accreditation Task Force 2006-2007

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MS. SCHNEIDER: Good afternoon, everyone. I'm Pauline Schneider and I am Chair of the Task Force that's looking at the accreditation policy of the ABA. I'd like to begin by giving a couple of housekeeping issues and then going into how we're
going to proceed today. We have had a couple of
people sign up in advance to speak. If you wish to
speak today, we would ask you to sign up on the
sheet in the back of the room and we will honor you
in the order in which you signed up.

Number two, there are additional copies of
the memorandum that was sent out with respect to the
Task Force, its work, and the questions that we
would like to discuss with you today. If you wanted
a copy, you can find some additional copies in the
back of the room.

Three, there is a CLE sign-up sheet in the
back of the room as well, so if you can get CLE
credit for this, please sign up.

(Laughter)

MS. SCHNEIDER: I'm delighted to be here
today, even though my arm is still aching from being
requested to do this, but my friend, Bill Rakes, is
pretty persuasive and Bill Rakes had an idea that we
are trying to carry out. He thought it was time for
us to take a fresh look at the procedures that have
evolved over a period of time that regulate the
accreditation of law schools in the United States.

He has appointed this Task Force that you see here
today to help look at this issue.

There are a couple of members who aren't
here. We will introduce them anyway, and I think at
least one or two of them will be joining us, but
they may join us after we have gotten started.

To my far right is Steven Smith. Next to
Steve is Randy Hertz. Steve is in San Diego; Randy
Hertz is at NYU. We have Kent Syverud from
Washington University in St. Louis. We have Dean
Dick Morgan from Nevada, Las Vegas. And I think
everybody by now knows the legal education Bucky
Askew. He may not have been mentioned before, but
you all know him now.

MR. SMITH: He's the person who's giving
you the CLE credit.

(Laughter)

MS. SCHNEIDER: Hopefully, you've all had a
chance to sort of take a look at the memo that was
sent out in advance of this hearing to share with you sort of our thinking about how we might approach our task and to share with you some of the questions that we were thinking about as we were trying to do our work.

I will let you know in advance that this Committee or Task Force has not formed any positions or made any decisions on any policies or procedures that may need to be changed or wherever they might need to be improved or may need to be done away with. We are in a listening phase. We will have this hearing. We will also have a hearing at the mid-year meeting of the ABA in Miami, and we hope in the meantime we will also get written comments from any number of you, your views on the questions that we propose as well as anything else that's on your mind about law school accreditation.
As many of you know, I am not an academic. I am in a private practice of law. I suspect my view of the world may be significantly different from many of yours, but hopefully as to the richness of the discussion that we're going to have that we can listen to the points of view of many people who are interested in legal education in this country and who have a deep desire and concern that it should be the best legal education that's possible and that it's up to us to make sure that it is delivered in a way that makes the most sense.

One other housekeeping matter I forgot to mention at the beginning, this session is being recorded by the court reporter. So when you stand up to speak, we would ask you to go to the microphone, to identify yourself, and you might want to just spell your name, because sometimes those names get garbled, and tell us your affiliation or
law school or however you prefer to be identified.

I just want to sort of talk a little bit about the questions that we have raised and we would ask you to sort of focus in your comments on some of these questions. First, to the extent that we have more time, we can entertain other notions that haven't crossed our minds yet, but we'd like to hear about some of the issues we've raised.

We also encourage you very, very strongly to submit written statements. That will make our work a lot easier and, I think, a lot more productive. I don't know about you, but sometimes I'm much more thoughtful when I have to put it down in writing.

With that, let me just start off with discussing some of the questions that we on the Task Force have sort of framed as issues that we need to
think about as we are thinking about this process,
this process of accreditation of a legal education.
As you know, many schools, probably each of
your schools, defines the word admission and the
admission often is beyond sort of the base
admissions that we set forth in the standards which
have to do with admission to the Bar and effective
and responsible participation in the legal
profession. The question is: Should our standards
explicitly recognize these other missions, these
other goals that schools set for themselves, and if
we should recognize them, how should we mess with
them, how should we hold, or should we hold, schools
accountable for making -- three of my colleagues
have just joined us here, Jose Garcia-Pedrosa --
MR. JEFFRIES: We were in the other -- we
were in the original room.
(Laughter)
MS. ROTHENBERG: We thought nobody wanted
to come.
MS. SCHNEIDER: Karen Rothenberg from
Maryland and John Jeffries from the University of
Virginia.
Secondly, we note that a lot of the
commentators, including our accrediting body the
Department of Education, has focused on outputs as
measures of successful accreditation. We raise the
question: To what extent should we focus on our
outputs? And if we're focused on outputs, what
should those outputs be that we should measure and
how should we measure them? How much weight should
we give to them? Are they more important than
inputs? Should they be measured equally?

Third, we all talk about transparency and
we like to think that our process ought to be
transparent in very significant ways. We wonder,
however, what are the best ways to structure a
process and to administer a process that is
appropriately transparent? We know, I think,
intuitively and from all kinds of legal, legislative
experience that some things can't be absolutely
transparent. We know out of respect that certain
information must be confidential, personnel issues, that sort of thing. So to what extent should portions of the process be maintained confidentially and to what extent should there be transparency, and then how should we frame it so that it is transparent?

Next question: To what extent should the accreditation process go toward ensuring compliance beyond minimum requirements, particularly for those schools who identify greater aspirations. How should we weigh compliance with minimum standards versus compliance with higher aspirations or should we weigh them?

Fifth question: Cost of legal education. We all know that there are times when we impose standards on schools that are costly. To what extent should we be concerned exclusively about cost
or to what extent should quality be used as a balance to cost? How should we take cost into account when we think about our standards?

Six: When we're assessing law schools, should we take into account in our process the kinds of practices our graduates are going to engage in? If we are a school -- I will pick on South Dakota, why not, it's where most of its graduates might remain in South Dakota and might go to very small firms -- should their curriculum, should there program of what's legal education look different from NYU's, where most of the students might be practicing in large urban areas and perhaps in larger law firms. To what extent should the accreditation process be concerned about this?

Seven: And this is one that we hear a lot about, but I'm not sure whether we hear -- I'm not sure we hear that debate or dialogue in the way
that's been very helpful, and that is, to what extent should law schools that are considered as perhaps elite law schools or first-year law schools or however, what these days, to what extent should some law schools be given a pass in terms of the accreditation process? To what extent should our standards be flexible so that you pay more attention to schools that seem to have more difficulty or greater problems, and to what extent should we decide that schools that seem to be doing fine be given a pass? What are some issues here on fundamental fairness with how you treat one law school and how you treat another law school?

Eight: If you assume that an excellent accreditation process should engender some high level of satisfaction from the institution that's being accredited, what steps should the ABA be taking to measure or to get feedback from the schools to determine the level of satisfaction with the process?

Right now, most of our feedback is clearly anecdotal and most of it is connected with an
1 accreditation visit that's just occurred and most of
2 it is probably unhappy comment. Although I have
3 often had people, particularly deans, say in their
4 more reflective minds, it was a variable process but
5 I learned a lot from the process and our institution
6 really learned the process, even though it was a
7 difficult process. But to what extent should we be
8 getting some formal, regular feedback from schools
9 and particularly schools that are not engaged in the
10 review process at the time.
11 And, finally, the ninth question which will
12 be the question that I guess we'll hear from more
13 towards the end is: What other issues should we be
14 looking at in this process?
15 We've had two folks sign up. We'll take
16 those folks in the order in which they've signed up
17 in advance. Then I'll get the list from the back of
18 the room from those who would like to speak. We're
19 going to begin our discussion with time limits, but
to the extent that there is not a large number of individuals who sign up, we might be more flexible with our time limits. And I would like to begin with David Van Zandt.

