FIRST EDITION (1999, 2000)
COMPILED BY CAROLYN WILKES KAAS

COMPILED BY ALEXANDER SCHERR

THIRD EDITION (2005)
COMPILED BY CHRISTINE CIMINI & CAROLYN WILKES KAAS

FOURTH EDITION (2007)
COMPILED BY KIM DIANA CONNOLLY

FIFTH EDITION (2009)
COMPILED BY LAURA E. MCNALLY

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Dear New Clinician and New Member of Our Community,

On behalf of the Clinical Legal Education Association (CLEA), welcome to clinical teaching. You have chosen what may be the perfect job. It permits the pursuit of social justice, the fostering of young lawyers and a deeply satisfying and reflective law practice, all from the same office! To be sure, you will encounter challenges and obstacles as a clinician, but you have also set yourself on the path to a unique form of professional and personal fulfillment.

Another pleasure of clinical teaching rests in the community of clinicians. Whether you work in an urban center with many law schools, or a smaller community in which yours is the only law school, the clinical world offers an enormous range and depth of support, encouragement and professional development. These include training opportunities like the New Clinicians Conference, the Section's spring professional development conference, regional workshops in the Midwest, Rocky Mountain, Northeast, Southeast and other areas, and other times to connect and grow.

The community of clinicians offers other kinds of support as well. The Clinical Law Review, cosponsored by CLEA, the AALS Clinical Section and NYU, serves as a principal scholarly voice on social justice and on the theory and practice of law teaching. The Best Practices Project has emerged from the clinical community as a major initiative towards reforming the way young lawyers are trained. Clinicians regularly honor excellence in our work, through awards and recognition for both clinicians and students. Perhaps most critically, our community provides consistent, high quality advocacy for clinicians and the clinical community.

You will already have noticed that the national community sustains two distinct but complimentary organizations: the Clinical Section of the AALS and CLEA. The two organizations complement each other on many of these initiatives; but each offers separate value. CLEA serves as an independent voice for clinicians on critical issues concerning the certification of law schools and the participation of clinicians in the academy. CLEA also serves as a sponsoring organization for new initiatives addressing legal education: for example, it fostered both the Best Practices Project and the New Clinicians Conference. Finally, CLEA offers a wide range of community-building activities, from celebrations and dances, to the Creative Competition, to its annual awards to clinic students across the country.

So, welcome to this world of people engaged in solid, absorbing work. CLEA is excited that you can join us for this training. We look forward to getting to know you, and to working with you in the months and years to come.

Kim Diana Connolly
President (2009)
On behalf of the Association of American Law Schools Section on Clinical Legal Education, I would like to welcome you to clinical teaching. I encourage you to become active in Section committees to develop mentorships beyond your home institutions and to engage in important issues of clinical education. As you establish your place in clinical legal education, you will find a supportive and collaborative environment rich in opportunities for professional development in the areas of teaching, service and scholarship, and for the promotion of the ethical-social values of the legal profession.

You are joining the legal academy at a vital time for the clinical education community. The recent publication of the Carnegie Foundation for the Advancement of Teaching’s *Educating Lawyers: Preparation for the Profession of Law* promises to be a catalyst for the development of innovative curricular reform that will provide a more integrated foundation for law students to become effective and responsible professionals.

The focus of the legal academy on the recommendations of the Carnegie Report provides an opportunity for clinical legal educators to step into leadership roles to help our institutions to integrate skills and values progressively throughout the curriculum, improve our clinical programs, and help to fulfill legal education’s social justice responsibilities. Clinicians are at the forefront of bridging legal analysis with practical skills training and the development of professional values.

Additionally, the law school student body is increasingly more diverse, and law schools must be responsive to its needs. As the law student population strives to become more reflective of the communities that lawyers serve, the communities are also further changing in their compositions and needs. You are integral to training law students to provide crucial legal services to vulnerable populations by promoting learning through service.

I, along with other members of the AALS Section on Clinical Legal Education, look forward to working with you and helping you to achieve your professional goals.

Sincerely,

Carol M. Suzuki
2009 Chair
AALS Section on Clinical Legal Education
Associate Professor of Law
University of New Mexico School of Law
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WELCOME TO THE NEW CLINICIANS CONFERENCE

The majority of readers will receive this handbook in conjunction with participation in the Clinical Legal Education Association (CLEA) New Clinicians Conference. If this is the case for you, it is an honor to have you participate in this conference! If this is not the case for you, please consider attending the next CLEA New Clinicians Conference!

CLEA traditionally holds a New Clinicians Conference every two years. As has become our custom, we hold this conference right before the AALS Clinical Workshop and at the same time as the Clinical Directors Workshop. The conference in conjunction with the 2009 edition of the handbook is taking place May 5th & 6th, 2009 in Cleveland, Ohio.

Incorporated in 1992, CLEA’s mission includes the following:

- to bring together in one organization all those involved in clinical education;
- to serve as a voice for clinical teachers and to represent their interests inside and outside the academy;
- to promote and disseminate clinical scholarship and research;
- to foster professional development of clinical teachers; and
- to gather and distribute to clinical teachers information about issues and developments that affect clinical teachers.

CLEA’s New Clinicians Conference is designed for newer clinicians as a fun and informative introduction to clinical teaching and the clinical community. The agenda includes coverage of pedagogical matters, supervision issues, introduction to the history of the clinical movement, and much more! Experienced clinicians from around the country join in leading sessions and small groups, adding important networking opportunities to the substantive coverage.

Those of you at the conference, thank you for attending – we look forward to getting to know you as part of our community. Those of you reading this handbook outside of the conference, we look forward to getting to know you too! Some day it is likely you will serve on the planning committee for future CLEA New Clinicians Conferences, or edit future editions of the handbook, or otherwise participate in this wonderful clinical community...

Very truly yours,

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WHAT DO WE DO?
GLOSSARY OF CLINICAL TERMS

CLINIC
In law schools, a program that teaches through direct experience of lawyering, under the supervision of practicing attorneys / teachers, characteristically in work that advances social justice or the public interest.

LIVE-CLIENT CLINIC
A clinic in which students form lawyer-client relationships directly with clients, exercising legal judgment and performing legal services for those clients. Also known as a “direct service” clinic.

EXTERNSHIP CLINIC (FIELD PLACEMENT CLINIC)
A clinic in which students work under the supervision of non-clinician attorneys in practices outside (external to) the law school, with separate supervision from a law school clinician. Students may work as in ‘live-client’ clinics, but may also perform more limited tasks, and do work other than representation (e.g. judicial clerks, legislative advocacy) and may spend more time in observation than in direct performance of lawyering behaviors.

HYBRID CLINIC
Clinics involving a blend of externship, direct service models and other approaches; e.g., a clinic where students work in a law office external to the law school, but under direct case supervision by a law school clinician.

IN-HOUSE CLINIC
A clinic housed in and / or funded (in whole or in part) by a law school. Contrast with an externship or hybrid clinics.

SIMULATION
A class exposing students to various behaviors and methods of lawyering, often in isolation from legal work, using fictional fact and supervised performance as the primary experience. Examples include trial practice, “interviewing, counseling and negotiation” or legal drafting. Simulation methods also appear in the seminar portion of many clinics.

PRACTICUM
A seminar which integrates analytical inquiry into a discrete area of law and policy with opportunities for student experience practical problem-solving in that field. Typically does not include litigation, but may include planning, community organizing or informal advocacy.
CLASSROOM (OR “STANDUP” OR “PODIUM”) TEACHING
A teaching / learning methodology through which students learn from lecture, discussion and / or question & answer, typically in medium to large groups.

EXPERIENTIAL LEARNING
A teaching / learning methodology through which students learn from personal performance of a job or task, either in work contexts (e.g. a clinic) or in a classroom setting (e.g. a simulation class). Usually refers to structured programs operating from an academic base, and includes closely-related classroom, discussion, and supervisory elements.

REFLECTIVE LEARNING
A teaching / learning methodology in which students think, talk and write about their experience so as to identify and broaden the learning it has prompted. Reflective learning often occurs with the guidance of a mentor / clinician, but may be self-guided. Tools to encourage reflection include journals, personal interviews, case supervision and group discussion.

CASE SUPERVISION
Discussion and appraisal by student and clinician of the legal, strategic and behavioral dimensions of client representation.

CLINICAL SUPERVISION
Includes case supervision, but may also include discussion and appraisal of student learning arising from the entire clinical experience.

DIRECTIVE vs. NON-DIRECTIVE TEACHING (OR SUPERVISION)
In directive teaching, the teacher provide answers to student questions in a more-or-less direct manner. In non-directive teaching, the teacher assists the student to realize answers through questions, suggestions, or further experience.

STUDENT PRACTICE
A form of legal practice through which a state bar grants a limited license to law students to represent clients, typically: in litigation, in a law school clinical program, and during a student’s third year (“third year practice.”) These requirements and others (e.g. types of cases or clients) vary between states.

TENURE
Guaranteed employment, usually as a right granted to a teacher after a probationary period, protecting against dismissal for most reasons.

[11]
PROMOTION
The process through which a teacher proceeds from one level of employment status to the next. A traditional path includes assistant professor, associate professor, full professor, and lastly chaired professor. Each promotion can bring increases in salary and in scope of governance rights.

TENURE-TRACK
An employment status under which a teacher is guaranteed consideration for eventual tenure, usually within a stated number of years. Failure to meet the conditions of the tenure probationary period can result in termination.

CLINICAL TENURE
A form of tenure in which probationary requirements may include a wider range of work than traditional scholarship, but where salary and governance rights may or may not be less than those for traditional tenured faculty.

“TENURE IN THE POSITION”
Tenure granted for a particular job or position, but terminable when the law school terminates the job or position.

LONG-TERM CONTRACT
Contract employment for periods typically in excess of one year, renewable on terms intended to provide right comparable to tenured status. See A.B.A. Standard for Approval of Law Schools, Standard 405 (c), Interpretation 405-6.

SHORT-TERM CONTRACT
Contract employment for periods typically of one or two years, with no job security, or other requirements if “reasonably similar” perquisites. See A.B.A. Standard for Approval of Law Schools, Standard 405 (c), Interpretation 405-6.

HARD MONEY
Funding drawn directly from within an academic institution’s internal operating budget, generated from traditional, long-term financial sources such as tuition, state support, or alumni giving.

SOFT MONEY
Funding drawn from outside an institution’s internal budget, typically from short-term grant sources and typically of limited duration.

GOVERNANCE / VOTING RIGHTS
The right of a law school employee to serve on committees or to vote on internal issue (e.g. hiring, promotion, curriculum, etc.) in whole or in part.
A TAXONOMY OF CLINICAL PROGRAM DESIGN

This document provides an overview of some of the common types of clinics, and of some of the fundamental design questions facing most clinical programs. It does no more than to introduce basic ideas, and to distinguish different approaches one from the other. In fact, it may well promote more disagreement than consensus, which, if true, should illustrate the diversity and opportunities of clinical teaching. In later pages, you will find descriptions of clinical programs from across the country, which provide more concrete examples of the design ideas presented here.

TYPES OF CLINICS

Clinicians and law schools have generated an enormous diversity in clinical programs, responding to many influences: social justice, client need, clinician interest and motivation, funding, teaching goals and more. This section provides some points of distinction between various programs, organized by relationship of student, client, & supervisor; by lawyering activity; by relationship to the law school and funding sources.

BY RELATIONSHIP OF STUDENT, CLIENT, & SUPERVISOR

DIRECT SERVICE (‘LIVE CLIENT’): students form lawyer-client relationships directly with clients, in law practices engaged exclusively in clinical practice, under the supervision of law school clinicians.

EXTERNSHIP: students work in law offices engaged primarily in non-clinical practice, under the supervision of both attorneys engaged in that practice and law school clinicians.

HYBRID: programs which combine and vary elements of the others, including vary either the nature of the law practice, its relationship to the law school, and the degree to which the clinician engages in specific case supervision and active practice in the underlying practice.

BY LAWYERING ACTIVITY

LITIGATION: students represent clients in formal advocacy to authoritative decision-makers, typically in courts or administrative agencies and in trial or appellate advocacy.

TRANSACTIONAL: students represent clients in planning, negotiating and drafting of transactions, from individual planning, through community organizing, to regulatory and legislative rule-making.

DISPUTE RESOLUTION/NEUTRAL PRACTICE: student engage in either informal negotiation or in practice as neutral mediators or arbitrators.
JUDICIAL: students work as clerks in judicial chambers, both trial and appellate, typically in an externship model.

COMMUNITY ORGANIZING: students work with community groups to advocate for group issues and concerns, including economic development and/or social justice.

LEGISLATIVE ADVOCACY: students accept legislative drafting and advocacy projects on behalf of clients seeking redress through legislative action. Related to both transactional and community organizing clinics.

OMBUDSMAN/INFORMAL ADVOCACY: students advocate on behalf of clients towards informal, non-litigation solutions to individual or community problems.

“UNBUNDLED” CLINICS: students engage in lawyering tasks seen (and taught) as a sub-set of “full lawyering”, such as counseling, pro-se assistance or negotiation.

BY RELATIONSHIP TO LAW SCHOOL AND FUNDING SOURCES

IN-HOUSE vs. EXTERNAL

IN-HOUSE CLINICS function exclusively as clinical practices within the law school, in which clinicians work with students to provide the chosen legal services.

EXTERNAL CLINICS function as law practices outside the law school, with attorneys hired to practice in the chosen field, and with clinical training as an accepted, not primary feature.

HARD MONEY, SOFT MONEY, DIRECT STATE SUPPORT

CLINICS FUNDED WITH HARD MONEY operate as part of the law school’s internal budget, based on sources of support for the entire institution, including alumni giving and state support. Seen as institutionally secure, but within administrative discretion.

CLINICS FUNDED WITH SOFT MONEY operate on funds from temporary sources, including grants, foundations and governmental programs. Seen as unstable and provisional, but providing a measure of independence from decanal control.

CLINICS FUNDED WITH DIRECT STATE SUPPORT operate on funds from state or local government to provide a designated legal service.
COMMON CLINIC DESIGN FEATURES
Even between clinics of similar type, differences in clinical design create wide differences in teaching and service provision, while clinics of very different types often closely share assumptions about those concerns. This section offers a non-exclusive list of common design choices, with related questions raised by each feature.

CLIENT SERVICE
Choice of the client service rests on factors too numerous to list here. However, the relationship of client service to teaching practice forms a central concern. Should a clinic choose short-term over long-term representation; if the latter, how to ensure meaningful semester-to-semester engagement by different students? Should the clinic offer itself as a universal provider of the given service; if the former, how will the clinic balance the increased case-load pressure with the often slower pace of supervised practice?

SUPERVISION
Supervisory relationships can vary from the traditional lawyer to law clerk model in some externship programs (with clinical supervision by a clinician) to direct one-to-one relationships on cases and caseloads by clinician and student in direct service programs. A plausible distinction lies between case supervision (in which clinician / attorney work with the student on specific legal work) and clinical supervision (through which the student also explores personal, ideological or professional development). Direct service clinics tend to combine both types of supervision in the clinician - student relation; externship programs tend to separate them into two roles.

REFLECTIVE PRACTICE
JOURNALS: many if not most clinics require some form of written journal from the student, in which the student can reflect on their experience and realize additional lessons and useful guidance from the reflection. Clinics vary in the number, length, focus and use of these journals, and may distinguish between periodic journals and end-of-semester learning appraisals.

INTERVIEWS: many clinics also require formal interviews between student and clinician, in which the clinician can provide feedback and prompt further reflection by the student, and the student also provide feedback and critical assessment to the clinician. Differences exist between beginning, mid-semester and end-of-semester interviews: the first may tend towards goal-setting; the second towards feedback and course correction; and the last towards assessment, evaluation, and long-term developmental issues.
BEHAVIORAL ("SKILLS") TRAINING
Clinics differ in how they handle focused training on the basic tasks which students must perform while in the clinic. Some clinics front-load training in an intensive period towards the beginning; others spread behavioral training throughout the semester; while still others require students to take pre-requisites (e.g. ‘interviewing, counseling & negotiation’; ‘document drafting’; ‘trial practice.’). Moreover, where training occurs within the clinic, it can happen either through conceptual discussion of the task, simulated practice through role-play, or task supervision in the context of an individual case.

CLASSROOM TEACHING
Most clinics provide students with a classroom or seminar experience as part of the clinic. These classes address a wide range of topics: from focused training on specific doctrine relevant to the practice; to policy- and value-based assessment of the client group or broader social concerns; to behavioral training; to staff meetings and practice management; to introductions to lawyering theory and practice; to practicums on ethics. Teaching methodologies include discussion, lecture and presentation, simulation, case review, behavioral self-assessments, sensitivity training, and even traditional socratic question & answer.

RESEARCH, ANALYSIS, WRITING AND SPECIAL PROJECTS
Many clinics specifically require completion of one or more written projects by students, typically within the context of the relevant practice, and as part of regular case work. Supervision of written work can happen both on a case-specific basis, and during an overall evaluation of the student writer. Moreover, some clinics also require research on issues not specifically related to cases, but arising out of the practice or the student's response to it. This research may be reported in traditional research paper format, or through the implementation of projects to improve the practice or assist the community.

