

## **Society of American Law Teachers—SALT—Statement to the ABA Outcome Measures Committee, February 1, 2008**

The Society of American Law Teachers (SALT) has engaged for almost ten years in promoting the use of alternatives to the bar exam to license new attorneys, based on our judgment that the bar exam does not adequately or thoroughly test attorney competence.<sup>1</sup> Our work supports the importance of using alternative measures, both for attorney licensing and for evaluating the quality of law school education. We therefore strongly endorse the American Bar Association's willingness to look beyond bar passage rate and job placement statistics to determine whether law schools are providing their students with a quality education.

In this initial statement, SALT provides preliminary information about alternative measures and resources that we hope will help the Committee begin exploring alternative outcome measures. American law schools lag behind some of their foreign counterparts<sup>2</sup> and other professions<sup>3</sup> in developing and testing multiple outcome measures, and the ABA can draw from reviews of such models.

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<sup>1</sup> SALT, *Statement on the Bar Exam*, 52 J. LEGAL EDUC. 446 (2002); Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 NEB. L. REV., 363, 364 (2002). See also Kristen Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV., 1969, 1723 n. 103 (2002).; see also Gregory S. Munro, *Outcomes Assessment for Law Schools* at 42, Institute for Law School Teaching (2000), noting that the following are not part of either most law school pedagogy and generally not tested on a bar exam: cost-benefit analysis, risk-benefit analysis, comparative risk, predictive probabilistic judgment, ends means, hypothesis testing, resource allocation, contingency planning and client and court relations. For a list of fundamental values lawyers should possess, see Robert MacCrate, *Legal Education and Professional Development-An Educational Continuum* at 124 (Robert MacCrate ed., West Publishing 1992).

<sup>2</sup> For a discussion of what some other countries are doing in terms of outcome measures and assessments, see Roy Stuckey et al., *Best Practices For Legal Education*, 46-49 (Clinical Legal Education Association 2007).

<sup>3</sup> See note 10, *infra*.; see also Stuckey, *supra* note 2 at 48 (discussing the medical school model).

## 1. Developing Alternative Outcome Measures

In assessing whether law schools are providing students with quality legal education, the ABA should consider the wide range of competencies important to lawyers.

Lominger Leadership Competencies, used in the corporate world, evaluates qualities such as business acumen, composure, conflict management, creativity, ability to deal with people of all kinds and classes, ethics and values, integrity and trust, and the ability to set priorities and build teams.<sup>4</sup> A study by University of California at Berkeley Professors Marjorie Shultz and Sheldon Zedeck identifies twenty-six (26) factors related to effective lawyering, including practical judgment, passion and engagement, listening, stress management, and many other skills not currently assessed by the bar exam.<sup>5</sup>

The ABA should work with those law schools that foster these skills and qualities and have developed ways to measure them. Northwestern Law School assembled a working group to study the abilities that law graduates need to have successful careers and the ways in which the law school can develop those skills.<sup>6</sup> The Franklin Pierce School of Law, through its Daniel Webster Scholar Program, is developing and testing assessment tools for a wide range of lawyering skills.<sup>7</sup> That program, and others like it, should serve as a resource for this Committee. There are methods of assessment that measure a student's ability to interview and interact with clients and several studies have demonstrated that these are measurable skills.<sup>8</sup> A comparative study of the

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<sup>4</sup> A fuller description of the competencies and their use in business is available at <http://www.halogensoftware.com/products/halogen-eappraisal/lominger-leadership/>.

<sup>5</sup> Problem solving, practical judgment, passion and engagement, analysis and reasoning, creativity/innovation, integrity/honesty, writing, community involvement and service, building client relationships and providing advice and counsel, organizing and managing (own work), fact finding, self-development, researching the law, speaking ability to see the world through the eyes of others, strategic planning, networking and business development, stress management, listening, influencing and advocating, questioning/interviewing, negotiating skills, diligence, organizing and managing others (staff/colleagues), evaluation, development, and mentoring, developing relationships. Stuckey, *supra* note 2 at 51.

<sup>6</sup> For a discussion of the attempt by Northwestern University to identify outcome measures for its students, see <http://www.law.northwestern.edu/difference/workinggroup.html>

<sup>7</sup> <http://www.piercelaw.edu/websterscholar>

<sup>8</sup> See K. Barton et al., What Clients Think: Standardized Clients and the Assessment of Clinical Competence, *Clinical Law Review* (13)(1) (2006).

techniques used internationally would be useful. SALT members are currently examining the outcome measures used in other countries.<sup>9</sup>

In terms of measurement, the ABA could look at the number of students at a given law school involved in classes or extra-curricular programs that develop litigation skills, client counseling skills, appellate advocacy skills, and research and writing skills. It could quantify the resources devoted to externships and clinics, and the number of students who take these courses. Likewise, the existence of writing clinics and resources dedicated to the improvement of writing skills are measurable. All of these are quantifiable measures of an institutional commitment to the development of specific competencies new lawyers should possess.

There are other ways to develop competency measures. For example, the American Board of Genetic Counseling (ABGC) sponsored a consensus development conference at which directors of graduate programs in genetic counseling, board members, and expert consultants identified a list of professional competencies. These competencies were then organized into four domains of skills. More importantly, the participants explored the ways in which those competencies would be analyzed in graduate program accreditation as well as some of the implications competency-based standards may have for education and their profession.<sup>10</sup> These skills domains then became the basis for their outcome measures.

