# American Bar Association
# Section of Legal Education and Admissions to the Bar

# Report of the Outcome Measures Committee

**Professor Catherine L. Carpenter**
**Professor Michael J. Davis**
**Jerome C. Hafter, Esq.**
**Dean Joseph D. Harbaugh**
**Professor Randy Hertz (Chairperson)**
**E. Christopher Johnson, Jr., Esq.**
**Dean Maryann Jones**
**Dean Lisa A. Kloppenberg**
**Thomas E. Perez, Esq.**
**Dean Raymond C. Pierce**
**Dean Kurt L. Schmoke**
**Dean Kevin J. Worthen**

**July 27, 2008**

**Contents**

**Page:**

## *EXECUTIVE SUMMARY*

In May 2007, the Section's Accreditation Policy Task Force – a special committee formed by the then-Chair of the Section, William R. Rakes, to take "a fresh look at accreditation from a policy perspective," and chaired by former Section Chair Pauline A. Schneider – recommended that "[t]he Council form a task force to examine ways to revise the accreditation process to rely, to a greater extent than it currently does, on output measures." In response to this recommendation, which was approved by the Council of the Section, Section Chair Ruth V. McGregor appointed a "Special Committee on Output Measures" in October 2007, charging the committee with the following task:

> This Committee will determine whether and how we can use output measures, other than bar passage and job placement, in the accreditation process. The Committee may consider approaches taken by other accrediting agencies, evaluate criticism of existing measures, and analyze relevant information and studies. The Committee also should consider methods to measure whether a program is accomplishing its stated mission and goals. The Committee should define appropriate output measures and make specific recommendations as to whether the Section should adopt those measures as part of the Standards.

The charge directed the Committee to "submit an interim report to the Council by May 2008."

In accordance with the terms of the charge, the Committee gathered extensive information about the approaches used by other accrediting agencies in the U.S. and abroad and examined the current state of thought on law school pedagogy and approaches to accreditation. The following report presents this information and then sets forth recommendations for reform.

The report recommends that the Section re-examine the current ABA Accreditation Standards and reframe them, as needed, to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures. As the report shows, such a shift towards outcome measures is consistent with the latest and best thinking of U.S. legal educators and legal educators in other countries and is also consistent with insights gleaned from legal practice and from accreditors in other fields of professional education. The report begins by discussing the current state of thought about law school pedagogy, focusing in particular on two recently published, influential reports: WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007); and ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007). The discussion reviews what these reports show about the outcomes that may be regarded as central to the legal education field as a whole; the efficacy of existing measures for assessing the outcomes that are generally accepted by the field; and the types of other outcome measures that might be developed. The report then moves on to the international experience, showing that legal educators in other countries make far greater use

of outcome measures than do U.S. legal educators. The report next looks at the insights that can be gleaned from legal practice, examining the data that is available on practitioners' views of what competencies are most important. Thereafter, the report moves on to accreditation standards in other fields of professional education, focusing on the following ten fields: allopathic and osteopathic medicine, dentistry, veterinary medicine, pharmacy, psychology, teaching, engineering, accounting and architecture. The discussion of other sets of accreditation standards concludes with an examination of the standards of the six regional higher-education accrediting organizations in the U.S., and the criteria that have been developed by the Council for Higher Education Accreditation (CHEA).

In an analysis of the existing ABA Accreditation Standards, the report points out that the Standards' Preamble has, since its development by the Wahl Commission in 1995, articulated a vision of law school accreditation that is conceptualized in outcome-based terms. Yet, current Standards on the law school curriculum and other critical Standards focus more heavily on inputs than outputs. The report explains that a retooling of the existing Standards and Interpretations to move in the direction of outcome measures would be a long overdue course correction to bring the Standards and Interpretations in line with the vision set forth in the Preamble.

The final section of the report contains a number of suggestions to the Council and the Standards Review Committee on how to manage a shift to an outcome-oriented approach to accreditation of law schools. This section explains that a central question in moving to such an approach will be whether to set forth detailed outcome measures in the Standards. The report recommends an approach that would afford considerable flexibility to individual law schools to determine the outcomes the school seeks to effect (presumably within broad contours established by the Standards and Interpretations) and the mechanisms by which to measure those outcomes. The final section of the report also proposes some general considerations for identifying the Standards that should be reframed in outcome-based terms and for determining the types of changes that should be made in these Standards. The discussion also considers the relationship that should exist between the new outcome measures and current Standards and Interpretations on an already-existing outcome measure – the Bar Examination.

The final section of the report also considers the likely costs of shifting to an outcome-oriented approach to accreditation. It explains that, although there inevitably will be costs for law schools, these costs are not as great as one might fear because many law schools have already been engaged for several years in a process of enhancing the ways in which they teach and measure student learning in the areas of lawyering skills and professional values. For those schools that will need to make changes, the schools that have already successfully adopted the new approaches have models that can be emulated and these schools can offer advice on approaches that are likely to succeed and pitfalls that should be avoided. This section of the report explains, however, that the ABA Office of the Consultant on Legal Education is likely to face substantially increased costs in the early years of a new outcome-based system of accreditation, and that the Council will need to prepare for these likely increases in costs.

*Introduction*

In recent years, there has been a growing sentiment within the legal education community that the Accreditation Standards of the ABA Section of Legal Education and Admissions to the Bar should be reframed to focus more heavily on "outcome measures" – accreditation criteria that concentrate on whether the law school has fulfilled its goals of imparting certain types of knowledge and enabling students to attain certain types of capacities, as well as achieving whatever other specific mission(s) the law school has adopted. Those who advocate this change maintain that the current Accreditation Standards rely too heavily on "input measures" – accreditation criteria that concentrate on whether law schools are investing the right types and amounts of resources (such as physical plant, number of faculty, and budget) to achieve the goals identified in the accreditation standards and the school's missions.

Responding to these concerns, the Section's Accreditation Policy Task Force – a special committee formed in 2006 by the then-Chair of the Section, William R. Rakes, to take "a fresh look at accreditation from a policy perspective," and chaired by former Section Chair Pauline A. Schneider – included the subject of output measures in the list of issues on which the Task Force focused. On this issue (as well as the other issues selected for study), the Task Force solicited input from the legal education community and held public hearings. The written notice soliciting commentary identified the following questions with regard to output measures:

> Some commentators maintain that the accreditation process should rely, to a greater extent than it currently does, on output measures. Should that view prevail and, if so, which outputs should be the focus of examination, and how should such outputs be assessed? If a system of output-oriented assessment were to rely, at least in part, on a law school's evaluation of its own performance, what processes might be used to verify the law school's self-assessment?

In a final report issued on May 29, 2007, the Task Force reported that the solicitation of comments on the issue of outcome measures yielded relatively little response:

> The Task Force also sought help from the legal community with the development of outcome measures. In a widely-distributed memorandum, the Task Force asked for input, either at the public hearings or in comment letters, on the question of how the ABA could move to a system of outcome measurements and what measures should be used. Unfortunately, little comment was received that was useful to the Task Force on these questions.

ABA Section of Legal Education and Admissions to the Bar, *Report of the Accreditation Policy Task Force* 7 (May 29, 2007). The Task Force's final report "noted with approval the growing trend among accrediting bodies to evaluate programs on the basis of fulfillment of stated goals, as assessed by 'outcome measures,'" and "recommend[ed] that the ABA move . . . as rapidly as possible" to "a more outcome-based evaluation system." *Id*. The Task Force expressed concern,

however, about the "difficulties involved" in identifying and formulating "appropriate measures by which . . . evaluators can determine that the school is meeting its mission and goals." *Id*. The Task Force explained that its discussion of the subject "included criticism of our existing output measures – bar passage rates and employment statistics – but also concluded that the development of additional, appropriate measures is very difficult." *Id*. "Until there is agreement on an appropriate number and type of outcome measures," the Task Force stated, "it would be difficult to move the theoretical benefits of outcome assessment to the practical plane of reality." *Id*. Accordingly, the Task Force recommended that "[t]he Council form a task force to examine ways to revise the accreditation process to rely, to a greater extent than it currently does, on output measures." *Id*. at 9.

The Council voted to follow the Task Force's recommendation and to create a special committee on the subject of outcome measures. In October 2007, the Chair of the Section, the Honorable Ruth V. McGregor, Chief Justice of the Arizona Supreme Court, appointed a "Special Committee on Output Measures," and charged the committee with the following task:

> This Committee will determine whether and how we can use output measures, other than bar passage and job placement, in the accreditation process. The Committee may consider approaches taken by other accrediting agencies, evaluate criticism of existing measures, and analyze relevant information and studies. The Committee also should consider methods to measure whether a program is accomplishing its stated mission and goals. The Committee should define appropriate output measures and make specific recommendations as to whether the Section should adopt those measures as part of the Standards.

Section Chair McGregor charged the Committee with "submit[ting] an interim report to the Council by May 2008."

To gather data for its work and to ensure that its findings and recommendations would reflect the best thinking of the legal education community, the Committee issued a general call in October 2007 for information, input, and suggestions. The "Request for Public Comment," which was posted on a wide number of relevant listserves and sent to relevant organizations, quoted the above charge of the Committee and then stated:

> The Committee would welcome any information and ideas you or your organization would like to submit to us on any subjects that fall within the charge to the Committee. The Committee is particularly interested in receiving concrete suggestions for developing outcome measures (which, as the charge envisions, should be measures "other than bar passage and job placement") that address appropriate areas and that are amenable to assessment that is feasible, reliable, and verifiable. If your organization has developed outcome measures, the Committee would appreciate your sharing those measures with us and informing us of your experience in using the measures (including, if possible, specific

examples of difficulties and successes in applying the measures).

The Request for Public Comment set a deadline of February 1, 2008, for submissions so that the Committee would have the information in time to use it in preparing the interim report that Chair McGregor charged the Committee with submitting by May 2008.

Unfortunately, the Committee's request for comment, like the Accreditation Policy Task Force's previous effort to gather data on the subject of outcome measures, produced a relatively small number of submissions, and most of the submissions were quite brief. Those who submitted comments expressed strong support within the legal education community for moving in the direction of outcome measures and for reducing reliance on the existing outcome measures of bar passage and job placement. For example, the Society of American Law Teachers (SALT) stated that it "strongly endorse[s] 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." Society of American Law Teachers (SALT), Statement to the ABA Outcome Measures Committee 1 (Feb. 1, 2008) (footnotes omitted), *available at* http://www.saltlaw.org/files/uploads/2-1-08SALTOutcomeMeasures.pdf. Similarly, the Clinical Legal Education Association (CLEA) "commend[ed] the American Bar Association Section of Legal Education and Admissions to the Bar for creating the Special Committee on Outcome Measures," and stated that the organization "believe[s] this is a significant step towards creating outcome measures, other than bar passage, that will be relevant to the accreditation process, and that will allow schools to serve underrepresented law student populations and offer clinical and experiential courses that will best prepare students for law practice." Clinical Legal Education Association (CLEA), Comments to the Special Committee on Outcome Measures Regarding Alternative Output Measures for Law School Accreditation 1 (Feb. 1, 2008). But the Committee did not receive the detailed data, analyses, and recommendations that the Committee had hoped the Request for Public Comment would produce.

To prepare its report, the Committee conducted research on its own, examining the relevant literature in the legal education field as well as other fields of professional education and also more general literature. As the following report describes, there has been extensive attention to the subject of outcome measures in other fields of professional education for many years. This trend in higher education gained momentum approximately a decade ago when Robert Barr and John Tagg recognized that higher education was experiencing a "paradigm" shift from an "Instruction paradigm" (which focuses on the delivery of information typically in 50-minute lectures) to a "Learning paradigm" (which focuses on learning outcomes). *See* Robert B. Barr & John Tagg, *From Teaching to Learning*, 27 CHANGE 12-25 (Nov./Dec. 1995), also *available at* http://critical.tamucc.edu/~blalock/readings/tch2learn.htm. The legal education system has lagged behind these other fields but has begun to focus on the topic of outcome measures in very recent years. This recent change in direction has been fueled in large part by the publication, in 2007, of two influential reports on legal education: WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the

Advancement of Teaching 2007); and ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007).

In accordance with the Section Chair's charge, the Committee issued an interim report on May 12, 2008. That report was presented to the Chair and the entire Council, and it was the subject of Council discussion at a meeting of the Council on June 7, 2008. In the interim Report, the Committee had asked the Chair for clarification about whether certain issues were or were not within the original charge to the Committee. At the Council meeting on June 7, the Chair and the Council authorized the Committee to address the remaining issues. The Council's discussion produced a number of valuable comments on the draft by Council members, which were relayed to all members of the Committee. The Committee thereafter revised the Interim Report to produce this final Report, which addresses the issues that had been left open in the Interim Report and contains other changes prompted by Council members' comments.

This report will first discuss the insights that emerge from the recent reports on legal education and from the experiences of legal educators in other countries, the practicing bar, and accreditors in other fields. Thereafter, the report will draw on this information to propose steps that the Council of the ABA Section of Legal Education and Admissions to the Bar can take to revise its accreditation standards to reflect the best thinking in our field and other fields on the subject of outcome measures.

## I. *The Nature of Outcome Measures and the Implications for Legal Educators*

### A. *Insights Gleaned from Legal Education in the U.S.: The Carnegie Foundation and "Best Practices" Reports*

As noted in the Introduction to this report, two recently published reports – WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007), and ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007) – offer significant guidance on the subject of outcome measures. These reports address three issues that are critical to any discussion of the use of outcome measures in legal education: (1) What outcomes may be regarded as central to the legal education field as a whole? (2) How effective are the existing measures for assessing these outcomes? and (3) What other outcome measures might be developed? The following discussion summarizes the information on these topics that emerge from the two reports. Because the reports focus primarily on the use of outcome measures by legal educators – rather than by accrediting agencies – the following summary will focus on legal educators. Later sections of this report will focus on accrediting agencies and the use of outcome measures in the accreditation process. The abbreviation "CF" will be used to refer to the Carnegie Foundation report; the abbreviation "BP will be used to refer to the "Best Practices" book.

(1) *What outcomes may be regarded as central to the legal education field as a whole?*

CF explains that the common goal of all professional education – whether it be found in medical school, engineering school, the seminary, nursing school, or law school – is to "initiate novice practitioners to think, to perform and to conduct themselves (that is, to act morally and ethically) like professionals." CF at 22; *see also* BP at 19. To prepare students to be competent professionals, CF ascribes three apprenticeships that should make up their education. The first apprenticeship is the cognitive or intellectual, which provides students with the academic knowledge base. The second apprenticeship is the forms of expert practice shared by practitioners. The third is the apprenticeship of identity and purposes, which introduces the student to the values required of the professional community. CF at 27-28. In shorthand, CF describes these three apprenticeships as "knowledge, skills, and attitude." *Id*. at 22.

CF identifies six tasks that are involved in preparing professionals:

- developing in students *an academic knowledge base*;
- providing students with *the capacity to engage in complex practice*;
- enabling students to *learn to make judgments*;
- teaching students how to *learn from experience*;
- introducing students to the disciplines of *creating and participating in the professional community*; and
- forming students able and willing to join an *enterprise of public service*.

*Id*. These tasks, taken as a whole, are described as the three "apprenticeships of legal education."

Using descriptions taken from various projects and scholarly writings, BP also explores the "essential characteristics of the professional lawyer." BP at 51-53. Professor Rogelio Lasso's description, cited by BP, shares common attributes with them all. Good lawyers, he writes, should possess four attributes:

- *knowledge* (which includes general and technical knowledge, and cognitive and analytical skills);
- *skills* (including those used to obtain and process information, and those used to transform "existing situations into those that are preferred");
- *perspective* (ability to consider the historical, political, ethical and moral aspects of a problem); and
- *personal attributes* (qualities of character that pertain to how lawyers go about their professional activities and the ways they relate to others).

BP at 52. If the last two attributes are combined, Lasso's list corresponds well with the three apprenticeships identified by CF.

Finally, what emerges from the two reports is a theme of the necessity to infuse the "practical" into essential lawyering attributes, such as practical wisdom, practical reasoning, and practical judgment. *See generally* BP, Chapter Two.

(2) *How effective are existing measures for assessing the outcomes that are generally accepted by the legal education field?*

If knowledge, professional skills, and professionalism serve as cornerstones of professional education, BP and CF concur in their overarching criticism that legal education focuses disproportionately on developing the academic knowledge base (what BP calls "content") to the exclusion of developing necessary practical skills and professionalism. CF describes this as a seriously unbalanced learning experience for the student. CF at 145. As CF notes, universities are most comfortable in developing the skills required in the first apprenticeship because so much of their investment lies in research and analytical reasoning.

Within this general critique are three specific claims for improvement: 1) law schools should incorporate ongoing assessments and other formative techniques to encourage and evaluate the student's development of the other tasks outlined above; 2) law schools should shift in assessment from the conceptual knowledge accumulated by students (the "cognitive apprenticeship") to the assessment of practical competencies (professional skills) and the development of professional identity; and 3) law schools need to engage in a cohesive and unified set of teaching goals, rather than rely on *ad hoc* goal setting by individual faculty members. *See* CF at 62-63, 231. *See also* BP at 206, and *see generally id*., Chapter Three.

(a) *Reliance on Developing and Assessing the Academic Knowledge Base to the Exclusion of Assessing Professional Skills and Professionalism*

Law schools assess what they value. Focusing predominantly on the first apprenticeship – the cognitive or intellectual – exacerbates the gap between what practitioners and the academy value. It deprives the students of forming the skills necessary to take abstract principles which were learned in law school and apply them in real-life or simulated contexts. CF argues that this one-sided look at the profession "undercuts the principal aims of the ethical-social apprenticeship." CF at 145. By teaching more subjects *without sufficient progression and integration of the three types of competencies*, these sources assert that law schools are not preparing students well for the profession. As CF states:

> The interdependence of knowledge, skills and sense of purpose in professional practical reasoning is difficult to teach or assess *through the usual academic techniques*, which focus on procedures and techniques out of context. Practical judgment depends on complex traditions of living, which can only come alive through apprenticeship experiences with inherited judgment and skill.