CASE FILE / CASE LOAD HANDLING
Clinics have the added task (and opportunity) of educating students on the handling of case files and case loads. Computerized and networked systems can abate the technical burden; but clinics must usually introduce students to the mechanical details of practice: notation of case events; opening, summary and closing memos; organization of case files; management of multiple files and schedules; and the challenges of deadlines and collaborative calendars. Moreover, clinics may vary in how they train students in time management: from purely laissez-faire to a structured, shared effort in calendaring.
COLLABORATIVE PRACTICE
Clinics also vary in the extent to which they encourage team and group practice, in addition to the already collaborative relationship between student and clinician. Some clinics focus on one-on-one clinical supervision, while others encourage work in teams of two or more students, up to a full collaborative model for all participants in the clinic. Clinics thus provide a first exposure to interdependence, at variance with the often competitive context of law schools outside the clinic setting.

ACADEMIC AND CURRICULAR CONCERNS
Clinics often vary in their interface with the traditional law school curriculum. Common issues here include: the need for pre- or co-requisites; the number of credit hours granted, and relationship between hours of work and credit; the use and assignment of grades; and the procedures by which students enroll, including eligibility / requirement for one or more semesters. Other curricular concerns relate more to clinical faculty, and vary from school to school, including: the necessity or availability of other teaching; and the calculation of number of teaching hours credited to the clinician.
from The Task Force on Law Schools and the Profession, A.B.A. Section of Legal Education and Admission to the Bar, Statement of Fundamental Lawyering Skills and Professional Values (1992).

“The Task Force on Law Schools and the Profession: Narrowing the Gap was formed in 1989 for the purpose of studying and improving the processes by which new members of the profession are prepared for the practice of law. The Task Force was a diverse group, reflecting the various segments of the profession. It included members of the federal and state judiciary, deans and faculty members of law schools, and members of the practicing bar.

“In 1992, the Task Force issued a report entitled “Legal Education and Professional Development — An Educational Continuum” . . . One of the sections of this report contained a “Statement of Fundamental Lawyering Skills and Professional Values.” This was a central feature of the report's analyses and provided a foundation for its recommendations. In preparing the Statement, the Task Force benefitted greatly from the comments of a large number of legal educators, practicing lawyers, judges, and professionals from other fields who work regularly with lawyers. Criticisms and suggestions received from the profession in response to a national circulation of a tentative draft of the Statement in June of 1991 improved the document substantially...

“The Statement does not contemplate that a new member of the profession must necessarily become acquainted with the enumerated skills and values while in law school or even before he or she is admitted to the bar. The Statement seeks to define the lawyering skills and professional values with which every lawyer should be familiar prior to assuming the full responsibilities of a member of the legal profession . . .

“The central distinction drawn here — between attorneys who do and do not have ultimate responsibility for representing a client or making professional judgments — is informed by the nature of the lawyer's function. Capable performance of that function requires a well-trained generalist — one who has a broad range of knowledge of legal institutions and who is proficient at a number of diverse tasks. This is so because any problem presented by a client (or other entity employing a lawyer's services) may be amenable to a variety of types of solutions of differing degrees of efficacy; a lawyer cannot capably represent or advise the client or other entity unless he or she has the breadth of knowledge and skill necessary to perceive, evaluate, and begin to pursue each of the options. . . .” Id. at 1–3.
OVERVIEW OF THE SKILLS AND VALUES ANALYZED IN THE STATEMENT

FUNDAMENTAL LAWYERING SKILLS

SKILL § 1: PROBLEM SOLVING

In order to develop and evaluate strategies for solving a problem or accomplishing an objective, a lawyer should be familiar with the skills and concepts involved in:

1.1 Identifying and Diagnosing the Problem
1.2 Generating Alternative Solutions and Strategies
1.3 Developing a Plan of Action
1.4 Implementing the Plan
1.5 Keeping the Planning Process Open to New Information and New Ideas

SKILL § 2: LEGAL ANALYSIS AND REASONING

In order to analyze and apply legal rules and principles, a lawyer should be familiar with the skills and concepts involved in:

2.1 Identifying and Formulating Legal Theories
2.2 Formulating Relevant Legal Theories
2.3 Elaborating Legal Theory
2.4 Evaluating Legal Theory
2.5 Criticizing and Synthesizing Legal Argumentation
SKILL § 3: LEGAL RESEARCH

In order to identify legal issues and to research them thoroughly and efficiently, a lawyer should have:

3.1 Knowledge of the Nature of Legal Rules and Institutions
3.2 Knowledge of and Ability to Use the Most Fundamental Tools of Legal Research
3.3 Understanding of the Process of Devising and Implementing a Coherent and Effective Research Design

SKILL § 4: FACTUAL INVESTIGATION

In order to plan, direct and (where applicable) participate in factual investigation, a lawyer should be familiar with the skills and concepts involved in:

4.1 Determining the Need for Factual Investigation
4.2 Planning a Factual Investigation
4.3 Implementing the Investigative Strategy
4.4 Memorializing and Organizing Information in an Accessible Form
4.5 Deciding Whether to Conclude the Process of Fact-Gathering
4.6 Evaluating the Information That Has Been Gathered

SKILL § 5: COMMUNICATION

In order to communicate effectively, whether orally or in writing, a lawyer should be familiar with the skills and concepts involved in:

5.1 Assessing the Perspective of the Recipient of the Communication
5.2 Using Effective Methods of Communication
**SKILL § 6: COUNSELING**

In order to counsel clients about decisions or courses of action, a lawyer should be familiar with the skills and concepts involved in:

6.1 Establishing a Counseling Relationship That Respects The Nature and Bounds of a Lawyer's Role
6.2 Gathering Information Relevant to the Decision to Be Made
6.3 Analyzing the Decision to Be Made
6.4 Counseling the Client About the Decision to Be Made
6.5 Ascertaining and Implementing the Client's Decision

**SKILL § 7: NEGOTIATION**

In order to negotiate in either a dispute-resolution or transactional context, a lawyer should be familiar with the skills and concepts involved in:

7.1 Preparing for Negotiation
7.2 Conducting a Negotiation Session
7.3 Counseling the Client About the Terms Obtained From the Other Side in the Negotiation and Implementing the Client's Decision

**SKILL § 8: LITIGATION AND ALTERNATIVE DISPUTE-RESOLUTION PROCEDURES**

In order to employ – or to advise a client about – the options of litigation and alternative dispute resolution, a lawyer should understand the potential functions and consequences of these processes and should have a working knowledge of the fundamentals of:

8.1 Litigation at the Trial-Court Level
8.2 Litigation at the Appellate Level
8.3 Advocacy in Administrative and Executive Forums
8.4 Proceedings in Other Dispute-Resolution Forums
SKILL § 9: ORGANIZATION AND MANAGEMENT OF LEGAL WORK

In order to practice effectively, a lawyer should be familiar with the skills and concepts required for efficient management, including:

9.1 Formulating Goals and Principles for Effective Practice Management
9.2 Developing Systems and Procedures to Ensure that Time, Effort and Resources Are Allocated Effectively
9.3 Developing Systems and Procedures to Ensure that Work is Performed and Completed at the Appropriate Time
9.4 Developing Systems and Procedures for Effectively Working with Other People
9.5 Developing Systems and Procedures for Efficiently Administering a Law Office

SKILL § 10: RECOGNIZING AND RESOLVING ETHICAL DILEMMAS

In order to represent a client consistently with applicable ethical standards, a lawyer should be familiar with:

10.1 The Nature and Sources of Ethical Standards
10.2 The Means by Which Ethical Standards are Enforced
10.3 The Processes for Recognizing and Resolving Ethical Dilemmas

FUNDAMENTAL VALUES OF THE PROFESSION

VALUE § 1: PROVISION OF COMPETENT REPRESENTATION

As a member of a profession dedicated to the service of clients, a lawyer should be committed to the values of:

1.1 Attaining a Level of Competence in One's Own Field of Practiced
1.2 Maintaining a Level of Competence in One's Own Field of Practice
1.3 Representing Clients in a Competent Manner
VALUE § 2: STRIVING TO PROMOTE JUSTICE, FAIRNESS AND MORALITY

As a member of a profession that bears special responsibilities for the quality of justice, a lawyer should be committed to the values of:

2.1 Promoting Justice, Fairness and Morality in One's Own Daily Practice

2.2 Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services Are Provided to Those Who Cannot Afford to Pay for Them

2.3 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice

VALUE § 3: STRIVING TO IMPROVE THE PROFESSION

As a member of a self-governing profession, a lawyer should be committed to the value of:

3.1 Participating in Activities Designed to Improve the Profession

3.2 Assisting in the Training and Preparation of New Lawyers

3.3 Striving to Rid the Profession of Bias Based on Race, Religion, Ethnic Origin, Gender, Sexual Orientation, or Disability, and to Rectify the Effects of These Biases

VALUE § 4: PROFESSIONAL SELF-DEVELOPMENT

As a member of a learned profession, a lawyer should be committed to the values of:

4.1 Seeking Out and Taking Advantage of Opportunities to Increase His Or Her Knowledge and Improve His or Her Skills

4.2 Selecting and Maintaining Employment That Will Allow the Lawyer to Develop as a Professional and To Pursue His or Her Professional and Personal Goals
This book was published in March, 2007, by the Clinical Legal Education Association (CLEA). Copies are available at no charge (unless a shipping charge becomes necessary) from Mary Lynch, Albany Law School, 80 New Scotland Avenue, Albany, New York 12208-3494. Email: mlync@albanylaw.edu. The document is also posted on-line in PDF format at cleaweb.org and http://law.sc.edu/faculty/stuckey/best_practices/.

The Best Practices Project began in 2001. Guided by a Steering Committee of law teachers around the country, the project sought to describe best practices for legal education generally, not just for clinical legal education. Each new draft was posted on-line several times a year. Requests for comments were regularly sent to various listservs, and discussions about the evolving document or segments of it were conducted at various professional meetings. A national conference focusing on the document was held at Pace University School of Law in March, 2005.

When publication neared, CLEA formed a committee co-chaired by Alex Scherr, Georgia, and Carrie Kaas, Quinnipiac, to develop strategies for persuading law teachers to implement the principles of best practices described in the book. The work of this committee is expected to continue for years to come.

**BEST PRACTICES FOR LEGAL EDUCATION** can be used by a law school as a road map for overall curricular reform, or individual teachers can use it to improve their course design and the quality of their instruction.

**A SUMMARY OF THE CONTENTS**

**INTRODUCTION**

The Introduction describes the major criticisms of current practices in U.S. legal education, and it points out that there has never been a serious effort to explore what law students need to learn about legal knowledge, skills, and values or how best to teach them. It also gives an overview of the motivation behind the Best Practices Project and what it hopes to achieve.

**EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS**

This section summarizes the overall conclusions and key recommendations in outline form.
CHAPTER ONE: REASONS FOR DEVELOPING A STATEMENT OF BEST PRACTICES

A. A STATEMENT OF BEST PRACTICES CAN HELP EVALUATE THE QUALITY OF A LAW SCHOOL’S PROGRAM OF INSTRUCTION AND GUIDE EFFORTS TO IMPROVE IT. AND

B. THE NEED TO IMPROVE LEGAL EDUCATION IS COMPELLING:
   1. The licensing process is not protecting the public;
   2. Law schools are not committed to preparing students for bar examinations;
   3. Law schools are not committed to preparing students for law practice;
   4. Law students can be better prepared for practice if law schools expand their educational goals, improve the competence and professionalism of their graduates, and attend to the well-being of their students; and
   5. Principles of accountability and consumer protection require change.

CHAPTER TWO: BEST PRACTICES FOR SETTING GOALS OF THE PROGRAM OF INSTRUCTION

This chapter encourages law schools to be committed to preparing students for practice and to clearly articulate educational goals in terms of desired outcomes. It concludes that the primary outcome that law schools should try to achieve is to develop competence – the ability to resolve legal problems effectively and responsibly. In order to do this, law schools need to help students acquire the attributes of effective, responsible lawyers. These attributes are described.

CHAPTER THREE: BEST PRACTICES FOR ORGANIZING THE PROGRAM OF INSTRUCTION

In organizing the program of instruction, law schools should strive to achieve congruence; progressively develop knowledge, skills, and values; integrate the teaching of theory, doctrine, and practice; and teach professionalism pervasively throughout all three years of law school.
CHAPTER FOUR: BEST PRACTICES FOR DELIVERING INSTRUCTION, GENERALLY

This chapter describes a variety of principles of effective teaching. It encourages law teachers to strive continuously to improve their teaching skills, and it encourages law schools to put more emphasis on the quality of teaching and learning. It calls on law teachers to use multiple methods of instruction and to reduce their reliance on the Socratic dialogue and case method.

It promotes the use of context-based instruction throughout the program of instruction, and encourages law schools to use context-based instruction to teach theory, doctrine, and analytical skills (problem and case-based learning); how to produce law-related documents (legal writing and drafting); and how to resolve human problems and to cultivate “practical wisdom” (role assumption and practice experience).

CHAPTER FIVE: BEST PRACTICES FOR EXPERIENTIAL COURSES

This chapter describes best practices for experiential education courses in general, but also for simulation-based courses, in-house clinics, and externships. It stresses the importance of focusing on education objectives that can be achieved most effectively and efficiently through experiential education generally and specifically, and it suggests what those goals should be.

CHAPTER SIX: BEST PRACTICES FOR NON-EXPERIENTIAL TEACHING METHODS

This chapter describes best practices for the following types of teaching methods: Socratic dialogue and case method, discussion, and lecture.

CHAPTER SEVEN: BEST PRACTICES FOR ASSESSING STUDENT LEARNING

This chapter begins by explaining the importance and purposes of assessments and pointing out the shortcomings of current assessment practices in United States law schools. It then describes best practices for assessing student learning.
CHAPTER EIGHT: BEST PRACTICES FOR ASSESSING INSTITUTIONAL EFFECTIVENESS

This chapter calls on law schools to evaluate institutional effectiveness regularly, and it describes some of the best practices for doing so.

CHAPTER NINE: COMPONENTS OF A “MODEL” BEST PRACTICES CURRICULUM

This chapter provides one vision of what the curriculum of a law school might look during each of the three years, if it complied with principles of best practices for legal education.

CONCLUSION: THE ROAD AHEAD

The concluding section of the book examines the reluctance of law schools to embrace change and describes the factors that have impeded legal education reform. It ends by noting the growing number of academics and others who recognize the compelling need for significant change, and it encourages leaders to come forward and work together to improve legal education in the United States.
This book was published in March, 2007, by the Carnegie Foundation for the Advancement of Teaching following a multi-year study of legal education that included visits to sixteen law schools.

EDUCATING LAWYERS contains some praise for existing practices in United States law schools, but overall, it is a scathing indictment of the shortcomings of our approach to legal education. The authors of the report refer to three “apprenticeships of professional education” to which law schools should be attending: the intellectual or cognitive apprenticeship, the apprenticeship to the forms of expert practice shared by competent practitioners, and the ethical-social apprenticeship.

[W]e speak of three apprenticeships. The signature pedagogies of each professional field all have to confront a common task: how to prepare students for the complex demands of actual professional work – to think, to perform, and to conduct themselves like professionals. The common problem of professional education is how to teach the complex ensemble of analytic thinking, skillful practice, and wise judgment upon which each profession rests.

Drawing upon contemporary learning theory, one can consider law, medical, divinity, or engineering schools as sites to which students come to be inducted into all three of the dimensions of professional work: its way of thinking, performing, and behaving. For the sake of their future practice, students must gain a basic mastery of specialized knowledge, begin acquiring competence at manipulating this knowledge under the constrained and uncertain conditions of practice, and identify themselves with the best standards and in a manner consistent with the purposes of the profession. Yet within the professional school, each of these aspects of the whole ensemble tends to be the province of different personnel, who often understand their function differently and may be guided by different, even conflicting goals.

The first apprenticeship, which we call intellectual or cognitive, focuses the student on the knowledge and way of thinking of the profession. Of the three, it is most at home in the university context since it embodies that institution’s great investment in quality of analytical reasoning, argument, and research. In professional schools, the intellectual training is focused on the academic knowledge base of the domain, including the habits of mind that the faculty judge most important to the profession.
The students’ second apprenticeship is to the forms of expert practice shared by competent practitioners. Students encounter this practice-based kind of learning through quite different pedagogies from the way they learn the theory. They are often taught by different faculty members than those through whom they are introduced to the first, conceptual apprenticeship. In this second apprenticeship, students learn by taking part in simulated practice situations, as in case studies, or in actual clinical experience with real clients.

The third apprenticeship, which we call the ethical-social apprenticeship, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible. Its lessons are also ideally taught through dramatic pedagogies of simulation and participation. But because it opens the student to the critical public dimension of the professional life, it also shares aspects of liberal education in attempting to provide a wide, ethically sensitive perspective on the technical knowledge and skill that the practice of law requires. The essential goal, however, is to teach the skills and inclinations, along with the ethical standards, social roles, and responsibilities that mark the professional.

The authors of Educating Lawyers concluded that most law schools in the United States are only partially attending to the intellectual or cognitive apprenticeship and are almost totally ignoring the other two. Their proposed remedy is not just to give more attention to the other areas, but to do so in an integrated fashion requiring significant curricular and attitudinal changes.

A fuller and more adequate legal education, one that would provide a broader – and, therefore, more realistic as well as more ethically appealing – understanding of the various vocations in the law, could not be based solely on most schools’ current pedagogical and assessment practices. This fuller and more adequate preparation for the profession would, from the beginning, introduce students to lawyering and clinical work as well as concern with ethical and professional responsibility – in short, the cognitive, practical, and ethical-social apprenticeships would be integrated.

