

January 3, 2007

ALDA Board Statement
Hearing of the ABA Accreditation Task Force (January 5, 2007)

The following is a statement of the Board of Directors of the American Law Deans Association ("ALDA"):

ALDA represents approximately 130 of the deans of the American Bar Association ("ABA") 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 ("NACIQI"), 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 of 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 "the general goals and principles of a sound and appropriate system of accreditation", which are expressed in the Preamble to the Standards for Approval of Law Schools, and takes "these generally accepted principles as a starting point for analysis." ALDA fully agrees with and supports this approach of the Task Force. ALDA urges the Task Force to recommend that the Standards and the approach to setting and applying the Standards be thoroughly revised so that they further only these principles and not a range of other interests and purposes extraneous to these principles.

ALDA sees the following principles as central to the accreditation Standards and processes:

- **Minimum requirements:** The Standards should require a law school to provide a sound legal education.
 - In doing so, the Standards should set only the minimum requirements necessary to provide such a sound legal education so that a law school can comply with the Standards in a manner that is not unnecessarily wasteful of the law school's or its students' resources.
 - In evaluating whether a law school provides a sound legal education, the Standards should be based chiefly on an evaluation of the resulting legal education that a law school produces and not on the specific inputs into the educational process.
- **Consumer protection:** The Standards should protect consumers, principally the public and applicants to law schools and law students.
- **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.

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 individual 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:

- 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 “one-size-fits-all” model of legal education. The Standards often seem to reflect the good intentioned effort of the rule makers to articulate the ideal form and 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 attempt 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.

- Decisionmaking: Decisions about the substance of Standards should reflect the best judgment of a decisionmaking body whose sole concern is ensuring that the principles articulated above are implemented as well as possible. ALDA has been concerned that the decisionmaking 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.
- Evaluation Process: The current process of evaluating individual schools every seven years through multi-day 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 a 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.

- Purpose of Site Evaluation Process: The site evaluation process also suffers from a diffusion of purposes. ALDA believes that the only required purpose should 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 requirements, 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 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 NACIQI 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 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.

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 NACIQI hearings, and we attach our various statements to NACIQI.) 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 of employment has no precedent in the accreditation standards of other types of 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 and terms and conditions of employment:

- ❖ Dean (Standard 206(c)): "Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure."
- ❖ 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, non-tenure 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 non-tenure track faculty.

- ❖ 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).
- ❖ Clinical Faculty (Standard 405(c) and Interpretations 405-6, 405-7, and 405-8): “A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided to other full-time faculty members.”
- ❖ Legal Writing Faculty (Standard 405(d)): “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 (1) attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 302(a)(2) and (2) safeguard academic freedom.”
- ❖ Law Librarian (Standard 603(d) and Interpretation 603-3): “Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty positions.”

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 “arrangements sufficient to ensure academic freedom”, not that it provide various classes of faculty with employment security. ALDA applauds the recent action 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.

Conclusion

ALDA thanks Chair Schneider and the members of the Task Force for their attention and consideration of the views of most 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.