*Id*. at 173 (emphasis added).

On the role of an interdependent education, BP notes the importance of developing in students the skill of problem solving, but cautions that such development may require an integration of the three types of competencies:

> Most lawyers spend most of their time trying to solve problems. Those problems consist of raw facts (not yet distilled into the short, coherent story laid out in the appellate court opinion) – facts presented by clients, along with some questions like "Legally speaking, how do I get myself out of this mess?" or "How do I plan my affairs to avoid getting into a mess like this in the first place?"
>
> If our job is to teach students how to "think like lawyers," then we should train them to solve such a problem . . . . But – you reply – law schools cannot spend their scarce academic resources teaching students every single skill they will need in law practice – how to bill clients, how to manage a law office, how to find the courthouse. True, but problem-solving is not like any of those activities. Problem-solving is the single intellectual skill on which all law practice is based.

BP at 63 (quoting Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241, 245 (1992)).

In response to the argument that students must be exposed to a significant academic knowledge basis in order to be competent, CF argues that professional schools cannot directly teach students to be competent in any and all situations; rather,

> [t]he essential goal . . . must be to form practitioners who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise. They must become "metacognitive" about their own learning, to use the psychologists' term. This is why effective means of formative assessment are so crucial for training professionals.

*Id*.

(b) *Reliance on Comprehensive Examinations to the Exclusion of Other Formative Assessments*

Both reports argue that legal education relies too heavily on summative examinations (final examinations, bar examinations) to assess students. While summative examinations offer some value in assessing the competency of a student's academic knowledge base, they often do little to develop or assess professional skills and professionalism. In addition, some argue that

heavy reliance on this type of examination impedes learning, community building and moral development, leaving students without a correlation between the quality and quantity of their studying and their performance. CF at 163-66; BP at 237. The current practice of grading, it is argued, is less designed to assess students then it is to weed out the weakest ones. *See* BP at 236-39. The reports argue that testing should include midterms, practice examinations, feedback on multiple examinations, and the use of other formative assessments. *See* CF at 162-63. *See also* BP at 206, and *see generally id*., Chapter Three.

But even in the context of experiential courses, the reports express criticism that law schools are not performing well. In contrast to other disciplines, experiential courses in legal education are fewer, are generally weighted less than other courses in the curriculum and many are graded pass/fail.

(c) *Failure to Develop a Unified Set of Institutional Goals*

Both CF and BP criticize law schools for not approaching teaching goals at a cohesive, institutional level. Instead, *ad hoc* demonstrations seem to be the order of the day, with individual faculty members defining their own learning outcomes and modes of assessment. And perhaps, as noted in CF, a single teacher in the clinical setting often evaluates student performance under standards of competency not discussed with, or shared by, the institution or the legal academy. *See* CF at 162-63, and Chapter Eight. *See also* BP at 206, and Chapter Three.

BP argues that law schools should demand that faculty be able to articulate clearly what each course demands, not only in terms of the academic knowledge base acquired by the student, but also in terms of what students should understand and be able to do. Further, BP suggests that each syllabus offer these stated outcomes to provide an institutional context and message to students. *See* BP at 55-58.

(3) *What other outcome measures might be developed?*

BP lists seven principles for developing outcome assessments consistent with the model of professional education that is set forth in the report:

- faculty should formulate outcomes in *collaboration with the bench and bar*;
- outcomes should *serve the law school's mission*;
- outcomes should be adopted only after *consensus* is reached;
- outcomes should be *measurable*;
- outcomes should be *clear, straightforward*;
- faculty should choose a *reasonable amount* of outcomes in terms of resources available
- outcomes should be *reasonable in light of the abilities* of the students and faculty.

BP at 49-50.

In addition to the principles described above, BP offers a series of specific responsibilities (some of which overlap with the goals identified above) which law schools should assume in developing outcomes assessments. The law school should:

- *Be clear* about assessment goals;
- *Assess* whether students learn what is taught;
- *Conduct criteria-referenced assessments* which judge by one standard of performance rather than grading on a curve;
- Use assessments to *inform students of their professional development*;
- Be sure the assessment is *feasible*;
- Use *multiple measures* of assessment;
- *Distinguish between summative* (e.g., a final exam at end of course) *and formative assessments* (e.g., a mid-term where feedback is given so student can improve in course);
- *Conduct formative assessments* throughout the course or term;
- When possible, *conduct multiple summative ones* throughout the course or term;
- Ensure *summative assessments are also formative* (e.g., give feedback to students after final exams); and
- Require students to *compile educational portfolios*.

BP at 239-63.

BP explains that evidence of educational effectiveness may be direct or indirect. Direct evidence of student learning outcomes may include: faculty testing, capstone performances and courses; professional and clinical performances; and third-party testing, including licensing examinations. *See* BP at 267. Indirect evidence of effectiveness include: work samples; graduate surveys; employer ratings for performance; and self-reported growth by graduates. It is also urged that schools use the resulting data to determine whether they are delivering an effective educational program and continually incorporate that learning to ensure an effective program of legal education.

B. *Insights Gleaned from the Experiences of Legal Educators in Other Countries*

As the "Best Practices" report recounts, legal educators in other countries make far greater use of outcome measures than do U.S. legal educators. BP presents a detailed description of "outcomes-focused systems of legal education" used in "Scotland, Northern Ireland, and England and Wales" in both law schools and "the graduate programs operated by professional organizations." BP at 45.

As BP explains, "law teaching in the United Kingdom previously focused heavily on

content" but has now shifted to focusing on "what a student should be able to do as a result of his or her studies." *Id*. at 46. In 2001, the Law Society of England and Wales "began the process of developing a new outcomes-focused training framework for solicitors," which has led to the development of "a statement of the core values, professional skills, and legal understanding that solicitors should have on their first day in practice." *Id*. The Law Society is currently in the process of "developing new forms of examination and assessment of those values, skills, and knowledge," which are "intended 'to ensure that qualification to practice law is based on an individual's knowledge and understanding of law and legal practice and their ability to deliver legal services to a high quality, rather than on their ability to complete a particular course or courses of study.'" *Id*. (quoting The Law Society, Qualifying as a Solicitor – A Framework for the Future: A Consultation Paper 6 (March 2005)).

In England and Wales, aspiring lawyers must first obtain an undergraduate law degree. *Id*. "The Quality Assurance Agency [has] established benchmarks that set minimal standards for undergraduate law degrees. . . . Each law school is expected to establish its own standards at a modal level, that is, to describe what a typical student should be able to do rather than what the weakest students can do. Thus, the QAA benchmarks are not standards to measure up to, but standards below which students cannot fall." *Id*. at 46. After obtaining an undergraduate law degree, those who seek to become solicitors must take a year-long Legal Practice Course, and then, over the course of the ensuing two years, work under the supervision of a solicitor and enroll in a Professional Skills Course for at least 72 hours of instruction. *Id*. As BP describes, "[t]hese programs are very outcomes-focused," with a goal of "teach[ing] students what they need to know, understand, and be able to do and the attributes they should have on their first day as practicing lawyers." *Id*.

As reported in an article co-authored by two Scottish legal educators and two U.S. legal educators, "Scotland has designed a system of preparation for legal practice that is much more comprehensive than found in the United States, especially in its aspirations to integrate academic education and professional training." Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1, 3 (2006). BP reports that the Scottish system of legal education, which "is already outcomes-focused," is currently considering reforms that would result in an even greater focus on "the benchmark of competence in legal practice" as the "core educational concept." BP at 47.

In Australia, the Australian Law Reform Commission (ALRC) drew on the "MacCrate Report" of the ABA Section of Legal Education and Admissions to the Bar in developing an outcomes-focused model for legal education. As Professor Sally Kift of Australia's Queensland University of Technology explains:

> The ALRC reiterated the 1971 UK Ormrod Committee's call for a "desirable mix of university and apprenticeship elements in legal education" ... and the U.S. MacCrate Report's emphasis on providing law graduates with the high level

> professional skills and values needed to operate in dynamic work environments, ... and urged an Australian curriculum re-orientation away *from* the traditional content focus *towards* skills and values acquisition and training – towards "what lawyers need to be able to do [rather than] anchored around outmoded notions of what lawyers need to know."

Sally Kift, *Integrating the Knowing, the Doing and the Practise: An Early Australian Case Study of Curriculum Renewal* (Paper Prepared for the International Conference on the Future of Legal Education, Georgia State University College of Law, Feb. 20-23, 2008), *available at* http://law.gsu.edu/FutureOfLegalEducationConference/Papers/Kift-SS.pdf. *See also* BP at 47 (discussing the use of outcome measures in Australian legal education).

In Japan, where the legal education system has been reconceptualized and restructured in the last few years as a result of a report in 2001 by the government-created Justice System Reform Council, the newly created "'professional' law schools . . . [are designed to] 'bridge . . . theoretical education and practical education' and provide law students with the opportunity to acquire the specialized legal knowledge, lawyering skills, and professional values 'necessary for solving actual legal problems.'" Peter A. Joy, Shigeo Miyagawa, Takao Suami & Charles D. Weisselberg, *Building Clinical Legal Education Programs in a Country Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study*, 13 CLINICAL L. REV. 417, 418-19 (2006) (footnotes omitted). The Japan Law Foundation, one of the country's two accrediting agencies for law schools, has set forth the following list of "two attitudes and seven skills required for being a competent lawyer":

> Skill 1 – problem solving; Skill 2 – legal knowledge (basic legal knowledge, specialized legal knowledge, and legal research); Skill 3 – fact investigation and finding; Skill 4 – legal analysis and reasoning; Skill 5 – critical and creative consideration; Skill 6 – legal discussion, expression and persuasion; Skill 7 – communication."
>
> Attitude 1 – sense of mission; Attitude 2 – legal ethics.

Eri Osaka, *Debate Over the Concept of the Competent Lawyer in Japan: "What Skills and Attitudes Does Japanese Society Expect from Lawyers?"*, 35 INT'L J. OF SOCIOLOGY OF LAW 1, 9-10 (2007). The influence of the MacCrate Report, which is well-known to Japanese legal educators (*see, e.g.*, Eri Osaka, *The History of Legal Education in the United States: Implications of the MacCrate Report*, 40 COMP. L. REV. 365 (2007)) is evident in the list of skills, which adopts several of the formulations of lawyering skills in the MacCrate Report's "Statement of Fundamental Lawyering Skills and Professional Values."

C. *Insights Gleaned from Legal Practice*

As the Society of American Law Teachers (SALT) pointed out in a submission to the

Committee, much can be learned from already-existing data on "the wide range of competencies important to lawyers." Society of American Law Teachers (SALT), Statement to the ABA Outcome Measures Committee 2 (Feb. 1, 2008) (footnotes omitted), *available at* http://www.saltlaw.org/files/uploads/2-1-08SALTOutcomeMeasures.pdf.

A recent survey of the Arizona bench and bar, conducted by the Phoenix School of Law in 2005, included a focus group and CLE panel of a broad range of practitioners (government lawyers, in-house counsel, private practice (solo practice and small, medium and large law firms) and members of the bench). The recurring themes that emerged from those interactions were as follows:

- The need for balance in legal education. Traditional legal education does a good job at teaching analysis, theory, and research skills, all of which are important in the practice of law and should continue to be a significant part of law school. However, traditional legal education does not give enough emphasis to other practical skills such as working with clients, managing a file, the business of law practice, negotiations, etc.
- The value of clinics, externships, clerking and simulation courses. These opportunities provide a context for the academic side of legal education and hands-on experience that is critical to the education of a practice-ready graduate.
- The importance of clear, concise writing. Written communication is integral to law practice. Law school should include more instruction in writing in a wide variety of contexts, including memos, briefs, motions, discovery, client letters, settlement agreements, wills, etc.
- The decline of professionalism. Civility, reputation, and respect are key ingredients to success in law practice. Lawyers have a responsibility to clients, the legal profession, and the public. As one lawyer put it, many people graduate from law school with the power that a law degree conveys but without the wisdom necessary to use that degree to help clients, the public, and the profession.

*Phoenix School of Law, Arizona Bench and Bar Survey and Focus Group Results, Professors Gerry Hess and Stephen Gerst – July, 2005*, at 6.

Relevant data also may be available from many of the employers of law school graduates in the private and public sectors. In its submission, SALT reported that:

> 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.

SALT statement, *supra* at 2.

In that regard, General Motors has developed an assessment instrument to evaluate the performance of its lawyers, using the Lominger Competencies, with respect to a number of areas of:

- *knowledge* (such as, for example, possessing the appropriate legal knowledge, knowing how businesses work and knowledge about current and possible future policies, practices, trends, technology and information affecting the business and the organization; knowing the competition; and awareness of how strategies and tactics work in the marketplace);

- *skills* (including, for example, possessing the necessary legal skills, decision-making, organizational agility, priority setting, conflict management, creativity, managerial courage, managing diversity, building effective teams, composure, and comporting oneself in a manner that conveys integrity and inspires trust); and

- *ethics and values* (defined in the assessment instrument as "adher[ing] to an appropriate (for the setting) and effective set of core values and beliefs during good and bad times; act[ing] in line with those values; reward[ing] the right values and disapprov[ing] of others; [and] practic[ing] what s/he preaches" and "[being] an individual who is widely trusted and seen as a direct truthful person who can maintain confidences and tell the unvarnished truth in an appropriate and helpful manner").

The three general categories of knowledge, skills and ethics/values, within which these competencies can be grouped, correlate well with CF's "apprenticeships of legal education" and BP's "essential characteristics of a successful lawyer."

Another relevant source of data is the existing literature on the skills needed for effective practice. As SALT reported in its submission to the Committee:

> 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.

Society of American Law Teachers (SALT), Statement to the ABA Outcome Measures Committee 2 (Feb. 1, 2008) (footnotes omitted), *available at* http://www.saltlaw.org/files/uploads/2-1-08SALTOutcomeMeasures.pdf. For examples of other studies that bear on the skills needed for effective practice, see Bryant G. Garth, Donald D. Landon & Joanne Martin, *Learning Lawyering: Where Do Lawyers Acquire Practice Skills?*, *in* ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) 379-84 (1992) [hereafter cited as "MacCrate Report"]; Joanne Martin & Bryant G. Garth, *Clinical Education as a Bridge Between Law School and Practice: Mitigating the Misery*, 1 CLINICAL L. REV. 443 (1994).

The MacCrate Report's detailed "Statement of Fundamental Lawyering Skills and Professional Values" also sheds light on the lawyering skills and professional values that law school graduates need in practice. *See* MacCrate Report, *supra* at 123-221. As the MacCrate Report explains:

> The focus of the Statement is on the skills and values with which a well-trained generalist should be familiar before assuming ultimate responsibility for a client. Different lawyers will emphasize different skills, and practitioners will often be concerned with matters outside the scope of the Statement, such as attracting and retaining clients. The Statement is concerned with what it takes to practice law competently and professionally.

*Id*. at 125.

## II. *Using Outcome Measures in Accreditation Standards*

### A. *Treatment of Outcome Measures in the Current ABA Accreditation Standards and Interpretations*

Of the existing ABA Standards, the one that is most consciously framed in terms of "outcome measures" is ABA Standard 301(a), which states:

> A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.

Prior to the issuance of the MacCrate Report in 1992, Standard 301(a) was focused entirely and exclusively on preparation of students "for admission to the bar." The language at that time provided: "A law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar." As the MacCrate Report explained, the original Standard 301(a)'s

> focus upon the qualification of graduates to become lawyers [was] hardly a set requirement, but rather a generalization that lays down the philosophical basis and educational emphasis for the Standards that follow. The standard was adopted shortly after the Council of the ABA Section of Legal Education and Admissions to the Bar and the Board of Managers of the National Conference of Bar Examiners in July 1971 had expressly acknowledged that bar admissions authorities "should determine that the content of the applicant's education is such that, upon admission he [or she] will be able to adequately serve the public," underscoring the need for a suitable level of skills and values education prior to admission.

MacCrate Report, *supra* at 261-62. The MacCrate Report recommended that Standard 301(a) be amended to add the clause that now appears at the end of the Standard – "and effective and responsible participation in the legal profession" – so as to clarify the originally intended scope and breadth of the rule. *See id*. In August 1993 the ABA House of Delegates approved the addition of this language to the rule. *See* Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89 (1994).

Other Standards address subjects that are related to outcomes, but these other Standards are not framed in terms of the outcomes that a law school should seek to produce or mechanisms for assessing those outcomes. These other Standards include: 202 ("Self Study"); 203 ("Strategic Planning and Assessment"); 302 ("Curriculum"); 303 ("Academic Standards and Achievements"); and 501 ("Admissions").

The most overt and detailed formulation of outcome measures appears not in the Standards and Interpretations themselves but in the Preamble to the ABA *Standards and Rules of Procedure for Approval of Law Schools.* The Preamble states:

> The Standards for Approval of Law Schools of the American Bar Association are founded primarily on the fact that law schools are the gateway to the legal profession. They are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education. The graduates of approved law schools can become members of the bar in all United States jurisdictions, representing all members of the public in important interests. Therefore, an approved law school must provide an opportunity for its students to study in a diverse educational environment, and in order to protect the interests of the public, law students, and the profession, it must provide an educational program that ensures that its graduates:
>
> (1) understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
>
> (2) receive basic education through a curriculum that develops:
>
> (i) understanding of the theory, philosophy, role, and ramifications of the law and its institutions;
>
> (ii) skills of legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other fundamental skills necessary to participate effectively in the legal profession;
>
> (iii) understanding of the basic principles of public and private law; and

(3) understand the law as a public profession calling for performance of pro bono legal services.