“We believe legal education requires not simply more additions, but a truly integrative approach in order to provide students with broad-based yet coherent beginning for their legal careers.”
A CHAPTER BY CHAPTER SUMMARY

INTRODUCTION
The Introduction makes the point that legal education should focus on the professional formation of law students – “the formation of competent and committed professionals deserves and needs to be the common unifying purpose.” Law schools must tend not only to teaching students to think like lawyers, but also how to act like lawyers. The report proposes an integration of student learning of theoretical and practical legal knowledge and professional identity.

CHAPTER 1: LAW SCHOOL IN THE PREPARATION OF PROFESSIONALS
In this chapter, the authors explain that the declining public trust in the legal profession and the erosion of morale among lawyers, among other factors, creates an urgent need to the question of how best to educate future professionals.” It describes three apprenticeships of law students to which law schools should attend in a coherent, integrated manner: the intellectual or cognitive apprenticeship, the forms of expert practice shared by competent practitioners, and the apprenticeship of identity and purpose. The authors also describe effective pedagogies for addressing students’ formative development.

CHAPTER 2: A COMMON PORTAL: THE CASE DIALOGUE AS SIGNATURE PEDAGOGY
This chapter begins with a discussion of the pros and cons of the case dialogue method. It calls for greater balance in the curriculum, noting that most students’ experience in law school does not include much if any experience with clients or attention to ethical/moral issues. It encourages law schools to give more attention to practice-related instruction and the formation of students’ professional identities. The authors explain the importance of helping students develop narrative modes of thinking in addition to analytical thinking, and encourage schools to help students become more self-reflective and self-directed. They suggest that using simulations of practice and clinics involving clients would be appropriate ways to address these areas. However, they caution against simply adding on educational components and encourage schools, instead, to take a truly integrative approach to teaching knowledge, skills, and values.
CHAPTER 3: BRIDGES TO PRACTICE: FROM “THINKING LIKE A LAWYER” TO “LAWYERING”

Chapter three encourages law schools to move education for practice to the center of attention, in order to help students develop narrative thinking skills and “clinical” habits of mind. It explains how novice professionals move toward competence and expertise – toward the “wisdom of practice” (professional judgment). It describes how conceptual models of skills along with simulated and actual practice opportunities provide scaffolds for developing basic levels of competence.

CHAPTER 4: PROFESSIONAL IDENTITY AND PURPOSE

This chapter also calls for more balance in legal education, particularly the need to give more attention to helping students develop their identities as legal professionals. It explains that legal education will inevitably have an impact on students’ development of professional identity and discusses how law schools can have a more positive impact than current practices. It encourages law teachers to keep discussions of morality and fairness on the table with discussions of the law. Faculty should be models of moral attitudes and values. Students should have opportunities to perform in the roles of lawyer with feedback and reflection.

CHAPTER 5: ASSESSMENT AND HOW TO MAKE IT WORK

Chapter five considers practices for assessing student learning and institutional effectiveness. It finds much to be desired in the methods and frequency of current practices. It encourages law schools to use criterion-referenced assessments of student learning and to assess a broader range of knowledge, understanding, skills, and attributes, including professionalism. It promotes intentional teaching to foster intentional learning.
HOW DO WE ORGANIZE OURSELVES?
The Association of American Law Schools (“AALS”) Section on Clinical Legal Education and the Clinical Legal Education Association (“CLEA”) are the two main professional organizations for clinicians. This roadmap aims to describe the two organizations and their activities.

The Section on Clinical Legal Education is the official voice of clinicians in the Association of American Law Schools (“AALS”). The Section presents programs, supports regional conferences, publishes a newsletter, and advocates the interests of clinicians and clinical education within AALS. Annual membership dues for the Section are $15 (payable to AALS).

The Clinical Legal Education Association (“CLEA”), founded in 1992, advocates on behalf of clinicians and clinical education in venues outside the AALS. CLEA is the co-publisher of the Clinical Law Review, sponsors and supports conferences, publishes a newsletter and job forum, maintains a web site and chat site, publishes Best Practices, maintains a facebook page (search for Clinical Legal Education Association) and takes public positions on issues of interest to clinicians. Annual membership dues are $40 (payable to CLEA). CLEA membership includes a subscription to the Clinical Law Review (jointly sponsored with New York University and the AALS).

You can easily join either or both organizations by sending your membership fees to the following address:

Brenda Parks
University of Michigan Law School
625 South State St., 545 Legal Research
Ann Arbor, MI 48109-1215

Forms for membership can be found at the end of this manual or on-line at https://cgi2.www.law.umich.edu/_GCLE/index.asp. You can also join CLEA on-line using PayPal at http://www.cleaweb.org/.

CLEA and the Section work closely together and membership greatly overlaps between them. Both organizations sponsor workshops and conferences. For example, the workshop for new clinicians is sponsored by CLEA while the AALS Section sponsors the annual longer workshop or conference on clinical education. (Historically, the AALS alternates each year between 3-day “workshops” and longer 5-day “conferences.”) The AALS Committee on Professional Development approves the workshop or conference and appoints the Planning Committee from among the Section membership. Generally, CLEA sponsors smaller more specific workshops and the Section sponsors the annual national conference. Both organizations also support regional workshops.
Both CLEA and the AALS Section have committees that address various issues, which affect clinical teachers, and often there are joint “Task Forces.” Both organizations: sponsor and support the Clinical Law Review, a peer-edited journal which is co-sponsored by NYU Law School; publish periodic newsletters for their members and; offer the first year of membership for free.

With many similarities, you may be wondering: Why do we need two organizations and what are the differences between them? One major difference is the way each organization can take independent public positions or take an active role on public issues.

The Section is part of the AALS and as such, it cannot take an independent public position or take an active role on public issues without permission of the AALS Executive Committee. The policy-making body within the AALS for clinical education is the AALS Committee on Clinical Legal Education. The Section can attempt to get the AALS to take a position but it cannot take a position on its own.

CLEA, on the other hand, is a freestanding entity and as such can take immediate action on an issue or take a public opinion without permission of a larger governing organization. For example, when the ABA is contemplating some action, CLEA can be the immediate voice of clinical teachers about that proposed action, acting through its elected Board.

Another difference between the two organizations is the ability of clinicians to become members. Membership in the AALS Section is limited to faculty at schools that are members or fee-paid associates of the AALS. CLEA is not so restricted, so teachers in foreign countries or at non-AALS member schools can join, and adjunct professors and supervisors in field placement programs who are not full-time employees of a law school are also eligible to join CLEA.
THE CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION (CSALE)

The Center for the Study of Applied Legal Education is a non-profit corporation dedicated to the empirical study of applied legal education and the promotion of related scholarship.

CSALE’s initial focus is a long-term longitudinal study that captures significant aspects of the growth and development of applied legal education, its diverse substantive foci, its methodologies, its instructors, and its integration into the American legal academy.

The study is conducted with a multi-layered survey issued every three years. The first iteration of the survey was completed in the Spring of 2008. A report summarizing the results and access to some of the raw data is now available on-line at www.csale.org.

CSALE's work is supported by the AALS Section on Clinical Legal Education, the Clinical Legal Education Association, the University of Michigan Law School, and through the generosity of people like you.

THE NEED FOR CSALE’S WORK

Since its modern "re-birth" in the late 1960's, applied legal education has taken a firm hold in the American legal academy. The American Bar Association now mandates that every law school offer its students “substantial opportunities for . . . live-client or other real-life practice experiences . . . designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession . . . .” The ABA also closely regulates the content of both clinical and field placement programs.

Despite its proliferation, there has been little empirical analysis of applied legal education. Who is teaching in applied legal education programs, what they are teaching, and how they are teaching and supervising it are all, as an empirical matter, largely unknown. This dearth of hard data has hurt legal education in several ways. Perhaps most notably, there has been very little empirical scholarship in the field of applied legal education. A small example is the almost complete lack of empirical work on innovation, course design, pedagogical methods, and overall program design.

The lack of data has also hindered innovation and advancement by depriving legal educators of concrete examples of successes and failures in the field when they are charting the course and texture of applied legal education in their home institutions. It also largely prohibits comparative empirical analysis of foreign systems of legal education that vary widely in their use and methods of applied legal education.

CSALE is dedicated to filling this empirical gap and helping to cure these ills with its study.
SAMPLE OF THE RESULTS

EMPLOYMENT STATUS

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<td>Fellow</td>
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of those reporting contractual appointment:

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<tr>
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<tr>
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### VOTING RIGHTS BY STATUS

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<th>4 – 6 yr+ Contract</th>
<th>1 – 3 yr Contract</th>
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<tr>
<td>No Vote But Attend</td>
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AND SOMETHING OPTIMISTIC:

Each School Year (excluding summers) Live Client Clinics:

- Deliver over **1.8 million** hours of *civil* legal services
- To nearly **90,000** clients
- Deliver over **600,000** hours of *criminal* legal services
- To nearly **38,000** clients
CLEA MISSION STATEMENT

The Clinical Legal Education Association was founded after several years of discussion among clinical teachers. Membership is open to all people interested in using clinical methodology to prepare law students and lawyers for more effective law practice. Clinical methodology includes supervised representation of clients, supervised performance of other legal work, and the use of simulated exercises in a variety of settings, both within law schools and outside of them, and is designed to teach skills and values necessary to the ethical and competent practice of law.

CLEA was incorporated as a nonprofit corporation in 1992. What follows is a list of some of the principal goals and accomplishments of the organization:

1. **To bring together in one organization all of those involved in clinical education.** CLEA welcomes as members not only full-time clinical teachers at law schools belonging to the Association of American Law Schools, but also field supervisors, adjunct teachers, faculty at schools outside the U.S., and other people who are involved in clinical education or are interested in its continued development.

2. **To serve as a voice for clinical teachers and to represent their interests inside and outside the academy.** CLEA has been a vigorous advocate for the interests of clinical teachers on a number of issues, including: the proposed interpretation of the ABA/AALS externship accreditation standard; the ABA proposal for mandatory Pro Bono; the proposed cuts in Legal Services Corporation funding; and a uniform law that would make admission to practice easier for clinical teachers.

3. **To promote and disseminate clinical scholarship and research.** CLEA was instrumental in founding the first Journal of Clinical Legal Education ["Clinical Law Review"], a peer-review journal which publishes useful and readable articles about improving the teaching of law and the quality of legal practice. Membership in CLEA includes a subscription to the Journal.

4. **To foster professional development of clinical teachers.** CLEA organized the first national conferences on externships and on Alternative Dispute Resolution clinical programs and a workshop for newer clinical teachers. In addition, CLEA has provided training on advanced supervision issues for experienced clinical teachers and field supervisors in two geographic regions. Members receive discounts on the cost of CLEA conferences and training.

5. **To gather and distribute to clinical teachers information about issues and developments that affect clinical teachers.** CLEA publishes a newsletter, maintains active telephone and Internet communications, and sponsors an annual salary and demographic survey of clinic teachers.
6. **To foster the development of clinical methodologies, the integration of clinical methodology into legal education, and the integration of clinical teachers into Law Schools.** CLEA organized a workshop on the MacCrate report during the 1993 AALS annual convention which attracted a diverse group of faculty and administrators. CLEA also has a committee to help coordinate local efforts of law schools and the organized bar to review and implement MacCrate recommendations where appropriate.

CLEA presently has more than 700 members. If you are interested in these goals, or if you would like to contribute by adding some new objective to a young and growing organization, please join by completing the attached membership form and submitting it with your annual dues.
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WHO INFLUENCES US?
A PRIMER ON THE ACCREDITATION OF LAW SCHOOLS

ROLEPLAYERS

THE UNITED STATES DEPARTMENT OF EDUCATION (DOE)
The federal agency responsible for approving the accrediting bodies of a variety of educational programs, including for law schools.

COUNCIL OF THE SECTION ON LEGAL EDUCATION AND ADMISSION TO THE BAR (THE COUNCIL)
The Council is the component of the American Bar Association (ABA) that the DOE has certified as the accrediting body for legal education. As such, it has semi-independent status from the ABA. The Council has oversight responsibility for all accreditation decisions, including final authority (subject only to limited ABA review) over accreditation rules and over accreditation decisions for individual schools.

The Council has a rotating membership representing three primary groups: judges, practitioners, and legal academics. Representation by legal academics includes both Deans and law professors. In recent years, the Council has had at least one clinical teacher as a member.

A Chair leads the Council, each chair serving for a one-year term. Service as chair rotates among the three main constituencies. The Chair has responsibility for appointing the membership of committees. The Consultant on Legal Education serves as an executive director for the Council’s business, including the details of the accreditation process. The Council works through two main committees: the Accreditation Committee and the Standards Review Committee. It can also form committees to address particular needs, including a nominating committee for its own membership and the membership of its other committees.

THE AMERICAN BAR ASSOCIATION (ABA)
The ABA provides funding for the Council’s activities, and has a limited ability to review the Council’s decisions. The Council must report its decisions to the House of Delegates of the ABA. The House can either approve a decision of the Council, or may refer a decision back to the Council for reconsideration. The Council may then revise its decision, or readopt it. Ultimately, the Council’s decision is final.

THE CONSULTANT ON LEGAL EDUCATION
The Consultant is a single individual charged with executing the Council’s accreditation functions. The Consultant has an office with full-time staff, located at the ABA’s offices in Chicago. The Consultant organizes the accreditation process; coordinates the work of the Council and its committees; acts as a liaison with the ABA and with other affiliated organizations; and serves as reporter in the drafting of the accreditation rules and on other rules and procedures. As a result, the Consultant has significant influence over both policy and daily operations of the accreditation process.
THE ACCREDITATION COMMITTEE
The Accreditation Committee is a sub-committee of the Council. This Committee receives reports from law schools and inspection teams prepared on the occasion of each school’s regular periodic inspection. The Committee reviews the entire record, including those facts found by the inspection team, and formulates a recommendation on any further requirements for a school, if any. That recommendation goes to the Council for final decision. Membership on the Committee is by appointment of the Chair of the Section, on recommendation from the nominating committee. In recent years, the committee has included a clinical teacher. All proceedings of this Committee are closed and confidential, as are the deliberations of the Council on its recommendations.

THE STANDARDS REVIEW COMMITTEE
The Standards Review Committee is a sub-committee of the Council. This Committee oversees the drafting and revision of the Standards for the Accreditation of Law Schools. The Committee’s routine work focuses on individual referrals from the Council for reconsideration or redrafting of particular rules or of newly required provisions. On a regular, but more extended schedule, this Committee also engages in a thorough review of all of the Standards. Finally, interested parties can make requests for rule making to the Council, which the Council refers to the Standards Review Committee for handling.

The Committee proceeds through notice and comment process. After formulating draft language, it publishes each proposed revision to interested parties, and holds a series of public meetings at which it receives oral comment from those parties. The Committee also receives written commentary on proposed changes. The Committee then recommends draft language to the Council for final decision. The Council has final decision-making authority on proposed changes to the Standards.

Membership on the Committee is by appointment of the Chair of the Section, on recommendation from the nominating committee. In recent years, the committee has included a clinical teacher.

AFFILIATED ORGANIZATIONS
A number of organizations take a direct interest in the business of accreditation; the Council recognizes these organizations as “affiliated organizations.” Affiliated organizations receive copies of the agenda of Council meetings (excluding those items relating to accreditation decisions for specific schools.) Representatives of affiliated organizations attend Council meetings, present regular reports to the Council on their activities, and attend social events associated with Council meetings.

CLEA is an affiliated organization. Other affiliated organizations include: ALDA (deans); NALP (placement directors); AALL (librarians); ALWD (legal writing directors); LSAC (admissions); and the NCBE (MBE / MPT drafter).
ACCREDITATION PROCESS (IN BRIEF)

Every law school has its program reviewed at regular periods, typically every seven years for established schools. New schools undergo more frequent reviews, and face more specific requirements from the Council.

The law school initiates the process by engaging in a self-study process. This process typically includes both administration and faculty of the school, as well as alumni and students. As the law school prepares its self-study, the Consultant forms a group of volunteers that serves as the “inspection team” for that school, including a chair that is typically the dean of another law school. Ideally, each inspection team should include deans, professors, librarians, educational administrators, and a practitioner or judge. In recent years, clinicians have served regularly on teams.

After the school completes its self-study, the inspection team visits the school for about three days. Each member of the team is charged with reviewing particular aspects of the school’s operation, using a template provided by the Consultant’s office that is based on the Standards. After the visit, each member of the team drafts their section of the team’s report; and the chair then edits the separate sections into a coherent document, which the chair then forwards to the Accreditation Committee, with a copy to the school. The team’s report is meant as fact-finding only; the team has no authority to make recommendations as to whether particular aspects of the school’s operations do or do not comply with the Standards.

The Accreditation Committee reviews the report of the inspection team, and has available to it all of the materials from the self-study document. The Committee can get clarification or further information from the school. The Committee formulates conclusions about the school’s compliance with the Standards, as well as recommendations (if any) for further action by the school to come into compliance. The Committee forwards its recommendations to the Council for final decision. The Council considers those recommendations in executive session and can either approve or remand the Committee’s decision.

Each law school receives notice of each action at each phase of the process. Schools have the right to address the Committee and the Council concerning ultimate decisions.
CLEA’S ADVOCACY

CLEA’s advocacy in this system takes a number of different forms:

- Representatives of CLEA regularly attend Council meetings and events, and maintain long-term contacts with the leadership and members of the Council.

- CLEA monitors the activities of the Standards Review Committee, and submits written and oral comment on proposals affecting clinicians.

- CLEA has initiated requests for rule making before the Council.

- CLEA has mobilized commentary from other interested organizations, primarily to provide commentary before the Standards Review Committee.

- CLEA maintains regular contact with Chair of the Council and with the Consultant’s office to discuss issues as they arise.