MR. VAN ZANDT: Thank you very much. My name is David Van Zandt, and I'm the Dean of Northwestern University Law School. With me today from the American Law Deans Association are Rick Matasar. I'm the incoming president of the association. Rick is the incoming vice president. Kate Bartlett -- Rick's from New York Law School. Kate Bartlett's from Duke. She's on the Board. And last, Patricia White is from Arizona State and she is the incoming secretary of American Law Deans Association.

One question I had, I had submitted a statement late last night because our Board never approved it, and I'm sorry I didn't get it to you in
time. I could read that statement to you; it's about four pages. You did mention a time limit. I don't want to, you know, take away from other people's time.

MS. SCHNEIDER: I'm sure you could read quickly; right?

MR. VAN ZANDT: I could read quickly.

MS. SCHNEIDER: I think we have a little flexibility here.

MR. VAN ZANDT: Let me start out by saying the following is a statement of the Board of Directors of the American Law Deans Association.

The Board of Directors, in addition to the people I've already introduced, are composed of Saul Levmore, who is the past president from the University of Chicago; Evan Caminker, the Dean at the University of Michigan; Michael Fitts, Dean at
the University of Pennsylvania; Elena Kagan, Dean of Harvard University of Law School; Joe Knight, Dean at the University of Washington's Law School; Karen Rothenberg from the University of Maryland; Stewart Schwab from Cornell University; and, last, Joan Wexler from Brooklyn Law School.

And this statement's been approved by that group. It is not, however, a statement of the overall American Law Deans Association, nor does it represent the view of every last member of that association. In fact, I think it's safe to say that all members do not share some of the views expressed in this statement. So with that caveat, let me proceed.

ALDA represents approximately 130 of the deans of the American Bar Association accredited law schools. ALDA, throughout its history, has sought to address various aspects of accreditation that it believes could be improved. Over the last few years, ALDA believes that there have been improvements in the accreditation process and thanks
members of the council and its accreditation committee and standards review committee for these efforts. There is still more to be done.

ALDA applauds and welcomes the formation of the Accreditation Task Force by Chair William R. Rakes and thanks Mr. Rakes and Chair Pauline Schneider for their leadership on this important matter. As ALDA told the National Advisory Committee on Institutional Quality and Integrity of the Department of Education, we see this as a very positive step that we hope will result in substantial improvements in the accreditation process. As we also testified, we currently support the principle or voluntary accreditation by the ABA and simply wish to see it improved. The purpose of the Task Force to examine the goals and methods of accreditation at a more abstract level is precisely what ALDA believes should be done.

Over the last few years, ALDA believes that there have been improvements in the accreditation process and thanks members of the Standards Review
Committee and the Council for the effort of reviewing the standards line by line. Those improvements have come, however, without the type of overarching review that the Task Force is undertaking and, thus, in ALDA's view have been fairly ad hoc and unsystematic.

Guiding principles. The initial statement of the Task Force as expressed in the memorandum from the Task Force dated December 12, 2006, identifies, quote, The general goals and principles of a sound and appropriate system of accreditation, end quote, which are expressed in the preamble to the Standards for Approval of Law Schools, and takes, quote, these generally accepted principles as a starting point for analysis, end quote. ALDA fully agrees with and supports this approach of the Task Force. ALDA urges the Task
14 Force to recommend that the standards and the
15 approach to setting and applying the standards be
16 thoroughly revised so that they further only these
17 principles and not a range of other interests and
18 purposes extraneous to these principles.
19 ALDA sees the following principles as
20 central to the accreditation standards and
21 processes:
22 Minimum standards. The standards should
23 require a law school to provide a sound legal
24 education. In doing so, the standards should set
25 only the minimum requirements necessary to provide
of the resulting legal education that a law school produces and not on the specific inputs into the educational process.

Second, consumer protection. The standards should protect consumers, principally the public and applicants to law schools and law students.

Third, supporting innovation. The standards should permit a law school to pursue its own mission in any way that it deems appropriate so long as it meets the minimum requirements of providing a sound legal education. ALDA does not believe that the standards should dictate that a law school have a particular mission or provide a legal education in a specified way as long as the legal education that the law school provides is a sound legal education.

Some general considerations. The substance of the current standards and the process and procedures by which they are enforced are not
completely consistent with the above principles.

Over the years, ALDA has expressed multiple concerns about both the substance and procedures of the standards. Certainly there are many different opinions among deans as there are among other persons of good faith who are interested in legal education about which standards and which specific procedures are more or less in need of improvement. ALDA does not intend to express a view on each of the specific standards and procedures. Instead, the ALDA board has agreed to collect from its member deans for the Task Force individual information on specific standards and procedures that raise concern.

ALDA does believe, however, that it would help the Task Force to hear its more general views on the issues that should be addressed. First, vision of the standards. In ALDA's view, the current standards, which include many input requirements that are more than the minimum requirements necessary to provide a sound legal education, tend to enforce a, quote,
one-size-fits-all, end quote, model of legal education. The standards often seem to reflect the good-intentioned effort of the rule makers to articulate the ideal content of a sound legal education and insist that all law schools approach that model. Certainly the standards might require a carefully thought through set of basic subject matter coverage requirements, but a law school should be allowed to satisfy the minimum requirements of a sound legal education in the way it best sees fit.

Unfortunately, insisting on a common model has the effect of requiring a range of matters that are not the minimum necessary to a sound legal education. Moreover, this approach encourages individual groups within legal education to press the council to put into the standards specific requirements that reflect their own particular
visions of legal education. This dampens the ability of law schools to be innovative. A constant complaint about law schools is that they have changed little since the days of Langdell. Legal education could benefit from an influx of law schools that are attempting to provide a sound legal education innovatively. In addition to restricting how the legal educators in each law school pursue their mission, the requirements raise the cost of legal education to our students overall, a matter of great public concern. The standards should not instantiate a particular or even a limited set of missions or organizational structures for law schools. Second general consideration, decision making. Decisions about the substance of standards should reflect the best judgment of a
decision-making body whose sole concern is ensuring that the principles articulated above are implemented as well as possible.

ALDA has been concerned that the decision making on the standards and related matters has too often sought to reflect a consensus among a whole range of groups, many of whom have specific visions of legal education that they would like to see be the required model for legal education. A simple example of this has been the composition of the site evaluation teams with the unstated requirement that each include a law librarian and a clinician.

While receiving a diverse set of views on important issues is necessary, no one particular group should be able to have its view of legal education imposed on law schools through specific standards.

Third, the evaluation process. The current
process of evaluating individual schools every seven years through multiday visits by full site evaluation teams is not the most effective means of ensuring that the standards have been met. If the goal is determining whether each law school is providing sound legal education, it is clear that the investigation needed will vary from school to school. Moreover, more use could be made of the data that law schools are required to provide in the annual questionnaire to identify areas of concern for more careful investigation. Putting to the side the burden on each school of the process, the current process is wasteful of the valuable time of the volunteers who selflessly serve on site evaluation teams. Because of that, the consultant's office does find it difficult to find volunteers and there is a tendency for people with a particular interest in an area of legal education to volunteer at a higher rate.

