

ABA Accreditation Task Force
Notes of Hearing
February 9, 2007

All Task Force members were present except for John Jeffries and Randall Shepherd (John Leahy arrived late).

Chair Pauline Schneider made introductory remarks that summarized the 9 questions in the December 6, 2006, memorandum from the Task Force to Legal Community. She added a tenth question: what might constitute a quality legal education?

The following is a brief summary of the individual testimony (with profuse apology when I have incorrectly understood the testimony or reported the individual's name or institutional affiliation):

Jon Garon, Dean, Hamline Law School

He expressed concerns about the accreditation team process: i) there is limited actual participation by nonacademics and deans. Generally, deans reflect broadest perspective. In practice, the existing teams consist of deans and faculty who are socialized into standard way of doing things. ii) an AALS representative is included on each team, and by the AALS charge, emphasizes faculty status and scholarship issues. iii) Missing are professional educators and experts on assessment and training. In effect, the current team structure drives out innovation.

Consequences of the process:

- 1) Discourages innovation by mingling standards and mission, which raises costs.
- 2) Divorce of part-time and full-time faculty: standards should focus on quality of output, not on employment status.
- 3) Clinical education is a best practice, but standards do not recognize as minimal competency. Standard 301(b) erodes student choice with no demonstrable benefit.
- 4) Full-time faculty defined by what person cannot do. Standard 402 (the student-faculty ratio) should be based on definition of time spent teaching.

The process also plays a consumer protection role, which should be limited and based on quantitative analysis of minimum competency. These include:

- 1) Cumulative (not first-time) bar passage: compare to LSAT scores to test "added value"
- 2) Appropriate value based on cost: cost of attendance and long-term market value of degree (salary for 10-years)
- 3) Quantitative measures of what profession values: pro bono service and hours or hours of legal writing instruction.
- 4) Long-term satisfaction of graduates.

Site inspection process could be peer assessment and help with best practices. Annual identification of schools falling below minimum competencies: could be done by professional personnel.

Dean Carrington, Texas Southern

Whether a historically black law school can satisfy Standards 301 (test scores) and 501 (admissibility to bar)? Standards act as a bar to minorities entry to profession (Standard 301: LSAT or other standardized test requirement and Standard 501: bar passage).

Dean James Douglas, Professor, Thurgood Marshall School of Law

LSAT is barrier to black applicants.

Richard Newman, Professor, Hofstra Law School

Compared accreditation practices in architecture in architecture and medicine.

Architecture: 1) Site report becomes public. 2) Exit process is school-wide meeting at which the team addresses whole school community to give impressions of site visit to those to be affected by it. 3) 34 objectives in statement of competencies for every graduate: team reviews student portfolios to discover if students have competence.

Revise Standard 302: incorporate the statements of skills and values in MacCrate report which has statement of competency.

Architecture and Medicine: regulation more intense (architecture based on outputs, medicine on inputs). ABA, if it does anything, underregulates. There is no lobbying by deans in medicine or architecture for less regulation. Medical school graduating transcript: more required courses designed to achieve competencies; a student cannot graduate with 60 to 65% of credits in electives.

Newman taught a course for associates in a large national firm on legal writing persuasive skills that he would have to be taught in the third year of a JD program. Partners at the firm were angry at legal education because of its failure to provide this competency.

Question (Randy Hertz): MacCrate Report assumes skills need to be acquired over entire course of career, not only in law school.

Answer: Agree. He referred the Task Force to the Carnegie Foundation Report on Architecture Schools (1997).

Question (Kent Syverud): medical education heavily subsidized by clinical revenues. How would you pay for increased skills trading?

Answer: In medical schools, 1/3 of operating expenses generated by faculty practice plan revenue and 80% of clinical faculty do not teach but generate revenue. To do the same in law schools would be difficult under current rules.

Question (Barry Sullivan): who would you hire to teach these competencies?

Answer: Legal education has underestimated value of practicing members of bar. In his experience, the richest teaching has been collaboration between full-time clinical and practitioners.

Craig Smith, Professor, Vanderbilt, President, Legal Writing Teachers

MacCrate Report provides a good vision of competency. In response to the 12/9/06 memo questions:

- 1) Accreditation Standards should not reflect missions. ABA should focus closely on ensuring minimum standards.
- 2) Process should rely on output with respect to the competencies identified in the MacCrate Report, but cannot focus solely on outputs. It must look at inputs as well. The process should ensure that law schools provide the competencies and not leave this to law firms or commercial bar review providers.
- 3) Official decisions of the accrediting body should be published widely. Assists in perception of fairness. The process should try to create fair and efficient market; information needed to do that.
- 4) Encourage, but not require, aspirations, but ABA should not lose focus. Should ensure consumer protection.
- 5) Cost arguments should have less force in providing basic competencies.
- 6) Do not consider areas of practice
- 7) Use streamlined processed of review, but the individual law school should bear the burden of demonstrating compliance.
- 8) Get more people involved in discussions.

