

Recommendations to the Consultant on Legal Education and the Standards Review Committee of the ABA Section on Legal Education and Admissions to the Bar from Participants in the LII Distance Learning Workshop, June 2001

We* recommend that the following actions be undertaken by the Consultant on Legal Education and the Standards Review Committee of the ABA Section on Legal Education and Admissions to the Bar:

- **1. The Temporary Distance Education Guidelines should be revised so that experimentation with technology enhanced instruction is encouraged, communication fostered, and evaluation mandated.**

Although the ABA Temporary Distance Education Guidelines were intended to encourage thoughtful experimentation with new technology, the document is presently ambiguous and serves unnecessarily to discourage precisely the experimentation and discussion that it means to foster.

Nevertheless, further study is necessary -- perhaps spanning several years and requiring data generated by the experiments contemplated by the Temporary Guidelines -- before the many ways in which new technologies may appropriately impact on accreditation standards can be responsibly addressed. For that reason we urge that the Temporary Guidelines be revised.

Specifically, the guidelines should permit credit for law school work done by means of distance learning, provided that (1) the law school Dean and Faculty have adopted a policy that grants credit for the work done; and (2) the work is not counted in the 45,000 minutes of regular coursework required by Standard 305. Waivers should still be available, upon application, for courses, programs or other uses of distance learning technologies that do not fit within this guideline. A reporting requirement should be added, to include both a report when such an experiment is commenced, and an assessment of the experiment at least annually. A list of the projects thus reported, and the full text of the annual assessments should be made broadly available (ideally, electronically) to others in legal education. If this approach were adopted the waivers for synchronous distance education and for clinical education would be duplicative and could be deleted.

This is not a long-term solution. It neither addresses all ways in which distance learning may effectively be used within our programs, nor proceeds from a comprehensive application of the principles on which the accreditation standards are based to the emerging technological teaching methods. Rather, it is meant, in the spirit of the original Guidelines, to encourage the experimentation and communication that will be essential components of any comprehensive and durable solution. And it is designed to permit schools in the short term to engage in experiments that comport with their own standards for out-of-classroom credits and with the ABA's own standards for such methodologies as directed independent study.

- **2. A small workgroup should be established, with membership to include both representatives from the Section's the Standards Review Committee and tenured law faculty members who have spent two or more years engaging in a range of distance learning methodologies.**

The workgroup should closely review the existing accreditation standards to determine in what ways the standards have implications for technology-enhanced law school instruction, and in what ways the new technologies affect aspects of the standards. A list of these points of intersection between the existing standards and the new technologies should be broadly disseminated within legal education for review and comment by law faculties, individual faculty members, and their institutions.

The new technologies are tools, not programs or courses or even approaches to legal education. They raise questions that are generally not different in quality or kind from the questions raised by existing instructional methodologies. How can we best engage student interaction? Do we need face-to-face contact to be effective in all of our teaching? How can I tell when a student understands what I am teaching? How can I keep my tests and other assessments secure? None of these are specific to distance instruction, which simply provides new context in which these old questions need be asked, and perhaps a fresh urgency to seek answers that make sense in the new context.

This has two consequences: First, it means that we fully endorse the need for the application of accreditation standards to these new methodologies. The principles that support the value of and need for accreditation in legal education, now and historically, are no less (and possibly even more) compelling in this context. Second, however, the application, and even the articulation of those principles needs to be informed by and adapted to the emerging technologies. This work needs to be undertaken *precisely because* there need to be accreditation standards governing distance learning.

Just as traffic rules changed with the introduction of the automobile, and evolved as it has evolved, we need to move with agility to adapt our regulatory structure to the new tools so many of us are already using.

- **3. The workgroup should gather these comments and itself assess ways in which the standards should be modified so that they can reasonably be applied to law school courses utilizing these new teaching methodologies.**

In some instances the principles on which the standards themselves have been based should be revisited to see whether they remain appropriate in light of the way in which law school teaching has evolved.

* Layman Allen - University of Michigan Law School; Tom Bruce - Cornell Law School; Steve Burnett - Seattle University School of Law; George Comeau - Suffolk University Law School; John Farago - CUNY School of Law; Joel Friedman - Tulane Law School; Paul Joseph - Nova Southeastern University, Shepard Broad Law Center; Kenneth Kirwin - William Mitchell College of Law; Peter Martin - Cornell Law School; Elmer Masters - Emory University School of Law; Marjorie McDiarmid - College of Law, West Virginia University; Michael Norwood - University of New Mexico School of Law; Theresa Player - University of San Diego School of Law; Polly Price - Emory University School of Law; Michael Rustad - Suffolk University Law School; Diana Sclar - Rutgers, Center for Law and Justice (Newark); Robert Seibel - CUNY School of Law; and Stephanie Willbanks - Vermont Law School