Fourth general consideration, purpose of site evaluation process. The site evaluation process also suffers from a diffusion of purposes.
be to gather information to allow the accreditation committee to determine whether the law school provides a sound legal education by complying with the requirements of the standards. Currently, site evaluation teams and their reports evaluate all aspects of a law school and often attempt to determine if a law school's aspirations are being met, and there is little direct reference in the report to specific standards and the evidence gathered to determine whether a school is in compliance with a particular standard. Certainly, an individual law school should be free to ask members of the site team for assistance in how the law school, although already in compliance with the minimum standards might improve its legal education, but that assistance should be completely independent of the compliance determination.
To many of our member deans, the two purposes are often conflated with the aspirational help appearing to be a matter of compliance. ALDA takes no position on whether site evaluation teams should be expressly limited in its investigation to compliance with the minimum requirements or only clearly distinguish between the two purposes. Interpretation of the standards. ALDA urges the Task Force to recommend measures that would make the interpretations and practices of the accreditation committee in evaluating law school's compliance more transparent. For example, ALDA applauds the recent announcement by the consultant at the Consultant of the Department of the Investigation Hearing that the committee would publish its standards for evaluating the bar passage rates of law schools. Clearly, however, there remain many areas
where there is an unannounced common law that the committee follows. For example, Standard 405(c) was applied to schools according to an unstated interpretation that seemed to vary over time and across schools. Likewise, the interpretation of Standard 606 apparently includes an unstated range of the minimum number of volumes that a new law school must have to obtain accreditation.

Understandably, confidentiality about the specific circumstances of individual schools is important to those schools involved. That need -- that need for confidentiality, however, does not also require that law schools be kept in the dark about the way the committee has interpreted the standards in the past.

My last topic in terms and conditions of employment. ALDA does have an express view on the
standards that require that specific employees of a
law school or university have certain terms and
conditions of employment. This is the issue on
which ALDA testified at the Department of Education
hearings, and we attach our various statements to
that committee.

ALDA urges the Task Force to recommend that
the council remove from the standards all references
to terms and conditions of employment and urges that
the council do so as soon as possible. Such
requirements are a prime example of the more general
issues cited above.

To our knowledge, requiring specific terms
and conditions has no precedent in the accreditation
standards of other educational institutions and
programs and do not for very good reason. They are
not necessary to provide a sound educational program
and impinge unnecessarily on the institutional
autonomy of law schools and universities. As stated
above, a law school should be judged on the quality
of its educational product.

While requiring tenure or tenure-like job
security for faculty and other employees certainly
might improve the program of legal education of a
particular law school, there may be other means to
achieve whatever positive benefits there are. There
are also circumstances in which it can harm a
program by reducing the flexibility of the program
to adjust to changes in the profession. It is
certainly the case, for example, that some law
schools have limited their provision of clinical
education because of their unwillingness to bring on
employees with life-time or similar long-term
contracts.

Finally, such requirements increase the
costs of providing legal education to our students.
The decision about the terms and conditions on which
a law school or university hires its faculty and
other employees should remain with the individual
law school and its university as long as the law
school provides a sound legal education.

In particular, ALDA recommends that the
following standards be removed or modified to
eliminate the requirement that law schools provide
certain terms and conditions of employment.

One, the dean. Standard 206(c). Except in
extraordinary circumstances, a dean shall also hold
appointment as a member of the faculty with tenure.

Second, student-faculty ratio.

Interpretation 402-1(1)(A). For the purposes of the
published student-faculty ratio, a law school must
differentiate among faculty and instructors based on
the terms and conditions of their employment by
counting certain faculty who are not on tenure track
or its equivalent who teach a full load as 0.7, and
adjuncts, emeriti faculty, nontenure track
administrators who teach, librarians who teach, and
teachers from other units of the university as 0.2.

This provision creates perverse incentives that may
limit hiring of nontenure track faculty.

Next, faculty. Standard 405(b) and Interpretation 405-1. A law school shall have an established and announced policy with respect to academic freedom and tenure. To the extent that it is interpreted to require a system of tenure or tenure-like job security.

Next, clinical faculty. Standard 405(c) and Interpretations 405-6, 405-7, and 405-8. Quote, A law school shall afford to full-time clinical faculty members a form of security reasonably similar to tenure and noncompensatory perquisites reasonably similar to those provided to other full-time faculty members, end quote.

Next, legal writing faculty. Standard 405(d). Quote, A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may
be necessary to attract and retain a faculty that is well-qualified to provide legal writing instruction as required by Standard 302(a)(2) and to safeguard academic freedom.

And last, law librarian. Standard 603(d) and Interpretation 603-3. Quote, Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty positions, end quote.

ALDA believes that a legitimate purpose of the terms and conditions of employment standards listed above may be, as mentioned at different points in the standards, academic freedom. ALDA strongly endorses that purpose but believes that protection of academic freedom requires that a law school or its university have in place, quote, arrangements sufficient to ensure academic freedom, end quote, not that it provide various classes of faculty with employment security.

ALDA applauds the recent actions of the accreditation committee with respect to at least two of its members, which recognized that Standard
405(c)'s requirements are met by having in place a procedure to permit all faculty, regardless of the terms of their individual employment, to challenge adverse actions that allegedly violate the principles of academic freedom.

ALDA believes that a legitimate purpose of the standards would be to require that a law school have the teaching resources necessary to provide a sound legal education to its students.

In conclusion, ALDA thanks Chair Patricia Schneider and the members of the Task Force for their attention and consideration of the views of most of the deans in our law schools. ALDA stands ready to engage in further discussions with the Task Force, provide whatever information and assistance that it can, and assist the Task Force in formulating its recommendations. Thank you.

MS. SCHNEIDER: Thank you.

Does anyone know if they have any questions
Thank you very much.
Paulette Williams, CLEA.

MS. WILLIAMS: Thank you. Good afternoon.

For the record, my name is Paulette Williams. I call myself Paula, though, and I teach at the University of Tennessee College of Law. I am pleased to have this opportunity to speak to the Accreditation Policy Task Force in my capacity as president of CLEA, the Clinical Legal Education Association.

We appreciate the opportunity to engage in a conversation with the Task Force on the policy issues raised by the accreditation process. CLEA plans to actively participate in this process with you by making this statement. We will submit the statement in writing to you and we also plan to submit further statements and testify at the hearing.
13 scheduled for February.
14 Today I wish to make a brief statement
15 addressing an issue relating to Standard 405(c) on
16 security of positions for clinicians and the
17 transparency of the process for administering the
18 standards.
19 We are concerned that there has not been
20 sufficient transparency in developing the
21 interpretations of the standards and the problem.
22 The concern is that common law applied
23 interpretations have been developed and applied
24 without public comment and discussion. These
25 interpretations can have the impact of altering the

32

1 plain language of the interpretations of the
2 standards.
3 We are also concerned about the weight that
4 is given to interpretations as opposed to the plain
language of the standards themselves. The recent
example illustrates the problem involving the
accreditation process with the clinicians at two
member schools, Northwestern and St. Louis
University.

Standard 405(c) says in part: A law school
shall afford to full-time clinical faculty members a
form of security of position reasonably similar to
tenure and noncompensatory perquisites reasonably
similar to those provided to other full-time faculty
members.