This Preamble was drafted by the "Wahl Commission" (the Commission to Review the Substance and Process of the American Bar Association's Accreditation of American Law Schools) in 1995, and subsequently adopted by the Council and the ABA House of Delegates, and thereafter stylistically revised in various respects in the ensuing years. The Wahl Commission developed this language, and recommended its adoption as a Preamble, in order to "provide a framework for future developments of the Standards as well as their Interpretations" and in order to "signify the ABA's commitment to complying with the regulations governing all accrediting agencies, which were set by Department of Education regulations." ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE COMMISSION TO REVIEW THE SUBSTANCE AND PROCESS OF THE AMERICAN BAR ASSOCIATION'S ACCREDITATION OF AMERICAN LAW SCHOOLS 19 (1995) [hereafter cited as "Wahl Commission Report"].

In its tripartite focus (on academic knowledge, lawyering skills, and professional values), the Preamble foreshadows the Carnegie Foundation's conception of the three apprenticeships that are at the core of professional education in all fields: the cognitive or intellectual apprenticeship; the apprenticeship in forms of expert practice shared by practitioners; and the apprenticeship of identity and purposes.

This same tripartite focus is apparent in ABA Standard 302, which is designed to implement the vision set forth in the Preamble and Standard 301(a)'s required objectives of a law school by identifying essential elements of a law school curriculum. Prior to the issuance of the MacCrate Report, Standard 302 did not address all three areas of learning. As the MacCrate Report explained in its discussion of the then-existing standard:

> Standard 302, dating from 1981, now requires instruction for *all* students of three kinds: in subjects in the core curriculum; in the legal profession (including the ABA Model Rules of Professional Conduct); and "at least one rigorous writing experience," but the Standard excludes professional skills instruction as a requirement for *all* students and only prescribes that schools "offer instruction in professional skills."

MacCrate Report, *supra* at 263. The MacCrate Report recommended that "the Section of Legal Education and Admissions to the Bar . . . revisit generally the treatment of skills and values instruction in the accreditation process in recognition of the skills and values identified in the [MacCrate Report's] Statement of Fundamental Lawyering Skills and Professional Values as those with which a lawyer should be familiar before assuming ultimate responsibility for a client." *Id*. at 330. As a result, the Wahl Commission engaged in a careful study of the subject and ultimately recommended a number of revisions of Standard 302 and its Interpretations "to give due recognition to the importance of professional skills instruction and to give effect to the

House of Delegates' recent action in amending Standard 301(a) to require law schools to prepare law students to 'to participate effectively in the legal profession.'" Wahl Commission Report, *supra* at 21. The revisions proposed by the Wahl Commission were subsequently adopted and, as revised in the ensuing years by the Section's Standards Review Committee and Council, appear in the current version of Standard 302.

Although the Preamble speaks in terms of outcomes – stating that the accreditation standards are designed to ensure that law schools fulfill their responsibility to produce graduates who have mastered the essential lessons in the areas of academic knowledge, lawyering skills, and professional values – Standard 302 shifts the focus from outputs to inputs. Standard 302(a) provides that "[a] law school shall require that each student receive substantial instruction" in a roster of five subjects that fall within the general categories of academic knowledge (*see* Standard 302(a)(1) ("the substantive law generally regarded as necessary to effective and responsible participation in the legal profession")), lawyering skills (*see* Standards 302(a)(2) ("legal analysis and reasoning, legal research, problem solving, and oral communication"); 302(a)(3) ("writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year"); 302(a)(4) ("other professional skills generally regarded as necessary for effective and responsible participation in the legal profession")); and professional values (*see* Standard 302(a)(5) ("the history, goals, structure, values, rules and responsibilities of the legal profession and its members")). Standard 302(b) provides that "[a] law school shall offer substantial opportunities" for certain forms of instruction: "live-client or other real-life practice experiences" (Standard 302(b)(1)); "student participation in pro bono activities" (Standard 302(b)(2)); and "small group work through seminars, directed research, small classes, or collaborative work" (Standard 302(b)(3)).

An outcome-oriented approach to accreditation would call for reframing Standard 302 so that, instead of focusing on the areas and types of instruction that the law school should provide, the Standard would instead focus on the types of lessons the students should have learned (or, in the language of the Carnegie Foundation Report, the apprenticeships the students should have had) by the time of graduation from law school. Thus, as just one example, Standard 302(b)(3)'s current requirement that "[a] law school shall offer substantial opportunities for . . . collaborative work" might be refashioned in terms of the collaborative/teamwork capacities that students should have mastered by the time of graduation. An outcome-oriented approach to accreditation might also focus on the criteria by which a law school would measure the students' learning to ensure that the requisite learning has taken place, and focus as well on the means by which an accrediting agency can ensure that the law school is fulfilling its responsibility to produce and measure the requisite outcomes.

With retooling of this sort, Standard 302 can begin to function as an outcome measure that implements the outcome-oriented vision of the Preamble. But even with this change, the Preamble, Standard 301(a), and Standard 302, would do little more than affirm the responsibility of a law school to prepare students who have been adequately educated in the three areas of

professional learning. The existing Standards do not elaborate upon and delineate the role of the law schools in producing these outcomes or the means by which to assess whether a law school is fulfilling its responsibilities in this respect. To develop an understanding of what more a set of accreditation standards can and appropriately should do, it is useful to consult accreditation standards in other fields of professional education and thereby to learn from the experiences of accreditors in these other fields.

### B. *The Use of Outcome Measures in Other Accreditation Mechanisms*

#### (1) *Accreditation Standards in Other Fields of Professional Education*

In her charge, Section Chair McGregor specifically encouraged the Committee to "consider approaches taken by other accrediting agencies [and] methods to measure whether a program is accomplishing its stated mission and goals." In following the Chair's direction, the committee has examined the accreditation schemes of ten other professions, focusing particularly on the means adopted by those disciplines to assess whether programs were achieving their declared missions and their educational and professional goals. Each of the professions selected for review requires graduates of accredited programs to successfully complete a licensing examination (national or by state) or professional test to either practice the discipline or to be recognized as a certified professional. The professions chosen for comparison were allopathic and osteopathic medicine, dentistry, veterinary medicine, pharmacy, psychology, teaching, engineering, accounting and architecture. Of the ten sets of accreditation standards considered by the committee, eight were promulgated by bodies, like the Section of Legal Education and Admissions to the Bar, that are approved by the U.S. Department of Education (ED); the accrediting agencies for two of the disciplines (engineering and accounting) are recognized by CHEA; and three of the accrediting bodies (pharmacy, psychology and veterinary medicine) are endorsed by ED and CHEA.

*Overview*

All ten of the reviewed professional accrediting bodies apply standards based on outcome measures. Most of them moved from input-based systems in the last ten years, although one – dentistry – promulgated its first set of outcome measures in 1988. After adopting initial output-based accreditation standards, almost all of the accreditors modified or amended them based on their experience applying the criteria to schools. Each discipline's current outcome-centered norms were approved by the ED or CHEA in the last four years.

Institutional mission stands out as an important element in the standards of the ten professional accrediting agencies. With the exception of engineering and education, mission is mentioned far more often in the standards of the other disciplines than it is in the ABA Standards. Noteworthy, in the standards of every profession the outcome criteria, including the performance-based assessment measures, are often linked directly to the school's mission.

The approaches of the other professions vary when it comes to assessing whether a school is "success[ful] with respect to student achievement in relation to the institution's mission." The professional accreditation schemes can be divided into three broad models. Several disciplines identify specific criteria and measurement devices which every school within its accreditation jurisdiction must apply but grant to schools some freedom to devise and justify other assessment approaches. Other accrediting agencies mandate some but suggest several other criteria and allow the schools to select, add or delete measurement devices based on their individual missions. A few of them delegate to the schools much responsibility for developing and supporting assessment measures that fit the school's specific mission so long as they are not inconsistent with the agencies' criteria.

The Committee's review of the standards of the other professions included an effort to identify and categorize the prescriptive and descriptive outcome measures adopted by these accrediting bodies. This exercise isolated twenty-eight assessment criteria that were used by two or more of the ten professions. (See Appendix A, Assessment Factors for the criteria used by other disciplines.) Although the Committee tried to describe the assessment categories in simple but accurate terms, it makes no claim that every outcome factor used by the various accrediting bodies was captured in its review. The six most prevalent outcome measures and the number of professional accrediting bodies that include them in their standards are

- licensure of graduates (7);
- evaluation of the clinical, problem solving and communication skills of students (7);
- criteria to insure that students possess the competencies expected by the profession and the public (6);
- evaluation of the skills, knowledge, behaviors and/or attitudes of students (6);
- student portfolios as evidence of student performance (5);
- collection of evidence-based data of learning objectives and/or competencies (5).

Overall, the ten professions reviewed by the Committee reflect two trends in professional accreditation. First, the accrediting body measures a school's performance against its own stated mission. According to a recent report by a National Architectural Accrediting Board committee, this "shifts emphasis away from a school's compliance with a universal set of criteria, and gives a school more leeway to define its own mission [and] the accreditation process then measures whether a school is delivering what it has promised to deliver." Second, accreditation standards are performance-based and seek evidence of student learning. According to the same report, the "emphasis [is] on student performance outcomes [that] measur[e] only what students have learned – not what is taught, how it is taught, or what resources the school possesses." *See*

http://www.naab.org/accreditation/2008_accreditation.aspx, click on Individual Task Group Report, Trends in Accreditation.

The following sections provide greater detail on these trends by examining how the accreditation standards of other professions address the role of institutional mission and apply various outcome measures.

*Mission*

Department of Education (ED) regulation § 602.16 requires that the standards of an approved accreditation agency be "sufficiently rigorous to ensure that … [it] is a reliable authority regarding the quality of the education … provided by the programs … it accredits." The criterion first mentioned in § 602.16 that an accrediting body must measure when evaluating an academic program is the school's "success with respect to student achievement in relation to the *institution's mission*." (Emphasis added.) The Committee observed a significant difference between the role of *mission* in the accreditation standards of the other ten professional disciplines and the treatment of *institutional mission* in the ABA Standards.

The Committee concluded, following its review of the standards of the other ten professions and conversations with accreditation officials from several of them, that institutional mission is substantively more important and tied more tightly to the accreditation process by them than it is in legal education. Mission certainly is mentioned more often in the standards of most other disciplines than it is in the ABA Standards. With the exception of engineering and education, "mission" (and its synonyms) appears at least a dozen times in the standards of the other professional fields. More important, there often are explicit links among mission, outcomes and assessment measures in the accreditation requirements of other professions. The connections these disciplines have drawn between *mission* and *outcome assessment* may best be understood by considering several examples:

- The American Osteopathic Association's Commission on Osteopathic College Accreditation (COCA) requires that each college of medicine (COM) develop "a clearly defined mission statement, including goals and objectives appropriate to osteopathic medical education that addresses *teaching, research, service*, including osteopathic clinical service, *and student achievement*." Beyond defining how mission affects the college's critical professional education goals, "the COM must *connect its learning outcomes assessment to mission plans and objectives* in order to continuously improve the educational quality of its osteopathic medical education program." (Emphasis added.)

- Similar to COCA, the Commission on Dental Accreditation of the American Dental Association, in Standard 1.1, ties mission to key elements of the professional education program: "The dental school *must* develop a clearly stated purpose/mission statement appropriate to dental education, addressing teaching, patient care, research and service."

(Emphasis in original) Thereafter, the ADA ties *mission* to specific goals which, in turn, are linked to outcomes.

- The Accreditation Council for Pharmacy Education is even more explicit about the association between outcome measures and mission: "The ... school must have an evaluation plan, based on *assessment measures*, that allows for a determination of the degree to which the *mission and goals* have been achieved." More specifically, the school must "establish and implement an evaluation plan that *assesses achievement of the mission and goals*. The evaluation must measure the extent to which the *desired outcomes* of the professional degree program (including *assessments of student learning* and *evaluation of the effectiveness of the curriculum*) are being achieved [as well as how] the *desired outcomes of research and other scholarly activities, service, and pharmacy practice programs* are being *achieved* [and] *measured*." (Emphasis added.)

- The American Psychological Association (APA) makes it clear that a school should be granted a significant degree of leeway in measuring how well it achieves its self-selected mission. "The accreditation process involves judging the degree to which a program has achieved the goals and objectives of its stated training model. That is, an accreditation body should not explicitly prescribe a program's educational goals or the processes by which they should be reached; rather, it should judge the degree to which a program achieves outcomes and goals that are consistent with its stated training model and with the guiding principles contained in this document." According to the APA's Commission on Accreditation (CoA), "a program or institution has the right to be evaluated in the light of its own education and training philosophy, model, goals, objectives, and methods, insofar as they are consistent with those generally accepted as appropriate to the profession and the CoA…. The accreditation guidelines and principles are specifically intended to allow a program broad latitude in defining its philosophy or model of training and to determine its training principles, goals, objectives, desired outcomes, (i.e., its "mission"), and methods to be consistent with these. Stated differently, the CoA recognizes that there is no one 'correct' philosophy, model, or method of doctoral training for professional psychology practice; rather there are multiple valid ones…."

- The Association to Advance Collegiate Schools of Business (AACSB) recognizes a breadth of missions for schools of accounting and the proper place of accreditation rules in the professional education process. "Accreditation standards provide guidance and a framework within which accounting programs will be reviewed for overall high quality and for effectiveness in the achievement of *self-selected missions*. The accreditation standards allow flexibility and autonomy and thereby encourage the development of diverse accounting programs *serving a broad range of missions*." (Emphasis added.) A school's mission, however, may cause it to deviate from the AACSB standards. That may not lead to the loss of accreditation, however, because the AACSB Standards build in flexibility based on mission: "the *aspirations of individual programs* may create circumstances unforeseen in these more general [Standard] statements. One of the Peer

Review Team's responsibilities is to work with the Accounting Accreditation Committee to judge the *reasonableness of any deviations* from the standards." (Emphasis added.) AACSB provides an example of mission by connecting it with diversity. The AACSB Standards state that while "the institution must demonstrate diversity in its accounting programs," diversity can be the central theme of a school's mission. "One purpose of educational institutions may be to *offer opportunity to traditionally under-served groups*." (Emphasis added.)

- Finally, in the Preface of its standards, the National Architectural Accrediting Board, ties the academic program to mission when it explains that "to gain and retain accreditation of its degree program, *each institution* must … develop a program specific to *its mission*…." To accommodate schools with different missions and means, the Preface also expresses the NAAB's "intention to create an integrated system of architectural education that would allow *schools with varying resources and circumstances to develop according to their particular needs*." (Emphasis added.)

Although a law school's *mission* is mentioned a half-dozen times in the current ABA Standards, it does not emerge as a prominent factor in the accreditation process. Interpretation 104-1, for example, urges schools, "consistent with [their] aspirations, mission and resources … [to] continuously seek to exceed [the] minimum requirements [of the Standards] in order to improve the quality of legal education and to promote high standards of professional competence, responsibility and conduct." Rarely if ever is a law school held accountable for failing to "continuously seek to exceed [the] minimum requirements" of the Standards. Interpretation 402-2(3) (student/faculty ratios), Interpretation 605-1 (library services and resources), and Standard 401 (qualifications of the faculty) purport to tie these criteria to the school's mission. While there are times when a law school is found wanting on student/faculty ratios and library resources and there are occasions when the qualifications and experience of the faculty are questioned, these concerns are not often linked to the "mission" of the school. Similarly, although there are instances when the adequacy of the "present and anticipated financial resources of a law school" are questioned (Standard 201), almost always the Standard's first conjunctive factor (the ability of the school to "sustain a sound program of legal education") is implicated, while the facially co-equal criterion (the school's capacity to "accomplish its mission") is seldom cited. On the other hand, a law school's mission is more likely to be referenced when the self study required by Standard 202 is reviewed during the accreditation process. The self study Standard is the most "mission driven" of the ABA requirements, calling upon each law school to articulate a mission statement, to "evaluate the strengths and weaknesses of [its] program in light of the school's mission," and to "identify the means to accomplish the law school's unrealized goals."

*Outcome Measures and Assessment*

Simply listing the outcome measures selected by the accrediting bodies of other disciplines and identifying the assessment procedures they follow may not provide information

sufficient to make critical judgments among the choices available to the Section. To foster a deeper understanding of the current state of professional accreditation, the Committee presents below the language used by several agencies responsible for adopting and applying standards for their professional fields. Because the bar examination as an outcome measure has been at the center of recent scrutiny by legal educators and members of the profession, approaches to professional licensure are included. In addition, specific examples of the accreditation outcome schemes of four other professions are provided.

*Licensure*

Three of the professional accrediting bodies (dentistry, engineering and architecture), two of which (dentistry and architecture) are approved by the ED, do not include licensing or certification examinations in their accreditation standards. Of the seven that do, veterinary medicine is the only one that has adopted a licensing criterion that parallels the approach taken in legal education's recently adopted Interpretation 301-6. Similar to 301-6, Standard 11.1.a of the American Veterinary Medical Association (AVMA) Council on Education's Accreditation Policies and Procedures requires that license test results be reported annually and a school achieve a quantitative passage rate.

> Student educational outcomes must include … [the] NAVLE … school score report data and passage rates over the past five years …. Each college must submit a copy of the annual North American Veterinary Licensing Examination (NAVLE) School Score Report with the AVMA-COE Interim Report each year. The Council on Education expects that 80% or more of each college's graduating senior students sitting for the NAVLE will have passed at the time of graduation. Colleges with recurring passing percentages less than 80% for two successive years will be placed on Limited Accreditation. Colleges with passing percentages less than 80% for four (4) successive years will, for cause, be placed on Terminal Accreditation.