- CLEA has appeared before the Department of Education and provided commentary on the recertification of the Council as an accrediting body.

- CLEA has helped to advocate in the ABA House of Delegates on issues of relevance to clinicians.

- CLEA has organized and continues to encourage participation of clinicians in site inspection teams.

Examples of CLEA’s recent advocacy work are located in the Appendix of this handbook.
ABA ACCREDITATION STANDARDS

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Concern for improving the competence of those entering the legal profession was a major reason for creating the American Bar Association in 1878. The Standards for Approval of Law Schools are promulgated to serve that objective.

**Accrediting Agency for Law**

Since 1952, the Council of the Section of Legal Education and Admissions to the Bar (“the Council”) of the American Bar Association (“the ABA”) has been approved by the United States Department of Education as the recognized national agency for the accreditation of programs leading to the first professional degree in law. It is the Council and not the ABA that is so recognized.

The majority of the highest courts of the states rely upon ABA approval of a law school to determine whether the jurisdiction’s legal education requirement for admission to the bar is satisfied. Whether a jurisdiction requires education at an ABA-approved law school is a decision made by a jurisdiction’s bar admission authority and not by the Council or the ABA.

The Council and the ABA believe that every candidate for admission to the bar should have graduated from a law school approved by the ABA, that graduation from a law school alone should not confer the right of admission to the bar, and that every candidate for admission should be examined by public authority to determine fitness for admission.

**History**

The ABA in 1879 established the Standing Committee on Legal Education and Admissions to the Bar as one of the ABA’s first committees. In 1893, the Section of Legal Education and Admissions to the Bar was established as the Association’s first section. Recognizing the need to take further steps to improve legal education, the Section leadership played the major role in creating the Association of American Law Schools (AALS) in 1900. The AALS has a regulatory role in that member law schools must meet its requirements for membership, but the AALS is not recognized by the Department of Education as an accrediting agency, and no jurisdiction requires that one have graduated from an AALS member law school in order to be eligible for admission to the bar.

In 1921 the American Bar Association promulgated its first Standards for Legal Education. At the same time, the ABA began to publish a list of ABA-approved law schools that met the ABA Standards.

To administer its program of approval of law schools meeting the Standards, the ABA in 1927 employed Professor H. Claude Horack of the University of Iowa College of Law as the first Advisor to the Section. When Professor Millard H. Ruud of the University of Texas was appointed in 1968 to succeed then-Advisor to the Section Dean John G.
Hervey of Oklahoma City University School of Law, the title was changed to Consultant on Legal Education to the American Bar Association in order to recognize the broader responsibilities of the position. Professor James P. White of Indiana University School of Law-Indianapolis succeeded Professor Ruud in January 1974 and served as Consultant until the end of August 2000. John A. Sebert, previously Dean at the University of Baltimore School of Law, succeeded Dean White as of September 1, 2000 and served as Consultant through August 31, 2006. As of September 1, 2006, Hulett H. Askew became the Consultant. Mr. Askew previously was Director of Bar Admissions for the Supreme Court of Georgia.

Revisions of the Standards, Interpretations and Rules of Procedure through 1996

The Revisions of the Early 1970s
A major revision of the 1921 Standards was undertaken in the early 1970s. After an extensive comment process, the revised Standards and the Rules of Procedure were adopted by the Section of Legal Education and Admissions to the Bar in August, 1972, and were approved by the ABA House of Delegates in February, 1973.

Ramsey Commission
In 1988 Judge Henry Ramsey, Jr., of the Alameda County, California, Superior Court and Chair-Elect of the Section, was asked to chair a study of the accreditation process. As a result of the work of the Ramsey Commission, a number of revisions to the Rules of Procedure were adopted in 1989.

Department of Justice Consent Decree
In June 1995, the United States Department of Justice filed a civil antitrust suit against the ABA, alleging violations of antitrust laws in the accreditation program. The civil suit was concluded by a final Consent Decree that was approved in June 1996. It included a number of requirements concerning the Standards, many of which reflected revisions that the ABA had previously adopted. The Consent Decree was in force for a period of ten years and expired by its own terms on June 25, 2006. The Council has determined, however, that after the expiration of the Consent Decree, accreditation processes and procedures will continue to observe the substantive provisions of the Consent Decree.

The Wahl Commission and the 1996 Revisions of the Standards
In 1992 the Council launched a formal revision of the Standards and their Interpretations. In the midst of that review, in April 1994, the Council established the Commission to Study the Substance and Process of the American Bar Association’s Accreditation of American Law Schools. Justice Rosalie E. Wahl of the Supreme Court of Minnesota, and a former chairperson of the Section, accepted appointment as chairperson. The Wahl Commission’s mandate was to conduct a thorough, independent examination of all aspects of law school accreditation by the ABA. Upon the basis of hearings, solicited written comments, and surveys, the Commission prepared a report for submission at the 1995 annual meeting of the ABA.

The Consent Decree, however, required that the ABA establish a special commission to determine whether the Standards, Interpretations, and Rules of Procedure should be
revised in some respects. It was agreed by the Department of Justice and the ABA that the Wahl Commission’s mandate would be enlarged to include these matters and that the Commission’s tenure would be continued. In response to this additional mandate, in November 1995 the Wahl Commission submitted a supplement to its August 1995 report.

The four-year revision process that began in 1992 and culminated with the work of the Wahl Commission focused both on the form and the substance of the Standards and Interpretations. After extensive opportunity for comment, the revised Standards were approved by the Council and adopted by the House of Delegates in August, 1996.


Proposed revisions to the Standards, Interpretations and Rules of Procedure are subject to an extensive public comment process. Proposed revisions are widely distributed for comment, and comment is solicited by letter and e-mail, and at public hearings. Proposed revisions are then carefully considered in light of the comment received before any final action is taken.

The Council, with the assistance of the Standards Review Committee, regularly reviews and revises the Standards and Interpretations to ensure that they are appropriate requirements for current legal education programs and that they focus on matters that are central to the provision of quality legal education. A comprehensive review of the Standards and Interpretations was undertaken during 1996–2000. Another such comprehensive review was undertaken from 2003-04 through 2005-06. The next comprehensive review will commence in fall 2008.

In the summer of 2004, the Council appointed a Rules Revision Committee, chaired by Provost E. Thomas Sullivan of the University of Minnesota (a former chair of the Section), to undertake and recommend a comprehensive revision of the Rules. In June 2005 the Council accepted the Committee’s report and shortly thereafter distributed for comment a proposed comprehensive revision of the Rules. The Council adopted the comprehensive revision of the Rules of Procedure in December 2005 and the House of Delegates concurred in those revisions in February 2006.

Council Responsibility

The Council grants provisional and full ABA approval to law schools located in the United States, its territories, and possessions. It also adopts the Standards for Approval of Law Schools and the Interpretations of those Standards, and the Rules of Procedure that govern the law school approval process. The Council also must grant prior acquiescence in any major changes that are proposed by an approved law school.
ABA House of Delegates Responsibility

In 1999, the role of the ABA House of Delegates in accreditation matters was revised in order to comply with the requirements of the Department of Education that any recognized accrediting agency be “separate and independent” from any membership organization of a profession to which the programs accredited by the agency lead. If the Council grants provisional or full approval to a law school, that decision is effective immediately upon notice to the school, without any action by the House of Delegates. If the Council decides to deny provisional or full approval to a school, or to withdraw approval from a school, the Council’s decision is final unless the school timely files an appeal to the House of Delegates. If the school does appeal, the House of Delegates may either concur in the Council’s decision or refer that decision back to the Council for further consideration. A decision of the Council denying provisional or full approval may be referred back a maximum of two times, and the Council’s decision following a second referral back is final. A decision of the Council to withdraw approval from a school may be referred back to the Council by the House only one time, and the Council’s decision following that referral is final.

Any decision of the Council to adopt any revisions to the Standards, Interpretations or Rules of Procedure also must be reviewed by the House of Delegates. The House either concurs in those revisions or refers them back to the Council for further consideration. The Council’s decision after the second referral back is final.

Contents of This Publication

Standards and Interpretations
The Standards contain the requirements a law school must meet to obtain and retain ABA approval. Interpretations that follow the Standards provide additional guidance concerning the implementation of a particular Standard and have the same force and effect as a Standard. Almost all Standards and Interpretations are mandatory, stating that a law school “shall” or “must” do as described in the Standard or Interpretation. A few Standards and Interpretations are not mandatory but rather are stated as goals that an approved law school “should” seek to achieve.

Rules of Procedure
The Rules of Procedure govern the accreditation process and the process through which decisions concerning the status of individual schools are made. The Rules also contain provisions related to the operation of the Office of the Consultant on Legal Education.

Criteria for Approval of Foreign Programs
Under its authority to adopt rules implementing the Standards, the Council has adopted criteria for the approval of programs leading to credit for the J.D. degree that are undertaken outside the United States by ABA-approved law schools. Those Criteria include the Criteria for Approval of Foreign Summer Programs, the Criteria for Approval of Semester Abroad Programs, and the Criteria for Student Study at a Foreign Institution. The Council has delegated to the Accreditation Committee the authority to approve programs under the Criteria.
Additional Contents
The Statement of Ethical Practices in the Process of Law School Accreditation contains principles that ensure impartiality and propriety in all aspects of the accreditation process. Internal Operating Practices provide additional direction concerning the operation of accreditation functions and other activities of the Office of the Consultant on Legal Education. Council Statements are positions that the Council has taken on various matters that do not have the force of a mandatory Standard or Interpretation.

PREAMBLE

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.
CHAPTER 3
PROGRAM OF LEGAL EDUCATION

Standard 301. OBJECTIVES

(a) 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.

(b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school’s educational program, co-curricular programs, and other educational benefits.

Interpretation 301-1
A law school shall maintain an educational program that prepares its students to address current and anticipated legal problems.

Interpretation 301-2
A law school may offer an educational program designed to emphasize certain aspects of the law or the legal profession.

Interpretation 301-3
Among the factors to be considered in assessing the extent to which a law school complies with this Standard are the rigor of its academic program, including its assessment of student performance, and the bar passage rates of its graduates.

Interpretation 301-4
Among the factors to consider in assessing compliance with Standard 301(b) are whether students have reasonably comparable opportunities to benefit from regular interaction with full-time faculty and other students, from such co-curricular programs as journals and competition teams, and from special events such as lecture series and short-time visitors.

Interpretation 301-5
For schools providing more than one enrollment or scheduling option, the opportunities to take advantage of the school’s educational program, co-curricular activities, and other educational benefits for students enrolled under one option shall be deemed reasonably comparable to the opportunities of students enrolled under other options if the opportunities are roughly proportional based upon the relative number of students enrolled in various options.
Interpretation 301-6 [See Commentary: Appendix 3.]

A. A law school's bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:

1. That for students who graduated from the law school within the five most recently completed calendar years:

   (a) 75 percent or more of these graduates who sat for the bar passed a bar examination, or

   (b) in at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.

   In demonstrating compliance under sections (1)(a) and (b), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70% of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

2. That in three or more of the five most recently completed calendar years, the school's annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions.

   In demonstrating compliance under section (2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.

B. A school shall be out of compliance with the bar passage portion of 301(a) if it is unable to demonstrate that it meets the requirements of paragraph A (1) or (2).

C. A school found out of compliance under paragraph B and that has not been able to come into compliance within the two year period specified in Rule 13(b) of the Rules of Procedure for Approval of Law Schools, may seek to demonstrate good cause for extending the period the school has to demonstrate compliance by submitting evidence of:

   (i) The school's trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school's favor, a declining or flat trend against it.
(ii) The length of time the school’s bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school’s favor, a longer period against it.

(iii) Actions by the school to address bar passage, particularly the school’s academic rigor and the demonstrated value and effectiveness of the school’s academic support and bar preparation programs: value-added, effective, sustained and pervasive actions to address bar passage problems will be considered in the school’s favor; ineffective or only marginally effective programs or limited action by the school against it.

(iv) Efforts by the school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the school will be considered in the school’s favor; ineffective or limited efforts by the school against it.

(v) Efforts by the school to provide broader access to legal education while maintaining academic rigor: sustained meaningful efforts will be viewed in the school’s favor; intermittent or limited efforts against it.

(vi) The demonstrated likelihood that the school’s students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school’s favor, providing the school has undertaken counseling and other appropriate efforts to retain its well-performing students.

(vii) Temporary circumstances beyond the control of the school, but which the school is addressing: for example, a natural disaster that disrupts the school’s operations or a significant increase in the standard for passing the relevant bar examination(s).

(viii) Other factors, consistent with a school’s demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school’s efforts to improve them.
Standard 302. CURRICULUM

(a) A law school shall require that each student receive substantial instruction in:

(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) legal analysis and reasoning, legal research, problem solving, and oral communication;

(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;

(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

Interpretation 302-1
Factors to be considered in evaluating the rigor of writing instruction include: the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of the student’s written products; the number of drafts that a student must produce of any writing project; and the form of assessment used by the writing instructor.
**Interpretation 302-2**
Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302 (a)(4).

**Interpretation 302-3**
A school may satisfy the requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be “substantial,” instruction in professional skills must engage each student in skills performances that are assessed by the instructor.

**Interpretation 302-4**
A law school need not accommodate every student requesting enrollment in a particular professional skills course.

**Interpretation 302-5**
The offering of live-client or real-life experiences may be accomplished through clinics or field placements. A law school need not offer these experiences to every student nor must a law school accommodate every student requesting enrollment in any particular live-client or other real-life practice experience.

**Interpretation 302-6**
A law school should involve members of the bench and bar in the instruction required by Standard 302(a)(5).

[**Interpretation 302-7 DELETED IN 2008.**]
If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation.

**Interpretation 302-8**
A law school shall engage in periodic review of its curriculum to ensure that it prepares the school’s graduates to participate effectively and responsibly in the legal profession.

**Interpretation 302-9**
The substantial instruction in the history, structure, values, rules, and responsibilities of the legal profession and its members required by Standard 302(a)(5) includes instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association.
Interpretation 302-10
Each law school is encouraged to be creative in developing substantial opportunities for student participation in pro bono activities. Pro bono opportunities should at a minimum involve the rendering of meaningful law-related service to persons of limited means or to organizations that serve such persons; however volunteer programs that involve meaningful services that are not law-related also may be included within the law school’s overall program. Law-related pro bono opportunities need not be structured to accomplish any of the professional skills training required by Standard 302(a)(4). While most existing law school pro bono programs include only activities that receive academic credit, Standard 302(b)(2) does not preclude the inclusion of credit-granting activities within a law school’s overall program of pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

Standard 303. ACADEMIC STANDARDS AND ACHIEVEMENTS

(a) A law school shall have and adhere to sound academic standards, including clearly defined standards for good standing and graduation.

(b) A law school shall monitor students’ academic progress and achievement from the beginning of and periodically throughout their studies.

(c) 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.

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.

Interpretation 303-2
A law school shall provide academic advising to students to communicate effectively to them the school’s academic standards and graduation requirements, and guidance regarding course selection and sequencing. Academic advising should include assisting each student with planning a program of study consistent with that student’s goals.

Interpretation 303-3
A law school shall provide the academic support necessary to assure each student a satisfactory opportunity to complete the program, graduate, and become a member of the legal profession. This obligation may require a school to create and maintain a formal academic support program.
Standard 304. COURSE OF STUDY AND ACADEMIC CALENDAR

(a) A law school shall have an academic year of not fewer than 130 days on which classes are regularly scheduled in the law school, extending into not fewer than eight calendar months. The law school shall provide adequate time for reading periods, examinations, and breaks, but such time does not count toward the 130-day academic year requirement.

(b) A law school shall require, as a condition for graduation, successful completion of a course of study in residence of not fewer than 58,000 minutes of instruction time, except as otherwise provided. At least 45,000 of these minutes shall be by attendance in regularly scheduled class sessions at the law school.

(c) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.

(d) A law school shall require regular and punctual class attendance.

(e) A law school shall not permit a student to be enrolled at any time in coursework that, if successfully completed, would exceed 20 percent of the total coursework required by that school for graduation (or a proportionate number for schools on other academic schedules, such as a quarter system).

(f) A student may not be employed more than 20 hours per week in any week in which the student is enrolled in more than twelve class hours.

Interpretation 304-1
This Standard establishes a minimum period of academic instruction as a condition for graduation. While the academic year is typically divided into two equal terms of at least thirteen weeks, that equal division is not required. The Standard accommodates deviations from a conventional semester system, including quarter systems, trimesters, and mini-terms.

Interpretation 304-2
A law school may not count more than five class days each week toward the 130-day requirement.
Interpretation 304-3
In calculating the 45,000 minutes of “regularly scheduled class sessions” for the purpose of Standard 304(b), the time may include:

(a) coursework at a law school for which a student receives credit toward the J.D. degree by the law school, so long as that work itself meets the requirements of Standard 304;

(b) coursework for which a student receives credit toward the J.D. degree that is work done in a foreign study program that qualifies under Standard 307;

(c) law school coursework that meets the requirements of Standard 306(c);

(d) in a seminar or other upper-level course other than an independent research course, the minutes allocated for preparation of a substantial paper or project if the time and effort required and anticipated educational benefit are commensurate with the credit awarded; and

(e) in a law school clinical course, the minutes allocated for clinical work so long as (i) the clinical course includes a classroom instructional component, (ii) the clinical work is done under the direct supervision of a member of the law school faculty or instructional staff whose primary professional employment is with the law school, and (iii) the time and effort required and anticipated educational benefit are commensurate with the credit awarded.