At Northwestern School of Law, there are
31 --

(Lights go out.)

(Laughter)

MS. WILLIAMS: Okay. All right. At
Northwestern there are 31 full-time clinicians who
are on one-year contracts and Northwestern has been
found to be in compliance with 405(c). An
interpretation of 405(c), which says that one-year
contracts are, quote, reasonably similar to tenure,
violates the plain language of the standard. An interpretation that justifies this result on the grounds it act and freedom misses the point of Standard 405(c). This interpretation is inconsistent with the standard. It sets a bad precedent and violates the principle of transparency in the process of interpreting the standards.

The goal of clinicians, the clinicians that we at CLEA represent, is to provide the highest-quality legal education to our students that we can. I assume that this is something that we can all agree upon. Our goal is also to provide the training of students and students -- to promote the training of students in the skills they will need to be effective, ethical professionals. We provide teaching methods and experiences that -- that will give students valuable practice and experience in a supervised setting. Those experiences are designed to prepare them to enter the profession ready to practice law.

We are also promoting social justice
through our service to clients. The work of clinicians on teaching methodology, the development of expertise, learning theory, experiential learning and other aspects of learning from practice, has made enormous contributions to legal education, and as a part of a complete package of legal education, has contributed much to the value that law schools offer to our students.

CLEA and other advocates for clinical education have long taken the position that in order to attract highly-qualified faculty to teach in their clinical programs and to recognize the value that clinicians add to the educational enterprise and out of basic fairness, clinical faculty deserve to have security and position and comparable rights in law school governance to those of the nonclinical faculty.
We at CLEA will be petitioning the council and the accreditation committee to reexamine the determination that has been made in the interpretation of 405(c). We look forward to continuing this discussion about how we may improve the accreditation process and legal education generally.

Thank you very much for your attention.

MS. SCHNEIDER: Thank you.

Do any of my colleagues have any questions?

Thank you.

I have three people who have signed up.

1  Dean Harbaugh from Nova Southeastern.

2  MR. HARBAUGH: I'm Joe Harbaugh, Dean of

3  Nova Southeastern University's Law Center, and I

4  have a very brief comment that I'd like to make to

5  you. If I could change my glasses so I can see.

6  (Pause)
MR. HARBAUGH: The information that the
Task Force distributed to the deans and the legal
education community mentioned how important it was
to foster innovation and creativity in legal
education. Indeed, your memo said that prior
reports on law school accreditation and legal
education have recognized that excellence in legal
education is best supported by encouraging pluralism
in innovativeness, and that accordingly, the
accreditation process should afford law schools
maximum degree of independence, autonomy and
opportunities for innovation and uniqueness.

In making this statement, you quoted or
referenced two prior task forces of the ABA section.
Both Wahl Commission Report and the MacCrate
was very proud to be on both of those task forces
and underscore that the Wahl Commission and the
MacCrate Task Force focused a good bit of attention
on uniqueness and innovation. It's my sense that the present standards, particularly Standard 802 and its interpretations, do not allow very much flexibility for innovativeness on the part of law students.

I urge you when you revisit the standards to look at 802 and the variance provisions and look at the history of variance requests by law schools and how they were treated to consider whether the language ought to be changed or the process ought to be changed that would allow greater flexibility and greater experimentation within the orbit of the standards, but allowing those of us in legal education to innovate and create so that there are differences between and among schools and progress in education.

Thank you very much.

MS. SCHNEIDER: Thank you.

Any questions for Dean Harbaugh?

Thank you. The next person I have is Gary Palm.

MR. PALM: How long do we have the room?
1 (Laughter)

2 MR. PALM: My name is Gary Palm and I am a retired law professor from the University of Chicago Law School. I served as -- 21 years as director of the clinic there and 30 years in various professorial type with various professorial titles.

3 I am going to retiring from the board, finishing mass CLEA and I really want to say I'm not here speaking for CLEA, but I'm going to refer to CLEA throughout my talk as taking positions as some others have done about their organizations. This is my statement and mine alone.

4 First, I am disappointed, although talking to some here it appears on the first page there is a reference to diversity. And at your meeting I
thought that this was going to be one of the primary concerns that would be a part of the accreditation. Now, maybe I misheard that, but I would hope that in terms of most students and faculty we need a -- a diverse teaching environment and learning environment, and this is the future of America and of the world. So I hope that as was just mentioned in the preamble, I hope the progress that has recently made up indicates that, so.

Now, some other things I'll just highlight quickly and I think there are things that the Committee hasn't thought about yet. Consider getting rid of the EOE. Really, why do you jump through all these hoops to satisfy the EOE when it only relates to, at the most, any -- right now it could be 17 schools that are nonuniversity-affiliated. All the
university-affiliated schools are approved by a regional accrediting body. So they don't need you for that, and many of the nonuniversity affiliate stand-alones have made the correctional arrangements with the regional bodies. I don't know what the numbers are, but I bet it's under ten now left, using the ABA for purposes of federal loans. They just walk you through all kinds of -- you don't need them. Just walk away from it and everybody -- you know, you still have the responsibility to the states and I think you'll have to do all this other bureaucratic stuff fairly. All of it has little to do with legal education. Along that line, I really don't know what happened and I would hope that you would consider why it is we now have the accreditation committee as a separate accrediting body. I mean, this was
approved by the EOE. There was no action that I
know of by the council. Should the accreditation
committee be a separate accrediting body? I think
that really should be on your agenda so that it's --
it's -- it can operate independent of standards
review and other council and make its own decisions.

And my next point is that the debate with
Dean Van Zandt and others who share his views is
really about the importance of clinical education.

I'm from Illinois. We had the Douglas-Lincoln
debates. I wasn't there for that, but --

(Laughter)

MR. PALM: That debate, they pretended it
wasn't about slavery, you remember? They pretended
it was about state's rights and letting the states
alone; let there be autonomy of the states. And
this is what this is about, really. Why do they
need to have one-year contracts that could be
terminated almost with no short notice so they could
close ranks when they have other priorities? What
you have to say, I think, it's a matter of
educational importance that you can't have a decent
law school experience, you can't be fit to practice,
clinical education. That's where we've come and

Now, I don't think you can avoid getting into the issue of some status to work on how that's going to be. I'll give you my example. This is the University of Chicago. Their dean now who's involved with a deposition I had a couple of weeks to take and my case is against the university. Their position is that after 30 years you can have your contract not renewed for no reason. They don't have to articulate any reason, and that's the same result that was just so ordered by the accreditation committee.

So this whole question is very complexed and I don't know exactly -- in some ways I think your group ought to stay out of it, you know. It seems to me it is getting to a sort of standard
review level of management and that we need to make clear that clinical education is here and it shouldn't be diminished.

The next thing is on outputs. I like a lot of what I heard at your meeting, but it shouldn't be bar exam passage rates. It should be bar exam scores. Because state supreme courts have been raising the cut rate, the cut score, and so the problem is that it's a moving target. In Illinois,

they raised it and the truth was they raised it because we have more students doing better on the bar exam. We've done a better job as law professors and in part because of the presence of the clinical. That hasn't been there in earlier days. And that, I think, is honestly a decision made about the size of the bar and not about the quality of the people applying to become attorneys.