The Committee observes several factors worth considering when comparing the role of licensure in veterinary and legal education accreditation. First, unlike the bar examination, NAVLE can be taken twice by veterinary students during their senior year of study (it is unclear if students can delay graduation until they have passed the exam). This factor is important because the veterinary medicine schools maintain contact with their students during the critical initial two examination periods in veterinary medicine, facilitating counseling and support of them during the preparation for and review of the exam. Moreover, veterinary medicine students have full access to federal student loan funds during these two iterations of the licensing exam. This opportunity is not available to law students following graduation, forcing many future lawyers to balance preparation for the bar exam and gainful employment to support themselves and, often, their families.

Second, while the NAVLE four-year, 80 percent "bright line" rule appears firm and rigid, there may be some flexibility in its application based on another Standard. The AVMA "Full Accreditation" Standard (33.3) explains that the Council on Education (COE) recognizes exceptions in meeting its Standards:

> A college which is *in compliance with all but one or two Standards* and *the Council is convinced that student outcomes are minimally affected* is assigned substantial compliance and more frequent reporting may be required…. A college assigned Full Accreditation with substantial compliance must correct noted deficiencies and be in full compliance with all Standards within a specified time not to exceed two years, depending on the deficiencies cited…. [I]f at the end of the two-year time period, the college can provide reasons that must be acceptable by the Council for its inability to comply with all the Standards, the *Council may by majority vote extend Limited Accreditation for good cause*. (Emphasis added.)

It also is worthy of note that performance on the NAVLE, a standardized exam accepted by all U.S. jurisdictions and all Canadian provinces, is under constant review by the accreditation authorities. Standard 7.8, "Review of NAVLE Scores" explains the ongoing evaluation process: "The North American Veterinary Licensing Examination (NAVLE) assesses entry-level competency for licensure to practice veterinary medicine. The SRG [the COE Statistical Research Group] evaluates NAVLE results annually, by noting *significant changes in scores and passing rates over time*, and *significant differences in scores or passing rates among graduates from different veterinary colleges*. *Decreasing scores* may indicate a *reduction in the adequacy of the standards*, while *significant differences among graduates* from different colleges *may suggest the standards are not relevant*." (Emphasis added.)

Finally, the AVMA makes a point of emphasizing that the use of "bright line" quantitative criteria in its Standards is limited to the licensing examination. "Except for NAVLE, the Council *does not assign numerical values to describe levels of achievement for students* in any of the outcome delineators, but closely analyzes trends for the college. Trends that imply significant decrease(s) in student achievement over a five-year period may imply deficiencies in the program. The trends are used by the Council in its analysis of the compliance of the college with the Standards. In the case of declining trends in the delineators, the college must provide an explanation for the decline(s), and must provide a plan to reverse the trend(s)." (Emphasis added.)

The use of a quantitative threshold for the licensing examination makes veterinary medicine unique among the professional accrediting bodies reviewed by the Committee. While similar to veterinary medicine in requiring passage of a national standardized examination as a condition of graduation, neither the allopathic nor the osteopathic medicine accrediting body sets a specific passage rate on the examination in assessing the schools they supervise. For example, although licensing obviously is essential if one is to practice medicine, the Liaison Committee on Medical Education (LCME), the accrediting body of allopathic medicine, mentions licensing and

certification exams only briefly in its Standards and then as only one of many outcome measures. Under the title Educational Program for the M.D. Degree, LCME Standard ED-1-A, relating to Educational Objectives, sets forth the accreditation premise: "the objectives of the educational program must be stated in outcome-based terms that allow assessment of student progress in developing the competencies that the profession and the public expect of a physician." After providing examples of educational objectives (i.e., "statements of the items of knowledge, skills, behaviors, and attitudes that students are expected to exhibit") that "should relate to the competencies that the profession and the public expect of a physician," the Standard provides examples of how the medical school may demonstrate student achievement, including results on pre- and post-graduation licensing and certification exams:

> Student achievement of educational program objectives should be documented by specific and measurable outcome-based performance measures of knowledge, skills, attitudes, and values (for example, measures of basic science grounding in the clinical years, *USMLE results* [United States Medical Licensing Examination, a pre-graduation requirement], performance of graduates in residency training, *performance on licensing and certification examinations*). National norms should be used for comparison whenever available. (Emphasis added.)

The principle that the license exam is only one of many outcome measures that may be assessed during accreditation is repeated in Standard ED-46:

> A medical school must collect and use a variety of outcome data, including national norms of accomplishment, to demonstrate the extent to which its educational program objectives are being met. Schools should collect outcome data on student performance during and after medical school appropriate to document the achievement of the school's educational program objectives. The *kinds of outcome data that could serve this purpose include* performance on national licensure examinations, performance in courses/clerkships and other internal measures related to educational program objectives, academic progress and program completion rates, acceptance into residency programs, assessments of program directors and graduates on graduates' preparation in areas related to educational program objectives, including the professional behavior of their graduates. (Emphasis added.)

Osteopathic medicine's approach to licensure is similar to its sister medical discipline. The American Osteopathic Association, in Standard 1.3.1 of its COM Accreditation Standards and Procedures, includes student achievement on national exams and licensure as well as other factors in assessing its medical schools. Thus, a school "must incorporate formative and summative reviews of student achievement including, but not limited to: COMLEX I and II passage rates [the pre-graduation standardized test]; licensure, geographic area of practice, obtainment and completion of a postdoctoral program, and … board certification." Standard 5.4.1 explains that the assessment of a school includes students passing the standardized

licensing exams *before graduation*: "All students must take and pass the National … Comprehensive Osteopathic Medical Licensing Examination (COMLEX) … prior to graduation." COM Accreditation Standard 5.4.3 recognizes the role of the school in preparing students for the exam. Each college of medicine should "provide feedback to each student and should serve as a motivating factor in improving student performance" on the COMLEX exams as part of its "process to determine how well students accomplish the COM's educational goals." Finally, in Part 3 of the Standards, dealing with the structure of a school's accreditation report, the AOA's Commission on Osteopathic College Accreditation calls for the preparation of a Student Achievement Data Sheet to be "used in the on-site visit process to assess student achievement." The Data Sheet must include "COMLEX … passage rates …; graduation rates; licensure; [and] board passage, when available."

To practice psychology, all U.S. states and Canadian provinces require passage of the post-graduate Examination for Professional Practice of Psychology (EPPP), prepared and administered by the Association of State and Provincial Psychology Boards. The Accreditation Standards of the American Psychological Association (APA), however, do not require schools of psychology to meet quantitative licensure requirements. In contrast, the APA does set "general" numerical goals in five areas: the number of years to complete the academic program; the percentage of students withdrawing from the program; the percentage of students accepted into an internship; the percentage of students who are authors or co-authors of articles in professional and scientific journals; and the percentage of students who present papers or participate in workshops at professional meetings. The APA's approach to licensure is set forth in a Standard's section entitled "Disclosure of Education/Training Outcomes and Information Allowing for Informed Decision-Making to Prospective Doctoral Students." That section, effective January 1, 2007, makes the following important points.

> Reporting of program licensure data is an expectation of the US Secretary of Education's National Advisory Committee on Institutional Quality and Integrity for program accreditors, including the APA Commission on Accreditation. Programs are expected to report the *number and percentage* of program graduates who have *become licensed* psychologists *within the preceding decade*. This percentage should be calculated by dividing the number of students who have both graduated and become licensed psychologists *within the 8 years* spanning the period of *2-10 years post-graduation* by the number of doctoral degrees awarded by the program over that same period. That is, the figures reported by a program for 2007 would be number of students who graduated from the program during the period 1997-2005 and who have achieved licensure divided by the number of students graduating from the program during that same 8-year period. Program licensure rates are to be updated at least every three years. *Programs may interpret their licensure rate in light of their training model and program goals and objectives*. (Emphasis added.)

Similar to veterinary medicine, the APA includes licensure as one element of its ongoing research agenda. Section E1-3, dealing with the APA's Commission on Accreditation Policy on Research Studies, lists the EPPP as part of the study of graduate outcomes. The Commission reviews the overall scores on the exam as well as scores on particular sections of the license exam and compares them with data on the education and training models adopted by psychology schools. The study procedure involves tabulation of "licensing exam score data from the most recent EPPP performance publication … to study psychology licensing exam performance."

The Accreditation Council for Pharmacy Education (ACPE), in its Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree, exhibits a minimalist approach to including licensure of graduates in the assessment process. As noted in the Preamble of the Standards, pharmacy is similar to law in that graduation from an accredited school is a prerequisite to taking a state licensing exam: "State boards of pharmacy require that licensure applicants from the United States have graduated from an accredited pharmacy degree program to be eligible to sit for the North American Pharmacist Licensure Examination™ (NAPLEX®)." Although the ACPE includes significant detail in Standards that deal with outcomes assessment, only in Standard 9, which addresses the goal of the curriculum, is licensure mentioned and then only in the context of preparing the graduate to sit for the professional exam: "The college or school's professional degree program curriculum *must prepare graduates with the professional competencies to* enter pharmacy practice in any setting to ensure optimal medication therapy outcomes and patient safety, *satisfy the educational requirements for licensure as a pharmacist*, and meet the requirements of the university for the degree. (Emphasis added.)

Although graduates of accounting programs can practice in most jurisdictions without completing the Certified Public Accountant examination, producing graduates who become CPAs is the goal of many schools of accounting. The AACSB does not set quantitative measures for the CPA exam. In Standard 38, however, the AACSB requires that "where there is a formalized practice of accounting, and when a school's mission indicates that it aspires to have its graduates enter the profession, graduates meet the entry requirements of the accounting profession." In fulfilling the Standard, schools must demonstrate that "all curriculum requirements for entry are included in the institution's learning objectives [and] program graduates show a history of successful entry into the formalized practice of accounting."

*Outcome Measure Models*

The Committee has selected four professional disciplines – allopathic medicine, architecture, osteopathic medicine and engineering – for in-depth descriptions of their outcome assessment processes. The selection was based on illustrating the three principal models mentioned earlier – disciplines that identify specific criteria and measurement devices which every school within its accreditation jurisdiction must apply but grant to schools some freedom to devise and justify other assessment approaches; disciplines that mandate some but suggest several other criteria and allow the schools to select, add or delete measurement devices based on

their individual missions; and disciplines that delegate to the schools much more responsibility for developing and supporting assessment measures that fit the school's specific mission so long as they are not inconsistent with the agencies' criteria.

Allopathic medicine is an example of the first model, while osteopathic medicine exemplifies the second approach. Engineering illustrates greater aspects of the third accreditation scheme. Architecture presents more of a mixed model with many learning criteria identified but significant freedom extended to schools to develop and justify measurement devices.

The approaches set forth below reveal both similarities and differences of substance and style. The Committee cautions, however, that not every element of the outcome measurement schemes of each discipline is addressed in these summaries. Readers are encouraged to review the complete accreditation standards of the ten professional accrediting bodies.

*Allopathic Medicine*

The LCME "Standards for Accreditation of Medical Education Programs Leading to the M.D. Degree" are crafted in both a narrative form that "illustrates how the Standards relate to each other" and in a list format that includes "explanatory annotations to clarify the operational meaning of standards …." In the Introduction to the Standards, the importance of and the relatively minor distinction between "must" and "should" directives are explained:

> [T]he words "must" and "should" have been chosen with great care. The difference in terminology is slight but significant. Use of the word "must" indicates that the LCME considers meeting the standard to be absolutely necessary for the achievement and maintenance of accreditation. Use of the word "should" indicates that compliance with the standard is expected unless there are extraordinary and justifiable circumstances that preclude full compliance.

When it comes to assessment by the use of either "must" or "should" outcome measures, the LCME is consistent and direct in its narrative and list formats.

At the outset of the narrative portion of its Standards, the LCME mandates that a medical school "must engage in a planning process that sets the direction for the institution and results in measurable outcomes." The narrative portion of the Standards continues by tasking the medical school faculty with defining the objectives of the school's educational program. Once defined, "the objectives must serve as guides for establishing curriculum content" and the objectives "must be stated in outcome-based terms that allow assessment of student progress in developing the competencies that the profession and the public expect of a physician." Under the heading "Teaching and Evaluation," the narrative describes the overall process of assessing student achievement in the following manner:

> The medical school faculty must establish a system for the evaluation of student achievement throughout medical school that employs a variety of measures of knowledge, skills, behaviors, and attitudes. There must be ongoing assessment that assures students have acquired and can demonstrate on direct observation the core clinical skills, behaviors, and attitudes that have been specified in the school's educational objectives. There must be evaluation of problem solving, clinical reasoning, and communication skills.

The narrative describes the "Evaluation of Program Effectiveness" in the following terms:

> A medical school must collect and use a variety of outcome data, including national norms of accomplishment, to demonstrate the extent to which its educational program objectives are being met. In assessing program quality, schools must consider student evaluations of their courses and teachers, as well as a variety of other measures.

The parallel to the narrative portion that calls for "a planning process that sets the direction for the institution and results in measurable outcomes" is a list section and explanatory annotation that describes the school's responsibilities:

> To assure ongoing vitality and successful adaptation to the rapidly changing environment of academic medicine, schools need to establish periodic or cyclical institutional planning processes and activities. Planning efforts that have proven successful in medical schools and other professional or business milieus typically involve the definition and periodic reassessment of both short-term and long-range goals for the successful accomplishment of institutional missions. By framing goals in terms of measurable outcomes wherever circumstances permit, a school can more readily track progress towards their achievement. The manner in which a school engages in institutional planning will vary according to available resources and local circumstances, but all schools should be able to document their vision, mission, and goals, evidence indicating their achievement, and strategies for periodic or ongoing reassessment of successes and unmet challenges.

The list and annotation portion of the Standards also tracks and expands on what is involved in the faculty setting the educational objectives identified in the narrative section entitled "Teaching and Evaluation":

> Educational objectives state what students are expected to learn. Such objectives are statements of the items of knowledge, skills, behaviors, and attitudes that students are expected to exhibit as evidence of their achievement. The educational objectives should relate to the competencies that the profession and the public expect of a physician.

> The educational objectives established by the school, along with their associated outcome measures, should reflect whether and how well graduates are developing these competencies as a basis for the next stage of their training. Student achievement of educational program objectives should be documented by specific and measurable outcome-based performance measures of knowledge, skills, attitudes, and values (for example, measures of basic science grounding in the clinical years, USMLE results, performance of graduates in residency training, performance on licensing and certification examinations). National norms should be used for comparison whenever available.
>
> There are several widely recognized definitions of the knowledge, skills, and attitudinal attributes appropriate for a physician, including those described in [three separate reports of professional groups on the knowledge, skills, behaviors and attitudes of physicians].

The LCME Standards include a number of prescriptive "must" requirements related to insuring and measuring student achievement, including the following:

- The medical school faculty must establish a system for the evaluation of student achievement throughout medical school that employs a variety of measures of knowledge, skills, behaviors, and attitudes.

- There must be ongoing assessment that assures students have acquired and can demonstrate on direct observation the core clinical skills, behaviors, and attitudes that have been specified in the school's educational objectives.

- The objectives of the educational program must be stated in outcome-based terms that allow assessment of student progress in developing the competencies that the profession and the public expect of a physician.

- There must be evaluation of problem solving, clinical reasoning, and communication skills.

- The directors of all courses and clerkships must design and implement a system of formative and summative evaluation of student achievement in each course and clerkship.

There also are many instances of "should" directives in the LCME Standards, among which are the following:

- The faculty of each discipline should set the standards of achievement in that discipline.

- Each student should be evaluated early enough during a unit of study to allow time for remediation.

- Narrative descriptions of student performance and of non-cognitive achievement should be included as part of evaluations in all required courses and clerkships where teacher-student interaction permits this form of assessment.

- Educational objectives state what students are expected to learn [and] are statements of the items of knowledge, skills, behaviors, and attitudes that students are expected to exhibit as evidence of their achievement. The educational objectives should relate to the competencies that the profession and the public expect of a physician.

- The educational objectives established by the school, along with their associated outcome measures, should reflect whether and how well graduates are developing these competencies as a basis for the next stage of their training.

- Student achievement of educational program objectives should be documented by specific and measurable outcome-based performance measures of knowledge, skills, attitudes, and values (for example, measures of basic science grounding in the clinical years, USMLE results, performance of graduates in residency training, performance on licensing and certification examinations). National norms should be used for comparison whenever available.

- Evaluation of student performance should measure not only retention of factual knowledge, but also development of the skills, behaviors, and attitudes needed in subsequent medical training and practice, and the ability to use data appropriately for solving problems commonly encountered in medical practice.

- Those directly responsible for the evaluation of student performance should understand the uses and limitations of various test formats, the purposes and benefits of criterion-referenced vs. norm-referenced grading, reliability and validity issues, formative vs. summative assessment, etc.

- The chief academic officer, curriculum leaders, and faculty should understand, or have access to individuals who are knowledgeable about

methods for measuring student performance [and] the school should provide opportunities for faculty members to develop their skills in such methods.

- An important element of the system of evaluation should be to ensure the timeliness with which students are informed about their final performance in the course/clerkship.

- Each student should be evaluated early enough during a unit of study to allow time for remediation. It is expected that courses and clerkships provide students with formal feedback during the experience so that they may understand and remediate their deficiencies.

Although the LCME grants to medical schools the responsibility of devising *how* student learning will be measured, the accrediting body is quite prescriptive as to *what* aspects of student achievement will be measured.

*Architecture*

The accreditation standards of the National Architectural Accrediting Board (NAAB) were last revised and approved in 2004, making them the most mature of the current accreditation criteria reviewed by the Committee.

