

1 AALS EXECUTIVE COMMITTEE AND ABA ACCREDITATION

2 POLICY TASK FORCE OPEN FORUM

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17 The American Bar Association Accreditation

18 Committee Meeting, taken at the Marriott Wardman

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22 White, Court Reporter.

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1 P R O C E E D I N G S

2 - - -

3 MS. SCHNEIDER: Good afternoon, everyone.

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

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

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

22 (Laughter)

23 MS. SCHNEIDER: I'm delighted to be here
24 today, even though my arm is still aching from being

25 requested to do this, but my friend, Bill Rakes, is

1 pretty persuasive and Bill Rakes had an idea that we
2 are trying to carry out. He thought it was time for
3 us to take a fresh look at the procedures that have
4 evolved over a period of time that regulate the
5 accreditation of law schools in the United States.
6 He has appointed this Task Force that you see here
7 today to help look at this issue.

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

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

20 MR. MORGAN: He's the person who's giving
21 you the CLE credit.

22 (Laughter)

23 MS. SCHNEIDER: Hopefully, you've all had a
24 chance to sort of take a look at the memo that was

25 sent out in advance of this hearing to share with

1 you sort of our thinking about how we might approach
2 our task and to share with you some of the questions
3 that we were thinking about as we were trying to do
4 our work.

5 I will let you know in advance that this
6 Committee or Task Force has not formed any positions
7 or made any decisions on any policies or procedures
8 that may need to be changed or wherever they might
9 need to be improved or may need to be done away
10 with. We are in a listening phase. We will have
11 this hearing. We will also have a hearing at the
12 mid-year meeting of the ABA in Miami, and we hope in
13 the meantime we will also get written comments from
14 any number of you, your views on the questions that
15 we propose as well as anything else that's on your
16 mind about law school accreditation.

17 As many of you know, I am not an academic.
18 I am in a private practice of law. I suspect my
19 view of the world may be significantly different
20 from many of yours, but hopefully as to the richness
21 of the discussion that we're going to have that we
22 can listen to the points of view of many people who
23 are interested in legal education in this country
24 and who have a deep desire and concern that it
25 should be the best legal education that's possible

1 and that it's up to us to make sure that it is
2 delivered in a way that makes the most sense.

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

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

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

24 With that, let me just start off with
25 discussing some of the questions that we on the Task

1 Force have sort of framed as issues that we need to
2 think about as we are thinking about this process,
3 this process of accreditation of a legal education.

4 As you know, many schools, probably each of
5 your schools, defines the word admission and the
6 admission often is beyond sort of the base
7 admissions that we set forth in the standards which
8 have to do with admission to the Bar and effective
9 and responsible participation in the legal
10 profession. The question is: Should our standards
11 explicitly recognize these other missions, these
12 other goals that schools set for themselves, and if
13 we should recognize them, how should we mess with
14 them, how should we hold, or should we hold, schools
15 accountable for making -- three of my colleagues
16 have just joined us here, Jose Garcia-Pedrosa --

17 MR. JEFFRIES: We were in the other -- we
18 were in the original room.

19 (Laughter)

20 MS. ROTHENBERG: We thought nobody wanted
21 to come.

22 MS. SCHNEIDER: Karen Rothenberg from
23 Maryland and John Jeffries from the University of
24 Virginia.

Secondly, we note that a lot of the

1 commentators, including our accrediting body the
2 Department of Education, has focused on outputs as
3 measures of successful accreditation. We raise the
4 question: To what extent should we focus on our
5 outputs? And if we're focused on outputs, what
6 should those outputs be that we should measure and
7 how should we measure them? How much weight should
8 we give to them? Are they more important than
9 inputs? Should they be measured equally?

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

25 Next question: To what extent should the

1 accreditation process go toward ensuring compliance
2 beyond minimum requirements, particularly for those
3 schools who identify greater aspirations. How
4 should we weigh compliance with minimum standards
5 versus compliance with higher aspirations or should
6 we weigh them?

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

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

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

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

24 Right now, most of our feedback is clearly
25 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
20 to the extent that there is not a large number of
21 individuals who sign up, we might be more flexible
22 with our time limits. And I would like to begin
23 with David Van Zandt.

24 MR. VAN ZANDT: Thank you very much. My
25 name is David Van Zandt, and I'm the Dean of

1 Northwestern University Law School. With me today
2 from the American Law Deans Association are Rick
3 Matasar. I'm the incoming president of the
4 association. Rick is the incoming vice president.
5 Kate Bartlett -- Rick's from New York Law School.
6 Kate Bartlett's from Duke. She's on the Board. And
7 last, Patricia White is from Arizona State and she
8 is the incoming secretary of American Law Deans
9 Association.

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

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

19 MR. VAN ZANDT: I could read quickly.

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

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

25 The Board of Directors, in addition to the

1 people I've already introduced, are composed of Saul
2 Levmore, who is the past president from the
3 University of Chicago; Evan Caminker, the Dean at
4 the University of Michigan; Michael Fitts, Dean at
5 the University of Pennsylvania; Elena Kagan, Dean of
6 Harvard University of Law School; Joe Knight, Dean
7 at the University of Washington's Law School; Karen
8 Rothenberg from the University of Maryland; Stewart
9 Schwab from Cornell University; and, last, Joan
10 Wexler from Brooklyn Law School.

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

19 ALDA represents approximately 130 of the
20 deans of the American Bar Association accredited law
21 schools. ALDA, throughout its history, has sought
22 to address various aspects of accreditation that it
23 believes could be improved. Over the last few
24 years, ALDA believes that there have been
25 improvements in the accreditation process and thanks

1 members of the council and its accreditation
2 committee and standards review committee for these
3 efforts. There is still more to be done.