A law school shall not include in the 45,000 minutes required by Standard 304(b) to be by attendance in regularly scheduled class sessions at the law school any other coursework, including but not limited to (i) work qualifying for credit under Standard 305; (ii) coursework completed in another department, school or college of the university with which the law school is affiliated or at another institution of higher learning; and (iii) co-curricular activities such as law review, moot court, and trial competitions.

Interpretation 304-4
Law schools may find the following examples useful. Law schools on a conventional semester system typically require 700 minutes of instruction time per “credit,” exclusive of time for an examination. A quarter hour of credit requires 450 minutes of instruction time, exclusive of time for an examination. To achieve the required total of 58,000 minutes of instruction time, a law school must require at least 83 semester hours of credit, or 129 quarter hours of credit.

If a law school on a semester system offers classes in units of 50 minutes per credit, it can provide 700 minutes of instruction in 14 classes. If such a law school offers classes in units of 55 minutes per class, it can provide 700 minutes of instruction in 13 classes. If such a law school offers classes in units of 75 minutes per class, it can provide 700 minutes of instruction in 10 classes.
If a law school on a quarter system offers classes in units of 50 minutes per class, it can provide 450 minutes of instruction in 9 classes. If such a law school offers classes in units of 65 minutes per class, it can provide 450 minutes of instruction in 8 classes. If such a law school offers classes in units of 75 minutes per class, it can provide 450 minutes of instruction in 6 classes.

In all events, the 130-day requirement of Standard 304(a) and the 58,000-minute requirement of Standard 304(b) should be understood as separate and independent requirements.

Interpretation 304-5
Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

Interpretation 304-6
A law school shall demonstrate that it has adopted and enforces policies insuring that individual students satisfy the requirements of this Standard, including the implementation of policies relating to class scheduling, attendance, and limitation on employment.

Interpretation 304-7
Subject to the provisions of this Interpretation, a law school shall require a student who has completed work in an LL.M. or other post J.D. program to complete all of the work for which it will award the J.D. degree following the student’s regular enrollment in the school’s J.D. program. A law school may accept transfer credit as otherwise allowed by the Standards.

A law school may award credit toward a J.D. degree for work undertaken in a LL.M. or other post J.D. program offered by it or another law school if:

(a) that work was the successful completion of a J.D. course while the student was enrolled in a post-J.D. law program;

(b) the law school at which the course was taken has a grading system for LL.M. students in J.D. courses that is comparable to the grading system for J.D. students in the course, and

(c) the law school accepting the transfer credit will require that the student successfully complete a course of study that satisfies the requirements of Standards 302(a)-(b) and that meets all of the school’s requirement for the awarding of the J.D. degree.
Standard 305. STUDY OUTSIDE THE CLASSROOM

(a) A law school may grant credit toward the J.D. degree for courses or a program that permits or requires student participation in studies or activities away from or outside the law school or in a format that does not involve attendance at regularly scheduled class sessions.

(b) Credit granted shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

(c) Each student’s academic achievement shall be evaluated by a faculty member. For purposes of Standard 305 and its Interpretations, the term “faculty member” means a member of the full-time or part-time faculty. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.

(d) The studies or activities shall be approved in advance and periodically reviewed following the school’s established procedures for approval of the curriculum.

(e) A field placement program shall include:

1. a clear statement of the goals and methods, and a demonstrated relationship between those goals and methods to the program in operation;

2. adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;

3. a clearly articulated method of evaluating each student’s academic performance involving both a faculty member and the field placement supervisor;

4. a method for selecting, training, evaluating, and communicating with field placement supervisors;

5. periodic on-site visits or their equivalent by a faculty member if the field placement program awards four or more academic credits (or equivalent) for field work in any academic term or if on-site visits or their equivalent are otherwise necessary and appropriate;
(6) a requirement that students have successfully completed one academic year of study prior to participation in the field placement program;

(7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student can earn four or more academic credits (or equivalent) in the program for fieldwork, the seminar, tutorial, or other means of guided reflection must be provided contemporaneously.

**Interpretation 305-1**
Activities covered by Standard 305(a) include field placement, moot court, law review, and directed research programs or courses for which credit toward the J.D. degree is granted, as well as courses taken in parts of the college or university outside the law school for which credit toward the J.D. degree is granted.

**Interpretation 305-2**
The nature of field placement programs presents special opportunities and unique challenges for the maintenance of educational quality. Field placement programs accordingly require particular attention from the law school and the Accreditation Committee.

**Interpretation 305-3**
A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. This Interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement.

**Interpretation 305-4**
(a) A law school that has a field placement program shall develop, publish and communicate to students and field instructors a statement that describes the educational objectives of the program.

(b) In a field placement program, as the number of students involved or the number of credits awarded increases, the level of instructional resources devoted to the program should also increase.

**Interpretation 305-5**
Standard 305 by its own force does not allow credit for Distance Education courses.
Standard 306. DISTANCE EDUCATION

(a) A law school may offer credit toward the J.D. degree for study offered through distance education consistent with the provisions of this Standard and Interpretations of this Standard. Such credit shall be awarded only if the academic content, the method of course delivery, and the method of evaluating student performance are approved as part of the school’s regular curriculum approval process.

(b) Distance education is an educational process characterized by the separation, in time or place, between instructor and student. It includes courses offered principally by means of:

(1) technological transmission, including Internet, open broadcast, closed circuit, cable, microwave, or satellite transmission;

(2) audio or computer conferencing;

(3) video cassettes or discs; or

(4) correspondence.

(c) A law school may award credit for distance education and may count that credit toward the 45,000 minutes of instruction required by Standard 304(b) if:

(1) there is ample interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and

(2) there is ample monitoring of student effort and accomplishment as the course progresses.

(d) A law school shall not grant a student more than four credit hours in any term, nor more than a total of 12 credit hours, toward the J.D. degree for courses qualifying under this Standard.

(e) No student shall enroll in courses qualifying for credit under this Standard until that student has completed instruction equivalent to 28 credit hours toward the J.D. degree.

(f) No credit otherwise may be given toward the J.D. degree for any distance education course.
Interpretation 306-1
To allow the Council and the Standards Review Committee to review and adjust this Standard, law schools shall report each year on the distance education courses that they offer.

Interpretation 306-2
Distance education presents special opportunities and unique challenges for the maintenance of educational quality. Distance education accordingly requires particular attention from the law school and by site visit teams and the Accreditation Committee.

Interpretation 306-3
Courses in which two-thirds or more of the course instruction consists of regular classroom instruction shall not be treated as “distance education” for purposes of Standards 306(d) and (e) even though they also include substantial on-line interaction or other common components of “distance education” courses so long as such instruction complies with the provisions of subsections (1) and (2) of Standard 306(c).

Interpretation 306-4
Law schools shall take steps to provide students in distance education courses opportunities to interact with instructors that equal or exceed the opportunities for such interaction with instructors in a traditional classroom setting.

Interpretation 306-5
Law schools shall have the technological capacity, staff, information resources, and facilities required to provide the support needed for instructors and students involved in distance education at the school.

Interpretation 306-6
Law schools shall establish mechanisms to assure that faculty who teach distance education courses and students who enroll in them have the skills and access to the technology necessary to enable them to participate effectively.

Interpretation 306-7
Faculty approval of credit for a distance education course shall include a specific explanation of how the course credit was determined. Credit shall be awarded in a manner consistent with the requirement of Interpretation 304-4 that requires 700 minutes of instruction for each credit awarded.

Interpretation 306-8
A law school that offers more than an incidental amount of credit for distance education shall adopt a written plan for distance education at the law school and shall periodically review the educational effectiveness of its distance education courses and programs.
Interpretation 306-9
“Credits” in this Standard means semester hour credits as provided in Interpretation 304-4. Law schools that use quarter hours of credit shall convert these credits in a manner that is consistent with the provisions of Interpretation 304-4.

Standard 307. PARTICIPATION IN STUDIES OR ACTIVITIES IN A FOREIGN COUNTRY

A law school may grant credit for student participation in studies or activities in a foreign country only if the studies or activities are approved in accordance with the Rules of Procedure and Criteria as adopted by the Council.

Interpretation 307-1
In addition to studies or activities covered by Criteria adopted by the Council, a law school may grant credit for (a) studies or activities in a foreign country that meet the requirements of Standard 305 and (b) brief visits to a foreign country that are part of a law school course approved through the school’s regular curriculum approval process.

Standard 308. DEGREE PROGRAMS IN ADDITION TO J.D.

A law school may not establish a degree program other than its J.D. degree program without obtaining the Council’s prior acquiescence. A law school may not establish a degree program in addition to its J.D. degree program unless the school is fully approved. The additional degree program may not detract from a law school’s ability to maintain a J.D. degree program that meets the requirements of the Standards.

Interpretation 308-1
Reasons for withholding acquiescence in the establishment of an advanced degree program include:

(1) Lack of sufficient full-time faculty to conduct the J.D. degree program;
(2) Lack of adequate physical facilities, which has a negative and material effect on the education students receive;
(3) Lack of an adequate law library to support both a J.D. and an advanced degree program; and
(4) A J.D. degree curriculum lacking sufficient diversity and richness in course offerings.

Interpretation 308-2
Acquiescence in a degree program other than the first degree in law is not an approval of the program itself, and, therefore, a school may not announce that the program is approved by the American Bar Association.
CHAPTER 4

THE FACULTY

Standard 401. QUALIFICATIONS

A law school shall have a faculty whose qualifications and experience are appropriate to the stated mission of the law school and to maintaining a program of legal education consistent with the requirements of Standards 301 and 302. The faculty shall possess a high degree of competence, as demonstrated by its education, experience in teaching or practice, teaching effectiveness, and scholarly research and writing.

Standard 402. SIZE OF FULL-TIME FACULTY

(a) A law school shall have a sufficient number of full-time faculty to fulfill the requirements of the Standards and meet the goals of its educational program. The number of full-time faculty necessary depends on:

(1) the size of the student body and the opportunity for students to meet individually with and consult faculty members;

(2) the nature and scope of the educational program; and

(3) the opportunities for the faculty adequately to fulfill teaching obligations, conduct scholarly research, and participate effectively in the governance of the law school and in service to the legal profession and the public.

(b) A full-time faculty member is one whose primary professional employment is with the law school and who devotes substantially all working time during the academic year to the responsibilities described in Standard 404(a), and whose outside professional activities, if any, are limited to those that relate to major academic interests or enrich the faculty member’s capacity as a scholar and teacher, are of service to the legal profession and the public generally, and do not unduly interfere with one’s responsibility as a faculty member.

Interpretation 402-1

In determining whether a law school complies with the Standards, the ratio of the number of full-time equivalent students to the number of full-time equivalent faculty members is considered.

(1) In computing the student/faculty ratio, full-time equivalent teachers are those who are employed as full-time teachers on tenure track or its equivalent who shall be counted as one each plus those who constitute “additional teaching resources” as defined below. No limit is imposed on the total number of teachers that a school may
employ as additional teaching resources, but these additional teaching resources shall be counted at a fraction of less than 1 and may constitute in the aggregate up to 20 percent of the full-time faculty for purposes of calculating the student/faculty ratio.

(A) Additional teaching resources and the proportional weight assigned to each category include:

(i) teachers on tenure track or its equivalent who have administrative duties beyond those normally performed by full-time faculty members: 0.5;

(ii) clinicians and legal writing instructors not on tenure track or its equivalent who teach a full load: 0.7; and

(iii) adjuncts, emeriti faculty who teach, non-tenure track administrators who teach, librarians who teach, and teachers from other units of the university: 0.2.

(B) These norms have been selected to provide a workable framework to recognize the effective contributions of additional teaching resources. To the extent a law school has types or categories of teachers not specifically described above, they shall be counted as appropriate in accordance with the weights specified above. It is recognized that the designated proportional weights may not in all cases reflect the contributions to the law school of particular teachers. In exceptional cases, a school may seek to demonstrate to site evaluation teams and the Accreditation Committee that these proportional weights should be changed to weigh contributions of individual teachers.

(2) For the purpose of computing the student/faculty ratio, a student is considered full-time or part-time as determined by the school, provided that no student who is enrolled in fewer than ten credit hours in a term shall be considered a full-time student, and no student enrolled in more than 13 credit hours shall be considered a part-time student. A part-time student is counted as a two-thirds equivalent student.

(3) If there are graduate or non-degree students whose presence might result in a dilution of J.D. program resources, the circumstances of the individual school are considered to determine the adequacy of the teaching resources available for the J.D. program.
Interpretation 402-2
Student/faculty ratios are considered in determining a law school’s compliance with the Standards.

(1) A ratio of 20:1 or less presumptively indicates that a law school complies with the Standards. However, the educational effects shall be examined to determine whether the size and duties of the full-time faculty meet the Standards.

(2) A ratio of 30:1 or more presumptively indicates that a law school does not comply with the Standards.

(3) At a ratio of between 20:1 and 30:1 and to rebut the presumption created by a ratio of 30:1 or greater, the examination will take into account the effects of all teaching resources on the school’s educational program, including such matters as quality of teaching, class size, availability of small group classes and seminars, student/faculty contact, examinations and grading, scholarly contributions, public service, discharge of governance responsibilities, and the ability of the law school to carry out its announced mission.

Interpretation 402-3
A full-time faculty member who is teaching an additional full-time load at another law school may not be considered as a full-time faculty member at either institution.

Interpretation 402-4
Regularly engaging in law practice or having an ongoing relationship with a law firm or other business creates a presumption that a faculty member is not a full-time faculty member under this Standard. This presumption may be rebutted if the law school is able to demonstrate that the individual has a full-time commitment to teaching, research, and public service, is available to students, and is able to participate in the governance of the institution to the same extent expected of full-time faculty.

Standard 403. INSTRUCTIONAL ROLE OF FACULTY

(a) The full-time faculty shall teach the major portion of the law school’s curriculum, including substantially all of the first one-third of each student’s coursework.

(b) A law school shall ensure effective teaching by all persons providing instruction to students.

(c) A law school should include experienced practicing lawyers and judges as teaching resources to enrich the educational program. Appropriate use of practicing lawyers and judges as faculty requires that a law school shall provide them with orientation, guidance, monitoring, and evaluation.
Interpretation 403-1
The full-time faculty’s teaching responsibility will usually be determined by the proportion of student credit hours taught by full-time faculty in each of the law school’s programs or divisions (such as full-time, part-time evening study, and part-time weekend study). For purposes of Standard 403(a), a faculty member is considered full-time if that person’s primary professional employment is with the law school.

Interpretation 403-2
Efforts to ensure teaching effectiveness may include: a faculty committee on effective teaching, class visitations, critiques of videotaped teaching, institutional review of student evaluation of teaching, colloquia on effective teaching, and recognition of creative scholarship in law school teaching methodology. A law school shall provide all new faculty members with orientation, guidance, mentoring, and periodic evaluation.

Standard 404. RESPONSIBILITIES OF FULL-TIME FACULTY

(a) A law school shall establish policies with respect to a full-time faculty member’s responsibilities in teaching, scholarship, service to the law school community, and professional activities outside the law school. The policies need not seek uniformity among faculty members, but should address:

(1) Faculty teaching responsibilities, including carrying a fair share of the law school’s course offerings, preparing for classes, being available for student consultation, participating in academic advising, and creating an atmosphere in which students and faculty may voice opinions and exchange ideas;

(2) Research and scholarship, and integrity in the conduct of scholarship, including appropriate use of student research assistants, acknowledgment of the contributions of others, and responsibility of faculty members to keep abreast of developments in their specialties;

(3) Obligations to the law school and university community, including participation in the governance of the law school;

(4) Obligations to the profession, including working with the practicing bar and judiciary to improve the profession; and

(5) Obligations to the public, including participation in pro bono activities.

(b) A law school shall evaluate periodically the extent to which each faculty member discharges her or his responsibilities under policies adopted pursuant to Standard 404(a).
Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(b) A law school shall have an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory.

(c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

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

Interpretation 405-1
A fixed limit on the percent of a law faculty that may hold tenure under any circumstances violates the Standards.

Interpretation 405-2
A law faculty as professionals should not be required to be a part of the general university bargaining unit.

Interpretation 405-3
A law school shall have a comprehensive system for evaluating candidates for promotion and tenure or other forms of security of position, including written criteria and procedures that are made available to the faculty.

Interpretation 405-4
A law school not a part of a university in considering and deciding on appointment, termination, promotion, and tenure of faculty members should have procedures that contain the same principles of fairness and due process that should be employed by a law school that is part of a university. If the dean and faculty have made a recommendation that is unfavorable to a candidate, the candidate should be given an opportunity to appeal to the president, chairman, or governing board.
Interpretation 405-5
If the dean and faculty have determined the question of responsibility for examination schedules and the schedule has been announced by the authority responsible for it, it is not a violation of academic freedom for a member of the law faculty to be required to adhere to the schedule.

Interpretation 405-6
A form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long-term contracts. Under a separate tenure track, a full-time clinical faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure. After tenure is granted, the faculty member may be terminated only for good cause, including termination or material modification of the entire clinical program.

A program of renewable long-term contracts shall provide that, after a probationary period reasonably similar to that for other full-time faculty, during which the clinical faculty member may be employed on short-term contracts, the services of a faculty member in a clinical program may be either terminated or continued by the granting of a long-term renewable contract. For the purposes of this Interpretation, “long-term contract” means at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom. During the initial long-term contract or any renewal period, the contract may be terminated for good cause, including termination or material modification of the entire clinical program.