I think there's a major issue on yours
is -- that you've avoided is whether you're going to facilitate or not the U.S. and this world war -- U.S. News of World Report ratings system. As it is now, you do facilitate it through your statistics. You provide all the information that they can base their ratings on. And I think you have to come out against them. It's being misused. It's not a fair consumer protection device and, you know, it's a tough one. Maybe that goes to some other committee you have, but you should talk about that.

And the last thing is that the -- Bucky won't like this, but I like it. I don't think everybody else will. I think you ought to say something about how much change there has to be in the budget. I mean, the deans are fine, you know. They wanted all this change, but they don't want to see that it has to be paid for. You're doing it on
the cheap. You need to triple that budget in the accreditation project, which I don't know what it need because that's all 40 percent by the ABA, but the staff is way overworked for even what you're trying to do now. And most accrediting bodies have much more staff and use the volunteers, that I agree with, should be used up. So anyway, I'll supply a written statement more fully to discuss this.

Thank you.

MS. SCHNEIDER: Any questions for Gary?

Okay. We have Tom Perez of Maryland.

MR. PEREZ: Good afternoon. My name is Tom Perez. I have the privilege of teaching at the University of Maryland Law School. I'll note briefly for the record that when the witness testified and the lights went out, this was shortly after she talked about transparency.

(Laughter)

MR. PEREZ: And so I will leave those remarks until the end of my presentation. I teach in the law and health program as well as the clinic, and in connection with some of my work I'm doing with students, I've currently embarked on a project with the Kellogg Foundation
relating to accreditation. They asked myself and a 
couple of coinvestigators to look at the issue of 
how accreditation in medicine, dentistry, nursing, 
and psychology can be used to leverage increases in 
racial and ethnic diversity in those professions. 
And so my coinvestigators and I and 
research assistants have spent much of the last few 
months interviewing people in various disciplines, 
including but not limited to those that I mentioned 
but also including social work, law and optic 
medicine, to take a look at their processes. 
And I've learned a lot about accreditation 
over the last few months, and I thought I would 
share some of my insight as you move forward on your 
committee. And I would urge you as a threshold 
matter as you go through this incredible, important 
work that you're doing, and I thank you for doing 
it, to take a look at some of the other disciplines
and to look at and compare perspective because I predict that you will learn a lot from them.

As a threshold matter, what I’ve observed is that there appears to be a struggle or a split of opinion in terms of what the role of accreditation ought to be. There are some -- if I brought seven or eight representatives of the various disciplines,

you would hear some who would ascribe to the -- what I call the minimal standards approach or view of accreditation. Sometimes people call it the underwriters' laboratory view. If you plug in the toaster, you won't get electrocuted. That's a view of the world. There are also others who look at accreditation as a process of continuous quality improvement.

They're not necessarily mutually exclusive,

but what we've observed so far is that there is a
very significant diversity of opinion on what the role is, and it seems to me as you move forward, it would be useful to have that discussion and to figure out whether there is consensus on what the precise role is. Because it seems to me that so many things flow from a consensus, if there is one to be had, on what your role is.

There appears to be a movement among other accreditors to an additional focus on outcome or outputs as opposed to inputs. And that raises or demonstrates a number of challenges in the social work context. The Council on Social Work Education, they have made a significant movement in this area in their standards and they're in the process right now of revising the standards, and the feedback they have gotten has been decidedly mixed. Because it's a little bit easier to focus on do you have this item in your curriculum or that item or that item as
opposed to are you producing culturally competent social workers.

That's the outcome measure. That becomes a much more amorphous process. And while it has many, many benefits and that is where I see the movement overall, I think it would be useful to have a conversation, for instance, with the social work accreditors to talk about what has their experience been as they've attempted to move more towards an output- or outcome-based form of accreditation. Because there are a number of challenges that emerge, and it's certainly something of significant interest, but again cultural competency, I think, is a very good example. How do you measure whether your law school has produced culturally-competent graduates? Well, ultimately what ends up happening is you get back to a focus on inputs. What courses do you have? What modules do you have? And so it becomes the same conversation, but I think there are a lot of lessons that can be learned from other disciplines.

Transparency. I would simply, before the
lights go out, urge you to have a conversation with
the people in public health. The area of public
health has a very different view of the world on the
issue of transparency. You can get every piece of
information that you want, including the site visit
reports, the documents, every single document that
is available in the public health setting. They are
out there. Psychology has a much different school
of thought and feeling on that. I simply throw it
out there.

We asked a series of questions of all the
people we interviewed, and at least the public
health people pointed out that all of the concerns
about their entities they have, such as potential
for losses, potential for releasing information
that's proprietary, those issues and concerns, while
they're legitimate in their context, they're not
coming fast. So you might find it useful to take a
look at public health and their experiences there.
The issue of diversity. The things that are happening vis-a-vis the ABA and the Department of Education came up in literally every interview that we conducted, and they look at you appropriately as the leader in this area of diversity and I commend you for your work.

A couple of observations on diversity. The issue of structural diversity. We -- and by structural diversity, I'm talking about the issue really of numbers, both faculty and staff. One thing that I've observed is that oftentimes when there's a focus on structural diversity and asking schools to take efforts to increase the numbers of underrepresented minorities within the faculty and student ranks, sometimes it has the effect of creating robbing from Peter to pay Paul. And we haven't yet observed the standards that I would call a collective standard. What are
you doing to increase the pie as opposed to robbing
from Peter to pay Paul? And as you look at
diversity down the road, I would urge you to take a
look at is there a way in which a collective
standard? What is our institution doing to increase
the pipeline? What is our institution doing to make
sure that we're -- we're not robbing from Peter to
pay Paul? I think that would be a very important
issue to look at.

Similarly, cultural competence -- social
work, I guess, is probably the best example. Other
standards are very, very focused on the issue of
producing culturally-competent social work

professionals and on the issue of institutional
climate. And so as we look at diversity, I would
urge you again to look at all the three prongs: the
structural diversity, the institutional climate and
opportunities for cultural competence.

Finally, one thing that comes up time and time again in the conversations that we've been having, and I would encourage you to have a conversation, is the issue of leadership. It doesn't simply come up in a diversity context, although it always comes up in a diversity context. Leadership is absolutely necessary, albeit insufficient conditions of change as it relates to leadership -- as it relates to diversity. And the Joint Commission for Accreditation of Healthcare Organizations, for instance, has a number of measures in their accreditation standards that look at the issue of leadership. What is the leadership of an organization doing on the issues at hand, the issues that we find are the core issues that are the focus of our accreditation?

And I would urge you to have a conversation about leadership, not simply as it relates to the issues of diversity, structural and otherwise, but on the core issues that you find that ought to be
the most important component of the accreditation process.

I urge you to take a look at the Jayco process and ask the question: Should we be including questions about or standards relating to what the leadership of the various law schools are doing to facilitate the goals that we're talking about? Those are the things I've learned, in a nutshell, and I'm glad to share them further with you over time.

MS. SCHNEIDER: Thank you. I think there's a question.