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

19 Over the last few years, ALDA believes that
20 there have been improvements in the accreditation
21 process and thanks members of the Standards Review
22 Committee and the Council for the effort of
23 reviewing the standards line by line. Those
24 improvements have come, however, without the type of
25 overarching review that the Task Force is

1 undertaking and, thus, in ALDA's view have been
2 fairly ad hoc and unsystematic.

3 Guiding principles. The initial statement
4 of the Task Force as expressed in the memorandum
5 from the Task Force dated December 12, 2006,
6 identifies, quote, The general goals and principles
7 of a sound and appropriate system of accreditation,
8 end quote, which are expressed in the preamble to
9 the Standards for Approval of Law Schools, and
10 takes, quote, these generally accepted principles as
11 a starting point for analysis, end quote.

12 ALDA fully agrees with and supports this
13 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

1 such a sound legal education so that a law school
2 can comply with the standards in a manner that is
3 not unnecessarily wasteful of the law school's or
4 its students' resources. In evaluating whether a
5 law school provides a sound legal education, the
6 standards should be based chiefly on an evaluation
7 of the resulting legal education that a law school
8 produces and not on the specific inputs into the
9 educational process.

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

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

23 Some general considerations. The substance
24 of the current standards and the process and
25 procedures by which they are enforced are not

1 completely consistent with the above principles.
2 Over the years, ALDA has expressed multiple concerns
3 about both the substance and procedures of the
4 standards. Certainly there are many different
5 opinions among deans as there are among other
6 persons of good faith who are interested in legal
7 education about which standards and which specific
8 procedures are more or less in need of improvement.
9 ALDA does not intend to express a view on each of
10 the specific standards and procedures. Instead, the
11 ALDA board has agreed to collect from its member
12 deans for the Task Force individual information on
13 specific standards and procedures that raise
14 concern.

15 ALDA does believe, however, that it would
16 help the Task Force to hear its more general views
17 on the issues that should be addressed.

18 First, vision of the standards. In ALDA's
19 view, the current standards, which include many
20 input requirements that are more than the minimum
21 requirements necessary to provide a sound legal
22 education, tend to enforce a, quote,
23 one-size-fits-all, end quote, model of legal
24 education. The standards often seem to reflect the

25 good-intentioned effort of the rule makers to

1 articulate the ideal content of a sound legal
2 education and insist that all law schools approach
3 that model. Certainly the standards might require a
4 carefully thought through set of basic subject
5 matter coverage requirements, but a law school
6 should be allowed to satisfy the minimum
7 requirements of a sound legal education in the way
8 it best sees fit.

9 Unfortunately, insisting on a common model
10 has the effect of requiring a range of matters that
11 are not the minimum necessary to a sound legal
12 education. Moreover, this approach encourages
13 individual groups within legal education to press
14 the council to put into the standards specific
15 requirements that reflect their own particular
16 visions of legal education.

17 This dampens the ability of law schools to
18 be innovative. A constant complaint about law
19 schools is that they have changed little since the
20 days of Langdell. Legal education could benefit
21 from an influx of law schools that are attempting to
22 provide a sound legal education innovatively.

23 In addition to restricting how the legal
24 educators in each law school pursue their mission,
25 the requirements raise the cost of legal education

1 to our students overall, a matter of great public
2 concern. The standards should not instantiate a
3 particular or even a limited set of missions or
4 organizational structures for law schools.

5 Second general consideration, decision
6 making. Decisions about the substance of standards
7 should reflect the best judgment of a
8 decision-making body whose sole concern is ensuring
9 that the principles articulated above are
10 implemented as well as possible.

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

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

25 Third, the evaluation process. The current

1 process of evaluating individual schools every seven
2 years through multiday visits by full site
3 evaluation teams is not the most effective means of
4 ensuring that the standards have been met. If the
5 goal is determining whether each law school is
6 providing sound legal education, it is clear that
7 the investigation needed will vary from school to
8 school.

9 Moreover, more use could be made of the
10 data that law schools are required to provide in the
11 annual questionnaire to identify areas of concern
12 for more careful investigation. Putting to the side
13 the burden on each school of the process, the
14 current process is wasteful of the valuable time of
15 the volunteers who selflessly serve on site
16 evaluation teams. Because of that, the consultant's
17 office does find it difficult to find volunteers and
18 there is a tendency for people with a particular
19 interest in an area of legal education to volunteer
20 at a higher rate.

21 Fourth general consideration, purpose of
22 site evaluation process. The site evaluation
23 process also suffers from a diffusion of purposes.
24 ALDA believes that the only required purpose should
25 be to gather information to allow the accreditation

1 committee to determine whether the law school
2 provides a sound legal education by complying with
3 the requirements of the standards.

4 Currently, site evaluation teams and their
5 reports evaluate all aspects of a law school and
6 often attempt to determine if a law school's
7 aspirations are being met, and there is little
8 direct reference in the report to specific standards
9 and the evidence gathered to determine whether a
10 school is in compliance with a particular standard.
11 Certainly, an individual law school should be free
12 to ask members of the site team for assistance in
13 how the law school, although already in compliance
14 with the minimum standards might improve its legal
15 education, but that assistance should be completely
16 independent of the compliance determination.

17 To many of our member deans, the two
18 purposes are often conflated with the aspirational
19 help appearing to be a matter of compliance. ALDA
20 takes no position on whether site evaluation teams
21 should be expressly limited in its investigation to
22 compliance with the minimum requirements or only
23 clearly distinguish between the two purposes.

