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STATEMENT OF THE CLINICAL LEGAL EDUCATION ASSOCIATION ON THE REPORT OF THE AMERICAN BAR ASSOCIATION COUNCIL ON LEGAL EDUCATION'S SPECIAL COMMITTEE ON OUTCOME MEASURES AUGUST 4, 2008

The Clinical Legal Education Association (CLEA) is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. CLEA has approximately 700 annual dues-paying members representing faculty at approximately 140 law schools in the United States. We offer this statement in connection with the Council on Legal Education's consideration of the Interim Report¹ of its Special Committee on Outcome Measures.² We commend the Committee's effort, raise some cautionary notes, and recommend that the Council move forward with this critical enterprise.

CLEA supports the Council's initiative to re-examine and to consider reworking the approach toward law school accreditation taken by the existing Standards and Interpretations. In particular, CLEA endorses the Council's effort to develop outcome measures that relate directly to the primary goal of legal education: the preparation of lawyers for the practice of law.³ In our view, performance measures that focus solely on inputs cannot accurately assess a law school's effectiveness in preparing law students to provide competent professional representation. Bar passage and placement serve at best as proxy outcome measures of a law school's effectiveness in meeting the mission of preparing lawyers for practice. The Interim Report of the Outcome Measures

¹ These comments are on the interim report, and not the later-submitted final report from the Special Committee.

² In separate statements we have also submitted comments on the reports of the Special Committees on Security of Position and Transparency

³ CLEA reads the Interim Report as recommending the adoption of outcome measures for accreditation, but not as recommending the abandonment of all input measures. CLEA believes that certain input criteria must be a fundamental part of law school accreditation. We look forward assisting the Council to strike the appropriate balance as it moves forward in its process.

Committee (the 'Interim Report') represents a solid step toward the goal of articulating accreditation standards for law Schools that will assure the accomplishment of the fundamental responsibilities of law schools.

As an organization, CLEA represents professors who teach clinics and skills courses, and thus whose teaching agenda focuses squarely on the preparation of students for practice. We believe strongly in outcome-based assessments. Indeed, CLEA was an early sponsor and the eventual publisher of Roy Stuckey and Others, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association 2007), discussed by the Outcome Measures Committee starting at page 7 of the Interim Report. This "Best Practices Project" is an outcome-based vision of legal education, one driven by strategic planning and centered on a fundamental question: Does legal education adequately prepare law students for the practice of law?

In its advocacy before the Council, CLEA has consistently supported approaches to accreditation designed to improve and broaden the professional abilities of law school graduates. Thus, CLEA has spoken in favor of encouraging law schools to focus on the development of professional competencies and judgment, both in classrooms and in clinical practice, and has sought to assure that the contributions of faculty who teach professional skills are recognized and supported by the standards. A regulatory structure that ensures adequate instruction in skills (including the requirement of equality of treatment of professors who teach in clinical and skills courses) is crucial to correct the deficiencies in legal education long since identified by the MacCrate Report and more recently by the Carnegie Report.

CLEA therefore supports much of the approach suggested by the Outcome Measures Committee. We encourage the Council to explore further the questions raised at the end of its Interim Report. More specifically, CLEA strongly supports several key propositions of the Interim Report:

- 1) that the Council should revise the Standards and Interpretations to fulfill the promise of their Preamble by focusing on outcome measures that assess how well law schools have trained law students in academic knowledge, lawyering skills, and professional values;

- 2) that the Council should adopt outcome measures that go beyond bar passage and placement rates and that assess a law school's preparation of students for law practice;

- 3) that the Council should 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) that the Council should 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: academic knowledge, lawyering competency, and professional values.

We address each of these points briefly.

1. Focus on outcome measures directed towards preparation for practice

The Interim Report includes an admirable summary of approaches taken by accrediting bodies for other professional schools. Although these approaches are necessarily diverse, the Committee's summary reveals a striking consensus on several key concerns, including licensure; student performance in clinical, problem-solving and communication skills; satisfaction of public expectations for the competencies that graduates should possess; evaluation of skills, knowledge and behaviors of students; and collection of data (including portfolios) that provide evidence of student performance and competency in each area.

These core measures employed in other disciplines go well beyond the competencies tested in traditional law school exams or through the bar exam. Instead, they share a central concern for practice competency, especially in those areas directly related to service to clients and responsibility to the public. They require the collection of data that evidences student learning, and the use of evaluative standards that measure student success in learning.

Certainly, these core measures reflect a natural and logical extension of the central concern of the A.B.A. Standards, as expressed in the Preamble and more specifically in Standard 301: "A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession."