Interpretation 405-7
In determining if the members of the full-time clinical faculty meet standards and obligations reasonably similar to those provided for other full-time faculty, competence in the areas of teaching and scholarly research and writing should be judged in terms of the responsibilities of clinical faculty. A law school should develop criteria for retention, promotion, and security of employment of full-time clinical faculty.

Interpretation 405-8
A law school shall afford to full-time clinical faculty members participation in faculty meetings, committees, and other aspects of law school governance in a manner reasonably similar to other full-time faculty members. This Interpretation does not apply to those persons referred to in the last sentence of Standard 405(c).

Interpretation 405-9
Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers, nor does it preclude law schools from offering fellowship programs designed to produce candidates for full-time teaching by offering individuals supervised teaching experience.
In January 3, 2001, the Executive Committee of the Association of American Law Schools (AALS) adopted a new statement in support of academic freedom for all clinical faculty. The statement acknowledges that the AALS has long embraced the principle that clinical faculty “must have academic freedom to pursue effectively their teaching and research obligations,” and the AALS “has fully supported the principle that academic freedom applies equally to clinical law faculty and all other law faculty.”

In recent years, the AALS has taken the position – in the Submission to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court’s Student Practice Rule and in its amicus brief to the Fifth Circuit in the litigation over restrictions on clinical programs in Louisiana – that academic freedom for clinical faculty includes “rights to assign cases and teach their clinical courses without government intrusion.” Further, the AALS has maintained that “clinical teachers . . . have a First Amendment right to select cases as their course materials for their clinics. . . . Merely because a clinical teacher uses actual cases as course material, rather than a casebook or simulation assignments, does not eliminate his or her First Amendment rights to select materials.”

The AALS position in the Louisiana matter and the new AALS statement reaffirm the AALS support of the academic freedom of clinical faculty – without regard to whether an individual faculty member is eligible for a grant of tenure – to select cases without intrusion from outside the law school as well as intrusion from within the law school

1Statement of the Association of American Law Schools in Support of Academic Freedom for Clinical Faculty. The entire text of the statement follows this article.

2Jorge deNeve, Peter A. Joy & Charles D. Weisselberg, Submission of the Association of American Law Schools to the Supreme Court of the State of Louisiana Concerning the Review of the Supreme Court’s Student Practice Rule, 4 CLIN. L. REV. 539 (1998) [hereinafter AALS Submission]. The AALS Submission was reviewed by members of the AALS Executive Committee and signed by the authors and the 1997 President of the AALS, John E. Sexton (Dean, New York University School of Law).


4AALS Submission, supra note 2, at 557.
when faculty or deans are prompted to intrude into case selection decisions by clinical faculty. Provided the cases serve the pedagogical goals of the particular clinical course, and provided that the clinical faculty comply with applicable ethical obligations, clinical faculty are as free to make case selection decisions without intrusion as non-clinical faculty are to choose textbooks for their courses.

The AALS policy on academic freedom for clinical faculty also will be useful to deans and university administrators if they should face pressure from donors or the public who may be upset when a clinical program represents an unpopular client or cause. The express statement by the AALS, affirming the academic freedom rights of clinical faculty, demonstrates that law school deans and university administrators cannot interfere with the academic freedom of clinical faculty without violating AALS policy. If a dean, university administrator, or other faculty interfere with the academic freedom of any law faculty member – clinical or non-clinical faculty alike – the affected faculty at AALS member schools may file a complaint with the AALS, which will attempt to resolve the matter. If a violation of academic freedom is found, there are remedies available to the aggrieved faculty, and the law school may be further sanctioned by the AALS.

In addition to the AALS commitment to academic freedom for clinical faculty, the American Bar Association (ABA) has condemned “attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs . . . .” The ABA notes that such improper influences “have an adverse impact on the quality of the educational mission of affected law schools and jeopardize academic freedom.”

The pedagogical goals of a particular clinical course are furthered by clinical faculty choosing cases within the scope of the subject matter and skill level of the clinical course.

The AALS recognizes that in the clinical legal education setting, the academic freedom rights of clinical faculty carry correlative duties such as “complying with the law as well as professional standards of discipline and ethical standards of the profession.” Amicus Brief, supra note 3, at 18. The applicable ethical obligations for clinical faculty are contained in each jurisdiction's ethical rules governing lawyer conduct. These obligations include, but are not limited to: conflicts of interest rules, which primarily affect the whether or not certain clients may be represented; and competency obligations, which require clinical faculty to limit case selections to the number and types of cases in which the supervising faculty can guarantee will be handled with the requisite legal knowledge, skill, and resources necessary for the representation. See generally ABA Model Code of Professional Responsibility (1969); ABA Model Rules of Professional Conduct (2001). Every jurisdiction primarily bases its ethical rules for lawyers on one or both of the ABA models.

“Existing authority establishes that the locus of teaching and learning does not bear on whether the faculty and students enjoy academic freedom. Thus, the principles of academic freedom apply as equally to law school clinical courses as to Property, Torts, or Constitutional Law.” Amicus Brief, supra note 3, at 15-16. “Merely because a clinical teacher uses actual cases as course material, rather than a case book or simulation assignments, does not eliminate his or her First Amendment rights to select materials.” AALS Submission, supra note 2, at 557.


Memorandum to Deans of ABA Approved Law Schools from the Consultant on Legal Education to the American Bar Association, Feb. 21, 1983 (Statement of Council of the Section on Legal Education and Admissions to the Bar policy regarding interference in law school clinical activities).
principles of law school self-governance, academic freedom, and ethical
independence..."10 Furthermore, the ABA has stated in an advisory ethics opinion
that law schools should not adopt guidelines or procedures that prevent clinical
programs from representing controversial clients and cases because acceptance of such
clients "is in line with the highest aspirations of the bar to make legal services available
to all."11 The ABA ethics opinion specifically rejected a plan to require prior approval of
all clinic cases "on a case-by-case basis by a governing body consisting of the dean and
faculty,"12 The ethics opinion reasons that the "case-by-case review makes it likely that
the independent judgment of the five clinic lawyers and their loyalty to their clients will
be impaired."13 Such a limitation on the case selection would "violate the professional
ethics and responsibilities of the dean and the lawyer-directors of the clinic."14

Clinical faculty with academic freedom concerns are encouraged to contact the Political
Interference Group of the Clinical Section by phoning or e-mailing either of the authors.
All inquiries are kept confidential.

STATEMENT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS
IN SUPPORT OF ACADEMIC FREEDOM FOR CLINICAL FACULTY

The Association of American Law Schools has embraced from its very beginning the
principle that law professors at member schools must enjoy the benefit of academic
freedom to pursue effectively their teaching and research obligations. Bylaw 6-8(d)
provides, "A faculty member shall have academic freedom and tenure in accordance
with the principles of the American Association of University Professors." For many
years the Association has fully supported the principle that academic freedom apply to
all "engaged in teaching or scholarship, including work in a clinical or research and
writing program at a member school" without regard to whether the position is eligible
for a grant of tenure.

The resolve of the Association has been reflected in the public positions that it has taken
in support of clinics at member schools that have been the subject of external pressure.
The Association reaffirms that academic freedom applies equally to clinical law faculty.
Accordingly, clinical faculty have full access to the procedures available under Executive
Committee Regulations, Chapter 6, to pursue claims based on alleged violations of the
principles of academic freedom.


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10Id.
directors has an obligation not to reject controversial clients or cases); ABA Formal Op. 334 (1974)
(program priorities of a legal services office may not be based on considerations such as the identity of the
prospective adverse parties).
13Id.
14Id.
WHAT SHOULD I READ?
SELECTED BIBLIOGRAPHY FOR NEW CLINICIANS

This bibliography identifies a number of articles that provide a basic introduction to clinical history and theory. It is by no means meant to be exhaustive. Please let us know if there are other articles you already have read that should be contained in an “Introduction to Clinical Scholarship.” Thanks!

A fabulous resource that all new clinicians might want to peruse at some point is the Online Annotated Bibliography of Clinical Legal Education, prepared by J.P. Ogilvy & Karen Czapanskiy, available at http://faculty.cua.edu/ogilvy/Biblio05clr.htm.

HISTORY: CLINIC DEVELOPMENT

Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, Clinical Education for this Millennium: The Third Wave, 7 CLINICAL L. REV. 1 (2000)

Jerome Frank, Why Not a Clinical Lawyer-School?, 81 U. PA. L. REV. 907 (1933) (excerpt)

Wm. Pincus, Legal Education in a Service Setting, in Clinical Education for the Law Student 27 (1973)


AALS Section on Clinical Legal Education, Report of the Committee on the Future of the In-House Clinic, 42 J. LEGAL EDUC. 511 (1992)

Guidelines for Clinical Legal Education in Report of AALS-ABA Committee on Guidelines for Clinical Legal Education (1980)

Philip Schrag, Constructing a Law School Clinic, 3 CLINICAL L. REV. 175 (1997) (the Appendix is particularly helpful)


IN-HOUSE CLINICAL PROGRAMS

Supervision


Peter Toll Hoffman, The Stages of the Clinical Supervisory Relationship, 4 ANTIOCH L.J. 301 (1986)


**Social Theory**

Jane Aiken, *Striving to Teach Justice, Fairness & Morality*, 4 Clinical L. Rev. 1 (1997)


**EVALUATION AND CRITIQUE**


**EXTERNSHIPS**


Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic*, 75 Neb. L. Rev. 872 (1996).


Steven Maher, *Clinical Legal Education in the Age of Unreason*, 40 BUFF. L. REV. 809 (1992)


Sacks, *Student Fieldwork as a Technique in Educating Students in Professional Responsibility*, 20 J. LEGAL EDUC. 291 (1968).


DIVERSITY


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Margaret Montoya, *Voicing Differences*, 4 CLINICAL L. REV. 147 (1997)


**ETHICS**


Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 Yale L. J. 470 (1976)


BOOKS

Roy Stuckey and Others, BEST PRACTICES FOR LEGAL EDUCATION (CLEA, 2007)


David F. Chavkin, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS, CHAPTER THREE, GRADING AND EVALUATION, (2002).


Steven Keeva, TRANSFORMING PRACTICES (1999)


Philip G. Schrag and Michael Meltsner, REFLECTIONS ON CLINICAL LEGAL EDUCATION (Northeastern Univ. Press 1998)

CLINICAL ANTHOLOGY: READINGS FOR LIFE-CLIENT CLINICS (Alex J. Hureder, Frank S. Block, Susan L. Brooks & Susan L. Kay, eds.) (1997)


DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER (1987)


WEB-BASED RESOURCES FOR LAW SCHOOL CLINICIANS

WEBSITES AND BLOGS

American Association of Law Schools (AALS):
http://www.aals.org/

American Bar Association Central and East European Law Initiative (CEELI):
http://www.abanet.org/ceeli/home.html

American Bar Association Section of Legal Education and Admission to the Bar:
http://www.abanet.org/legaled/home.html

Association of American Law Schools (AALS) Section on Clinical Legal Education:
http://www.aals.org/services_sections_ce.php

Best Practices For Legal Education
http://bestpracticeslegaled.albanylawblogs.org/

Center for the Study of Applied Legal Education (CSALE)
http://www.csale.org/index.html

Clinical Education: An Annotated Bibliography, Revised Edition: (Revised 2005), J. P. Ogilvy with Karen Czapanskiy:
http://faculty.cua.edu/ogilvy/Biblio05clr.htm

Clinical Law Prof Blog:
http://lawprofessors.typepad.com/clinic_prof/

Clinical Law Review:
http://www.law.nyu.edu/clr/

Clinical Legal Education Association (CLEA):
http://www.cleaweb.org

clinicians with not enough to do: a reverent and irreverent look at clinical legal education:
http://kotplow.typepad.com/clinicians_with_not_enoug/

Gateway to Clinical Legal Education:
http://cgiz.www.law.umich.edu/_GCLE/Index.asp

Global Alliance for Justice Education (GAJE):
http://www.gaje.org/

A Humanizing Dimension for Legal Education:
http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/readinglist.pdf
International Network on Therapeutic Jurisprudence:  http://www.therapeuticjurisprudence.org/


The Law and Society Association:  http://www.lawandsociety.org/

LexternWeb:  http://www.law.cua.edu/lexternWeb/index.htm

National Legal Aid & Defender Association:  http://www.nlada.org/

National Professionalism Web Site:  http://professionalism.law.sc.edu/


Society of American Law Teachers (SALT):  http://www.saltlaw.org/
LISTSERVS

LAWCLINIC – go to http://lists.washlaw.edu/mailman/listinfo/lawclinic/

CLEA New Clinicians –
go to http://cleaweb.org/mailman/listinfo/cleanewclinicians_cleaweb.org

LEXTERN – to subscribe, email listserv@lists.cua.edu with the following request in the body of the message: subscribe lexttern

GAJE – email majordomo@list.vanderbilt.edu with the following command in the body of your email message: subscribe gaje

Humanizing Legal Education – to subscribe, send an empty email to: legaled-subscribe@mail.law.fsu.edu

LAWPROF – to subscribe, email listproc@chicagokent.kentlaw.edu with the following request in the body of the message: subscribe LAWPROF

LEGALETHICS – to subscribe, email listserv@lawlib.wuacc.edu with the following request in the body of the message: subscribe legalethics-l [your first name] [your last name] lawprofessor

PROF-ISM – a professionalism listserv, to subscribe email listserv@vm.sc.edu with the following request in the body of the message: SUB PROF-ISM [your first name] [your last name]
SAMPLE EXERCISES
BUILDING BLOCKS EXERCISE

from Paul Bergman, Avrom Sherr & Roger Burridge, Learning from Experience: Nonlegally-Specific Role Plays, 37 J. Legal Ed. 535 (1987)

The premise of this article is that simulation exercises placed outside an overtly legal context, in settings already familiar, are valuable for law students. Everyday social behavior sometimes constitutes desirable professional behavior as well. The article describes several usual exercises. One in particular has become a “staple” of many clinical programs: the Blocks Exercise.

The Blocks Exercise illustrates the strengths and weaknesses of oral communication, particular in a question-answer format. It has immediate relation to interviewing and direct examination, in particular. As the authors see it, “[r]esearch indicated that we are visual learners; most of what we know is a product of our having seen it. By contrast, we are quite inefficient when it comes to oral transmission of data. Transforming actual events into verbal description is something we do repeatedly in everyday life, but usually without any sense of how we have altered those events in the listener’s mind.” Obviously, oral communication is a lawyer’s principal tool as well. Distortion is an ever-present worry. This exercise never fails to make vivid points, in about ½ hour, depending on the length of the discussion.

Here is one suggested version of the exercise:

**Stage 1:** Player 1 builds; player 2 copies visually.

Discussion: Note the sight; speed; accuracy. (For contrast.)

**Stage 2:** Player 3 builds; player 4 is behind a screen. Player 3 describes her structure; player 4 is mute, listens and tries to replicate the structure.

Discussion: Note the additional time, the frustration and the lessened accuracy. Identify how it “went wrong” – usually, player 3 is accurate in the description, but the ambiguities of language become apparent.

**Stage 3:** Without warning, ask player 2 to return and build again – from memory – player 1’s structure.

Discussion: the added challenge of memory loss, especially without a warning that one will be called upon later to recall an “event”.

**Stage 4:** Player 5 builds; player 6 is behind a screen. Player 6 may interview player 5 to find out how to build the structure.

Discussion: Usually the time is longer but the accuracy increases. Lots of time spent setting up expectations and vocabulary.

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Stage 5: Player 7 builds; player 8 is behind a screen and is mute. Player 9 sits with player 7, and conducts a direct exam of him in order to enable player 8 to replicate the structure.

Discussion: player 8 is like a juror, trying to glean understanding from a conversation in which she cannot participate – like stage 2 again.
INTRODUCTION TO REPRESENTING CLIENTS

Ice Breaking Exercise

I first participated in this exercise in 1992 at a clinic conference. Jean Koh Peters and Paul Tremblay demonstrated it in a small group. I do not know where they got it, or if they invented it, but I have been using it in my clinic and in my simulation interviewing and counseling course ever since. It has evolved over time from the original exercise. - Carrie Kaas (2005)

Divide the class into pairs.

Ask each pair to interview each other for approximately three minutes each. I let them decide who goes first. I give very little guidance, and refuse to answer too many questions. I do not tell them whether or not to take notes. I do not tell them what is going to happen next. My students usually assume that this is the first “roleplay” interviewing exercise and focus heavily on interview technique, hoping to impress me with their interrogation skills. I do not contradict them.

Call everyone back together after six minutes. I now ask everyone to sit in a big circle—or the closest approximation that I can manage within the constraints of the room layout. I want everyone to be able to make eye contact with everyone else.

Tell everyone that they will be introducing the person they interviewed to the rest of the class, and telling the class about the person. Depending on the class size and time available, I usually limit the presentation to one minute or less.

Note for future comment how people react—especially if any pairs whisper or pass notes to each other.

Begin the presentations. Take notes and notice the following: Does anyone correct the presenter? Does any presenter ask for clarification from the person he or she is introducing? Who uses notes? How often do the pairs’ presentations mirror each other in topic? (Two favorite colors; two pets discussions; etc.) How often is the presentation nothing more than a resume? What is the body language of the person being presented? Who does the rest of the class look at—the presenter or the person being presented?

After the full rounds of presentations, introduce yourself.
Begin the discussion with a deliberate feint: Ask the people who interviewed first generic interviewing type questions—such as “Did you use a closed or open question?”

Slowly lead the conversation through questions and answers—moving from a focus on interviewer's conduct to the experience of being a “re-presenter” by another, with little or no control over, or preparation for, the experience.