24 Interpretation of the standards. ALDA

25 urges the Task Force to recommend measures that

1 would make the interpretations and practices of the
2 accreditation committee in evaluating law school's
3 compliance more transparent. For example, ALDA
4 applauds the recent announcement by the consultant
5 at the Consultant of the Department of the
6 Investigation Hearing that the committee would
7 publish its standards for evaluating the bar passage
8 rates of law schools.

9 Clearly, however, there remain many areas
10 where there is an unannounced common law that the
11 committee follows. For example, Standard 405(c) was
12 applied to schools according to an unstated
13 interpretation that seemed to vary over time and
14 across schools. Likewise, the interpretation of
15 Standard 606 apparently includes an unstated range
16 of the minimum number of volumes that a new law
17 school must have to obtain accreditation.

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

25 My last topic in terms and conditions of

1 employment. ALDA does have an express view on the
2 standards that require that specific employees of a
3 law school or university have certain terms and
4 conditions of employment. This is the issue on
5 which ALDA testified at the Department of Education
6 hearings, and we attach our various statements to
7 that committee.

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

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

23 While requiring tenure or tenure-like job
24 security for faculty and other employees certainly

25 might improve the program of legal education of a

1 particular law school, there may be other means to
2 achieve whatever positive benefits there are. There
3 are also circumstances in which it can harm a
4 program by reducing the flexibility of the program
5 to adjust to changes in the profession. It is
6 certainly the case, for example, that some law
7 schools have limited their provision of clinical
8 education because of their unwillingness to bring on
9 employees with life-time or similar long-term
10 contracts.

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

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

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

25 Second, student-faculty ratio.

1 Interpretation 402-1(1)(A). For the purposes of the
2 published student-faculty ratio, a law school must
3 differentiate among faculty and instructors based on
4 the terms and conditions of their employment by
5 counting certain faculty who are not on tenure track
6 or its equivalent who teach a full load as 0.7, and
7 adjuncts, emeriti faculty, nontenure track
8 administrators who teach, librarians who teach, and
9 teachers from other units of the university as 0.2.
10 This provision creates perverse incentives that may
11 limit hiring of nontenure track faculty.

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

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

25 Next, legal writing faculty. Standard

1 405(d). Quote, A law school shall afford legal
2 writing teachers such security of position and other
3 rights and privileges of faculty membership as may
4 be necessary to attract and retain a faculty that is
5 well-qualified to provide legal writing instruction
6 as required by Standard 302(a)(2) and to safeguard
7 academic freedom.

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

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

23 ALDA applauds the recent actions of the
24 accreditation committee with respect to at least two
25 of its members, which recognized that Standard

1 405(c)'s requirements are met by having in place a
2 procedure to permit all faculty, regardless of the
3 terms of their individual employment, to challenge
4 adverse actions that allegedly violate the
5 principles of academic freedom.

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

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

18 MS. SCHNEIDER: Thank you.

19 Does anyone know if they have any questions
20 they would like to ask?

21 Thank you very much.

22 Paulette Williams, CLEA.

23 MS. WILLIAMS: Thank you. Good afternoon.

24 For the record, my name is Paulette Williams. I

25 call myself Paula, though, and I teach at the

1 University of Tennessee College of Law. I am
2 pleased to have this opportunity to speak to the
3 Accreditation Policy Task Force in my capacity as
4 president of CLEA, the Clinical Legal Education
5 Association.

6 We appreciate the opportunity to engage in
7 a conversation with the Task Force on the policy
8 issues raised by the accreditation process. CLEA
9 plans to actively participate in this process with
10 you by making this statement. We will submit the
11 statement in writing to you and we also plan to
12 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

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
5 language of the standards themselves. The recent
6 example illustrates the problem involving the
7 accreditation process with the clinicians at two
8 member schools, Northwestern and St. Louis
9 University.

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

16 At Northwestern School of Law, there are

17 31 --

18 (Lights go out.)

19 (Laughter)

20 MS. WILLIAMS: Okay. All right. At
21 Northwestern there are 31 full-time clinicians who
22 are on one-year contracts and Northwestern has been
23 found to be in compliance with 405(c). An

24 interpretation of 405(c), which says that one-year
25 contracts are, quote, reasonably similar to tenure,

1 violates the plain language of the standard. An
2 interpretation that justifies this result on the
3 grounds it act and freedom misses the point of
4 Standard 405(c). This interpretation is
5 inconsistent with the standard. It sets a bad
6 precedent and violates the principle of transparency
7 in the process of interpreting the standards.

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

21 We are also promoting social justice
22 through our service to clients. The work of
23 clinicians on teaching methodology, the development
24 of expertise, learning theory, experiential learning
25 and other aspects of learning from practice, has

1 made enormous contributions to legal education, and
2 as a part of a complete package of legal education,
3 has contributed much to the value that law schools
4 offer to our students.

5 CLEA and other advocates for clinical
6 education have long taken the position that in order
7 to attract highly-qualified faculty to teach in
8 their clinical programs and to recognize the value
9 that clinicians add to the educational enterprise
10 and out of basic fairness, clinical faculty deserve
11 to have security and position and comparable rights
12 in law school governance to those of the nonclinical
13 faculty.

14 We at CLEA will be petitioning the council
15 and the accreditation committee to reexamine the
16 determination that has been made in the
17 interpretation of 405(c). We look forward to
18 continuing this discussion about how we may improve
19 the accreditation process and legal education
20 generally.

21 Thank you very much for your attention.

22 MS. SCHNEIDER: Thank you.

23 Do any of my colleagues have any questions?

24 Thank you.

25 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)

7 MR. HARBAUGH: The information that the
8 Task Force distributed to the deans and the legal
9 education community mentioned how important it was
10 to foster innovation and creativity in legal
11 education. Indeed, your memo said that prior
12 reports on law school accreditation and legal
13 education have recognized that excellence in legal
14 education is best supported by encouraging pluralism
15 in innovativeness, and that accordingly, the
16 accreditation process should afford law schools
17 maximum degree of independence, autonomy and
18 opportunities for innovation and uniqueness.