MR. SYVERUD: One, you talked about outputs versus inputs, and that is, of course, an issue of great interest and importance to all of us. So I'd be grateful for a little in the way of enlightenment from you ON that and I think it might be somewhat useful to everyone in the room. When you talked about the social work schools, you gave us a good example of a situation in which they sought to focus on outputs and ended
up moving back into inputs. So given that you studied this, could you help us get a better sense of how to move from an input measure to an output measure and talk about legal education that would be

MR. PEREZ: Let me come back for a moment to social work, because that's the one that's freshest on my mind. Their standards were most recently reenacted in 2002, they're undergoing their process in 2008. So we'll have new standards. And the standard prior to 2002, as it related to diversity and cultural competence, they had very specific do you have course -- what courses do you have on difference? What courses -- what speakers' series do you have on difference? And there was a very specific series of measures, and the consensus between '94 and 2001 was that they were creating a
very mechanistic process. You check a box, okay, have that course, have that module.

This isn't working, and so now -- I don't have the standard in front of me, but the standard is much more focused on you will develop a program of instruction that demonstrates an understanding of and commitment to producing social workers capable of thriving in environments of difference.

And there are some people who have criticized that and said that that actually represents a step backward because it's more difficult to measure. And so I would answer your question in part by saying that this is a work in progress. I have yet to see an outcome- or output-oriented standard where there is a consensus that this standard has moved the ball forward and is really working well.

I can tell you that many accrediting bodies
are struggling mightily with the question that you raised. It's just that it's one of the many $64,000 questions. It continues to be a work in progress, and the question is always how then do you measure it? Do you -- do you allow the self-study to be the measuring component? Well, then, there's, you know, arguable challenges with that. How do you independently measure that? And that to me is the real tension, and I wish I could tell you that there's a magic ball that you only look at psychology or others, but I haven't yet found that, and maybe it reflects whether I haven't investigated enough. But on February 13th we're meeting with all these bodies, and that's one of the questions that we're going to ask, and we invite the ABA to that meeting. So I hope we can learn from that.

MR. SYVERUD: Thanks.

MR. MORGAN: I just want to assure the
group we are systematically studying the accreditation standards from professionals as part of the work of the Task Force.

MR. PEREZ: Thank you. Thank you for your time and thank you for the opportunity.

MS. SCHNEIDER: My next person is Rick Matasar from New York Law School.

MR. MATASAR: Rick Matasar from New York Law School, where I am serving as the dean. I'm appearing in my individual capacity, not as a dean but as a person of the academy, a faculty member and someone who has been around a bit.

(Laughter)

MR. MATASAR: This is a very complex task that you're taking on because you're trying to take widely disparate institutions and array them against each other by some set of standards that will allow you to decide what's on one side of the line and what's on another side of the line. The tendency over the years has been to homogenize the way we look at our schools in order to be able to assess them against some single standard, and that has its
problems because when you look at the public and the private school or the for-profit and the not-for-profit school or the independent school or the start-up school or the school that has been around for a hundred plus years, it is very unlikely that the same set of standards would yield any useful information above a very small minimum or medium minimum or a high minimum that gives us a sense of where the bottom of the line ought to be on the quality of legal education.

I've been in the legal education for 27 years, five law schools, dean of three different law schools over the last 16 years. I've been on five site teams, where I was visited those schools. I've chaired three site teams and I've been on other site teams over the course of the last 15-year period.

And I guess what my impressions and the
process and hopefully add a little bit toward our 
debate by suggesting an attitude towards this 
process that ought to be reflected within the 
standards. 

I think that David Van Zandt, in speaking 
of a sound legal education, has really captured the 
essence of what our standards all look like. A 
sound legal education would be an education by which 
the person who acquires the education through coming 
to the school would be equipped with the tools that 
would allow him to graduate and achieve a set of 
identifiable goals that legal education provides 
value for, and that's slightly different than the 
nuanced interpretation of what we do. 

We don't only produce lawyers. We produce 
people for whom a legal education is a valuable tool 
on the transition to a gainful, useful life as a
And if we conceive only of what we're doing as producing a lawyer or a particular kind of lawyer, we greatly diminish the capacity of our 190-plus institutions to create value for the society through the education of their expending their funds out.

And so when I talk about a sound legal education and I hope we adopt a set of standards that are flexible in thinking about what a sound legal education might be. A sound legal education, for purposes that are best understood by clinician of the school that is being evaluated.

There are at least three critical lenses that I think are important to us to focus upon.

Cost. Ought we have standards that promote aggregating costs in order to achieve some set of goals, or is it enough for us to have a minimum set of cost that might be imposed because it's necessary.
for the sound mission, but anything beyond that set
of cost is really aspirational and goal setting.

My attitude to this would be to minimize
the cost and find it acceptable for an institution
that is using its resources in an effective way to
deliver an education. That has implications for
many of the standards. For example, how many
faculty members are necessary and at what ratio to
the students by what component of faculty? Must all
faculties be full-time members of the faculty, or is
there a particular version of how a full-time
faculty is necessary to ensure quality education?
The answer might be different in Iowa City, where I
was once at the University of Iowa and there were
very few lawyers who could be drawn upon to educate
the students of a school, than there might be in New
York City, where there is a substantial high-quality
bar with excess time on its hands and the desire to
impart knowledge on young people. That's a question
I'd like to think about more.

How long is legal education, and must it
be -- is it a three-year box? Is it a two-year box?
What if it's a two-year box with a year where we
encourage externships that the students can take pay
instead of as they currently cannot do, take pay and receive credit. Could a sound legal education exist in less than a three-year box? Do we all need a new building? Really? Distance learning. Could a law school effectively deliver legal education, predominantly through legal distance education, and if it did, would that be bad for America if it reduces the cost for our students quite substantially? If our standards are not sufficiently flexible to allow us to ask those questions and create institutions that might try it a different way, we're inhibiting the ability to deliver the education our students need. Second, access. Innovation, creativity, promotion or stifling. We do not experiment by permission. We experiment through subterfuge, through avoidance and through knowing that the cycle
is a seven-year cycle that gives you four or five
years to try interesting things. We could change
that by really literally saying, Well-Constructed,
well-thought-through feelings of delivering
education differently should be promoted, not
permitted.
Are we a profession that sees our role as
advancing the course of our students' education
through other methodologies, and our standards ought
to reflect those things because if we want a sound
legal education defined by a school. There may be
many ways to achieve those goals, but if only some
are permitted, we're going to lose the range.
Kent Syverud, in another meeting yesterday,
said what I felt was a brilliant thing. He said,
Can we all exist as Ritz Carlton law schools? Can't
we have Motel 6 law schools? There are clean beds
in both places, but some of them are just fancier,
deeper pile. And I think that's really a wonderful way of thinking about how experimentation might take place.

And process. Do we want a process that is costly, cumbersome, and that creates for all of us to the highest level? As a member of a site team, I know it's a tremendous burden to be on that site team. I don't do my homework until very late in the game, and when I go out, I have to know everything about the school, and most of the things about the school aren't really relevant. Only some of them might be relevant, a very few things at any given school.

Can we tailor our process for a school that's been at this game for a long time to know that most of the stuff is okay at that place? Is there a way to make a set of standards that would
work in that fashion? Shouldn't we be able to disaggregate the purposes of the current process from those things that are about complying with the standards to those things about the aspiration of the school? And if we can disaggregate them, shouldn't we allow them to be disaggregated in some level of consultation with the school who want consultant (coughing) to come along to evaluate you. A consultant can help you with aspiration, but it doesn't filter into the part of the report that's about whether you're providing a sound legal education.