The NAAB accreditation process begins with the Architecture Program Report (APR) each school is required to prepare. The APR must include a description of the school's self-assessment requirements and the actual process, including assessments of the curriculum and learning context by faculty, students and graduates (but "individual course evaluations are not sufficient to provide insight into the program's focus and pedagogy").

The APR must address what is called the *NAAB Perspectives*, the relevant interests of the five constituencies – educators, members of the practicing profession, students, registration board members, and public members – that make up the NAAB. These constituencies, "each of which brings specific concerns to the accreditation process, comprise the broad range of perspectives that frame a professional education in architecture." The NAAB requires the school of architecture's APR to address, "in a manner consistent with its scholastic identity and mission … each of the following five perspectives."

- *Architecture Education and the Academic Context*: The program must demonstrate that it both benefits from and contributes to its institutional context. Given its particular mission, the APR may cover such issues as: the program's academic and professional standards for both faculty and students; interaction between the program and other programs in the institution; contributions of the students, faculty, and administrators to the governance as well as the intellectual

and social life of the institution; and contributions of the institution to the program in terms of intellectual resources as well as personnel.

- *Architecture Education and the Students*: The program must demonstrate that it provides support and encouragement for students to assume leadership roles during their school years and later in the profession, and that it provides an interpersonal milieu that embraces cultural differences. Given its particular mission, the APR may cover such issues as: how students participate in establishing their individual and collective learning agendas; how they are encouraged to cooperate with, assist, share decision making with, and respect students who may be different from themselves; their access to the critical information needed to shape their futures; their exposure to the national and international context of practice and the work of the allied design disciplines; and how students' diversity, distinctiveness, self-worth, and dignity are nurtured.

- *Architecture Education and Registration*: The program must demonstrate that it provides students with a sound preparation for the transition to internship and licensure. Given its particular mission, the APR may cover such issues as: the program's relationship with the state registration board, the exposure of students to internship requirements and continuing education beyond graduation, students' understanding of their responsibility for professional conduct, and the proportion of alumni who have sought and achieved licensure since the previous visit.

- *Architecture Education and the Profession*: The program must demonstrate how it prepares students to practice and assume new roles within a context of increasing cultural diversity, changing client and regulatory demands, and an expanding knowledge base. Given its particular mission, the APR may cover such issues as: the program's engagement of the professional community in the life of the school; how students gain an awareness of the need to advance their knowledge of architecture through a lifetime of practice and research; how students develop an appreciation of the diverse and collaborative roles assumed by architects in practice; how students develop an understanding of and respect for the roles and responsibilities of the associated disciplines; how students learn to reconcile the conflicts between architects' obligations to their clients, the public, and the demands of the creative enterprise; and how students acquire the ethics for upholding the integrity of the profession.

- *Architecture Education and Society*: The program must demonstrate that it not only equips students with an informed understanding of social and environmental problems but that it also develops their capacity to help address these problems with sound architecture and urban design decisions. Given its particular mission, the APR may cover such issues as: how students gain an informed understanding of architecture as a social art, including the complex processes carried out by the

multiple stakeholders who shape built environments; the emphasis given to generating the knowledge that can mitigate social and environmental problems; how students gain an understanding of the ethical implications of built environment decisions; and how a climate of civic engagement is nurtured, including a commitment to professional and public service.

The *NAAB Perspectives* comprise the first of "Thirteen Conditions of Accreditation" that must be addressed in the APR. Several of the other "Thirteen Conditions" seem to be based on "input" as opposed to "output" measures. Beyond the *Perspectives*, the following are among the conditions (which include explanations and commentary):

- The school must have a clear policy on diversity that is communicated to current and prospective faculty, students, and staff and that is reflected in the distribution of the program's human, physical, and financial resources.

- The *APR* must demonstrate that the school has adopted a written studio culture policy with a plan for its implementation and maintenance and provide evidence of abiding by that policy.

- The accredited degree program must demonstrate that it provides adequate human resources for a professional degree program in architecture, including a sufficient faculty complement, an administrative head with enough time for effective administration, and adequate administrative, technical, and faculty support staff.

- The accredited degree program must provide the physical resources appropriate for a professional degree program in architecture, including design studio space for the exclusive use of each student in a studio class; lecture and seminar space to accommodate both didactic and interactive learning; office space for the exclusive use of each full-time faculty member; and related instructional support space.

- The accredited degree program must have a library collection that includes at least 5,000 different cataloged titles, with an appropriate mix of Library of Congress NA, Dewey 720–29, and other related call numbers to serve the needs of individual programs.

- The accredited degree program must have access to sufficient institutional support and financial resources to meet its needs and be comparable in scope to those available to meet the needs of other professional programs within the institution.

The primary responsibility of an accredited school of architecture is to "educate students to be knowledgeable and capable of producing work that can be measured by, and satisfy, specific performance criteria." A Standard, entitled Student Performance Criteria, addresses how

a school demonstrates student achievement. To meet the minimum for the "demands of an internship leading to registration for practice," the school "must ensure that each graduate possesses the knowledge and skills defined by [34 specific] criteria" and "must provide evidence that its graduates have satisfied each criterion through required coursework." In its APR, the school must include "a matrix cross-referencing each required course with the performance criteria it fulfills. For each criterion, the school must highlight the cell on the matrix that points to the greatest evidence of achievement."

The Standard states the NAAB created the performance criteria "to help accredited degree programs prepare students for the profession while encouraging educational practices suited to the individual degree program." The Standard adds that schools will be measured on "whether student performance meets the professional criteria" and on student "performance in relation to the school's stated curricular goals and content." Although the NAAB establishes the student performance criteria that must be met,

> it specifies neither the educational format nor the form of student work that may serve as evidence of having met these criteria. Programs are encouraged to develop unique learning and teaching strategies, methods, and materials to satisfy these criteria. The NAAB will consider innovative methods for satisfying the criteria, provided the school has a formal evaluation process for assessing student achievement of these criteria and documents the results.

Each criterion demands one of two levels of accomplishment – understanding or ability – which are defined in the Standard. Understanding is "the assimilation and comprehension of information without necessarily being able to see its full implication" and ability is "the skill in using specific information to accomplish a task, in correctly selecting the appropriate information, and in applying it to the solution of a specific problem." Among the 34 areas where "graduating students must demonstrate *understanding* or *ability*" are the following:

- *Ability to* read, write, listen, and speak effectively;
- *Ability to* raise clear and precise questions, use abstract ideas to interpret information, consider diverse points of view, reach well-reasoned conclusions, and test them against relevant criteria and standards [i.e., critical thinking skills];
- *Ability to* use appropriate representational media, including freehand drawing and computer technology, to convey essential formal elements at each stage of the programming and design process;
- *Ability to* gather, assess, record, and apply relevant information in architectural coursework [i.e., research skills];

- *Ability to* use basic architectural principles in the design of buildings, interior spaces, and sites;

- *Ability to* recognize the varied talent found in interdisciplinary design project teams in professional practice and work in collaboration with other students as members of a design team [i.e., collaborative skills];

- *Understanding of* the fundamentals of visual perception and the principles and systems of order that inform two- and three-dimensional design, architectural composition, and urban design;

- *Understanding of* the Western architectural canons and traditions in architecture, landscape and urban design, as well as the climatic, technological, socioeconomic, and other cultural factors that have shaped and sustained them;

- *Understanding of* the diverse needs, values, behavioral norms, physical ability, and social and spatial patterns that characterize different cultures and individuals and the implication of this diversity for the societal roles and responsibilities of architects;

- *Understanding of* the principles of sustainability in making architecture and urban design decisions that conserve natural and built resources, including culturally important buildings and sites, and in the creation of healthful buildings and communities;

- *Understanding of* the responsibility of the architect to elicit, understand, and resolve the needs of the client, owner, and user [i.e., the client's role in architecture];

- *Understanding of* the basic principles and legal aspects of practice organization, financial management, business planning, time and project management, risk mitigation, and mediation and arbitration as well as an understanding of trends that affect practice, such as globalization, outsourcing, project delivery, expanding practice settings, [and] diversity;

- *Understanding of* the architect's responsibility as determined by registration law, building codes and regulations, professional service contracts, zoning and subdivision ordinances, environmental regulation, historic preservation laws, and accessibility laws; and

- *Understanding of* the ethical issues involved in the formation of professional judgment in architectural design and practice.

The NAAB Standards do not require or suggest the manner in which schools of architecture should measure the ability or understanding of students in relation to each criterion, leaving to the school the creation of its own measurement tools. Thus, like the LCME, schools have the responsibility of developing *how* student learning will be measured but the NAAB is directive as to *what* aspects of student achievement will be measured.

*Osteopathic Medicine*

The American Osteopathic Association's (AOA) "COM [College of Medicine] Accreditation Standards and Procedures" appear slightly more descriptive than the LCME's often prescriptive standards. To be sure, the AOA includes a number of "must" statements about measuring the achievement of students, some of which are quite specific. For example, the school "must incorporate formative and summative reviews of student achievement," including scores on national exams, licensure, geographic area of practice and more; "must develop and publicize a system … to assess the progress of each student toward acquiring the competencies essential to effective performance as an osteopathic physician"; and "the system of assessment [developed by the school] must include a longitudinal record marking the career tracks, choices, and achievements of the graduates." On the other hand, several "must" as well as "should" statements in the AOA Standards use broad general language. Thus, each college of medicine "must connect its learning outcomes assessment to mission plans and objectives," and its "assessment program should be an ongoing, systematic process that provides the means for assessing student achievement, program effectiveness, and opportunities for improvement."

Perhaps the best illustration of the subtle difference between the LCME and the AOA is in the latter's Standards that deal with the "Core Competencies," those "specific educational objectives to be learned in … [the COM's] educational program." The AOA initially tells the schools what it must do in regard to the educational objectives and then suggests a range of measuring devices. Thus, the COM's educational objectives must be based on defined, published and implemented educational outcomes and clinical competencies that will prepare students for graduate medical education and the practice of osteopathic medicine. The Guideline that accompanies the Standard explains further the AOA's intent and direction:

> Osteopathic medical students should have the basic skills and competencies defined by COM faculty as the prerequisites to osteopathic graduate medical education. Integration of basic skills and competencies should be developed through the use of standardized patients, skills testing, and clerkship training. The COM should, at minimum, consider the Seven Core Competencies required of all AOA-accredited postdoctoral training programs. The seven competency areas include: medical knowledge; osteopathic philosophy and osteopathic manipulative medicine; patient care; professionalism; interpersonal & communication skills; practice-based learning and improvement; and systems based practice.

The Guideline includes a reference to the AOA's Core Competency Compliance Program (CCCP), an effort to develop a "competency map" to measure student achievement in residency programs. Each school is required to develop an Institutional Core Competency Plan which "is to be designed as a dynamic document that serves as an institutional road map for continuous improvement in teaching and in evaluating competency-based medical education [and must be] made available to AOA evaluators when on-site accreditation reviews are conducted." The CCCP "competency map" reproduced in the Standards suggests schools consider "eight commonly used assessment metrics," describing each one and listing common uses, advantages and disadvantages. Four of the competency metrics are set out below as examples of the measurement models recommended by the AOA.

- **Objective Structured Clinical Examination (OSCE)**

An assessment tool that consists of multiple stations [involving] various elements of clinical encounters. The stations include standardized patients (actors trained to portray illness in a standardized manner), actual patients, and/or components of clinical encounters (i.e., electrocardiograms for interpretation, radiographs for interpretation, etc.).

- **Use(s)**
- Evaluates:
- • Communication skills
- • Interpersonal skills
- • Professionalism
- • Psychomotor abilities

- **Advantage(s)**
- Multiple assessments
- • Improves validity
- • Improves reliability

- Useful feedback information
- • What the resident does well
- • What needs improvement

- **Disadvantage(s)**
- Expensive
- • 12 – 18 stations recommended
- • Selection/Creation of stations
- • Training of standardized patients (SPs)
- • Payment of SPs

- Difficult to design
- • Scoring criteria
- • Passing thresholds

- **Portfolios**

An assessment tool used to document learning experiences. Usually a compilation of written documents (i.e., case logs, procedural logs, research activity, committee involvement, lectures and conferences attended, etc.).

- **Use(s)**
- Evaluates:
- • A record of learning accomplishments

- **Advantage(s)**
- Useful for self-reflection on learning
- Provide a global view of experiences

- **Disadvantage(s)**
- Time consuming to create
- Difficult to assign a score

- **Written Examination**

An assessment tool used to assess not only the examinee's knowledge base, but also the ability to apply it to clinical situations. The most common written examination format uses multiple-choice questions.

- **Use(s)**
- Evaluates:
- • Knowledge base
- • Level of understanding

- **Advantage(s)**
- Familiarity
- Can cover many content areas quickly
- Can be graded quickly
- Can monitor progress over time
- • Use of anchor (repeated) questions

- **Disadvantage(s)**
- Require statistical analysis
- Passing scores should be predetermined
- Sampling error can occur
- • Use test blueprint

- **Chart Stimulated Oral Recall Examination**

An assessment tool used to assess clinical problem-solving ability [that] provides the ability to investigate the examinee's rationale for requesting information (i.e., historical or physical examination data), interpretation of information provided, and management of selected cases, not evident by simply reviewing the chart.

- **Use(s)**
- Evaluates:
- • Problem-solving ability
  - Ability to use information
  - Ability to select the next step

- **Advantage(s)**
- Selected cases can be covered quickly
- Can ask a series of related questions

- **Disadvantage(s)**
- Examiners must be trained
- Scoring can be debated
- Case selection can be difficult
- High anxiety level for some examinees

*Engineering*

The Accreditation Board for Engineering and Technology (ABET), in its "Accreditation Policy and Procedure Manual" for Engineering, follows a certification path different from that pursued by the two medical disciplines discussed above. While extending more freedom to the engineering schools, ABET demands from the schools what might be seen as a greater level of

responsibility. Early in the substantive standards ("criteria"), ABET defines four critical terms that are used throughout the accreditation criteria to describe the obligations of the engineering schools:

- *Program educational objectives* "are broad statements that describe the career and professional accomplishments that the program is preparing graduates to achieve."
- *Program outcomes* "are narrower statements that describe what students are expected to know and be able to do by the time of graduation. These relate to the skills, knowledge, and behaviors that students acquire in their matriculation through the program."
- *Assessment* "is one or more [outcome] processes that identify, collect, and prepare data to evaluate the achievement of program outcomes and program educational objectives."
- *Evaluation* "is one or more [reflective] processes for interpreting the data and evidence accumulated through assessment practices. Evaluation determines the extent to which program outcomes or program educational objectives are being achieved, and results in decisions and actions to improve the program."

Similar to LCME, ABET also defines its command language. As used in the criteria, "the word *shall* or *must* indicates definite obligatory requirements that the Commissions expect as a minimum to be met for a program to be accreditable. The word *should* indicates more permissive recommendations that may have an effect on accreditation. The word *may* is permissive."

ABET declares it "has no authority to impose any restriction or standardization upon [engineering] educational programs, nor does it desire to do so. On the contrary, ABET aims to preserve the independence of action of individual institutions and, thereby, to promote the general advancement of engineering … education." As an example of independence, ABET encourages innovative and experimental programs, leaving it to the engineering faculty to judge the professional and academic value of such efforts so long as the intent of the criteria is fulfilled:

> *Experimental or Innovative Programs* – Recognizing the value of innovation and experimentation in educational programs and the possibility that such programs may have difficulty meeting specific quantitative criteria, innovative or experimental programs will be evaluated, on request, on the basis of their demonstrated ability to satisfy the intent of the appropriate criteria and to produce graduates fully qualified to enter the practice of [engineering]. Programs are encouraged to adopt innovative procedures and approaches that meet the criteria and that improve the program.

ABET also makes it clear that its accreditation decisions are not simply tied to quantitative outcomes. "The evaluation of a program will include assessment of both qualitative as well as quantitative factors in the process leading to an accreditation decision." The curriculum is an area in which ABET applies this principle, explaining there is a relationship between program excellence and numerical measures:

> Considerable latitude in the choice and arrangement of subject matter in the curriculum is allowed. While the qualitative factors are more important than the quantitative …, the general principles outlined in the criteria will be checked closely by analyzing [the engineering] curriculum. The coverage of basic information rather than the offering of specific courses is the important criterion.

ABET places on the school the responsibility to develop the assessment and evaluation tools to measure program objectives and educational outcomes. The criteria highlight that responsibility when the engineering school employs "out of the box" pedagogy:

> Methods for delivery of instruction and their use are developing, and ways for evaluating the learning accomplishment are evolving as well. When a course offered as part of a program employs a method for delivery of instruction that differs from the more frequently encountered methods, e.g., lecture, discussion, laboratory, there must be a provision for evaluating the learning accomplishment to ensure that educational objectives are met.

At the outset of the description of the accreditation process, ABET repeats that "the evaluation of a program will include assessment of both qualitative as well as quantitative factors in the process leading to an accreditation decision." The basis and the method for assessing an institution's educational programs involve the school's self-study report and the on-site visit. As with NAAB, the initial basis for the ABET evaluation is the self-study report which is supplemented by an on-site visit. The on-site visit team has three tasks:

- First, the team "should assess factors that cannot be adequately described in the Self-Study Report. The intellectual atmosphere, the morale of the faculty and the students, the stability and continuity of the faculty and the students, the caliber of the staff and student body, and the outcome of the education offered as evidenced by the character of the work performed are examples of intangible qualitative factors that are difficult to document in a written statement. For analysis prior to the visit, the institution will have provided the team with a random selection of graduates' transcripts from each of the programs under evaluation."
- Second, the site visit team acts as outside experts to assist the school in evaluating its program. "The visiting team should help the institution assess its strong as well as its weak points."