19 In making this statement, you quoted or
20 referenced two prior task forces of the ABA section.
21 Both Wahl Commission Report and the MacCrate
22 Commission Report -- MacCrate Task Force report. I
23 was very proud to be on both of those task forces
24 and underscore that the Wahl Commission and the
25 MacCrate Task Force focused a good bit of attention

1 on uniqueness and innovation. It's my sense that
2 the present standards, particularly Standard 802 and
3 its interpretations, do not allow very much
4 flexibility for innovativeness on the part of law
5 students.

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

17 Thank you very much.

18 MS. SCHNEIDER: Thank you.

19 Any questions for Dean Harbaugh?

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

22 MR. PALM: How long do we have the room?

23 MS. SCHNEIDER: Excuse me?

24 (Laughter)

25 MR. PALM: How long do we have the room?

1 (Laughter)

2 MR. PALM: My name is Gary Palm and I am a
3 retired law professor from the University of Chicago
4 Law School. I served as -- 21 years as director of
5 the clinic there and 30 years in various
6 professorial type with various professorial titles.
7 I am going to retiring from the board, finishing
8 mass CLEA and I really want to say I'm not here
9 speaking for CLEA, but I'm going to refer to CLEA
10 throughout my talk as taking positions as some
11 others have done about their organizations. This is
12 my statement and mine alone.

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

Now, some other things I'll just highlight

1 quickly and I think there are things that the
2 Committee hasn't thought about yet. Consider
3 getting rid of the EOE. Really, why do you jump
4 through all these hoops to satisfy the EOE when it
5 only relates to, at the most, any -- right now it
6 could be 17 schools that are
7 nonuniversity-affiliated. All the
8 university-affiliated schools are approved by a
9 regional accrediting body. So they don't need you
10 for that, and many of the nonuniversity affiliate
11 stand-alones have made the correctional arrangements
12 with the regional bodies.

13 I don't know what the numbers are, but I
14 bet it's under ten now left, using the ABA for
15 purposes of federal loans. They just walk you
16 through all kinds of -- you don't need them. Just
17 walk away from it and everybody -- you know, you
18 still have the responsibility to the states and I
19 think you'll have to do all this other bureaucratic
20 stuff fairly. All of it has little to do with legal
21 education.

22 Along that line, I really don't know what
23 happened and I would hope that you would consider
24 why it is we now have the accreditation committee as

25 a separate accrediting body. I mean, this was

1 approved by the EOE. There was no action that I
2 know of by the council. Should the accreditation
3 committee be a separate accrediting body? I think
4 that really should be on your agenda so that it's --
5 it's -- it can operate independent of standards
6 review and other council and make its own decisions.

7 And my next point is that the debate with
8 Dean Van Zandt and others who share his views is
9 really about the importance of clinical education.
10 I'm from Illinois. We had the Douglas-Lincoln
11 debates. I wasn't there for that, but --

12 (Laughter)

13 MR. PALM: That debate, they pretended it
14 wasn't about slavery, you remember? They pretended
15 it was about state's rights and letting the states
16 alone; let there be autonomy of the states. And
17 this is what this is about, really. Why do they
18 need to have one-year contracts that could be
19 terminated almost with no short notice so they could
20 close ranks when they have other priorities? What
21 you have to say, I think, it's a matter of
22 educational importance that you can't have a decent
23 law school experience, you can't be fit to practice,
24 you can't be fit to sit for the bar without having
25 clinical education. That's where we've come and

1 they're going to have to provide it.

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

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

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

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

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

20 And the last thing is that the -- Bucky
21 won't like this, but I like it. I don't think
22 everybody else will. I think you ought to say
23 something about how much change there has to be in
24 the budget. I mean, the deans are fine, you know.
25 They wanted all this change, but they don't want to

1 see that it has to be paid for. You're doing it on
2 the cheap. You need to triple that budget in the
3 accreditation project, which I don't know what it
4 need because that's all 40 percent by the ABA, but
5 the staff is way overworked for even what you're
6 trying to do now. And most accrediting bodies have
7 much more staff and use the volunteers, that I agree
8 with, should be used up. So anyway, I'll supply a
9 written statement more fully to discuss this.

10 Thank you.

11 MS. SCHNEIDER: Any questions for Gary?

12 Okay. We have Tom Perez of Maryland.

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

19 (Laughter)

20 MR. PEREZ: And so I will leave those
21 remarks until the end of my presentation.

22 I teach in the law and health program as
23 well as the clinic, and in connection with some of
24 my work I'm doing with students, I've currently
25 embarked on a project with the Kellogg Foundation

1 relating to accreditation. They asked myself and a
2 couple of coinvestigators to look at the issue of
3 how accreditation in medicine, dentistry, nursing,
4 and psychology can be used to leverage increases in
5 racial and ethnic diversity in those professions.

6 And so my coinvestigators and I and
7 research assistants have spent much of the last few
8 months interviewing people in various disciplines,
9 including but not limited to those that I mentioned
10 but also including social work, law and optic
11 medicine, to take a look at their processes.

12 And I've learned a lot about accreditation
13 over the last few months, and I thought I would
14 share some of my insight as you move forward on your
15 committee. And I would urge you as a threshold
16 matter as you go through this incredible, important
17 work that you're doing, and I thank you for doing
18 it, to take a look at some of the other disciplines
19 and to look at and compare perspective because I
20 predict that you will learn a lot from them.