Transparency. From visit to visit over the time that I have been a dean, visits have gone extremely well or extremely badly because of the great variations in differences among the attitudes of the team that are on-site. Some members of the teams believe that what they are doing is finding out what's wrong with the school. And I would submit that the process ought to begin with the presumption that schools are doing a good job if they are in fact producing lawyers, if they are in fact passing the bar, if they are in fact taking on good careers.
We know that from the takeoffs, from the
data that we collect, that schools are adequately
performing before we ever get to the school. If
that's the case, let's assume they're a compliant
school and talk about the ways in which they might
be better at doing things or the small little things
that are not quite working as well as they could,
rather than seeing it as a process by which we
discover the things that are wrong. Why would that
be? Site visits should not be a method by which
every faculty fight is refought for the benefit of
strangers, and it becomes that on many site visits.
Other issues of transparency. Site reports
get written in a tone that sees one way and the
accreditation report comes back written as if it is
a completely different law school that was looked
at. How is that so? There must be a black box into
which the report has been put and a very different
19   set of standards applied to it. We need to know
20   more about what goes on, not on the site visit
21   (coughing) transparent and read by the entire
22   community but by the thinking processes that went
23   into deciding what issues were real issues and which
24   were not.
25            And finally, the question of process. It

60

1   is a method by which too few people have
2   participated and too many people have participated
3   too much. We need to widen our array of people that
4   will be volunteers so we can't find them in our
5   process -- something's wrong with our process if a
6   shared ownership of legal education falls on the
7   faculty, in the administration and in the
8   profession. We ought to find tremendous numbers of
9   people willing to volunteer, more than what we've
10   done. And I guess in part it's because there's been
a great deal of antagonism between the regulated
industry and the regulator. And it's hard for
someone who is as antiregulation as I have become
over the years to muster the ability to say yes, to
impose upon other people as I come to the site
visitor.
So I want to share with a thought I had
when came to a site visitor. I've asked the
question: What can I do to help you. Not what can
I do to help you extort resources from the
university? What can I do to help you as a school
and make this process useful to the school? I'd
like to see that as our attitude in these new
standards.

MS. SCHNEIDER: Thank you.

Are there any questions.

Thank you.

Vanessa Merton, Pace Law School.
Hi. I'm Vanessa Merton. I'm currently teaching at Pace Law School in White Plains, New York. I've been in legal education, God help me, for 30 years, both as a teacher, a scholar, an administrator, a director, associate dean, and also, fortunately, as someone practicing law through all but a few of those 30 years through the clinical programs of the law schools and one year at Kibby and now Pace at which I've taught. I've also been on other site inspection visit where I've spent -- gone through about three or four site visits and on the receiving end, particularly a memorable take one and this law school I still remember where the finest actually in retrospect.

I'd like to submit some written remarks as other people have indicated, so I'm just going to hit some highlights. It's not going to be particularly integrated or coherent, but there were a few themes coming up in the remarks so far that I did want to respond to or present what I think is a somewhat different perspective.

First of all, I think in the material that
you've developed, which is excellent, when you talk
about the public, I'd like to see you focus on
really who that public is. And what I'd like to ask
you to do is to think of the public whom you are
serving through doing the work you're doing as the
future clients of the graduates of our law schools
and to really think about what that means and how
little there is between the average, ordinary person
who's trying to find a decent, competent lawyer and
actually being taken advantage of, exploited or
provided with very poor representation because,
unfortunately, I think we can all agree that our bar
exams don't completely do that job.
I'm intrigued by the notion of the -- that
the law schools, all law schools are not producing
only lawyers, practitioners. We've certainly heard
that, and we certainly know that to be true, and I
think that any law school that is willing to say,
look, we're not about training, presenting,
educating people who are going to be practicing law. That's not what our mission is. That's not what we want to do. I think it's fair to say they shouldn't be subject to the same accreditation standards as law schools taught, but I've not yet heard of a law school that has identified itself as being in that category, although there are a few that sort of come close.

Secondly, I wanted to come back to some of the comments about looking at the accreditation process of other professions, and I just want to make sure you focus and you do that on the reality that we're one of the very, very, very few professions left that doesn't require supervised, carefully-crafted, practiced experience, not paid experience, where the goals, objectives of the employers are not primarily the education and development, professional development, of the people
going through the process, but the kind of practical experience that, yes, is provided in -- primarily in our law schools by our clinical faculty, as well as by the legal research or legal writing or whatever that first-year initial training. I think that ought to be viewed as an important type of experiential education.

I am someone who's very, very concerned about the cost of legal education, and I applaud your focus and question number five on that issue. I see daily its impact on our graduates who cannot pursue the careers they might wish to.

What I simply suggest to you is that it's a little bit of a -- well, the real cost, one can argue, in law school is the tremendous amount of resources that goes into producing scholarship that is not of any direct relevant value to the students.
who are receiving their professional education.

And, in fact, if you did get rid of the last year of
law school, which I think, you know, certainly
forcing the students to go through yet another year
of sitting in large classrooms reciting about
appellate cases doesn't necessarily strike me as
essential.

If you took the resources that would be
freed up by eliminating many, many faculty who do
only that type of work or else small seminars where
they have an even smaller student-faculty ratio than
you -- than the clinics do, and where the entire
work is focused on producing a paper, which is a
very valuable thing to do; it's just not something
that many lawyers spend much of their time doing.

If you took those resources that would be freed up,
you'd have a lot of resources to devote to, let's
say, a final year of education, maybe not called law
school, as such, but as another profession where
people are engaged in training and professional
development. And that's just an example.
In terms of innovation, we've heard a lot about innovation. I could only ask the committee to focus on where has the nonLangdellian approaches to legal education, where have they come from? Have they come from we think primarily from deans? That has not been my experience or what I have observed. Actually, what can I do again that clinicians and the legal writing teachers have done a tremendous amount to change, develop, to open up and to bring the law students out into the community and bring the community into the law school, and they're a much greater source for the most part of innovation than the rest of the traditional law school faculty. So I hope that you will engage in this process, not simply listen to rhetoric and take it -- I'm sure you won't, take it at its face value without stopping to think about what is really going on here. What is the actual phenomena that we're confronting here? What is the real problem with legal education in this country? Is it that there's insufficient quality control? I find it so hard to
22 believe that anybody can assert that.
23 Last comment, two last comments. One is
24 that I thought that going on a site inspection was
25 incredibly interesting, very exhausting, and very,

1 in some ways, overwhelming, but a terrific
2 experience, and I can't imagine anyone who's
3 seriously interested in education not wanting to
4 find out, to get a window, a picture, into another
5 law school's operation that you couldn't get any
6 other way. And it's an education for every faculty
7 member who participates. I don't think you have to
8 worry about that part of the process as much as has
9 perhaps been suggested.
10 I just want to make one comment about what
11 has been earlier mentioned, the decision to find in
12 compliance with 405(c) the one-year contract because
13 there existed in the institution a so-called
regulatory freedom review committee that could
rectify any problems that might occur.
I don't know whether any of you practice or
have practiced in the employment law area. I have.
And I also have myself been fired from an
institution. And in those circumstances, I had the
best of all possible worlds. I had an entire
faculty to a person that rallied around me and
brought a lawsuit, and for the first time in New
York State history, I was actually restored to my
position by the appellate division. So I guess it
was as good an experience as you can have in that
context.