- Third, the team "should examine in further detail the material compiled by the institution and relating to" thirteen specified criteria. Although recognized by CHEA, the ABET criteria appear to closely follow many of the accreditation standards of an approved Department of Education agency review to effectively address the quality of an academic program as set out in the Department's primary assessment regulation (§ 602.16).

The ABET criteria, without any specific quantitative or qualitative standards assigned, include the following factors:

- Standards for the admission of students (4);
- The appropriate number of students enrolled in both the college or division as a whole and in the individual educational programs (5);
- The number of teaching staff and teaching loads (6);
- The physical facilities (7);
- The soundness of the program's finances (investments, expenditures, and sources of income) (8);
- The content of the curriculum (9);
- A representative sample of student work that reveals the spectrum of educational outcomes ("to make a qualitative evaluation of a program, it is necessary that the institution exhibit teaching materials such as course outlines and textbooks for all courses required for graduation. Sufficient examples of student work in technical, mathematics, and science courses must be available to the visiting team for the entire campus visit. The examples should show a range of grades for assignments, including homework, quizzes, examinations, drawings, laboratory reports, projects, and samples of computer usage in technical courses. Examples must also be presented to demonstrate compliance with the requirement for student competence in written and oral communications.") (10);
- Records of employment of graduates and, as appropriate, passage rates on nationally normed examinations to evaluate placement and performance in terms of the goals stated for [the engineering] program (11);
- The student support services appropriate to the educational and career needs of the students, including registration, tutoring [academic success], career and academic advisement, library, computing, and laboratory resources; also additional services appropriate to the institution's and [engineering] program's mission and educational objectives (12); and
- The presence of clearly stated expectations for learning and student achievement appropriate to the mission and educational objectives of the institution and [engineering] program (13).

The final (13th) criterion includes requirements that schools have clear, fair, equitable and published academic policies (admissions, probation, dismissal, grievances, and graduation standards) as well as equitable, clearly articulated and consistently applied criteria used by faculty to evaluate students. The penultimate (12th) criterion is reviewed differently depending on the accreditation status of the engineering school's parent institution:

> Such matters of broad institutional function as administration, student personnel services, library, arts and sciences, etc., are considered only with respect to services rendered to the [engineering] programs being evaluated and are reviewed with different emphasis within institutions with regional accreditation versus those without such accreditation. When an institution not holding regional accreditation is visited, these areas are examined in depth within ABET policy.

Because the ABET criteria are less prescriptive than many other professions and because the role of the on-site visit team is so different from legal education, attention is given to the *process* of accreditation. The final decision on engineering accreditation rests with the appropriate ABET Commission. (The Engineering Commission is separate from the bodies that oversee Technology, Computing and Applied Science accreditation.) The Engineering Commission acts, however, on the basis of specific recommendations made to it by the visiting team contained in a Draft Statement the team writes and to which the engineering school is permitted to respond. The Draft Statement submitted by the team typically consists of the following six types of declarations:

- Statements of fact (e.g., "This program has five full-time faculty members whose primary commitment is to the program.");
- Statements of compliance (e.g., "The curriculum satisfies the applicable criteria.");
- Statements of concern ("A concern indicates that a program currently satisfies a criterion, policy, or procedure; however, the potential exists for the situation to change such that the criterion, policy, or procedure may not be satisfied.");
- Statements of weakness ("A weakness indicates that a program lacks the strength of compliance with a criterion, policy, or procedure to ensure that the quality of the program will not be compromised. Therefore, remedial action is required to strengthen compliance with the criterion, policy, or procedure prior to the next evaluation.");
- Statements of deficiency ("A deficiency indicates that a criterion, policy, or procedure is not satisfied. Therefore, the program is not in compliance with the criterion, policy, or procedure."); and
- Statements of observation ("An observation is a comment or suggestion which does not relate directly to the accreditation action but is offered to assist the institution in its continuing efforts to improve its programs.").

ABET grants accreditation if the Engineering Commission finds the school meets or exceeds the criteria:

> If current conditions are judged to be meeting or exceeding the minimum requirements [accreditation is granted for six years]. If, for any reason, the future of a program appears precarious or definite weaknesses exist, the accreditation will be granted for a shorter period, usually two years. Factors which might limit the period of accreditation include uncertainty as to financial status, uncertainty due to the nature of the administrative organization, a need for additions to or improvements in staff or equipment, a new or changing curriculum, undue dependence upon a single individual, etc.

*Conclusion*

The Committee's review of the accreditation standards of these ten other professional disciplines reveals a distinct pattern. First, professional schools are tasked with identifying and articulating their own missions and then are evaluated by their success in achieving those missions. Second, post-graduate licensure is not a universal criterion and only one profession sets a quantitative floor for passage. Third, although the agencies vary in their approach to setting accrediting criteria that must be addressed, other professions allow at least some (and several great) latitude to schools in how they measure students' achievement. In sum, the other disciplines allow schools to play a significant role in defining the nature of the professional education they will deliver to students and then demand that the schools produce outcome evidence of their educational efforts to insure they have delivered to graduates what they promised to deliver. The focus clearly is on student performance outcomes as opposed to input measures such as the human and other resources schools are investing in the educational enterprise.

(2) *Regional Accreditation Commissions*

There are six regional higher-education accrediting organizations in the United States: The Middle States Association of Colleges and Schools – Middle States Commission on Higher Education (www.msache.org), the New England Association of Schools and Colleges – Commission on Institutions of Higher Education (www.neasc.org), the North Central Association of Colleges and Schools – Higher Learning Commission (HLC), which is the largest, covering 19 states (www.ncahlc.org), the Northwest Commission on Colleges and Universities (www.nwccu.org), the Southern Association of Colleges and Schools – Commission on Colleges (SACS) (www.sacscoc.org), and the Western Association of Schools and Colleges – Accrediting Commission for Senior Colleges and Universities (WASC) (www.wascsenior.org). These regional accreditors are all recognized by the Department of Education, and, in fact, most colleges and universities are authorized to participate in federal financial aid programs by virtue of this regional accreditation. *See* 20 U.S.C. § 1099b.

The significance of the regional accreditation standards should not be minimized. With the exception of a small number of independent law schools, virtually all law schools are governed by regional accreditors. Because these bodies accredit institutions, not individual programs, law schools until very recently have been able to pay very little attention to the requirements of regional accreditation, leaving that task to the university central administration. As the regional accreditors have begun holding accredited schools accountable for demonstrating educational effectiveness at all levels, law schools are no longer able to fly beneath the regional radar screen. As universities come up for reaccreditation reviews under these revised standards, the law schools are being required to actively participate in the process. As many law deans have already learned, this requires a rather dramatic paradigm shift in the way the law school evaluates its success.

The regional accreditors have all moved from an input-based, prescriptive system of accreditation to an outcome-based system of accreditation, and in fact, had been moving in this direction since the late 1990s. All six of the regional accreditors now require institutions to collect and evaluate evidence to demonstrate that the institution is satisfying its mission as defined by the institution. In other words, it is up to each institution to define its own unique goals and objectives, but the institution must produce evidence to establish that it is in fact accomplishing those goals and objectives through routine collection and assessment of data. WASC, for example, requires the institution to conduct "sustained, evidence-based, and participatory discussions about how effectively it is accomplishing its purposes and achieving its educational objectives." WASC – ACSCU *Handbook of Accreditation* Standard 4. It is then up to the accreditor to determine whether these outcomes are appropriate in light of the school's mission.

As noted previously in this report, there is an enormously wide variety of outputs upon which an institution can choose to focus. The one general category of outcomes required by all six regional accreditors is student achievement or student learning. An accredited institution must demonstrate through multiple direct and indirect measures that students are achieving the levels of knowledge and skill as defined by the institution in light of the unique educational mission of that institution. None of the accreditors requires specific methods of assessment or mandates a certain minimum result on any assessment device. Rather, a review of the standards of accreditation of all six regional accreditors reveals a list of suggested or exemplary assessment mechanisms. For example, direct evidence of student learning could include results on external licensure exams, but also clinical performance, examination results, capstone courses, and portfolios. Indirect evidence could include the results of survey, focus groups, etc. Following is a summary of the standards on student achievement of each of the six regional accreditors.

(a) *Middle States Association of Colleges and Schools – Middle States Commission on Higher Education (MSCHE)*

Assessment measures for student learning may include "direct evidence such as capstone

projects, field experience evaluations, and performance on licensure examinations and indirect evidence such as retention and graduation rates and alumni surveys." MSCHE, *Characteristics of Excellence in Higher Education: Standards for Accreditation* 64 (12th ed. 2006). The commission elaborates on direct and indirect evidence:

> Student learning assessment processes should yield direct – clear, visible, and convincing – evidence of student learning. Tangible examples of student learning, such as completed tests, assignments, projects, portfolios, licensure examinations, and field experience evaluations, are direct evidence of student learning. Indirect evidence, including retention, graduation, and placement rates and surveys of students and alumni, can be vital to understanding the teaching-learning process and student success (or lack thereof), but such information alone is insufficient evidence of student learning unless accompanied by direct evidence. Grades alone are indirect evidence, as a skeptic might claim that high grades are solely the result of lax standards. But the assignments and evaluations that form the basis for grades can be direct evidence if they are accompanied by clear evaluation criteria that have a demonstrable relationship to key learning goals.

*Id.* at 65.

An institution might use "benchmarking techniques to define its comparison group – its peer institutions – and to compare its own outcomes to theirs. This benchmarking could be based, for example, on retention rates, five-year graduation rates, admissions yield data (the number of enrollees as a function of the number of students accepted), employment and graduate school placement rates, and performance on national or professional examinations." MSCHE, *Student Learning Assessment: Options and Resources* 27-28 (2d ed. 2007).

(b) *New England Association of Schools and Colleges – Commission on Institutions of Higher Education (NEASC-CIHE)*

An institution should base its approach to assessment of student learning on a "clear statement or statements of what students are expected to gain, achieve, demonstrate, or know by the time they complete their academic program." The institution's expectations for student learning should include "statements that are consistent with the institution's mission in preparing students for further study and employment, as appropriate." NEASC-CIHE, *Standards for Accreditation* 12-13 (2005).

Inquiry into the experiences and learning outcomes of students "may focus on a variety of perspectives, including understanding the process of learning, being able to describe student experiences and learning outcomes in normative terms, and gaining feedback from alumni, employers, and others situated to help in the description and assessment of student learning." *Id.* at 13.

An institution publishes "statements of its goals for students' education and the success of students in achieving those goals. Information on student success includes rates of retention and graduation and other measures of student success appropriate to institutional mission. As appropriate, recent information on passage rates for licensure examinations is also published." *Id*. at 26.

(c) *North Central Association of Colleges and Schools – The Higher Learning Commission (NCA-HLC)*

Assessment of student learning includes "multiple direct and indirect measures of student learning." The organization integrates into its assessment of student learning "the data reported for purposes of external accountability (e.g., graduation rates, passage rates on licensing exams, placement rates, transfer rates)." NCA-HLC, *Handbook of Accreditation*, section 3.1 (3d ed. 2003).

(d) *Northwest Commission on Colleges and Universities (NWCCU)*

"Several outcomes measures, when used in appropriate combinations and informed by the institutional mission, could yield an efficacious program of outcomes assessment." NWCCU, *Accreditation Handbook* 37 (2003 ed.). These outcomes measures may include:

- student information (aptitude of incoming students, retention, graduation, etc.)
- mid-program assessments (e.g., evidence of improvement or decline in skills)
- end of program assessment (retention and graduation rates, performance on capstone experience, etc.)
- program review and specialized accreditation (yielding outcomes assessment data)
- alumni satisfaction and loyalty (as determined through alumni surveys)
- dropouts/non-completers (attrition rate, effectiveness of retention efforts, etc.)
- employment and/or employer satisfaction measures (percentage of alumni who have sought and found employment, alumni satisfaction with employment, employers' evaluations of alumni's performance, etc.)

*Id*. at 37-39.

(e) *Southern Association of Colleges and Schools – Commission on Colleges (SACS)*

In evaluating student achievement, an institution considers, "as appropriate, … course completion, state licensing examinations, and job placement rates." SACS, *Principles of Accreditation: Foundations of Quality Enhancement (Interim Edition)* 17 (2d ed. 2006). More generally, the measures or indicators that may be combined to support compliance with the SACS's requirements and standards include:

- Trend data,
- Survey data,
- Benchmarking,
- Student satisfaction indices,
- National norms of student learning outcomes results,
- Major field test scores,
- Licensure/certification rates,
- Program accreditation results,
- Program peer review results, and
- Focus group findings.

SACS, *Handbook for Reaffirmation of Accreditation* 16 (2004).

(f) *Western Association of Schools and Colleges – Accrediting Commission for Senior Colleges and Universities (WASC-ACSCU)*

Results with respect to student achievement include "program completion, license examination, and placement rates results." WASC-ACSCU, *Handbook of Accreditation* 21 (2001). Reviews of the program's learning objectives and outcomes include, "where appropriate, evidence from external constituencies such as employers and professional societies." *Id.*

Evidence supporting an institution's analysis of educational effectiveness and student learning might include "selected results of assessment studies, results of any summative learning measures deemed important by the institution (e.g., pass rates for licensure examinations, capstone courses, etc.), surveys of graduates and current students, and employer feedback on former student performance." *Id.* at 47. The main classes of effectiveness information include:

> "hard" statistics that are drawn from existing records systems and analyzed to create appropriate indicators of performance (e.g., retention/graduation rates, syllabus analysis and examination of actual student assignments); self-reported data on perceptions and behaviors drawn from surveys, focus groups or interviews; and direct examination of student performance using, where appropriate, recognized or externally validated assessment procedures.

WASC-ACSCU, *Evidence Guide* 12 (working draft) (2002).

Among the most commonly encountered methods of assessment are:

> nationally available assessment examinations in general education or selected major fields (for which comparisons with national norms can be reported),

> professional or occupational licensure or certification examinations (typically reported in terms of pass rates), faculty-made comprehensive examinations (virtually always in the major), capstone courses in which selected assessment exercises can be embedded, portfolios and work samples drawing from previously graded student work, benchmark assignments embedded in regular classes and scored by teams of faculty employing specially designed scoring guides or rubrics, and self-reported gains in knowledge and skills reported by students on questionnaires.

*Id.* at 20-21.

In general, the regional commissions have put the onus on accredited institutions to do the heavy lifting in terms of creating a "culture of evidence" to demonstrate that the institution is meeting its goals and objectives that have been developed by that institution in alignment with its mission. Institutions must routinely collect evidence, assess that evidence, disseminate the evidence, and then use that evidence to continuously improve. A common theme among the regional commissions is the requirement that there be multiple indirect and direct methods of assessing student learning outcomes. There are no standards indicating that one form of assessment is paramount or is otherwise more important than others. Rather, reliability is gauged by multiple assessment devices all pointing to the same result.

(3) *Council for Higher Education Accreditation (CHEA)*

The Council for Higher Education Accreditation (CHEA) describes itself as a "national advocate and institutional voice for self-regulation of academic quality through accreditation." It is the largest institutional higher education membership organization in the United States, with membership of approximately 3,000 degree-granting colleges and universities and sees itself as a primary national voice for voluntary accreditation to the general public, opinion leaders, students and families, and to the Department of Education. It also serves as a national forum to address issues of mutual interest and concern in voluntary accreditation. The ABA is not a member of CHEA but collaborates with it on activities of mutual interest.

CHEA has for many years engaged in discussions about, and has developed policy positions on, the issues surrounding "student learning outcomes." It believes that information about student learning outcomes is important to accrediting organizations because the expectation that accreditors will provide this information is growing among important constituents, including those who recognize these organizations (i.e., the Department of Education). CHEA has stated that each accrediting organization needs to state clearly its position with respect to how it addresses the matter of evidence of student learning outcomes in its standards, policies and review processes.

CHEA has defined the term "student learning outcome":

> An "outcome" is something that happens to an individual student as a result of his or her attendance at a higher education institution or participation in a particular course of study. But there are many types of outcomes other than student learning. A "student learning outcome" in contrast is properly defined in terms of the particular levels of *knowledge, skills and abilities* [note the similarity] that a student has attained at the end (or as a result) of his or her engagement in a particular set of collegiate experiences.

CHEA has also described what counts as evidence of student learning. Examples of the types of evidence that might be used include (but are not limited to):

- faculty-designed comprehensive or capstone examinations and assignments;
- performance on external or licensure examinations;
- authentic performances or demonstrations;
- portfolios of student work over time; or
- samples of representative student work generated in response to typical course assignments.

Until 2006, CHEA had not taken a policy position on the question of the extent to which particular student learning outcomes should be specified by accreditors. It believed that this choice must be made explicitly by individual accreditors, depending upon their circumstances. Options range from:

- complete prescription of outcomes by accreditor (for example, specific professional skills required for practice);
- accreditor expects institution to choose and define outcomes; or
- both (for example, core set of outcomes on which accreditor and institution agree).

However, CHEA's policy statement in 2003 did say that accrediting organizations need to use evidence of student learning outcomes in making judgments about academic quality and accredited status. It went on to say that accreditors need to:

- Establish and apply standards, policies and review processes that examine how institutions and programs develop and use evidence of student learning outcomes for internal quality assurance and program improvement;

- Establish standards, polices and review processes that visibly and clearly expect institutions and programs to discharge the above responsibilities with respect to public communication about student learning outcomes;

- Clearly communicate to accreditation's constituents the fact that accredited status signifies that student achievement levels are appropriate and acceptable; and

- Provide information about specific proficiencies or deficiencies in aggregate student academic performance, if these played a role in an accreditation action or decision about an institution or program.