Any of these methodologies could serve as models for the ABA and law schools to develop more targeted and specific outcome measures connected to the range of skills attorneys should have. We note as well that guidelines for goal identification and

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<sup>9</sup> The Georgia State University College of Law is hosting an international "Conference on the Future of Legal Education." This is the first major academic conference to address the report on legal education issued by the Carnegie Foundation for the Advancement of Teaching. The Carnegie Report criticizes legal education which produces only "smart problem solvers" when the need is for responsible professionals who have learned through realistic and real-life experience what it means to be committed to the needs of both clients and the larger society. The conference will be held on February 20-23, 2008.

<sup>10</sup> Morris B. Fiddler, Beth A. Fine, Diane L. Baker, *A Case-Based Approach to the Development of Practice-Based Competencies for Accreditation of and Training in Graduate Programs in Genetic Counseling*, JOURNAL OF GENETIC COUNSELING, Vol. 5, No. 3 pp. 105 – 112 (1996)(identifying competencies in the domains of: communication skills, critical thinking skills, interpersonal, counseling, and psychosocial assessment skills and professional ethics and values which were to serve as the basis for accreditation and student training).

potential measurement tools are discussed at some length in Best Practices for Legal Education.<sup>11</sup>

## 2. Measuring Outcomes in Terms of Mission and Professional Values

Initial research indicates that other accrediting bodies recognize that different schools have different missions and require schools to identify their missions and what they expect students to achieve in terms of knowledge and skills. They also require schools to determine how to measure whether their students are achieving the desired outcomes identified in the schools' mission statements. This is the methodology endorsed by the Council for High Education Accreditation, an umbrella group for accrediting agencies. That Council notes that accreditors are most successful in promoting change that improves teaching outcomes when they work "as constructive partners" with educational institutions and "when the accreditor understands the individual mission of the institution."<sup>12</sup>

In developing outcome measures other than bar examinations and job placement rates, SALT urges the ABA Committee to consider whether schools have a valid mission statement and statement of student and institutional outcomes, and whether their curriculum is designed to meet that mission and outcomes. For example, part of Stanford's mission is to help solve the problems of our nation and the world. Public service is an essential part of the history and mission of Rutgers School of Law Newark and Queens College City University of New York. Others, such as Chicago's John Marshall Law School were founded "to offer opportunity to the sons and daughters of immigrants and members of minority groups."<sup>13</sup> Elon University School of Law describes its mission as "leadership education." It is important that outcome measures take into account a school's mission, even as general standards of professional competence are taken into account.

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<sup>11</sup> Stuckey, *supra*. note 2 at 28-68; 175-205.

<sup>12</sup> Paul Baskin, *Accreditors Honor Colleges – and Hope to Send a Message About Themselves*, CHRONICLE OF HIGHER EDUCATION (Feb. 1, 2008).

<sup>13</sup> John Wleklinski, 1899-1999, A Centennial History of John Marshall Law School 71 (1999).

The ABA itself has placed a high value on professional ethics and the commitment to pro bono work and should consider developing an outcome measure that assesses the ways in which a law school teaches ethics and fosters a commitment to social justice.<sup>14</sup> The ABA could measure the success of a school in developing opportunities for students to perform pro bono service during law school or the extent of a school's loan forgiveness program for students who do public interest work after graduation. It could look at whether the school has established reliable ways to link its students and alumni with credible organizations needing pro bono work and how such links are supported by the institution.<sup>15</sup> The ABA could look at the resources schools commit to affiliated programs that support student development of such skills.<sup>16</sup>

The ABA also has clearly states that creating a diverse bench and bar is a critical value.<sup>17</sup> The ABA standards must look at the diversity of the student body, the retention rates of minority students, academic support resources, and resources devoted to improving the bar passage rate of at risk students. Of course, the creation of these and other outcome measures must all be done in cooperation with various schools in light of the schools' missions and goals.

It is SALT's hope that as the ABA broadens its concept of what a law school should do to maintain an educational program that prepares its students for admission to the bar, it will also work with the licensing bodies to develop alternatives to the existing bar exams. The competencies that the ABA should evaluate are the skills, knowledge, and

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<sup>14</sup> See Glen, supra note 1 at 1723-24. See also Curcio, supra note 1 at 412-14. See also <http://www.abanet.org/legalservices/probono/committeeinfo.html#cteinfo>.

<sup>15</sup> The University of Maryland has worked with its graduates on just such a follow-up through Civil Justice, Inc. At a meeting in October 2006 to help promote the idea for local law schools, Professor Brenda Blom pointed out that graduates are often promised that they will be able to do public interest law, and then are cut loose. Given the limited legal services opportunities, many such alums open solo firms or join very small ones. They need help with expertise and referrals. The idea was to consider developing a collaborative of local law schools to offer support to solo practicing alumni who are interested in serving low and middle-income clients (although not necessarily exclusively). The collaborative could take advantage of the Law School Consortium Project (LSCP) which provides national support, teleconferences, and a national website as well as some services that are available to each practitioner.

<sup>16</sup> For example, many law schools are devoting considerable efforts to locating students at post-Katrina legal services offices in New Orleans and the Gulf Coast during breaks between semesters or during the summer.

<sup>17</sup> [www.abanet.org/justice/judicialbias/diverse.html](http://www.abanet.org/justice/judicialbias/diverse.html)

values that are important to the profession and go far beyond what is currently valued and measured. The ABA can have a profound impact upon the future of legal education and state licensing requirements as it pursues and develops relevant outcome measures.

### **3. Bibliography**

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