But I want to tell you, there is no
comparison between some sort of after-the-fact
remedy -- if somebody has been fired unjustly and
wrongfully because that person is trying to engage
in the kind of independent work that many clinicians
do and have in the process angered some funder or
some powerful person or some dean, it would be no,
no substitute, no alternative, even if it worked, to
have some after-the-fact resolution from a
university committee, and I hope you will keep that
in mind as you consider the choices before you.

Thank you very much.

MS. SCHNEIDER: Thank you.

Any questions?

I do not have anymore names, so if
anyone -- we have a couple of minutes left if anyone
wants to speak we will manage to --
Len Strickman in the back.

MR. STRICKMAN: Thank you. I am Len
Strickman. I'm from the Florida International
University College of Law. My resume is something
like Rick's except I've done more years in legal
education, more years as a dean, more site visits,
and one of the things I have associated myself with
what Rick Matasar has said and indeed what the last 
speaker said, the site visit process is a terrific 
process that I think somehow has gotten a little bit 
too sanitized over recent years. We can separate 
aspiration from accreditation standards for minimum 
quality.

I have been a dean -- two of my 
accreditationships have been at start-up law 
schools. I've probably been visited as many times 
by site visit teams as I have gone on site visits 
and chaired site visit teams, and I have never been 
on a site visit team from which I have not learned a 
great deal. I've been at great law schools and I've 
been at not-so-great law schools and, yes, I've 
learned something every time about how I can improve 
my own institution.

By the same token, I have been helped 
enormously, not in complying with the standards, but 
in having a better law school by the teams that have 
visited my schools. And I think it's okay for the 
accreditation process to go beyond the minimum 
standards as a consultative process rather than as
an evaluative process, but I do think it's very
important that as an evaluative process, the
standards are the standards and, yes, they should
apply to all institutions.

I thought I might be able to save this for
the next hearing but, in fact, when you meet in
February, I'm otherwise engaged, even though you're
meeting in Miami. So I'd like to take a crack at a
number of questions here -- and try to be brief
about it -- that have been posed by the Task Force
as general questions to be answered.
The first is multiple missions. Well, of
course schools should have missions beyond those
that are articulated in the standards. Should they
be judged against those missions? Only in one
respect, and that's the respect of consumer
protection. If they state the mission and they are
not striving to achieve the mission, then they are
misrepresenting themselves to students and they ought to be called on it. Other than that, no, whether I'm delivering a public service as long as -- on my public service mission, as long as I'm trying, working to deliver on my public service mission, that ought to end the inquiry for the accreditation committee and for the standards.

The second one relates to the inputs and outputs. We've talked about it already. Clearly, that has to be constant reexamination because we need some of each. I mean, some of the best measures are output measures. There's no question. I mean, a law school whose students are passing the bar at a terrible rate has to be called to account for that -- and, you know, as the classic output measure. On the other hand, there are input measures
that are important. A law school -- and some of those input measures relate to academic community, relate to the way in which law students learn, the way in which law students relate to faculty and relate to one other. It's very complicated, and it seems to me it's more than continuing review.

Transparency. It's easy to say what's totally transparent. The problem in the real world is that when some negative judgments are being made about a school, when a school is going through problems, it is so easy for its competitors and others to pounce on that school and to make and -- because of that transparency, to kick and even kill a school that is absolutely worth salvaging.

So I'm not quite as comfortable as others in simply moving forward and saying everything should be transparent. I think we have to think about that carefully. I haven't thought about it
carefully enough to have very strong suggestions.

I think more transparency is probably a good thing. The reason it's a good thing is to give more consistency to the application of standards by the accreditation committee particularly, and if there's that measure of transparency, then the process is well served. There has to be some common law, and to the extent that there's some common law, everybody ought to know about it. It shouldn't be a surprise.

The next question is about aspirations and that's something like about missions. I think it's the same. Everybody should have high aspirations. The standards aren't about aspirations; the standards are about sound legal education, about performance, about -- about meeting the minimums that are created.

Costs. I do think in writing the standards, costs have to be taken into account. I think it's one thing to say that the law school should be taught in contiguous space, that it should be distributed across the university, because I think we can provide very good reasons why law students and law faculty ought to have an academic
That's very different from what those facilities look like. What's in -- yeah, and it's nice, again, to have the Ritz. But it's okay to have the Motel 6 because people can interact with each other in a lesser facility and still achieve the academic community and the kind of learning interactions that are important to educating good lawyers.

The types of practice question. I think it -- can you mold the standards to where one school's graduates are going to practice and where another's are going to practice? I think the answer to that question is no.

I think to attempt to bury the standards -- I think a school should be congratulated on trying to meet a particular set of needs for -- because
more of the students are going into government work
or going into solo practice. I think we have
responsibilities to that. But should a small rural
school have to do more than the Harvard Law School
does with respect to solo practice? I don't think
that's the way to apply the accreditation standards.
And I guess I'll repeat -- it's the last
thing I'll say -- I do think it's important to apply
a uniform set of criteria to schools. The finest

schools that get easily accredited every time still
benefit from every seven years having to go through
a full process of inspection.

Some of the site visits that I chaired from
outstanding law schools like NYU -- and we put a
bunch of criticisms into that report, and there were
criticisms that of course does not require any
reports back, but they were aspirational. NYU was
held to the same set of criteria as everybody else.
They had the self-study -- they had to do the self-study; they had to do the self-examination. I think that's fine, and I think we all ought to live by the same set of rules in that respect. But I do think the process -- I don't think we ought to minimize the value that we have in the process now. I do associate myself with a great deal of what David Van Zandt said, but I think it's a different set of questions that becomes more particular with respect to the substance of the standards, and I hope, I know that this Task Force is going to review the substance of the standards, and I hope we have a good dialogue on those as well.

Thank you.

MS. SCHNEIDER: Any questions? All right.

So we've come at last to the end of our time. I would ask if any of my colleagues on the
Task Force would choose to make a closing or statement or raise anything?

Okay. A couple of things. I just would like to remind you that our next hearing will be at the Miami meeting. It will be on Friday afternoon. It will be directly following the end of the deans' workshop and in the same room as the deans' workshop. I don't know the exact name of that room. We appreciate the comments from everybody who has testified today. We will remind you to please submit your comments in writing. One thing that occurred to me as we've had this discussion today, particularly our focus on the standards of other entities, is I would ask you to think about a little bit because one of the things we're talking about at the committee level is, you know, not all professions have another hurdle after you finish school in order for you to be able to pursue your profession. Medicine and law are the two professions basically that do. So, yeah, okay. In any case, there are different degrees, I should say. I would not represent the District of Columbia if you were not a member of the bar, but you might be if you were an accountant be able to do some
accounting work if you had not passed various levels of the account levels exam.

In any case, I would ask you to sort of think about this in your discussion about standards is the extent to which there is this additional hurdle that you have to get over, whether that makes a difference in how you would get output sources.

That's just something to throw out there.

I thank all of you for coming and I appreciate your comments and we hope to hear more from you.

Thank you.

(Ending time: 3:18 p.m.)
UNITED STATES OF AMERICA )

ss:

DISTRICT OF COLUMBIA )

I, GERCHA RICHARDS WHITE, a Notary Public within and for the District of Columbia, do hereby certify that the witness whose deposition is hereinbefore set forth was duly sworn and that the within transcript is a true record of the testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 12th day of January, 2007.

__________________________
GERCHA RICHARDS WHITE

My Commission Expires:
September 1, 2010