CHEA *Advisory Statement, Statement of Mutual Responsibilities for Student Learning Outcomes: Accreditation, Institutions, and Programs* (September 2003).

CHEA more recently, in a 2006 paper entitled "New Leadership for Student Learning and Accountability," has adopted several principles for meaningful educational accountability. For purposes of this Committee's work, and to put this in a law school context, the most relevant of those principles are:

- The primary responsibility for achieving excellence falls on law schools themselves. Accrediting organizations (the ABA) must play a significant role in advancing the assessment of learning outcomes and do so while encouraging law schools to set the highest possible standards.

- To that end, a law school should develop ambitious, specific, and clearly stated goals for student learning appropriate to its mission, resources, tradition, student body, and community setting. While these educational goals will vary from institution to institution, they should include the enrichment of both individual lives and our democratic society as a whole through the study of law.

- Each law school should gather evidence about how well students are achieving learning goals across the curriculum and about the ability of its graduates to succeed in a challenging and rapidly changing world. Accrediting organizations (the ABA) should likewise evaluate law schools by their performance in accord with the school's goals and develop consistent strategies for summarizing and making public their findings.

- Understanding that the federal government relies upon independent accrediting organizations to encourage systematic improvement of educational results, and within this context, *CHEA strongly endorses the principle that quality standards must be set and met by institutions themselves and not by external agencies*. At the same time, it also calls for continued efforts to reduce the costs and distractions imposed by unproductive governmental regulation.

Thus it appears that as of 2006, CHEA takes the position that accrediting bodies should not be establishing student achievement measures – that responsibility rests with the schools themselves with a broad framework and oversight provided by the accreditor.

These principles are interesting in light of the current Congressional debate on the reauthorization of the Higher Education Act (HEA). As of April 1, 2008, the House and Senate

HEA bills had not gone to conference to reconcile differences, but both versions contain language constraining the Department of Education from adopting and imposing student achievement standards on accreditors. For instance, the House language provides:

> Nothing in this section shall be construed to permit the Secretary to establish any criteria that specifies, defines, or prescribes the standards that accrediting agencies or associations shall use to assess any institution's success with respect to student achievement.

It further provides:

> Nothing in subsection (a)(5) of this section shall restrict the authority of (1) an accrediting agency or association to set, with the involvement of its members, and to apply accreditation standards to institutions or programs that seek review by the agency or association; or (2) an institution to develop and use institutional standards to show its success with respect to student achievement, which shall be considered as part of any accreditation review.

## III. *Reframing the Current ABA Accreditation Standards to Focus on Outcomes More Overtly and Appropriately*

### A. *Reasons for Shifting to an Outcome-Based Approach*

The Committee recommends that the Section of Legal Education and Admissions to the Bar re-examine the current ABA Accreditation Standards and reframe them, as needed, to reduce their reliance on input measures and instead adopt a greater and more overt reliance on outcome measures. As Part I of this report showed, a shift towards outcome measures is consistent with the latest and best thinking of U.S. legal educators (as reflected in the Carnegie Foundation and "Best Practices" reports) and legal educators in other countries. As Part II(B) showed, such a shift also would comport with the best thinking and practices of accreditors in other fields.

Moreover, as Part II(A) showed, the existing Preamble to the ABA Standards and Rules of Procedure for Approval of Law Schools has – since its development by the Wahl Commission in 1995 – articulated a vision of law school accreditation that is conceptualized in outcome-based terms. A retooling of the existing Standards and Interpretations to move in the direction of outcome measures would be a long overdue course correction to bring the Standards and Interpretations in line with the vision set forth in the Preamble.

This does not mean, of course, that such an approach should – or even could – be implemented all at once. Large-scale change is often incremental. This report identifies in Section III(B) *infra* the most immediate issues for review by the Standards Review Committee. If, as suggested in Section III(B)(4), a new outcome-based approach is phased in, the use of outcome measures during the initial stages will produce data that can inform the Standards

Review Committee of the ways in which outcome-based measures may be framed and implemented in later stages.

### B. *Considerations to Take Into Account in Reframing the Current Standards to Adopt an Outcomes-Oriented Approach*

If the Council of the Section follows this Committee's recommendation and directs the Standards Review Committee to re-examine and revamp the existing Standards and Interpretations to incorporate an outcome-based approach, the Standards Review Committee will confront a number of difficult questions. The following discussion will identify a few of the most pressing of these questions and will offer the Committee's thoughts on these issues.

#### (1) *Determining the Degree of Specificity With Which to Identify Outcome Measures and the Degree of Flexibility to Accord to Law Schools in Selecting and Defining Outcomes*

A central question for the Standards Review Committee (and thereafter the Council) will be whether to set forth detailed outcome measures in the Standards. As the CHEA Institute for Research and Study of Accreditation and Quality Assurance explains, the options available to accreditors for using outcome measures range from:

- complete prescription of outcomes by accreditor (for example, specific professional skills required for practice);
- accreditor expects institution (or program) to choose and define outcomes;
- or both (for example, core set of outcomes on which accreditor and institution agree).

Council for Higher Education Accreditation (CHEA), *Accreditation and Accountability: A CHEA Special Report* 2 (Dec. 2006).

Although the choice of approach is for the Standards Review Committee to determine after studying the matter, the Committee recommends that the resulting system be one that affords considerable flexibility to individual law schools to determine the outcomes the school seeks to effect (presumably within broad contours established by the standards and interpretations) and the mechanisms by which to measure those outcomes. Such an approach would best fulfill the institutional interest in assuring opportunities for innovation on the part of individual law schools. *See* MacCrate Report, *supra* at 132 ("[e]xcellence [in legal education] ... is best supported by encouraging pluralism and innovativeness"); Wahl Commission Report, *supra* at 21 (quoting MacCrate Report approvingly); Report of the Accreditation Policy Task Force, *supra* at & n.1 (quoting MacCrate and Wahl Commission Reports).

Moreover, an approach that accords independence and flexibility to law schools would create room for individual law schools to fashion outcome measures and assessment mechanisms that reflect any special missions the law school has adopted. As previous sections of this report showed, the regional accreditation commissions and accreditors in other fields of professional education treat the mission of a school as extremely important to the accreditation process, and have adopted a flexible, mission-driven approach to accreditation. In a submission to the Committee, the Society of American Law Teachers (SALT) strongly recommended a similar recognition of the importance of mission in law school accreditation. *See* Society of American Law Teachers (SALT), Statement to the ABA Outcome Measures Committee 4 (Feb. 1, 2008) (footnotes omitted), *available at* http://www.saltlaw.org/files/uploads/2-1-08SALTOutcome Measures.pdf ("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. . . . It is important that outcome measures take into account a school's mission, even as general standards of professional competence are taken into account.").

Finally, an approach that accords significant independence to law schools would make it possible for the schools to serve as laboratories for innovation and systemic improvement. As noted above, it may be advisable to phase in an outcome-based approach in incremental stages. As law schools experiment with various models of their own choosing, the data these schools generate will inform other schools' experiments and will provide a basis for fine-tuning models for instruction and evaluation. At some point in the future, it may be the case that our understanding of outcome measures has progressed so far, and that certain views have become so widely held, that the ABA Section of Legal Education and Admissions to the Bar will be in a position to demand greater specificity in the criteria in the Standards and/or Interpretations. But, at least at the present time, the Committee believes that in drafting Standards and Interpretations, it is best to give law schools the latitude to experiment with a wide range of models.

(2) *Identifying the Standards that Would Benefit from a Shift to Outcome Measures and the Types of Revisions that Should be Made in these Standards*

To identify the Standards that would benefit from a shift to an outcome-oriented approach, it is useful to consider the respective roles of the individual law schools and the Council in defining outcomes and establishing appropriate and adequate mechanisms for ensuring that those outcomes are produced. The individual schools and the accrediting agency have interdependent roles to play in developing criteria and mechanisms for measuring whether the desired outcomes have been produced. Even under a system that affords substantial flexibility to schools to develop criteria and mechanisms that are well-suited to the outcomes they have selected, the Council has an ultimate responsibility to students, the profession, and the public to ensure that schools adopt suitable measures and utilize them adequately and appropriately.

The following Standards and Interpretations present the most promising potential for initial change. This discussion certainly is not intended as a complete list of the Standards that should be reframed in outcome-oriented terms. Indeed, many other Standards might benefit from such reframing. Rather, this discussion is offered to illustrate the types of changes that might be made and to offer an overall conceptual process that might be useful in identifying the key areas for reform.

*Standards 202 and 203*: Under the Committee's vision, a shift to an outcome-based approach should provide substantial flexibility to law schools to develop specific outcomes and the mechanisms for effecting and assessing those outcomes. A critical component in this shift will be the school's employment of a planning process that is up to the task of identifying appropriate, reliable, and verifiable outcome measures and developing mechanisms to produce those outcomes and to assess whether the outcomes are being adequately produced (and, if the system is not functioning adequately, to initiate systemic reforms). The planning process also needs to ensure that the school has the resources necessary for producing the desired outcomes (such as, for example, faculty members who are qualified to teach the requisite body of knowledge, skills, and values). Although all of these planning processes are functions to be performed by the individual school, the Council plays a critical role in ensuring that these processes are adequate and appropriate to accomplish these objectives. Accordingly, the Committee recommends that the Standards Review Committee consider reframing ABA Standards 202 ("Self Study") and 203 ("Strategic Planning and Assessment") to ensure that, in addition to what is contemplated currently in these Standards, law schools engage in planning that focuses appropriately on outcome measures.

*Standards 301 and 302*: The Committee recommends that the Standards Review Committee consider redrafting Standards 301 and 302 to incorporate explicitly the Preamble's conception of law schools as having a responsibility to "ensure that . . . graduates" possess an adequate understanding of substantive law ("basic principles of public and private law" and "the theory, philosophy, role, and ramifications of the law and its institutions"), professional skills (the skills of "legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other fundamental skills necessary to participate effectively in the legal profession"); and professional values (the "ethical responsibilities [that lawyers have] as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice," and an "understand[ing] of the law as a public profession calling for performance of pro bono legal services"). At present, Standard 301(a), although framed in outcome terms, is extremely broad, stating that "[a] law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession." While Interpretation 301-6 is a specific "bright-line" outcome measurement on bar passage, Interpretation 301-3 offers other aspects to be considered, such as rigor of academic program and assessment of student performance, without recognition of the law school's need to develop the mechanisms to assess and evaluate their success under Standard 301.

Standard 302 is designed to flesh out the Preamble's recognition of the core requirements, which it does by drawing on the tripartite knowledge-skills-values framework of the Preamble, but Standard 302 reconceptualizes the Preamble's output-oriented approach in input-based terms. Rather than requiring (as the Preamble does) that law schools ensure that graduates possess the requisite knowledge in these three areas, Standard 302 mandates that law schools provide students with "substantial instruction" in these three areas. Accordingly, Standards 301 and 302 should be reframed (perhaps in a single, consolidated Standard) to set forth the law school's responsibilities in output-based terms. This does not necessarily mean that all of the input measures that currently appear in Standard 302 need to be eliminated. It may be appropriate to retain, as an input measure, some minimal requirements of what should be contained in a law school curriculum.

If Standard 302 is recast as an outcome-based Standard, careful thought should be given to the types of mechanisms that individual schools can use to assess their effectiveness in teaching the requisite body of knowledge, skills, and values. For example, with respect to legal skills that build on foundations that students typically acquire in significantly varying degrees before coming to law school – such as problem solving, written communication, and oral communication – schools may find it useful to employ a "value added" approach that controls for the level of skills that students admitted to the school typically have. Such a model has been proposed as a tool for measuring the comparative performance of law schools in preparing students to pass the bar examination. *See* Letter from William P. Henderson to Randy Hertz (as Chair of Outcome Measures Committee) (Jan. 30, 2008). *See also* Andrew P. Morriss & William D. Henderson, *Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings* (forthcoming, *Indiana Law Journal*, 2008), *available at* http://ssrn.com/abstract=954604.

*Standard 303*: The Committee recommends that the Standards Review Committee consider whether revisions should be made to Standard 303(b) ("A law school shall monitor students' academic progress and achievement from the beginning of and periodically throughout their studies") and Interpretation 303-1 ("Scholastic achievement of students shall be evaluated by examinations of suitable length and complexity, papers, projects, or by assessment of performances of students in the role of lawyers") to focus on mechanisms that are well-suited to measuring outcomes. To provide law schools with the information they need for making decisions about how to measure outcomes effectively, the Committee recommends that the Standards Review Committee fashion Standards and Interpretations that would set very general parameters regarding outcome measures and then flesh those out with commentary, setting forth models that have proven successful and that a school could chose to use if it wishes. Thus, for example, Interpretation 303-1 might be revised and expanded to elaborate upon techniques for assessing students' learning in the areas of substantive knowledge, professional skills, and professional values, including the use of ongoing assessments and other formative techniques.

(3) *Relationship Between New Outcome Measures and the Existing Measures Concerning the Bar Examination*

If the Council adopts the Committee's recommendation to shift to an outcomes-oriented approach, the Standards Review Committee will need to consider how the new outcome measures it develops should interact with the Standards and Interpretations on an already-existing outcome measure: bar passage rates of a law school's graduates. Various types of relationships could be imagined. Bar passage could stand alone as a separate, independent accreditation criterion or it could be combined with other outcome measures as one of many criteria. Bar passage could be denominated as a "trump" in the sense that a law school that fails to comply with a bar passage standard would be at risk of losing its accreditation even if the school complies with other outcome measures, and/or a law school that meets or exceeds the bar passage standard might be free to ignore the other outcome measures. Or, alternatively, the overall list of new and old outcome measures might function as a whole, with no single measure taking precedence over the others.

The Committee believes that the best way to approach and resolve these issues is by considering the relative roles of a licensing examination and other outcome measures in the educational functions that professional schools provide to their students and in the mandated functions of an accrediting agency. As previous sections of this report have explained, law schools – like other professional schools – appropriately seek to teach students the body of knowledge, skills, and values that the public and the profession expect of a law school graduate. The bar examination, like any licensing examination in any field, tests a subset of this body of knowledge to ensure that licensed members of the profession have attained at least a certain minimum level of proficiency in all of these areas. The Multistate Bar Examination (MBE) and Multistate Essay Examination (MEE) test substantive knowledge, problem solving, and legal reasoning; the Multistate Performance Test (MPT) evaluates a broader array of lawyering skills; the Multistate Professional Responsibility Examination (MPRE) assesses understanding of professional norms. Licensing authorities under the direction of the judiciary may further examine bar applicants in these areas from a local perspective. Of course, law schools universally and appropriately seek to teach students far more in each of the three areas – knowledge, skills, and values – than is tested on the respective licensing examination.

As the accrediting agency approved by the United States Department of Education (since 1952) as the recognized national agency for the accreditation of programs leading to the first professional degree in law, the Council of the Section of Legal Education and Admissions to the Bar has responsibilities to the public, law students, and the profession to ensure that ABA-accredited law schools are appropriately and adequately fulfilling their functions in teaching students the body of knowledge, skills and values that the public and the profession expect a law school graduate to possess. This is especially the case given that graduates of approved law schools can become members of the bar in all United States jurisdictions. *See, e.g.*, LaBossiere v. Florida Board of Law Examiners, 279 So. 2d 288, 289 (Fla. 1973) ("We were persuaded to follow the American Bar Association standards relating to accreditation of law schools because

we sought to provide an objective method of determining the quality of the educational environment of prospective attorneys. This was deemed especially necessary because of the rapid growth in the number of educational institutions awarding law degrees. We wished to be certain that each of these many law schools provided applicants with a quality legal education, but we were unequipped to make such a determination ourselves because of financial limitations and the press of judicial business.").

When the Council conducts an accreditation review of a law school to ensure that the school is adequately fulfilling its functions of teaching substantive knowledge, skills, and values, bar passage (like passage of any licensing examination in any field of professional education) can serve as a useful outcome measure.[1] Until now, the law school accreditation system, unlike the accreditation processes in other fields of professional education, has not developed and

[1] The discussion in the text focuses exclusively on the role of bar passage as an outcome measure and its relationship to other outcome measures. Bar passage also functions in another manner in the current accreditation process. Under current Standard 301(a), law schools are required to maintain an educational program that "prepares ... students for admission to the bar." In accord with this vision of a law school's responsibilities, Standard 501(b) requires that a law school admit only students who "appear capable of ... being admitted to the bar"; Interpretation 501-3 elaborates that the "factors to consider in assessing compliance with Standard 501(b) . . . [include] the bar passage rate of [the school's] . . . graduates, and the effectiveness of the law school's academic support program"; and Standard 303(c) provides that "[a] law school shall not continue the enrollment of a student whose inability to do satisfactory work is sufficiently manifest so that the student's continuation in school would inculcate false hopes, constitute economic exploitation, or detrimentally affect the education of other students." These Standards and Interpretations can be viewed as establishing a role for bar passage as a measure of whether the legal education process is doing what it should to provide an adequate and appropriate pathway to admission to the bar. As an analytical matter, this issue can be seen as distinct from the use of bar passage as one of many outcome measures for assessing whether law schools are doing what they should to teach students the requisite knowledge, skills, and values. It is worth pointing out there that there is an ongoing debate within the legal education community about whether law schools should be required, as Standard 301(a) currently requires, to provide students with a pathway to admission to the bar. Some of those who question current Standard 301(a)'s focus on providing a pathway to admission to the bar have suggested that Standard 301(a) should be revised to provide instead that "[a] law school shall maintain an educational program that prepares its students for responsible participation in the legal profession or for using their legal education to serve the needs of society." The Committee did not address this debate in this report because the Committee concluded that the subject is beyond the charge from the Section Chair that created the Committee. That charge expressly stated that the Committee should examine "how we can use output measures, *other than bar passage* and job placement, in the accreditation process." Charge from Section Chair Ruth McGregor (October 2007) (emphasis added). Accordingly, the report focuses exclusively on the limited question of how bar passage – in its role as an outcome measure – interrelates with other outcome measures.

employed other types of outcome measures, and therefore bar passage has assumed a preeminent role. As the Standards Review Committee and the Council develop other appropriate outcome measures, these measures should function – along with bar passage – as a constellation of criteria for assessing whether a law school is adequately fulfilling its functions of teaching substantive knowledge, skills, and values. As previous sections of the report explain, the resulting system of outcome measures should accord great weight to a school's mission when assessing the school's performance.