Who controls the flow of information with what types of questions?
Because the person did not know what was to be done with the information, did he or she share more or less personal information?

Did any presenter self-censor what he or she said to the group about a classmate?

Did any person instruct the classmate not to reveal something (notes or whispers)?
Who did they look at and why—presenter or person being introduced?

How did it feel to be introduced to your classmates and professor with no chance to decide what was said?

Draw their attention to the fact that you got to tell the class whatever you wanted to about yourself, but that you took that privilege away from the class.

Ask how the presentations would have differed if you had told the class what was to happen? How many would have told their presenter what they wanted said about themselves?

Conclude with getting the observations about how much this exercise is like the experience of being a client: being asked lots of questions, with no idea what will happen with the information, and rendered mute as you listen to someone else making your “first impression” for you.

Note: I have begun using a variation of this exercise at the end of the semester as well. I tell the class that each person will present the class with an insight of something learned from the class (or some other task) and then I tell when they are going to “present” through an agent/lawyer. I pair them up and after a few minutes of talking, we go around the room. I remind them of the initial exercise and get them to tell me what was different. Most students tell me that they asked the partner, “What would you like me to tell the class on your behalf?” and admit that this approach never occurred to them in the first class.
APPENDIX
MEMBERSHIP FORMS
Enclosed is my check for my membership in CLEA for the calendar year 2009, including any additional voluntary contribution to support the advocacy efforts of CLEA, which is deductible from my federal income taxes.

NAME: ____________________________________________
TITLE: __________________________________________
UNIVERSITY: ______________________________________
ADDRESS: _______________________________________
_________________________________________________
PHONE: __________________________________________
E-MAIL ADDRESS: _____________________________ ___________________________

2009 Dues for Full Members are $40.00 (U.S. funds). Checks should be made payable to CLEA and are due on April 15, 2009. Dues paid Full Members have full voting rights in CLEA and receive the Clinical Law Review and CLEA Newsletter via regular mail or e-mail.

☐ I have enclosed my check for $40 for my 2009 membership as a Full Member, and am including a contribution to support the work of CLEA. Suggested Amount Extra ☐ $25 ☐ $50 ☐ $100 ☐ Other $________

☐ I will help CLEA save postage and printing costs by receiving the CLEA Newsletter via e-mail and not regular mail.
☐ Check here if you are a new member.

2009 Dues for Associate Members are $15.00 U.S. funds. Associate Members have full voting rights in CLEA and receive the CLEA Newsletter via e-mail only, and not the Clinical Law Review. Associate Membership is restricted to persons engaged in legal education on a basis that is less than full-time, such as in the capacity of an adjunct educator or field placement supervisor in an externship, or law faculty (full-time or part-time) in countries outside of the U.S., and others interested in the furtherance of clinical legal education who are not full-time legal educators.

☐ I have enclosed my check for $15.00 in U.S. funds as an Associate Member and am including a contribution to support the work of CLEA. Suggested Amount Extra ☐ $25 ☐ $50 ☐ $100 ☐ Other $________

For up to $175 in savings, see our Group Membership form on the CLEA website <www.cleaweb.org>.

☐ I would like to participate on the following CLEA Committees:
☐ Membership ☐ Prizes and Awards ☐ Creative Writing Comp. ☐ Best Practices ☐ Conferences and Meetings ☐ Accreditation/Standards ☐ Per Diem ☐ Fundraising ☐ Clinics and Law School Rankings ☐ Website

Mail this form, with a check payable to CLEA in the amount of $40.00 to:

Attn: Brenda Parks
University of Michigan Law School 625
South State St., 545 Legal
Research Ann Arbor, MI
48109-1215
AALS SECTION ON CLINICAL LEGAL EDUCATION
2009 Membership Application / Renewal Form
http://cgi2.www.law.umich.edu/_GCLE/Index.asp

The AALS Section on Clinical Legal Education is accepting new memberships, renewing memberships, and updating information in its database. Dues deadline is April 15, 2009. To ensure the clinical community's continued growth and enhancement, it is vital that you complete all fields on this form (even if you are not becoming a member). Confidential data is never released in individual identifiable format according to the Section's data collection and dissemination policy. The policy and form are viewable at <http://cgi2.www.law.umich.edu/_GCLE/Index.asp>. You can also check your membership and dues status by searching in the interactive clinician directory. Please allow three to four weeks from mailing for your membership information to be updated on the web.

Please check the boxes that apply:
☐ I would like to become a new member of the AALS Section on Clinical Legal Education for $15.00.
☐ Please renew my 2009 membership for the AALS Section on Clinical Legal Education for $15.00.
☐ Please change/update my profile below.

Last Name: ________________________ Suffix: ________________________
First / Middle Name: ________________________
Ms./Mrs./Mr./Dr.: ________ Title: ________________________
Email: ________________________
University: ________________________
University URL: ________________________
Law School Name: ________________________
Law School URL: ________________________
Building/Suite/Box #: ________________________
Law School Street Address: ________________________
City: ________________________ State: ________ Zip: ________________________
Country (if other than US): ________________________
Office Phone (voice): ________________________ Ext.: __________ Office Fax: ________________________
Year graduated from Law School: ________ Years full-time teaching: ________ Years part-time teaching: ________
Are you the overall Director of Clinical Programs at your school? ☐ Yes ☐ No
What is your employment/tenure status in the Law School: ☐ Long-Term Contract ☐ Short-Term Contract
☐ Tenured ☐ Tenured Track ☐ Clinical Tenured ☐ Clinical Tenure Track ☐ Other ________________________
Is scholarship a requirement of your job? ☐ Yes ☐ No
Decimal fraction working in legal education: ________________________
Decimal fraction that salary is support by hard money: ________________________
Number of months employment is supported by base salary: ________________________
Gender with which you identify: □ Male □ Female

Ethnicity with which you identify:

Would you like to be notified of activities of interest to:

Women Clinicians? □ Yes □ No
Clinicians of Color? □ Yes □ No
Lesbian/Gay/Bisexual/Transgender Clinicians? □ Yes □ No

Average supervision ratio in in-house clinic (if applicable):

Average supervision ratio in externship clinic (if applicable):

Name of first clinical course frequently taught:

Check Type: □ in-house □ externship □ simulation □ other

Name of second clinical course frequently taught:

Check Type: □ in-house □ externship □ simulation □ other

Name of third clinical course frequently taught:

Check Type: □ in-house □ externship □ simulation □ other

Name of fourth clinical course frequently taught:

Check Type: □ in-house □ externship □ simulation □ other

Average supervision ratio in in-house clinic (if applicable):

Average supervision ratio in externship clinic (if applicable):

Name of first non-clinical course frequently taught (if any):

Name of second non-clinical course frequently taught (if any):

Name of third non-clinical course frequently taught (if any):

Please select one category that best describes your clinic:

[ ] Administrative Law [ ] Comm/Econ. Development [ ] Employment Law [ ] Innocence
[ ] Appellate [ ] Constitutional Law [ ] Environmental [ ] Intellectual Property
[ ] Asylum/Refugee [ ] Consumer Law [ ] Family Law [ ] Legislative
[ ] Bankruptcy [ ] Criminal Defense [ ] Health Law [ ] Mediation
[ ] Children & The Law [ ] Criminal Prosecution [ ] Housing [ ] Prisoners’ Rights
[ ] Civil/Criminal Lit/Gen. Lit Clinic [ ] Death Penalty [ ] Human Rights [ ] Tax
[ ] Civil Lit/Gen Civil Litigation [ ] Disability Law [ ] Immigration [ ] Transactional
[ ] Civil Rights [ ] Domestic Violence [ ] Indian Law [ ] Wills/Trusts/Estates
[ ] Other (please list): [ ]

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University of Michigan Law School
625 S. State Street
Room 545 Legal Research Building
Ann Arbor, MI 48109-1215
CLEA’S ADVOCACY
STATEMENT OF THE CLINICAL LEGAL EDUCATION ASSOCIATION ON THE REPORT OF THE AMERICAN BAR ASSOCIATION COUNCIL ON LEGAL EDUCATION'S SPECIAL COMMITTEE ON OUTCOME MEASURES
AUGUST 4, 2008

The Clinical Legal Education Association (CLEA) is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. CLEA has approximately 700 annual dues-paying members representing faculty at approximately 140 law schools in the United States. We offer this statement in connection with the Council on Legal Education's consideration of the Interim Report1 of its Special Committee on Outcome Measures.2 We commend the Committee's effort, raise some cautionary notes, and recommend that the Council move forward with this critical enterprise.

CLEA supports the Council's initiative to re-examine and to consider reworking the approach toward law school accreditation taken by the existing Standards and Interpretations. In particular, CLEA endorses the Council's effort to develop outcome measures that relate directly to the primary goal of legal education: the preparation of lawyers for the practice of law.3 In our view, performance measures that focus solely on inputs cannot accurately assess a law school's effectiveness in preparing law students to provide competent professional representation. Bar passage and placement serve at best as proxy outcome measures of a law school's effectiveness in meeting the mission of preparing lawyers for practice. The Interim Report of the Outcome Measures

1 These comments are on the interim report, and not the later-submitted final report from the Special Committee.
2 In separate statements we have also submitted comments on the reports of the Special Committees on Security of Position and Transparency.
3 CLEA reads the Interim Report as recommending the adoption of outcome measures for accreditation, but not as recommending the abandonment of all input measures. CLEA believes that certain input criteria must be a fundamental part of law school accreditation. We look forward assisting the Council to strike the appropriate balance as it moves forward in its process.
Committee (the ‘Interim Report’) represents a solid step toward the goal of articulating accreditation standards for law schools that will assure the accomplishment of the fundamental responsibilities of law schools.

As an organization, CLEA represents professors who teach clinics and skills courses, and thus whose teaching agenda focuses squarely on the preparation of students for practice. We believe strongly in outcome-based assessments. Indeed, CLEA was an early sponsor and the eventual publisher of Roy Stuckey and Others, Best Practices for Legal Education: A Vision and a Road Map (Clinical Legal Education Association 2007), discussed by the Outcome Measures Committee starting at page 7 of the Interim Report. This “Best Practices Project” is an outcome-based vision of legal education, one driven by strategic planning and centered on a fundamental question: Does legal education adequately prepare law students for the practice of law?

In its advocacy before the Council, CLEA has consistently supported approaches to accreditation designed to improve and broaden the professional abilities of law school graduates. Thus, CLEA has spoken in favor of encouraging law schools to focus on the development of professional competencies and judgment, both in classrooms and in clinical practice, and has sought to assure that the contributions of faculty who teach professional skills are recognized and supported by the standards. A regulatory structure that ensures adequate instruction in skills (including the requirement of equality of treatment of professors who teach in clinical and skills courses) is crucial to correct the deficiencies in legal education long since identified by the MacCrate Report and more recently by the Carnegie Report.

CLEA therefore supports much of the approach suggested by the Outcome Measures Committee. We encourage the Council to explore further the questions raised at the end of its Interim Report. More specifically, CLEA strongly supports several key propositions of the Interim Report:

1) that the Council should revise the Standards and Interpretations to fulfill the promise of their Preamble by focusing on outcome measures that assess how well law schools have trained law students in academic knowledge, lawyering skills, and professional values;

2) that the Council should adopt outcome measures that go beyond bar passage and placement rates and that assess a law school’s preparation of students for law practice;

3) that the Council should adopt standards that provide schools with the flexibility to identify additional outcome measures that advance the school’s strategic plan, while remaining centered on the core mission to prepare students for practice; and

4) that the Council should retain a core structure within which to assess each law school’s effectiveness in preparing students for law practice, including all three primary areas of concern: academic knowledge, lawyering competency, and professional values.

We address each of these points briefly.
1. Focus on outcome measures directed towards preparation for practice

The Interim Report includes an admirable summary of approaches taken by accrediting bodies for other professional schools. Although these approaches are necessarily diverse, the Committee’s summary reveals a striking consensus on several key concerns, including licensure; student performance in clinical, problem-solving and communication skills; satisfaction of public expectations for the competencies that graduates should possess; evaluation of skills, knowledge and behaviors of students; and collection of data (including portfolios) that provide evidence of student performance and competency in each area.

These core measures employed in other disciplines go well beyond the competencies tested in traditional law school exams or through the bar exam. Instead, they share a central concern for practice competency, especially in those areas directly related to service to clients and responsibility to the public. They require the collection of data that evidences student learning, and the use of evaluative standards that measure student success in learning.

Certainly, these core measures reflect a natural and logical extension of the central concern of the A.B.A. Standards, as expressed in the Preamble and more specifically in Standard 301: “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.”

2. Focus on outcome measures that go beyond bar passage and placement

The charge to Outcome Measures Committee specifically directed it “to determine whether and how [the Council] can use output measures, other than bar passage and job placement, in the accreditation process.” CLEA strongly supports this inquiry and believes that the Committee has made an excellent start towards addressing it. We recognize that difficult issues remain in determining the ongoing relationship between bar passage and placement figures on the one hand, and on the other prospective new Standards focused on measuring the outcomes of law school preparation of students.

CLEA endorses the Council’s ongoing effort to articulate a broader, more practice-oriented set of measures for law schools’ preparation of students. Professional licensure and job placement are certainly measures of a law school’s performance. However, these measures incompletely assess the ability of a school’s graduates to engage in effective law practice. The ability to pass the bar exam reflects only the examinee’s ability to master and apply “academic knowledge” in a traditional testing setting. Performance testing such as the Multistate Performance Test provides only a single-shot example of student written performance on a fact-specific simulated problem. As the Interim Report notes, accreditation of other professional schools involves the assessment of competencies that require different kinds of evaluation, over a longer period of time, in a variety of performance contexts and with several different kinds of record-keeping. Law School accreditation should involve similar evaluations.
3. Law school flexibility to identify strategic goals

CLEA agrees with the Committee that law schools should have flexibility in meeting prospective outcome-driven measures. As an organization representing professors teaching in clinics and skills courses, CLEA takes pride in the diversity of approaches taken by its members and their programs towards preparing students for law practice. This diversity of approach results not only from the individual talents and creativity of our membership, but also from the organizational innovation, financial resources, and other support of our members' home schools. The Council can play a vital role in encouraging law schools to develop creative new approaches to meeting the demand of training students for law practice.

At the same time, we endorse the recommendation that the Standards should encourage innovation within the context of careful strategic planning. The Committee appropriately concluded that to meet the goal of preparation for practice requires forethought, careful marshalling of resources and a thorough integration of several different kinds of pedagogy. Importantly, CLEA believes that professors teaching in clinics must be included under the Standards in a governance capacity in law school planning.4

4. Retention of core standards for all law schools

As valuable as strategic planning is, CLEA believes that the Council must mandate that core professional values remain a part of every law school's curriculum. This only makes sense. Absent such a requirement, an accrediting body would be unable to insure anything other than a correspondence between a school's stated goals and its accomplishment of those goals. As an example, a law school might set as its sole strategic goal that students master a specific body of substantive law as demonstrated by performance on written exams. The Council would then have little to do other than to assure that the exams constituted a fair test of the relevant law.

Law schools at present fall short in preparing students for the practice of law. CLEA therefore urges that the Council set baseline goals that law schools must meet through their strategic planning. As the Interim Report notes at pages 14 - 17, the Standards have consistently articulated several core values which all law schools must advance in designing, delivering and sustaining their programs of education. These values center on the preparation of students for the representation of clients and for the broader professional role of a lawyer in civic life. CLEA believes that these are the

4 There is a connection between the move toward an outcome-measures accreditation process and the security of position issue currently (and persistently) before this Council. In CLEA’s view, the adoption of outcome measures that focus on preparation for practice necessarily requires recognition of the central role of pedagogy in producing those outcomes. For many years, CLEA’s membership has provided leadership in the design and delivery of pedagogies that produce lawyers prepared for the range of the demands of practice. The full and equal participation professors who teach clinics and skills in every law school’s curriculum planning and governance becomes even more important as outcome measures begin to emerge. While equality of position and participation are in a sense “input measures,” CLEA urges the Council to continue to require them, and indeed to strengthen the requirements, so that the limited gains of the current accreditation process not be lost. See Statement of the Clinical Legal Education Association on the Report of the American Bar Association Council on Legal Education’s Special Committee on Security of Position, dated July 18, 2008.
central concerns of the A.B.A.'s accreditation system, and that the Council can and should retain its role in assuring that law schools graduate students who are as prepared as possible to assume their roles as counselors to clients and to provide professional service to our society at large.

Conclusion

The Committee has proposed an enormous undertaking. CLEA is certain that the process will be both contentious and productive. We do not view this moment as the time for detailed proposals on how best to achieve the goals set out by the Committee, and we therefore do not offer our particular proposals here. Instead, we encourage the Council to move forward to resolve the issues the Committee has identified, including: the specification of the core standards to be imposed on all law schools; the relationship between broader output measures and the narrower measures of bar passage and placement; the impact of outcome-oriented standards on the fiscal realities of legal education; and the development of proposed language for consideration by the Standards Review committee. In addition, we urge that outcome measures be required to be valid measurements of competence to practice and that they not have a differential impact on minorities. We look forward to providing input and assistance to the Council as this work progresses.
The Clinical Legal Education Association (CLEA) is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. CLEA has approximately 700 annual dues-paying members representing faculty at approximately 140 law schools in the United States. We offer this statement in connection with the Council on Legal Education’s consideration of the report of its Special Committee on Security of Position. For the reasons detailed below, we urge that the report not be referred to the Standards Review Committee.