2. Focus on outcome measures that go beyond bar passage and placement

The charge to Outcome Measures Committee specifically directed it "to determine whether and how [the Council] can use output measures, other than bar passage and job placement, in the accreditation process." CLEA strongly supports this inquiry and believes that the Committee has made an excellent start towards addressing it. We recognize that difficult issues remain in determining the ongoing relationship between bar passage and placement figures on the one hand, and on the other prospective new Standards focused on measuring the outcomes of law school preparation of students.

CLEA endorses the Council's ongoing effort to articulate a broader, more practice-oriented set of measures for law schools' preparation of students. Professional licensure and job placement are certainly measures of a law school's performance. However, these measures incompletely assess the ability of a school's graduates to engage in effective law practice. The ability to pass the bar exam reflects only the examinee's ability to master and apply "academic knowledge" in a traditional testing setting. Performance testing such as the Multistate Performance Test provides only a single-shot example of student written performance on a fact-specific simulated problem. As the Interim Report notes, accreditation of other professional schools involves the assessment of competencies that require different kinds of evaluation, over a longer period of time, in a variety of performance contexts and with several different kinds of record-keeping. Law School accreditation should involve similar evaluations.

3. Law school flexibility to identify strategic goals

CLEA agrees with the Committee that law schools should have flexibility in meeting prospective outcome-driven measures. As an organization representing professors teaching in clinics and skills courses, CLEA takes pride in the diversity of approaches taken by its members and their programs towards preparing students for law practice. This diversity of approach results not only from the individual talents and creativity of our membership, but also from the organizational innovation, financial resources, and other support of our members' home schools. The Council can play a vital role in encouraging law schools to develop creative new approaches to meeting the demand of training students for law practice.

At the same time, we endorse the recommendation that the Standards should encourage innovation within the context of careful strategic planning. The Committee appropriately concluded that to meet the goal of preparation for practice requires forethought, careful marshalling of resources and a thorough integration of several different kinds of pedagogy. Importantly, CLEA believes that professors teaching in clinics must be included under the Standards in a governance capacity in law school planning.⁴

4. Retention of core standards for all law schools

As valuable as strategic planning is, CLEA believes that the Council must mandate that core professional values remain a part of every law school's curriculum. This only makes sense. Absent such a requirement, an accrediting body would be unable to insure anything other than a correspondence between a school's stated goals and its accomplishment of those goals. As an example, a law school might set as its sole strategic goal that students master a specific body of substantive law as demonstrated by performance on written exams. The Council would then have little to do other than to assure that the exams constituted a fair test of the relevant law.

Law schools at present fall short in preparing students for the practice of law. CLEA therefore urges that the Council set baseline goals that law schools must meet through their strategic planning. As the Interim Report notes at pages 14 - 17, the Standards have consistently articulated several core values which all law schools must advance in designing, delivering and sustaining their programs of education. These values center on the preparation of students for the representation of clients and for the broader professional role of a lawyer in civic life. CLEA believes that these are the

⁴ There is a connection between the move toward an outcome-measures accreditation process and the security of position issue currently (and persistently) before this Council. In CLEA's view, the adoption of outcome measures that focus on preparation for practice necessarily requires recognition of the central role of pedagogy in producing those outcomes. For many years, CLEA's membership has provided leadership in the design and delivery of pedagogies that produce lawyers prepared for the range of the demands of practice. The full and equal participation professors who teach clinics and skills in every law school's curriculum planning and governance becomes even more important as outcome measures begin to emerge. While equality of position and participation are in a sense "input measures," CLEA urges the Council to continue to require them, and indeed to strengthen the requirements, so that the limited gains of the current accreditation process not be lost. See Statement of the Clinical Legal Education Association on the Report of the American Bar Association Council on Legal Education's Special Committee on Security of Position, dated July 18, 2008.

central concerns of the A.B.A.'s accreditation system, and that the Council can and should retain its role in assuring that law schools graduate students who are as prepared as possible to assume their roles as counselors to clients and to provide professional service to our society at large.

Conclusion

The Committee has proposed an enormous undertaking. CLEA is certain that the process will be both contentious and productive. We do not view this moment as the time for detailed proposals on how best to achieve the goals set out by the Committee, and we therefore do not offer our particular proposals here. Instead, we encourage the Council to move forward to resolve the issues the Committee has identified, including: the specification of the core standards to be imposed on all law schools; the relationship between broader output measures and the narrower measures of bar passage and placement; the impact of outcome-oriented standards on the fiscal realities of legal education; and the development of proposed language for consideration by the Standards Review committee. In addition, we urge that outcome measures be required to be valid measurements of competence to practice and that they not have a differential impact on minorities. We look forward to providing input and assistance to the Council as this work progresses.