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

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

9 They're not necessarily mutually exclusive,
10 but what we've observed so far is that there is a
11 very significant diversity of opinion on what the
12 role is, and it seems to me as you move forward, it
13 would be useful to have that discussion and to
14 figure out whether there is consensus on what the
15 precise role is. Because it seems to me that so
16 many things flow from a consensus, if there is one
17 to be had, on what your role is.

18 There appears to be a movement among other
19 accreditors to an additional focus on outcome or
20 outputs as opposed to inputs. And that raises or
21 demonstrates a number of challenges in the social
22 work context. The Council on Social Work Education,
23 they have made a significant movement in this area
24 in their standards and they're in the process right

25 now of revising the standards, and the feedback they

1 have gotten has been decidedly mixed. Because it's
2 a little bit easier to focus on do you have this
3 item in your curriculum or that item or that item as
4 opposed to are you producing culturally competent
5 social workers.

6 That's the outcome measure. That becomes a
7 much more amorphous process. And while it has many,
8 many benefits and that is where I see the movement
9 overall, I think it would be useful to have a
10 conversation, for instance, with the social work
11 accreditors to talk about what has their experience
12 been as they've attempted to move more towards an
13 output- or outcome-based form of accreditation.

14 Because there are a number of challenges
15 that emerge, and it's certainly something of
16 significant interest, but again cultural competency,
17 I think, is a very good example. How do you measure
18 whether your law school has produced
19 culturally-competent graduates? Well, ultimately
20 what ends up happening is you get back to a focus on
21 inputs. What courses do you have? What modules do
22 you have? And so it becomes the same conversation,
23 but I think there are a lot of lessons that can be
24 learned from other disciplines.

25 Transparency. I would simply, before the

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

11 We asked a series of questions of all the
12 people we interviewed, and at least the public
13 health people pointed out that all of the concerns
14 about their entities they have, such as potential
15 for losses, potential for releasing information
16 that's proprietary, those issues and concerns, while
17 they're legitimate in their context, they're not
18 coming fast. So you might find it useful to take a
19 look at public health and their experiences there.

20 The issue of diversity. The things that
21 are happening vis-a-vis the ABA and the Department
22 of Education came up in literally every interview
23 that we conducted, and they look at you
24 appropriately as the leader in this area of
25 diversity and I commend you for your work.

1 A couple of observations on diversity. The
2 issue of a structural diversity. We -- and by
3 structural diversity, I'm talking about the issue
4 really of numbers, both faculty and staff. One
5 thing that I've observed is that oftentimes when
6 there's a focus on structural diversity and asking
7 schools to take efforts to increase the numbers of
8 underrepresented minorities within the faculty and
9 student ranks, sometimes it has the effect of
10 creating robbing from Peter to pay Paul.

11 And we haven't yet observed the standards
12 that I would call a collective standard. What are
13 you doing to increase the pie as opposed to robbing
14 from Peter to pay Paul? And as you look at
15 diversity down the road, I would urge you to take a
16 look at is there a way in which a collective
17 standard? What is our institution doing to increase
18 the pipeline? What is our institution doing to make
19 sure that we're -- we're not robbing from Peter to
20 pay Paul? I think that would be a very important
21 issue to look at.

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

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

6 Finally, one thing that comes up time and
7 time again in the conversations that we've been
8 having, and I would encourage you to have a
9 conversation, is the issue of leadership. It
10 doesn't simply come up in a diversity context,
11 although it always comes up in a diversity context.

12 Leadership is absolutely necessary, albeit
13 insufficient conditions of change as it relates to
14 leadership -- as it relates to diversity. And the
15 Joint Commission for Accreditation of Healthcare
16 Organizations, for instance, has a number of
17 measures in their accreditation standards that look
18 at the issue of leadership. What is the leadership
19 of an organization doing on the issues at hand, the
20 issues that we find are the core issues that are the
21 focus of our accreditation?

22 And I would urge you to have a conversation
23 about leadership, not simply as it relates to the
24 issues of diversity, structural and otherwise, but
25 on the core issues that you find that ought to be

1 the most important component of the accreditation
2 process.

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

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

13 MR. SYVERUD: One, you talked about outputs
14 versus inputs, and that is, of course, an issue of
15 great interest and importance to all of us. So I'd
16 be grateful for a little in the way of enlightenment
17 from you ON that and I think it might be somewhat
18 useful to everyone in the room.

19 When you talked about the social work
20 schools, you gave us a good example of a situation
21 in which they sought to focus on outputs and ended
22 up moving back into inputs. So given that you
23 studied this, could you help us get a better sense
24 of how to move from an input measure to an output

25 measure and talk about legal education that would be

1 if you want to other fields?

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

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

22 And there are some people who have
23 criticized that and said that that actually
24 represents a step backward because it's more
25 difficult to measure. And so I would answer your

1 question in part by saying that this is a work in
2 progress. I have yet to see an outcome- or
3 output-oriented standard where there is a consensus
4 that this standard has moved the ball forward and is
5 really working well.

6 I can tell you that many accrediting bodies
7 are struggling mightily with the question that you
8 raised. It's just that it's one of the many \$64,000
9 questions. It continues to be a work in progress,
10 and the question is always how then do you measure
11 it? Do you -- do you allow the self-study to be the
12 measuring component? Well, then, there's, you know,
13 arguable challenges with that. How do you
14 independently measure that?

15 And that to me is the real tension, and I
16 wish I could tell you that there's a magic ball that
17 you only look at psychology or others, but I haven't
18 yet found that, and maybe it reflects whether I
19 haven't investigated enough. But on February 13th
20 we're meeting with all these bodies, and that's one
21 of the questions that we're going to ask, and we
22 invite the ABA to that meeting. So I hope we can
23 learn from that.

