

**Statement by the AALS Deans Steering Committee
on the California Task Force on Admissions
Regulation Recommendations (TFARR)¹**

As a group of law deans charged with considering the national impact of topics affecting law schools, we write to offer comments on the proposal by a task force of the State Bar of California, to change the requirements for taking the California Bar Examination.

The proposal is thoughtful and reflects concerns we share about this critical time of change for how law is practiced and taught, how legal services are delivered, and how barriers to justice and the rule of law grow. We commend many elements of the proposal and admire the process that brought together members of the bar and bench, educators, and administrators. Collaborations of this sort are essential if we are to improve legal education, law practice, and access to justice. But we have concerns about the proposed “competency training” requirement for those who wish to be admitted to the California bar.² These concerns reflect our dual roles as law-school deans who are immersed in addressing the needs of our students and communities, and as participants in national and global discussions about the present and future of the legal profession.

Bridging theory and practice is a central purpose of professional-school education. Law schools are devoted to preparing students to enter a variety of positions and to supporting research, evaluation, service, and reforms addressing the profession. Although we admire the spirit and purpose of the TFARR proposal, the 15-credit-hour experiential requirement raises three concerns:

¹ This is a statement by the members of the Association of American Law Schools (AALS) Deans Steering Committee who are Darby Dickerson (Texas Tech University School of Law); Dave Douglas (William & Mary’s Marshall-Wythe School of Law); Ward Farnsworth (University of Texas School of Law); Claudio Grossman (American University Washington College of Law); Joan Howarth (Michigan State University College of Law); Lisa Kloppenberg (Santa Clara University College of Law); Marc Miller (University of Arizona James E. Rogers College of Law); Martha Minow (Harvard Law School and Chair of the Steering Committee); Blake Morant (The George Washington Law School and AALS President); Camille Nelson, (Suffolk University Law School); Wendy Purdue (University of Richmond School of Law); Susan Poser (University of Nebraska College of Law); Dan Rodriguez (Northwestern University School of Law); Avi Soifer (William S. Richardson Law School at University of Hawai’i); Kellye Testy (University of Washington School of Law), and Phillip Weiser (University of Colorado School of Law). Judith Areen, AALS Executive Director and past dean at Georgetown University Law Center also participated in discussions leading to this statement.

² If the requirement is approved, all applicants to the California Bar will need to have completed 15 credit hours of experiential education before admission to the bar. The Task Force on Admissions Regulation Reform proposal awaits review and approval by the Supreme Court of California and the California legislature.
<http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx>.

- The requirement will constrain experimentation in legal education and impair innovations currently underway and in development.
- The requirement will limit the flexibility and self-determination of individual students in studying law, and in planning diverse careers.
- The requirement will introduce complexity and uncertainty for law students attending schools across the country—many from California and many who will pursue careers in California but who do not attend law school in California—and undermine the efforts by the American Bar Association and law schools to ensure nationally uniform, minimum accreditation requirements that enable law students to pursue careers across the nation.

1. *Experimentation*

The TFARR effort responds to the reality that this is a time of dramatic change for the legal profession and for legal education. The changes in the practice and delivery of legal services are being driven by technology, globalization, the substitution of services by non-lawyers for those traditionally provided by lawyers, and the commoditization of legal practice.

Law schools across the country have responded with a variety of innovative approaches and educational reforms, some building on prior initiatives and many that are new since 2008. Law-school innovations offer students a wide range of skills training and professional development opportunities; it is a time of creativity in the kinds of relationships schools are building with the bar, in forms of instruction and feedback, in geographic and content areas for new offerings, and in reimagining relationships among theory, legal doctrine, practice, and reform.

We agree with the TFARR committee that “[t]he adage that ‘no one size fits all’ is certainly apt.” TFARR Phase I Final Report, June 24, 2013, p. 2. Yet as deans who continually survey this landscape and also support and assess these developments, we have read carefully the TFARR experiential education requirement and fear that the unintended consequences will be to narrow and constrain rather than expand and encourage new ways of educating students for the quickly changing landscape of careers they will forge.

For example, as the TFARR requirements focus solely on law school coursework and externship/clerkship/apprenticeships, they miss opportunities that could be developed with business, policy, public-health, and other professional schools and placements, even though wise observers emphasize the crucial role of cross-professional and

interdisciplinary skills and training for future lawyers.³ By limiting “earned credit in externships, clerkships, or other apprenticeship-type work” to “Bar-approved externships, clerkships or apprenticeships for courts, governmental agencies, law firms or legal service providers,” TFARR Final Report, p. 24, the requirements omit social-service enterprises and law-and-policy reform groups.

The TFARR list includes “law practice management and the use of technology in law practice,” but not the development of technological tools to increase access to justice for pro se litigants or designing and testing new business models and technologies for legal compliance. It includes “[p]roject management, budgeting and financial reporting,” but not a practicum on the anatomy of business deals; a course devoted to collaborations in drafting contracts,⁴ regulations, and treaties; or valuation analysis crucial to deal negotiation, bankruptcy, and other legal work. And none of the items encompasses the opportunity to design, implement, and evaluate substantive policies for companies, nonprofit organizations, or governments.

