

**CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA)
MAY 2010 TOWN HALL TALKING POINTS ON
AMERICAN BAR ASSOCIATION REVIEW OF OUTCOME MEASURES**

Outcome Measures, a current “hot topic” the world of legal education, is another name for a concept familiar to many clinical legal educators: developing pedagogically-sound assessments of what students know and can do after a particular learning experience.

In 2008, a specially-constituted American Bar Association Outcome Measures Committee submitted a special report to the ABA Section of Legal Education and Admissions to the Bar (available at: <http://www.abanet.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>), in response to its charge to “determine whether and how we can use output measures, other than bar passage and job placement, in the accreditation process.”

The Outcome Measures Committee report recommended:

That the Section re-examine the current ABA Accreditation Standards and reframe them, as needed, to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures. As the report shows, such a shift towards outcome measures is consistent with the latest and best thinking of U.S. legal educators and legal educators in other countries and is also consistent with insights gleaned from legal practice and from accreditors in other fields of professional education.

That Outcome Measures Committee report relied, as do many other discussions of incorporating outcome measures into legal education, on two recent reports on legal education: William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Carnegie Foundation 2007); and Roy Stuckey, et. al, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (Clinical Legal Education Association 2007).

Many other professional accrediting bodies apply accreditation standards based on outcome measures.

Most supporters of an outcome measures-based approach to legal education understand it as part of a larger mission of helping law students develop a more holistic, practical, and problem-solving approach to lawyering. In this view, skills and values are at least as important a part of a program of legal education as substantive doctrinal knowledge.

Sound outcome measures-based teaching also emphasizes the importance of *formative* assessment. Formative assessment takes place in the midst of learning and informs the ongoing process of teaching and learning, while *summative* assessment occurs at the end of a class and is much more familiar to most legal educators.

A number of law schools have been successfully moving toward outcome measure-based education in recent years, as discussed in the reports and studies noted above.

Traditionally, ABA Accreditation Standards for law schools have relied almost exclusively on requiring various *inputs* – such as numbers of faculty, seats in the library, applicant test scores, etc. Though

pedagogically more appropriate, the inclusion of outcome measure-based standards would be a significant shift. Development and implementation poses a host of complex issues.

In 2008, the ABA Section of Legal Education and Admission to the Bar's Standards Review Committee (Standards Review) appointed a subcommittee to look at developing outcome measure-based standards as part of the ABA's Accreditation Standards.

In 2008, CLEA submitted comments stating that the ABA should:

- 1) revise the Standards by focusing on outcome measures that assess how well law schools have trained law students in academic knowledge, lawyering skills, and professional values;
- 2) adopt outcome measure Standards that go beyond bar passage and placement rates and that assess a law school's preparation of students for law practice;
- 3) adopt Standards that provide schools with the flexibility to identify additional outcome measures that advance the school's strategic plan, while remaining centered on the core mission to prepare students for practice; and
- 4) retain a core structure within which to assess each law school's effectiveness in preparing students for law practice, including all three primary areas of concern.

The Outcome Measures Subcommittee has been working on various drafts of new outcome measures Standards (many documents available at: <http://www.abanet.org/legaled/committees/comstandards.html>)

A close-to-final draft by the Subcommittee was made public in April (see <http://www.abanet.org/legaled/committees/Standards%20Review%20documents/Student%20Learning%20Outcomes%20April%2017%202010.doc>) on which further comment will be accepted this summer.

The most recent draft standards raise serious concerns, including:

- The equation of simulation courses with live-client experiences through law clinic and field placement settings. While simulation courses are valuable, they are not equivalent to clinical experiences.
- Lack of guidance and excessive deference to individual schools and deans in implementing changes. Schools would be given license to autonomously pick out certain goals, then decide with very few parameters (if any) how to teach and measure progress against those self-defined aspirations. This is inappropriate given the responsibilities that have been entrusted by the U.S. Department of Education and the public to the ABA as the accrediting body for legal education. Legal education will suffer if it moves from what some say is a one-size-fits-all approach to accreditation standards to anything goes approach.

CLEA will continue to participate in the development of outcome-measures-based accreditation standards and will remain active in the development of a meaningful framework for incorporating outcome measures into clinical legal education, regardless of how the debate in the ABA accreditation process unfolds.