24 MR. SYVERUD: Thanks.

25 MR. MORGAN: I just want to assure the

1 group we are systematically studying the
2 accreditation standards from professionals as part
3 of the work of the Task Force.

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

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

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

13 (Laughter)

14 MR. MATASAR: This is a very complex task
15 that you're taking on because you're trying to take
16 widely disparate institutions and array them against
17 each other by some set of standards that will allow
18 you to decide what's on one side of the line and
19 what's on another side of the line. The tendency
20 over the years has been to homogenize the way we
21 look at our schools in order to be able to assess
22 them against some single standard, and that has its
23 problems because when you look at the public and the
24 private school or the for-profit and the
25 not-for-profit school or the independent school or

1 the start-up school or the school that has been
2 around for a hundred plus years, it is very unlikely
3 that the same set of standards would yield any
4 useful information above a very small minimum or
5 medium minimum or a high minimum that gives us a
6 sense of where the bottom of the line ought to be on
7 the quality of legal education.

8 I've been in the legal education for
9 27 years, five law schools, dean of three different
10 law schools over the last 16 years. I've been on
11 five site teams, where I was visited those schools.
12 I've chaired three site teams and I've been on other
13 site teams over the course of the last 15-year
14 period.

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

20 I think that David Van Zandt, in speaking
21 of a sound legal education, has really captured the
22 essence of what our standards all look like. A
23 sound legal education would be an education by which
24 the person who acquires the education through coming

25 to the school would be equipped with the tools that

1 would allow him to graduate and achieve a set of
2 identifiable goals that legal education provides
3 value for, and that's slightly different than the
4 nuanced interpretation of what we do.

5 We don't only produce lawyers. We produce
6 people for whom a legal education is a valuable tool
7 on the transition to a gainful, useful life as a
8 citizen. And if we conceive only of what we're
9 doing as producing a lawyer or a particular kind of
10 lawyer, we greatly diminish the capacity of our
11 190-plus institutions to create value for the
12 society through the education of their expending
13 their funds out.

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

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

22 Cost. Ought we have standards that promote
23 aggregating costs in order to achieve some set of
24 goals, or is it enough for us to have a minimum set
25 of cost that might be imposed because it's necessary

1 for the sound mission, but anything beyond that set
2 of cost is really aspirational and goal setting.

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

21 How long is legal education, and must it
22 be -- is it a three-year box? Is it a two-year box?
23 What if it's a two-year box with a year where we
24 encourage externships that the students can take pay
25 instead of as they currently cannot do, take pay and

1 receive credit. Could a sound legal education exist
2 in less than a three-year box? Do we all need a new
3 building? Really?

4 Distance learning. Could a law school
5 effectively deliver legal education, predominantly
6 through legal distance education, and if it did,
7 would that be bad for America if it reduces the cost
8 for our students quite substantially? If our
9 standards are not sufficiently flexible to allow us
10 to ask those questions and create institutions that
11 might try it a different way, we're inhibiting the
12 ability to deliver the education our students need.

13 Second, access. Innovation, creativity,
14 promotion or stifling. We do not experiment by
15 permission. We experiment through subterfuge,
16 through avoidance and through knowing that the cycle
17 is a seven-year cycle that gives you four or five
18 years to try interesting things. We could change
19 that by really literally saying, Well-Constructed,
20 well-thought-through feelings of delivering
21 education differently should be promoted, not
22 permitted.

23 Are we a profession that sees our role as
24 advancing the course of our students' education

25 through other methodologies, and our standards ought

1 to reflect those things because if we want a sound
2 legal education defined by a school. There may be
3 many ways to achieve those goals, but if only some
4 are permitted, we're going to lose the range.

5 Kent Syverud, in another meeting yesterday,
6 said what I felt was a brilliant thing. He said,
7 Can we all exist as Ritz Carlton law schools? Can't
8 we have Motel 6 law schools? There are clean beds
9 in both places, but some of them are just fancier,
10 deeper pile. And I think that's really a wonderful
11 way of thinking about how experimentation might take
12 place.

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

23 Can we tailor our process for a school
24 that's been at this game for a long time to know
25 that most of the stuff is okay at that place? Is

1 there a way to make a set of standards that would
2 work in that fashion?

3 Shouldn't we be able to disaggregate the
4 purposes of the current process from those things
5 that are about complying with the standards to those
6 things about the aspiration of the school? And if
7 we can disaggregate them, shouldn't we allow them to
8 be disaggregated in some level of consultation with
9 the school who want consultant (coughing) to come
10 along to evaluate you. A consultant can help you
11 with aspiration, but it doesn't filter into the part
12 of the report that's about whether you're providing
13 a sound legal education.

14 Transparency. From visit to visit over the
15 time that I have been a dean, visits have gone
16 extremely well or extremely badly because of the
17 great variations in differences among the attitudes
18 of the team that are on-site. Some members of the
19 teams believe that what they are doing is finding
20 out what's wrong with the school. And I would
21 submit that the process ought to begin with the
22 presumption that schools are doing a good job if
23 they are in fact producing lawyers, if they are in
24 fact passing the bar, if they are in fact taking on
25 good careers.

1 We know that from the takeoffs, from the
2 data that we collect, that schools are adequately
3 performing before we ever get to the school. If
4 that's the case, let's assume they're a compliant
5 school and talk about the ways in which they might
6 be better at doing things or the small little things
7 that are not quite working as well as they could,

8 rather than seeing it as a process by which we
9 discover the things that are wrong. Why would that
10 be? Site visits should not be a method by which
11 every faculty fight is refought for the benefit of
12 strangers, and it becomes that on many site visits.