Christine Gurney, Legal Writing Directors, Professor, Brigham Young

The MacCrate report and the Carnegie Report are the foundation of the vision of sound legal education. Those setting policy here and at law schools have not been enthusiasts of MacCrate. Standard 405 is best vehicle for ensuring that the people concerned are at table. It is not an "interest group" Standard, but is designed to bring skills to table and protect faculty academic freedom. Bringing skills faculty to the table also helps with diversity: 2/3 of faculty on tenure-track are male. Also, academic freedom at risk. Deans and tenure-line faculty have banned ALWD in favor of the Blue Book written by law students. Standard 405(c) strikes right balance.

Susan Hasey, President, Legal Writing Institute, Professor Brandeis School of Law

Carnegie Report: law schools fail to teach legal thinking in real context and fail to provide ethical and social skills. Efforts to improve legal education are piece meal.

The Task Force should reject excuses for protecting status quo. It should define inputs and outputs and measure them. Students should compile a portfolio to demonstrate minimum competency; the site team would review a sample of the portfolios to determine minimal competency. The process should look at inputs as well, including personnel at law schools.

Accreditation standards must open doors. In the current faculty scheme, it is difficult to move pedagogy in direction of clinical and legal writing. Through time, the ABA Council has demanded advancement.

Question (Steven Smith): which law schools are using portfolio approach.

Answer: we will provide a list.

Question (Barry Sullivan): Minimum standards and consumer protection are important goals. But if a law school is simply a talent sorter (selecting talented students) and its graduates and their employers are happy with that, why should we be concerned?

Answer: I do not think that either graduates or employers are happy with such law schools. Law schools that teach only thinking should not be accredited.

Claire Germane, Past President of AALL

Standards should require a basic structure of library services. In general, the current system works well. Academic law libraries in US are model for other countries.

In response to the specific questions:

Question 2: standards should identify appropriate output measures for libraries.

Question 3: site visit teams should continue to include librarians and other subject specialists.

Question 7: all law schools should be treated equally.

Question 9: standards are generally sound and flexible.

Standard 603(d): status requirements are necessary to protect woman and minorities on faculty. Academic freedom is an important requirement.

The sum of legal education is more than studying law and society: we must train lawyers who can practice effectively. Legal research is important to sound legal education. Tenure attracts best.

Question (Richard Morgan): in light of prevalence of electronic research and the cost of libraries, would AALL favor requiring every law school to have a library or simply having access to such resources shared with other institutions?

Answer: We could share regional library resources.

David Van Zandt, President, ALDA, Northwestern

[Read supplementary statement.]

Question (Kent Syverud): is the Board surveying its membership on the issue of the role of diversity in the Standards?

Answer: Yes. It is not clear that the ALDA Board will take a position on that issue.

Question (Jose Garcia-Pedrosa): does the ALDA Board take the position that tenure should not be required for anyone?

Answer: Yes

Paula Williams, President, Clinical Legal Education Association, Tennessee

There is a Best Practices report being published by CLEA and Roy Stuckey this April. Carnegie Foundation report cites Best Practices book. The Task Force should review it as a statement of what is needed in terms of competencies.

Clinical programs are important to legal education: live client, simulation, externships. Need high quality faculty to teach and contribute to diversity.

Question (Karen Rothenberg): do law schools need to engage in scholarship?

Answer: We have no position on that; law schools have done that and I see no change coming in that.

Question (Karen Rothenberg): should there be specialization of clinical and scholarship between law schools so that some law schools will do one or the other or some mix?

Answer: CLEA is concerned about clinical scholarship.

Question (Steven Smith): could the Task Force receive an early copy of Best Practices?

Answer: Yes.

Question (Richard Morgan): why should we require clinical education? Instead, we could let schools choose and students choose, and then let consumers and market decide.

Answer: We are not taking a position that clinical education should be required. Standards should encourage offering of opportunities.

Question (Barry Sullivan): Would you say that ideally clinical education would lead to certain skills, which are part of its mission?

Answer: Clinical education is best way to prepare students for law.

Paul Dean, Past-President, Association of Legal Writing Directors, Professor, Minnesota

Scholarship and clinical training are not exclusive. The bar exam does not test many of the needed skills. Law schools are professional schools; ABA is voice of profession. Think about accreditation in terms of protection of public and basic skills needed such as communication, negotiation, and problem solving skills.

Question (Karen Rothenberg): other disciplines such as medicine are more concerned about competencies. But we can only do so much while our students are in schools; in the past, the bar took more interest in education throughout careers. Is not it a two-way street?

Answer: I agree with that: it has become incredibly expensive to train new lawyers. Takes three years before an associate becomes profitable. Firms are looking to the law schools to cover gap. Law schools cannot assume that people will get training when they get out.