We are mindful that the Special Committee worked hard at its charge to explore alternatives to current security of position standards that might better insure academic freedom, a well-qualified faculty, and faculty governance of curricular decisions. We are grateful for the Committee’s thoughtful review of the history and policy issues involved in the questions it considered. And we particularly note that the Committee itself does not recommend the adoption of the alternative approach it developed and was divided on many major, interrelated issues.

In CLEA’s view, the alternative approach the Committee describes would not serve the interests of legal education. Because it would permit law schools to consign some faculty members to at-will employment while tenuring others, the approach is likely to further institutionalize the segregation of faculty who teach the clinical and skills curriculum into unequal and lesser professional status. Legal education, and the profession, would suffer.

Law schools must produce graduates who possess a broad array of legal skills, who are poised to protect client interests consistent with the ethical rules, and whose work will ultimately enhance the legal profession. We believe, and we hope that the Council will agree, that equality of treatment of all full-time faculty members of the legal academy, including those whose focus is on professional values and practice, is critical to the continued development of the education of such lawyers. We therefore ask that the Council take no action on the Special Committee’s report; we hope instead that the Council will consider what steps it can take to insure that law students receive the sound legal education they need to practice law.
As the 2007 Carnegie Foundation Report, *Educating Lawyers: Preparation for the Profession of Law*, reminds us, a sound legal education requires that law students acquire a mix of analytical and practical skills. Clinical programs provide the much-needed link between traditional legal education and the practice of law. Indeed, as the Carnegie Report explains, professional students “must learn abundant amounts of theory and vast bodies of knowledge, but the ‘bottom line’ of their efforts will not be what they know but what they can do.” Faculty who teach doctrine and those who teach in clinical programs together provide law students with the analytical, investigative, legal reasoning, moral, client relations and ethical skills necessary to produce engaged, diligent, reflective and effective attorneys.

However, as is well documented, many law schools have created two tiers of faculty. In these schools, doctrinal faculty members are presumed to constitute the core faculty and are afforded the protections of tenure. Faculty teaching practice skills and professional values, in contrast, are afforded little by way of the kind of security of position that is designed to attract and retain competent faculty. Indeed, it was this historical divide that led to the adoption of current Standard 405(c), which uses the term “reasonably similar to tenure” to mandate that clinical legal educators and doctrinal faculty be treated equally. However, continued resistance to this Standard has led to uneven progress among law schools in terms of equality of security of position between those teachers concentrating on doctrine and those concentrating on practice-related skills.

At present, the overwhelming majority of legal educators who teach in clinics are still treated as second-class citizens at their institutions. Data gathered by The Center for the Study of Applied Legal Education’s (CSALE) 2007-2008 Survey of Applied Legal Educators shows that nationwide only thirty-one per cent (31%) of respondents, all of whom teach in clinical programs, were on any form of tenure track, whether separate from or unitary with other faculty. The remainder is comprised of adjunct faculty (13%), staff attorneys (2%), fellows (2%), and contract faculty (52%). Of the contract faculty, fifty-five percent (55%) are working under contracts of three years or less. Only thirty-one (31%) of the one- or two-year contracts are “presumptively renewable”; fifty percent (50%) of the three-year contracts are. The data also unsurprisingly show that institutional support for scholarly activity correlates with status, as there is a precipitous drop off in support for those with lesser status at their institutions.

The evidence is clear. Despite their considerable contributions to legal education over the last quarter century, on a national level faculty who teach in clinics have not acquired a seat at the table. Those law schools that have welcomed professors of clinical courses as equal partners in legal education have benefited greatly from the perspectives and experiences of those faculty members. In contrast, where they do not debate, govern, and otherwise fully participate in the intellectual and administrative life of a law school, faculty who teach in clinics are constrained in their ability to produce research and scholarship that promote our understanding of the profession and of legal education and are hampered in their ability to engage with other faculty on these same vital issues.

If law schools are to fulfill their mandate to educate competent practitioners and to advance the profession, teachers and scholars of professional skills must be located together with doctrinal teachers and scholars at the core of law school faculties. A regulatory system that allows law schools to provide security of position only to those who teach doctrinal courses will inevitably cause some, if not many, law schools to locate their faculty who teach professional skills at the margins.

By permitting law schools to tenure some of their faculty and to relegate others to at-will employment, the alternative approach described (but not endorsed) by the Special Committee would have just that effect. CLEA is keenly aware of the importance of innovation in legal education. Faculty who teach in clinics have been at the forefront of innovation over the last quarter century and support a regulatory system which leaves law schools free to originate. But innovation will not be nurtured by
marginalizing only and precisely the segment of the legal academy that has been chiefly responsible for original thinking in the education of lawyers. The considerable contributions of faculty who teach in clinics will continue to enrich and inform legal education only to the extent that these teachers have an equal place at the intellectual and administrative centers of their institutions.

At the very least, equality means full governance rights; that long-term contracts can only be terminated or not renewed “for cause;” that faculty who teach in clinics be afforded the same procedural safeguards as doctrinal faculty; and that faculty who teach in clinics enjoy academic freedom. Notably, the Special Committee took particular care to describe the history and importance of academic freedom in law schools. The primary assaults on law professors’ academic freedom in recent years have been directed at legal educators who teach in clinics. For this reason, as well, it is particularly important to provide for security of position for faculty who supervise students representing clients of clinical programs.

Lastly, stripping the Standards of all job security-related requirements will frustrate law schools’ abilities to diversify their faculty who teach in clinics. As the Report of the Special Committee explains, job security is absolutely crucial to law schools’ ability to attract and retain competent faculty, particularly because “most law-faculty members have attractive alternatives in the world of practice.”7 A competent faculty is one that, among other factors, is diverse in many ways, including race. Our law schools are failing in this regard. The Association of American Law Schools Statistical Report on Law Faculty for 2007-2008 reports that 74.40% of faculty identified as White.8 Faculty teaching in clinics are even more racially homogeneous; the CSALE data reports that 88.53% of respondents identified as White.9 While this problem needs to be addressed on many fronts,10 it is certain that security of position is critical to attracting a diverse clinical faculty.

In making this statement, CLEA does not suggest that the Council should require that all law schools provide for tenure for all faculty who teach in clinics, nor, indeed, for all law faculty members. Rather, we ask that the Council carefully consider the deleterious impact on legal education that institutionalizing the inequality of professional status for those who teach clinics and professional skills would have. We hope that the Council will turn its attention to encouraging law schools to focus energy on building on the recommendations of the Carnegie Foundation Report and on strategies for diversifying the ranks of law school faculties, including those who teach in clinical programs.

We therefore urge the Council to take no action to further consider the Special Committee’s “alternative approach,” rather, we hope it will resolve to vigorously enforce the existing “substantial equivalency” requirements consistent with the original and intended meaning of ABA Standard 405(c). The effective education of law students, the diversity of the intellectual life of law schools, and the advancement of the profession depend on the full and equal participation of all educators in the legal academy.

\[\text{1}^\text{In separate statements we will also submit comments on the reports of the Special Committees on Outcome Measures and Transparency, prior to the Council’s August meeting.}\]

\[\text{2}^\text{See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 97 (2007) ("To be effective preparation for a variety of legal careers, legal education must provide a foundation in both...[analytical and practical] learning.")}\]

\[\text{3}^\text{Id. at 23. See also ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION 7 (2007) ("Law schools do some things well, but they do some things poorly or not at all. While law schools help students acquire some of the essential skills and knowledge required for law practice, most law schools are not committed to preparing students for practice. It is generally conceded that most law school graduates are not as prepared for law practice as they could be and should be. Law schools can do much better.")}\]
4See, e.g., SULLIVAN ET AL., supra note 2, at 24 (observing that many clinics are "taught by instructors who are themselves not regular members of the faculty").

5Taskforce on Clinicians in the Academy, AALS Section of Clinical Legal Education, Preview of the CSALE 2008 Survey of Applied Legal Education (on file with CLEA) ("CSALE survey"). Background information about the survey, including the research methodology, is available at http://www.csale.org. The website is still in development; for more information about the study, including the actual questions and the data, contact Professor David Santacroce, University of Michigan Law School, at dasanta.umich.edu.

6In just the past few months there have been two additional assaults on clinics. In one, at Rutgers-Newark, a developer, who had previously been sued by the environmental law clinic, is seeking access to clinic files, claiming entitlement under New Jersey’s Open Public Records Act. CLEA has filed an amicus brief discussing legal education, attorney-client privilege, and First Amendment issues. In the second, Denver’s Civil Rights Clinic is currently engaged in a legal dispute with the federal government over the contours of the attorney-client relationship in the context of clinical programs. The government has refused to treat clinic law students as attorneys for the purpose of granting clearance to visit clients at a supermax prison, arguing that, even though paralegals can be granted clearance, law student attorneys can be compelled to rely on the reports of interviews by the supervising clinical faculty in gathering facts and counseling their clients. See the Rutgers brief at http://www.cleaweb.org/resources/briefs/Rutgers_amicus_brief_and_supporting_docs.pdf.

7Report of Special Committee on Security of Position (May 5, 2008), at 11-12.


9See CSALE survey, supra note 5. Of those respondents who identified as a person of color, 4.03% were African-American, 2.17% were Asian-Indian, and 2.17% were Latin/Hispanic.

10See Sameer M Ashar, Law Clinics and Collective Mobilization, 14 CLINICAL L. REV. 355, 380 n.95 (2008) ("In a part of the legal academy that one would expect to be most hospitable to people of color, the numbers of clinical faculty of color remain fairly low and there doesn’t appear to be significant change on the horizon").
STATEMENT OF THE CLINICAL LEGAL EDUCATION ASSOCIATION ON THE REPORT OF THE AMERICAN BAR ASSOCIATION COUNCIL ON LEGAL EDUCATION’S SPECIAL COMMITTEE ON TRANSPARENCY
AUGUST 4, 2008

The Clinical Legal Education Association (CLEA) is committed to legal education which trains law students to be competent, ethical practitioners and to promoting access to legal representation. CLEA has approximately 700 annual dues-paying members representing faculty at approximately 140 law schools in the United States. We offer this statement in connection with the Council on Legal Education’s consideration of the Interim Report of its Special Committee on Transparency.1 For the reasons detailed below, we acknowledge the report as representing an advance on a significant matter, but are not satisfied that the recommendations are sufficient to meet the goals of transparent Council deliberations.

CLEA strongly supports the Council’s efforts to increase the transparency of its deliberations. The report of the Special Committee on Transparency proposes several positive steps towards enhancing the openness of the Council’s decision-making processes. In particular, CLEA supports proposals to make available unredacted decision-letters, to publish an Accreditation Issues Summary, to issue written versions of the advice provided by the Consultant’s office and to expand the use of web resources in the service of transparency. CLEA also sees reason to go beyond the Special Committee’s recommendations in some cases and, more broadly, encourages the Council to open up its decisions and its procedures to review and constructive comment from the public.

The Special Committee identifies two principal reasons for enhancing the transparency of the Council’s key decisions: the provision of clear guidance to law schools in handling the demands of the accreditation process; and the provision of

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1 In separate statements we also submitted comments on the reports of the Special Committees on Security of Position and Outcome Measures.
information to consumers of law schools, principally prospective law students, that will
enhance their ability to make informed choices among schools. CLEA agrees that these
purposes are important, and that the Council should account for them in any decisions
about the distribution of information.

In addition, the Special Committee accurately identifies the importance of
confidentiality to the proper functioning of the accreditation process. As the Committee
notes, complete and absolute transparency during self-study, inspection, accreditation
review and final decision would tend to suppress the careful self-critique and candid
self-disclosure that tends to produce more effective accreditation decisions. CLEA thus
supports the notion that early phases of the accreditation process should remain
confidential. While schools can be encouraged to disclose these materials, if a given
school sees reason to keep them confidential, the Council should respect that decision.

However, CLEA suggests that one additional and crucial consideration affects
the scope of transparency for the Council’s decision-making: the public and regulatory
nature of the Council’s role. In CLEA’s view, the Council now operates a quasi-public
administrative agency. In this capacity, the Council has the sole responsibility to make
binding decisions that significantly affect law schools, the legal academy, law students
and the future shape of the bar. The Council’s role in these decisions is authorized by
the federal government. Moreover, the Council has set up its organizational structure to
mirror that of an agency, with the Standards Review Committee initiating the rule-making
function, the Accreditation Committee initiating the regulatory function and the Council
itself as final agency decision-maker in contested cases.

The public impact of the Council’s decisions and procedures brings with it the
need for constructive public input into the Council’s own activities. Stated simply, the
Council cannot escape the public scrutiny that the importance of its role will prompt. The
Council already recognizes this reality in many ways. It already seeks to implement a
notice and comment approach to the creation and modification of the Standards and
their Interpretations. The procedures and practices of the accreditation process itself
also assume broad public engagement. Its recruitment and training of volunteers to
serve on inspection teams, coupled with its efforts to assure broad representation on
the Council itself, are rooted in a recognition of its irrevocably public function.

At the same time, the Council’s approach to its regulatory and dispute-resolution
functions has, to some extent, lagged behind the transparency it has sought to
implement in other areas of its process. Several controversies in recent years have
illustrated this fact, and led to the formation and charging of the Special Committee
itself. This relative lack of transparency on decisions relating to accreditation of schools
poses several risks. One of these risks appears explicitly in the Special Committee’s
report: the risk of inconsistent decisions on regulation between otherwise similarly
situated schools. A related risk involves the emergence and use of informal rules of
decision, either within the Accreditation Committee or in the Consultant’s office, that
strongly affect the outcomes of accreditation but are never implemented through notice
and comment process.

CLEA sees the Special Committee’s report as a necessary and laudable effort to
counteract these risks. We see every reason for the Council to continue its efforts to
open up its processes to public review. At the same time, and as a general matter, CLEA believes that the Council should make decisions about the extent of transparency not solely by reference to the needs of law schools for guidance during accreditation or of prospective law students for information about compliance by accredited schools. We suggest that the Council should implement transparency in full recognition of the broad impact of its public role. It should adopt measures that encourage constructive engagement with the Council itself in improving and regularizing its approach to accreditation. Such measures need not make the Council's work more difficult; to the contrary, by soliciting public input on its decision-making, the Council will assure that its procedures will receive broader acceptance by the community it regulates.

On this basis, CLEA offers the following comments on several of the Special Committee's recommendations:

- The Accreditation Committee should make available unredacted decision letters and follow-up correspondence between a school and the Committee: CLEA strongly supports the availability of these materials. We stress that our support for this practice does not extend to disclosing the deliberations of the Committee, which should remain strictly confidential, nor to the fact-finding materials generated by individual inspection teams.

However, at the point where the Accreditation Committee reaches a conclusion about compliance with existing Standards, the need for transparency becomes greater, as guidance to other schools and as an indication of how the Committee approaches its role as initial decision-maker on compliance. CLEA suggests that making available these letters (and follow-up correspondence) reflects an appropriate measure to increase transparency at a critical point in the Council's overall regulatory process.

Indeed, CLEA would strongly urge that the importance of these letters advises for a broader distribution than to Deans alone. The Committee's own relatively informal polling indicates that their respondents (including a substantial percentage of Deans and Associate Deans) supported mandated disclosure of limited documents by a substantial margin (58.9% - 41.1%). More specifically, that polling indicated even more substantial majorities in favor of mandated issuance of limited documents not only to Deans (79.5% - 20.5%) but also to law school faculty (75.7% - 24.3%). We hear and appreciate the Special Committee's caution about the statistical validity of these numbers; but these figures suggest a strong consensus among the respondents whose views the Committee solicited, a group whose composition consisted predominantly of law school administrators.

We would encourage the Council to implement a system that makes decision letters and follow-up correspondence available the public. We see little risk and great benefit to this broader disclosure. It would certainly permit any interested person to understand in greater depth issues on which the Accreditation Committee feels the need to act. Moreover, it would serve the function of making available for public review the key decisions on accreditation, as expressed by that Committee. The many state institutions with open records law and freedom of information statutes historically have not found that open exchange of information during the accreditation process was negatively impacted by public access to such information.
– The Consultant’s Office should make available for public review both its regular periodic Accreditation Issues Summary and (where appropriate) the less regular “Consultant’s Memos”. CLEA also strongly supports both of these ideas. We recognize that, while final decision-making rests initially with the Accreditation Committee and ultimately with the Council, the Consultant and staff of the Consultant’s office play a special role in communicating with schools and in assisting the work of both bodies. It is entirely plausible that the Consultant may issue written or unwritten advice to accredited schools that offer important perspectives on the accreditation process. Those perspectives can and likely do have a significant impact on how individual schools implement the standards through their own strategic planning.

Issuance of these documents would lay to rest any concerns that schools might receive varying opinions from the Council and its committees and staff. Moreover, public issuance would serve the goal of articulating new and emerging approaches by both the Council, its Committees and its staff. As with any administrative agency, the risk exists that informal approaches by staff might harden into settled rules of decision that have never been put through notice and comment rule-making. Public issuance of appropriate statements by the Consultant on current recommended approaches ensures that the Consultant articulates those informal approaches clearly, and can lead to reflection about whether they may require more formal handling by the Standards Review Committee.

– The Council should study the use of web-based resources in disseminating information about its operations: Again, CLEA strongly supports the use of the web for this purpose. We note that the Council has adopted workable procedures for making certain information available in advance of its meetings. We also note that the Standards Review Committee has also taken steps to assure the openness and accessibility of its processes. We believe that the marginal additional cost of implementing a web-based strategy is far outweighed by the improvement in public awareness of the Council’s work and that of its sub-committees.