13 Other issues of transparency. Site reports
14 get written in a tone that sees one way and the
15 accreditation report comes back written as if it is
16 a completely different law school that was looked
17 at. How is that so? There must be a black box into
18 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.

And finally, the question of process. It

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
11 a great deal of antagonism between the regulated
12 industry and the regulator. And it's hard for
13 someone who is as antiregulation as I have become
14 over the years to muster the ability to say yes, to
15 impose upon other people as I come to the site
16 visitor.

17 So I want to share with a thought I had
18 when came to a site visitor. I've asked the
19 question: What can I do to help you. Not what can
20 I do to help you extort resources from the
21 university? What can I do to help you as a school
22 and make this process useful to the school? I'd
23 like to see that as our attitude in these new
24 standards.

25 MS. SCHNEIDER: Thank you.

1 Are there any questions.

2 Thank you.

3 Vanessa Merton, Pace Law School.

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

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

25 First of all, I think in the material that

1 you've developed, which is excellent, when you talk
2 about the public, I'd like to see you focus on
3 really who that public is. And what I'd like to ask
4 you to do is to think of the public whom you are
5 serving through doing the work you're doing as the
6 future clients of the graduates of our law schools
7 and to really think about what that means and how
8 little there is between the average, ordinary person
9 who's trying to find a decent, competent lawyer and
10 actually being taken advantage of, exploited or
11 provided with very poor representation because,
12 unfortunately, I think we can all agree that our bar
13 exams don't completely do that job.

14 I'm intrigued by the notion of the -- that
15 the law schools, all law schools are not producing
16 only lawyers, practitioners. We've certainly heard
17 that, and we certainly know that to be true, and I
18 think that any law school that is willing to say,
19 look, we're not about training, presenting,
20 educating people who are going to be practicing law.
21 That's not what our mission is. That's not what we
22 want to do. I think it's fair to say they shouldn't
23 be subject to the same accreditation standards as
24 law schools taught, but I've not yet heard of a law

25 school that has identified itself as being in that

1 category, although there are a few that sort of come
2 close.

3 Secondly, I wanted to come back to some of
4 the comments about looking at the accreditation
5 process of other professions, and I just want to
6 make sure you focus and you do that on the reality
7 that we're one of the very, very, very few
8 professions left that doesn't require supervised,
9 carefully-crafted, practiced experience, not paid
10 experience, where the goals, objectives of the
11 employers are not primarily the education and
12 development, professional development, of the people
13 going through the process, but the kind of practical
14 experience that, yes, is provided in -- primarily in
15 our law schools by our clinical faculty, as well as
16 by the legal research or legal writing or whatever

17 that first-year initial training. I think that
18 ought to be viewed as an important type of
19 experiential education.

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

What I simply suggest to you is that it's a

1 little bit of a -- well, the real cost, one can
2 argue, in law school is the tremendous amount of
3 resources that goes into producing scholarship that
4 is not of any direct relevant value to the students
5 who are receiving their professional education.
6 And, in fact, if you did get rid of the last year of
7 law school, which I think, you know, certainly
8 forcing the students to go through yet another year
9 of sitting in large classrooms reciting about
10 appellate cases doesn't necessarily strike me as
11 essential.

12 If you took the resources that would be
13 freed up by eliminating many, many faculty who do
14 only that type of work or else small seminars where
15 they have an even smaller student-faculty ratio than
16 you -- than the clinics do, and where the entire
17 work is focused on producing a paper, which is a
18 very valuable thing to do; it's just not something
19 that many lawyers spend much of their time doing.
20 If you took those resources that would be freed up,
21 you'd have a lot of resources to devote to, let's
22 say, a final year of education, maybe not called law
23 school, as such, but as another profession where
24 people are engaged in training and professional
25 development. And that's just an example.

1 In terms of innovation, we've heard a lot
2 about innovation. I could only ask the committee to
3 focus on where has the nonLangdellian approaches to
4 legal education, where have they come from? Have
5 they come from we think primarily from deans? That
6 has not been my experience or what I have observed.
7 Actually, what can I do again that clinicians and
8 the legal writing teachers have done a tremendous
9 amount to change, develop, to open up and to bring
10 the law students out into the community and bring
11 the community into the law school, and they're a
12 much greater source for the most part of innovation
13 than the rest of the traditional law school faculty.

14 So I hope that you will engage in this
15 process, not simply listen to rhetoric and take
16 it -- I'm sure you won't, take it at its face value
17 without stopping to think about what is really going
18 on here. What is the actual phenomena that we're
19 confronting here? What is the real problem with
20 legal education in this country? Is it that there's
21 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
14 regulatory freedom review committee that could
15 rectify any problems that might occur.

16 I don't know whether any of you practice or
17 have practiced in the employment law area. I have.
18 And I also have myself been fired from an
19 institution. And in those circumstances, I had the
20 best of all possible worlds. I had an entire
21 faculty to a person that rallied around me and
22 brought a lawsuit, and for the first time in New
23 York State history, I was actually restored to my
24 position by the appellate division. So I guess it
25 was as good an experience as you can have in that

1 context.

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

13 Thank you very much.

14 MS. SCHNEIDER: Thank you.

15 Any questions?

16 I do not have anymore names, so if
17 anyone -- we have a couple of minutes left if anyone
18 wants to speak we will manage to --

19 Len Strickman in the back.

20 MR. STRICKMAN: Thank you. I am Len
21 Strickman. I'm from the Florida International
22 University College of Law. My resume is something
23 like Rick's except I've done more years in legal
24 education, more years as a dean, more site visits,

25 and one of the things I have associated myself with

1 what Rick Matasar has said and indeed what the last
2 speaker said, the site visit process is a terrific
3 process that I think somehow has gotten a little bit
4 too sanitized over recent years. We can separate
5 aspiration from accreditation standards for minimum
6 quality.