These are just a few examples, intended to demonstrate that the 15-credit requirement immerses the California bar authorities deeply in a complex set of curricular choices and a level of regulatory specificity that subverts the stated goals of flexibility and support for variety. Any requirement for a certain number of credits in a certain curricular area will by definition raise difficult questions of what does and does not count. Restricting the opportunities that would satisfy the 15-credit requirement to a set of enumerated topics, will necessarily exclude other worthy and comparable opportunities, some of which are still being developed at law schools across the country.

Although written with the best intentions to make lawyers more practice-ready, the draft requirements will end up stifling the flexibility and experimentation that law schools most need right now to prepare their graduates for a vast and ever-changing array of legal and law-related careers.

2. *Student Autonomy and Career Development*

³ Benjamin W. Heineman, Jr., William Lee & David Wilkins, *Lawyers as Professionals and Citizens: Key Roles and Responsibilities in the 21st Century* (Nov. 25, 2014), <http://corpgov.law.harvard.edu/tag/william-lee/>.

⁴ See George Triantis, *Improving Contract Quality: Modularity, Technology, and Innovation in Contract Design*, Aug. 6, 2013, <http://private-law-theory.org/?p=3358>.

Despite its clear intent to be broad and flexible, the TFARR proposal tends to treat law students, law schools, career options, and professional pathways for new lawyers as, for the most part, cut from the same cloth. As drafted, the requirements miss the enormous diversity in the missions and opportunities pursued by individual law schools; in the backgrounds and professional goals of law students; and in the legal profession or other professional worlds that law graduates will encounter and seek out.

Legal training has long opened opportunities for students in business, government, policy, and civic organizations, and law students increasingly deliberately train for and follow paths that are for jobs in business, government, and the nonprofit sector where a JD is preferred—or even where it is simply an advantage in doing the work. Many students now seek formal training in two or more fields through joint degrees, minors, and certificates. Some students seek training in multiple jurisdictions, in the United States and beyond. Still others follow a path toward work in policy, research, and educational settings.

Requiring 15 hours of experiential education, which is approximately one-semester's worth of credits, or one-sixth of a student's education, would significantly limit the number and types of other courses students can take and summer experiences in which they can participate that might be of greater benefit to their individual career goals. For example, the 15-hour requirement could seriously hamper the student who wants to practice tax law and whose future employer advises taking as many specialized courses as possible in that field. The TFARR requirement would occupy fully one quarter or more of all elective courses for traditional 3-year JD students, and up to half of all elective courses for international JD students completing their studies over two years.

3. *Access to Practice*

The TFARR recommendation of 15 mandatory units of experiential education risks restricting bar access and the movement of lawyers precisely when legal services are becoming more national and global. Even recognizing the size and leadership role that California plays in legal and other fields, the proposal's planned departure from national minimum standards will create confusion for law students and law schools, disharmony with the specific criteria advanced by the American Bar Association for its 6-credit experiential learning requirements, and barriers to entry for lawyers trained outside of California.

The proposed California mandate comes as other states are working creatively to remove barriers to mobility by law graduates through the Uniform Bar Exam and other efforts. The development of "global lawyers" is a key priority for law schools working

to harmonize training requirements in the European Union, in Asia, and elsewhere. California could easily urge and offer incentives for reform without erecting barriers that will limit the ability of California-based law firms, government agencies, and public-interest organizations to recruit graduates of law schools outside California — many of whom are California residents and others who hope to bring their talents and initiative to California. For law-school graduates who seek to “hang out a shingle,” or engage in other areas of direct representation or fields requiring particular training, there are many ways that a state bar might reform its regulatory structure to certify a higher level of competency for particular kinds of practice.

Because the American Bar Association adopted its new accreditation standard (Standard 304) requiring 6 credit hours of experiential education for all students at accredited law schools in February 2014, after the announcement of the TFAAR draft requirements, we encourage reconsideration of the TFAAR draft requirements. This new ABA standard reflects similar concerns, although it uses different criteria and a lower minimum. Now is the perfect time for law schools across the country to experiment, differentiate, and evaluate new experiential offerings. If the draft California requirements are enacted, unfortunately the result may well be a rush to the simplest, cheapest, and easiest forms of compliance, and California and the nation may lose the benefit of thoughtful and varied innovations subject to serious assessment.

Conclusion

At many schools, students can and do spend 15 units or more after the first year securing experiential opportunities guided by their law schools. On a national scale, the availability of simulation and clinical opportunities, and the number of field-placement positions filled as reported each year by law schools to the ABA, has roughly doubled since 2000, with a substantial increase coming in the past four years, even as law schools face declining demand, and many law schools have reduced enrollment.

California’s effort has already encouraged the new ABA Standards for experiential education and assessment of learning outcomes. These new national standards bring significant change, challenge, and opportunity to law schools across the entire country. California should allow these new standards time to be implemented and assessed before imposing additional curricular requirements and jeopardizing national accreditation standards and the mobility they support.

This is a critical time of challenge and opportunity for law schools and for the profession. We face complex issues about the future of the legal profession, not only in relation to how best to prepare law-school graduates and assess their abilities, but also how to diversify the profession and eliminate barriers that such assessment might erect.

Collaborations joining lawyers, judges, business people, policymakers, and legal educators are crucial. For students, for clients, and for society, law schools need to pursue the most effective, and cost-effective, ways to equip law school graduates to serve individuals and entities—public and private, domestic and international—and to seek justice. We hope that the good work undertaken in California will advance rather than hamper the innovations and individual choices of law students and law schools.