The Committee recommends, therefore, that the Standards Review Committee develop Interpretations to Standard 301 that address (i) outcome measures other than bar passage, complementing Interpretation 301-6's provisions on bar passage, (ii) the relationship between the new outcome measures and the already-existing provisions on bar passage, and (iii) the role that a school's mission should play in determining compliance.

(4) *Development of a Sound Process for Refashioning the Standards to Shift to an Outcome-Oriented Approach*

In shifting to an outcome-based approach, the Standards Review Committee and the Council may wish to consider this Committee's view that there are significant benefits to making changes to the Standards in an incremental fashion. After identifying the Standards that should be refashioned, the Standards Review Committee and the Council may find it useful to formulate an overall timetable under which changes in the Standards would take place in progressive stages. An incremental approach of this sort would afford time and opportunity to law schools to prepare for upcoming changes in the Standards. Moreover, with each stage of changes, the Standards Review Committee and the Council would be able to draw on the experiences in prior stages to fine-tune their planning and drafting.

Because a movement to an outcome-oriented approach is a quantum shift in the structuring of the law school accreditation process and because the legal education field has lagged behind other fields in developing and using outcome measures, retooling of the Standards to incorporate outcome measures is a daunting task. The Committee recommends that the Standards Review Committee turn to appropriate sources for guidance and assistance. For example, some authors and organizations have looked at outcome measures in legal education and are likely to have useful data and observations to share. These include, for example, the authors of the Carnegie Foundation report on legal education; the members of the Clinical Legal Education Association's "Best Practices Project"; and the Society of American Law Teachers (SALT). Accreditors in other fields of professional education have been working with outcome measures for many years and are likely to be able to offer valuable advice about the approaches that have proven successful and about pitfalls to avoid. The Council may also wish to maintain the existence of this Committee for some period of time to serve as an advisor to the Standards Review Committee in implementing a change to an outcome-oriented approach. Although it is usually the case that committees dissolve upon their submission of their final report, doing so in this instance would mean that the Standards Review Committee would be denied the assistance

of a group of people who, although we certainly would not claim to be experts in this area, have spent a year deeply immersed in the subject matter, learning a great deal about the nature and functions of outcome measures in accreditation of professional schools.

Moving to an outcome-oriented approach may also influence other aspects of the accreditation process. Specifically, retooling the Standards may affect the way site visits are conducted. Given time constraints on site, the Council may take its cue from other regional accrediting bodies to instruct evaluators on site to forego visiting classes and speaking with students in favor of reviewing the reliability and accuracy of the data produced by the law school and closely questioning those responsible for its production.

C. *Costs*

When the Committee first considered the potential costs of shifting to an outcome-oriented accreditation process, the Committee was very troubled by what appeared to be a likely prospect of substantial new fiscal burdens for the law schools. A transformation of this sort will involve a paradigm shift to a culture of evidence, which will undoubtedly entail new costs in collection and dissemination of data. Law schools that are not already employing suitable outcome measures will need to adopt new mechanisms of this sort and incorporate them into their overall programs of instruction and assessment. Moreover, once the new outcome measures have been activated (or even in anticipation of their activation), at least some law schools may come to the conclusion that their current programs of instruction in lawyering skills and/or professional responsibility do not provide the level and quality of instruction that the profession and the public rightfully expect of law schools. Such a conclusion might necessitate refashioning of the curriculum and/or hiring or redeployment of faculty.

New fiscal burdens are troubling enough, but what seemed to the Committee to be particularly worrisome was the prospect that some law schools might seek to pass on the new costs to students in the form of tuition increases. As many reports and commentators have recognized, the cost of legal education is currently so high that "law students are already having to shoulder prohibitively high debt." ABA Section of Legal Education and Admissions to the Bar, *Report of the Accreditation Policy Task Force* 12 & n.5 (May 29, 2007) (citing John A. Sebert, *The Cost and Financing of Legal Education*, 52 J. LEGAL EDUC. 516 (2002)).

As the Committee delved more deeply into the subject of outcome measures, however, the Committee came to appreciate that the costs to the law schools may not be as substantial as first imagined. There are models already in existence that law schools could adopt to improve their modes of instruction in ways that are both pedagogically sound and cost-effective. The Carnegie Foundation Report singles out some law schools for the models that they have developed for teaching substantive knowledge, skills, and values effectively in an integrated curriculum. *See* Carnegie Foundation report, *supra* at 34-44, 58-59, 179-80, 197-98. A follow-up study by the Carnegie Foundation, involving a group of law schools, is currently focusing on assessment, including potential outcome measures, and is likely to produce highly useful

information about successful approaches and pitfalls to avoid. There are also models already in existence, and currently being used by law schools, for assessment of the effectiveness of law school instruction in producing desired outcomes. These include, for example, the Law School Survey of Student Engagement (LSSSE), an evaluative instrument co-sponsored by the Association of American Law Schools (AALS) and the Carnegie Foundation, which is designed to obtain "valid reliable information about the law school experience from students at law schools across the country" on what law students "gain from attending law school" and the degree to which law schools produce "desired outcomes" (LSSSE website, http://lssse.iub.edu/html/quick_facts.cfm); the survey, which was initiated in 2003 with a pilot survey of 12 schools, has already spread to 85 law schools (*id*.).

It became apparent to the Committee, therefore, that a number of law schools are already far down the road of employing pedagogically sound, cost-effective methods for teaching and assessing substantive knowledge, lawyering skills, and professional responsibility in an integrated manner. This trend appears to have been sparked (or at least substantially encouraged) by the issuance of the MacCrate Report in 1992. *See* ABA Section of Legal Education and Admissions to the Bar, A Survey of Law School Curricula 1992-2002, at 6 (December, 2004) ("Cognizant of the MacCrate Report's findings that law schools should integrate practical skills into the curriculum, more law schools have moved beyond the strictly doctrinal nature of curricular offerings to include experiential units as required courses or mainstay elective opportunities."). In the past year, the issuance of the Carnegie Foundation report and CLEA's "Best Practices for Legal Education" book have fueled a new wave of attention and innovation. *See, e.g.*, Jonathan D. Glater, *Training Law Students for Real-Life Careers*, N.Y. TIMES, Oct. 31, 2007 (reporting that the Carnegie report "has galvanized reflection at many law schools," with the result that law schools "are expanding their clinical offerings").

There are other sources of guidance as well outside the world of legal academia. As earlier sections of this report showed, regional accreditors and educators in other fields of professional education have extensive experience in using outcome measures. Thus, there is substantial experience and expertise on which law schools can draw to help mitigate assessment costs.

It would seem, therefore, that many law schools are already well-positioned to move to an outcome-based approach. And those law schools that have not yet moved in this direction have models that they can consult in making changes in a cost-effective manner.

It seems likely, however, that a shift to an outcome-oriented approach will result in a considerable increase in costs for the ABA Office of the Consultant on Legal Education. New outcome-oriented measures of the sort the Committee is recommending will likely require greater staff time, especially in the early years. A shift in direction will probably produce a greatly increased volume of questions to the Consultant's Office from law schools seeking guidance on the meaning and implications of the new standards and/or seeking advice about models that have proven effective at other law schools. It may also result in an increase in the

number of workshops and training sessions that would be required, although the potential increase may be ameliorated by including the discussion in already existing conferences and workshops. While these costs likely will decrease over time – as law schools and the accrediting process adjust to the new system – there are likely to be substantial start-up costs for the Consultant's Office. Accordingly, if the Council adopts the Committee's recommendation to shift to an outcome-oriented approach, careful thought will need to be given to how to prepare for what is likely to be a substantial expansion of the workload of the Consultant's Office in the early years of a new outcome-oriented system of accreditation.

*Conclusion*

In the course of researching and writing this report, the members of the Outcome Measures Committee had the opportunity to learn about the practices and experiences in other fields of professional education, in other fields of accreditation, and in legal education in other countries. It is readily apparent that there is much that U.S. legal educators and the ABA Section of Legal Education and Admissions to the Bar (in its role as the accreditor of U.S. law schools) can and should learn from these other fields. Precisely because U.S. legal education has lagged behind these other fields in using outcome measures, we should now actively consult the literature in those other fields to learn from them and thereby to replicate their successes and, if possible, avoid whatever pitfalls they encountered.

Our review of these and other sources has also, however, helped us appreciate the strong and vibrant foundation on which the ABA's existing Standards and Interpretations rest. As Part I(B) showed, the literature on outcome measures by legal educators in other countries explicitly cites and builds upon the Section's MacCrate Report. So too, much of the rich thinking that is to be found in the Carnegie Foundation and "Best Practices" reports expressly builds upon the MacCrate Report. If the Council follows our recommendation and instructs the Standards Review Committee to re-examine the existing Standards and Interpretations for the purpose of moving towards a greater emphasis on outcome measures, the Committee strongly urges that the Committee and the Council revise with a very careful eye. As Part II(A)'s discussion of Standard 302 demonstrated, even Standards and Interpretations that are currently couched in input terms may reflect important concerns that should be retained, albeit in a more outcome-oriented formulation.

Professor Catherine L. Carpenter
Professor Michael J. Davis
Jerome C. Hafter, Esq.
Dean Joseph D. Harbaugh
Professor Randy Hertz (Chairperson)
E. Christopher Johnson, Jr., Esq.
Dean Maryann Jones
Dean Lisa A. Kloppenberg
Thomas E. Perez, Esq.
Dean Raymond C. Pierce
Dean Kurt L. Schmoke
Dean Kevin J. Worthen

July 27, 2008

# Appendix A

## ASSESSMENT FACTORS

The following tables are based on the Committee's review of the standards adopted by the approved accrediting agencies of ten professional disciplines and used to measure student achievement and the educational effectiveness of the schools that they accredit. The Committee attempted to describe and categorize the criteria contained in those several standards. While every effort was made to describe the categories in simple but accurate terms, no claim is made that the tables reflect every factor used by the various accrediting bodies. Moreover, only when two or more professions included an outcome measure was a factor category included in the chart.

## Five Traditional Health Care Professional Disciplines

| **Professional Disciplines/ Criteria** | MD (Allopathic) | DOM (Osteopathic) | Dental Medicine | Veterinary Medicine | Pharmacy |
|---|---|---|---|---|---|
| | | | | | |
| Licensing/Certification Exams | Y[2] | Y | N | Y | Y |
| Students possess competencies expected by profession/public | Y | Y | Y | Y | N |
| Criteria measure skills, knowledge, behaviors and/or attitudes | Y | N | N | N | Y |
| Evaluate clinical, problem solving and/or communication skills | Y | N | Y | Y | Y |
| Formative/summative evaluation of student achievement in class and/or clinic | Y | N | N | N | Y |
| Results of board exams before/required for graduation | Y | Y | N | Y | N |
| Attrition/Completion and Timely Graduation Rates | Y | Y | N | Y | N |
| Acceptance into Resident & Internship Programs | Y | N | N | N | N |
| Program Directors Assess Grads Prep & Professional Behavior | Y | N | N | N | Y |
| Grads Assess Own Prep & Professional Behavior | Y | N | N | N | Y |
| Peer Review, Benchmark & External Evaluations | Y | N | N | Y | Y |
| Students demonstrate self-initiated learning ability/traits | N | Y | Y | N | Y |
| Structured clinical exams | N | Y | N | Y | N |
| Longitudinal tracking of careers & achievements | N | Y | N | Y | N |
| Ongoing outcome assessment of student achievement | N | N | Y | Y | Y[3] |
| Student portfolios used to measure competency | N | Y | N | Y | Y |

[2] Medical students must pass all required boards in six attempts in seven years.
[3] The assessment conducted by the school must be reviewed by internal and external stakeholders.

| | | | | | |
|---|---|---|---|---|---|
| National standardized assessment instruments | Y | N | N | N | Y |
| Preceptor assesses professional behavior & competence | Y | N | N | N | Y |
| Ongoing Assessment by Faculty of Curriculum and Changes in Profession | Y | N | N | N | Y |
| School fosters/assesses experimentation and innovation | N | N | N | N | Y |
| Scholarly activity of faculty | N | N | Y | Y | N |
| Learning objectives and evidence-based data for all competencies | N | N | N | Y | Y |
| Evaluations During Mentoring Year | N | N | N | N | N |
| Employer reports/surveys | N | N | N | Y | N |
| State reviews of program | N | N | N | N | N |
| Employment rates | N | N | N | N | N |
| Mastery of technology | Y | N | N | N | N |
| Attract, manage, serve (patient/client), communicate with diverse community | N | N | N | N | N |

## Five Other Professional Disciplines

| **Professional Disciplines/ Criteria** | Psychologists | Teachers | Engineers | Accountants | Architects |
|---|---|---|---|---|---|
| | | | | | |
| Licensing/Certification Exams | Y[4] | Y | N | Y[5] | N |
| Students possess competencies expected by profession/public | N | Y | N | Y | N |
| Criteria measure skills, knowledge, behaviors and/or attitudes | N | Y | Y | Y | Y |
| Evaluate clinical, problem solving and/or communication skills | Y | Y | N | N | Y |
| Formative/summative evaluation of student achievement in class and/or clinic | N | Y | N | N | N |
| Results of board exams before/required for graduation | N | N | N | N | N |
| Attrition/Completion and Timely Graduation Rates | Y[6] | N | N | N | N |
| Acceptance into Resident & Internship Programs | Y[7] | N | N | N | N |
| Program Directors Assess Grads Prep & Professional Behavior | N | N | N | N | N |
| Grads Assess Own Prep & Professional Behavior | N | N | N | N | N |
| Peer Review, Benchmark & External Evaluations | N | N | N | N | N |
| Students demonstrate self-initiated learning ability/traits | N | N | N | N | N |
| Structured clinical exams | N | N | N | N | N |
| Longitudinal tracking of careers & achievements | N | Y | N | Y | N |
| Ongoing outcome assessment of student achievement | N | Y | N | N | N |

[4] School must report the percentage of graduates who have been licensed over an eight year period.
[5] Graduates must pass all four parts of CPA exam within 18 months of passing the first part; no requirement to report passage rate.
[6] School must report the percentage of enrolled students who failed to complete the program for any reason; completion data measured over a period of 10 years; results interpreted in light of school's mission.
[7] School must report the percentage of graduates over a seven-year period who received internships and residency appointments.

| | | | | | |
|---|---|---|---|---|---|
| Student portfolios used to measure competency | N | Y | Y | N | N |
| National standardized assessment instruments | N | N | N | N | N |
| Preceptor Assessment of competency & Prof Behavior | N | Y | N | N | N |
| Ongoing Assessment by Faculty of Curriculum and Changes in Profession | N | N | N | Y | N |
| School fosters/assesses experimentation and innovation | N | N | Y | N | Y |
| Scholarly activity of faculty | N | Y | N | N | N |
| Learning objectives and evidence-based data for all competencies | N | Y | N | Y | Y |
| Evaluations During Mentoring Year | N | Y[8] | Y | N | N |
| Employer reports/surveys | N | Y | N | N | N |
| State reviews of program | N | Y | N | Y | N |
| Employment rates | Y | N | Y | Y[9] | N |
| Mastery of technology | N | Y | N | N | Y |
| Attract, manage, serve (patient/client), communicate with diverse community | Y | Y | N | Y | Y |

[8] Evaluations of supervisors made during the cooperative teaching year.
[9] Measured at five or 10 years following graduation; based on employer and student surveys.

## Number of Accrediting Agencies Adopting Outcome Criteria

| Criteria included in Accreditation Standards | Number of Disciplines Including Criteria |
|---|---|
| Licensing/Certification Exams | 7 |
| Students possess competencies expected by profession/public | 6 |
| Criteria measure skills, knowledge, behaviors and/or attitudes | 6 |
| Evaluate clinical, problem solving and/or communication skills | 7 |
| Formative/summative evaluation of student achievement in class and/or clinic | 3 |
| Results of board exams before/required for graduation | 3 |
| Attrition/Completion and Timely Graduation Rates | 4 |
| Acceptance into Resident & Internship Programs | 2 |
| Program Directors Assess Grads Prep & Professional Behavior | 2 |
| Grads Assess Own Prep & Professional Behavior | 2 |
| Peer Review, Benchmark & External Evaluations | 3 |
| Students demonstrate self-initiated learning ability/traits | 3 |
| Structured clinical exams | 2 |
| Longitudinal tracking of careers & achievements | 4 |
| Ongoing outcome assessment of student achievement | 4 |
| Student portfolios used to measure competency | 5 |
| National standardized assessment instruments | 2 |
| Preceptor assesses | 3 |

| | |
|---|---|
| professional behavior & competence | |
| Ongoing Assessment by Faculty of Curriculum and Changes in Profession | 3 |
| School fosters/assesses experimentation and innovation | 3 |
| Scholarly activity of faculty | 3 |
| Learning objectives and evidence-based data for all competencies | 5 |
| Evaluations During Mentoring Year | 2 |
| Employer reports/surveys | 2 |
| State reviews of program | 2 |
| Employment rates | 3 |
| Mastery of technology | 3 |
| Attract, manage, serve (patient/client), communicate with diverse community | 4 |