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

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

1 apply to all institutions.

2 I thought I might be able to save this for
3 the next hearing but, in fact, when you meet in
4 February, I'm otherwise engaged, even though you're
5 meeting in Miami. So I'd like to take a crack at a
6 number of questions here -- and try to be brief
7 about it -- that have been posed by the Task Force
8 as general questions to be answered.

9 The first is multiple missions. Well, of
10 course schools should have missions beyond those
11 that are articulated in the standards. Should they
12 be judged against those missions? Only in one
13 respect, and that's the respect of consumer
14 protection. If they state the mission and they are
15 not striving to achieve the mission, then they are
16 misrepresenting themselves to students and they
17 ought to be called on it. Other than that, no,
18 whether I'm delivering a public service as long
19 as -- on my public service mission, as long as I'm
20 trying, working to deliver on my public service
21 mission, that ought to end the inquiry for the
22 accreditation committee and for the standards.

23 The second one relates to the inputs and
24 outputs. We've talked about it already. Clearly,

25 that has to be constant reexamination because we

1 need some of each. I mean, some of the best
2 measures are output measures. There's no question.
3 I mean, a law school whose students are passing the
4 bar at a terrible rate has to be called to account
5 for that -- and, you know, as the classic output
6 measure.

7 On the other hand, there are input measures
8 that are important. A law school -- and some of
9 those input measures relate to academic community,
10 relate to the way in which law students learn, the
11 way in which law students relate to faculty and
12 relate to one other. It's very complicated, and it
13 seems to me it's more than continuing review.

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

22 So I'm not quite as comfortable as others
23 in simply moving forward and saying everything
24 should be transparent. I think we have to think
25 about that carefully. I haven't thought about it

1 carefully enough to have very strong suggestions.

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

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

18 Costs. I do think in writing the
19 standards, costs have to be taken into account. I
20 think it's one thing to say that the law school
21 should be taught in contiguous space, that it should
22 be distributed across the university, because I
23 think we can provide very good reasons why law
24 students and law faculty ought to have an academic

25 community.

1 That's very different from what those
2 facilities look like. What's in -- yeah, and it's
3 nice, again, to have the Ritz. But it's okay to
4 have the Motel 6 because people can interact with
5 each other in a lesser facility and still achieve
6 the academic community and the kind of learning
7 interactions that are important to educating good
8 lawyers.

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

14 I think to attempt to bury the standards --
15 I think a school should be congratulated on trying
16 to meet a particular set of needs for -- because
17 more of the students are going into government work
18 or going into solo practice. I think we have
19 responsibilities to that. But should a small rural
20 school have to do more than the Harvard Law School
21 does with respect to solo practice? I don't think
22 that's the way to apply the accreditation standards.

23 And I guess I'll repeat -- it's the last
24 thing I'll say -- I do think it's important to apply
25 a uniform set of criteria to schools. The finest

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

4 Some of the site visits that I chaired from
5 outstanding law schools like NYU -- and we put a
6 bunch of criticisms into that report, and there were
7 criticisms that of course does not require any
8 reports back, but they were aspirational. NYU was
9 held to the same set of criteria as everybody else.
10 They had the self-study -- they had to do the
11 self-study; they had to do the self examination.

12 I think that's fine, and I think we all
13 ought to live by the same set of rules in that
14 respect. But I do think the process -- I don't
15 think we ought to minimize the value that we have in
16 the process now. I do associate myself with a great
17 deal of what David Van Zandt said, but I think it's
18 a different set of questions that becomes more
19 particular with respect to the substance of the
20 standards, and I hope, I know that this Task Force
21 is going to review the substance of the standards,
22 and I hope we have a good dialogue on those as well.
23 Thank you.

24 MS. SCHNEIDER: Any questions? All right.

25 So we've come at last to the end of our

1 time. I would ask if any of my colleagues on the
2 Task Force would choose to make a closing or
3 statement or raise anything?

4 Okay. A couple of things. I just would
5 like to remind you that our next hearing will be at
6 the Miami meeting. It will be on Friday afternoon.
7 It will be directly following the end of the deans'
8 workshop and in the same room as the deans'
9 workshop. I don't know the exact name of that room.

10 We appreciate the comments from everybody
11 who has testified today. We will remind you to
12 please submit your comments in writing. One thing
13 that occurred to me as we've had this discussion
14 today, particularly our focus on the standards of
15 other entities, is I would ask you to think about a
16 little bit because one of the things we're talking
17 about at the committee level is, you know, not all
18 professions have another hurdle after you finish
19 school in order for you to be able to pursue your
20 profession. Medicine and law are the two
21 professions basically that do. So, yeah, okay. In
22 any case, there are different degrees, I should say.
23 I would not represent the District of Columbia if
24 you were not a member of the bar, but you might be

25 if you were an accountant be able to do some

1 accounting work if you had not passed various levels
2 of the account levels exam.

3 In any case, I would ask you to sort of
4 think about this in your discussion about standards
5 is the extent to which there is this additional
6 hurdle that you have to get over, whether that makes
7 a difference in how you would get output sources.
8 That's just something to throw out there.

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

12 Thank you.

13 (Ending time: 3:18 p.m.)

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1 UNITED STATES OF AMERICA)

2 ss:

3 DISTRICT OF COLUMBIA)

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

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

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

16

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GERCHA RICHARDS WHITE

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21 My Commission Expires:

22 September 1, 2010

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