

TO: The Legal Education Community and Other Interested Parties

FROM: Accreditation Policy Task Force

RE: Input Requested on Goals and Principles of
Law School Accreditation

DATE: December 6, 2006

The Accreditation Policy Task Force was charged by William R. Rakes, Chair of the ABA's Section of Legal Education and Admissions to the Bar, with taking "a fresh look at accreditation from a policy perspective" because accreditation Standards, Interpretations, and Procedures that have evolved over a period of time might look very different if they were "designed from scratch today." Accordingly, as Chair Rakes recognized, the Section would benefit from a fresh look at accreditation, taking into account the changes in legal education and in the nature of legal practice, the Section's experience with the accreditation process, the feedback the Section has received regarding that process, and other relevant considerations.

The Task Force began by seeking to identify the general goals and principles of a sound and appropriate system of accreditation. A number of well-accepted goals and principles appear in the ABA Section of Legal Education and Admissions to the Bar's *Standards and Rules of Procedure for Approval of Law Schools*. The Preamble to the Standards recognizes that the law school accreditation process should be designed and administered in a manner that "protect[s] the interests of the public, law students, and the profession." The Preamble states that accreditation standards should be "minimum requirements designed, developed, and implemented" to advance "the basic goal of providing a sound program of legal education." Since "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" (*id.*), a law school's educational program must prepare its graduates for "admission to the bar and effective and responsible participation in the legal profession." ABA Accreditation Standard 301(a). *See* Preamble (identifying areas of substantive knowledge, lawyering skills, and professional values that are essential to a sound program of legal education, and recognizing the importance of "a diverse educational environment"). By ensuring that law schools prepare their graduates, the law school accreditation process not only serves the functions that the U.S. Department of Education requires of all federally recognized accrediting bodies, but also fulfills its systemic responsibility to the state high courts that rely upon ABA approval of a law school to determine whether the jurisdiction's legal-education requirement for admission to the bar is satisfied.

Prior reports on law school accreditation and legal education have recognized that "[e]xcellence [in legal education] . . . is best supported by encouraging pluralism and innovativeness." REPORT OF THE COMMISSION TO REVIEW THE SUBSTANCE AND PROCESS OF THE AMERICAN BAR ASSOCIATION'S ACCREDITATION OF AMERICAN LAW SCHOOLS 21

(August 3, 1995, as revised, October 31, 1995) (Wahl Commission Report). *Accord* LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 132 (July 1992) (MacCrate Report). Accordingly, the accreditation process should afford law schools a maximum degree of independence, autonomy, and opportunities for innovation and uniqueness.

Beginning with these generally accepted principles as a starting point for analysis, the Task Force set out to identify other considerations that should inform and guide accreditation of law schools. It concluded that the process would benefit greatly from input from all sections of the legal education community. To receive such input, the Task Force has scheduled two public hearings. The first hearing will be on January 5, 2007, from 1:30 to 3:15 p.m., at the Marriott Wardman Park Hotel, Washington, D.C., in connection with the AALS Annual Meeting. The second hearing is scheduled for February 9, 2007, at 1:30 p.m. in Bayfront A/B Room of the Intercontinental Hotel, Miami, Florida, in connection with the Mid-Year Meeting of the ABA. The Task Force is also soliciting written comments from a wide variety of groups and individuals.

To facilitate the gathering of information, the Task Force identified a number of areas for public input and invites your comments and suggestions on any or all of the following subjects as well as on any other aspects of law school accreditation on which you would like to provide information or express a view:

1) Law schools may choose to serve one or more missions beyond the central mission of preparing students for “admission to the bar, and effective and responsible participation in the legal profession.” ABA Accreditation Standard 301(a). Should the accreditation standards explicitly recognize any of these other missions and, if so, which ones? For example, should the accreditation standards expressly recognize a mission of promoting the advancement of new knowledge in law and its related fields, and/or a mission of public service? Are there other law school missions that should be recognized? Should law schools be required to demonstrate that they are achieving all articulated missions?

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

3) How should the accreditation process be structured and administered to assure appropriate transparency? Are there aspects of the current process that you regard as particularly successful or unsuccessful at achieving the goal of transparency? What types of information and what aspects of the process should be confidential, and how can any needs for confidentiality be appropriately balanced with the goal of transparency?

4) Should the accreditation process go beyond ensuring compliance with minimum requirements by encouraging law schools to identify and pursue greater aspirations in their educational missions and programs? If so, how could or should the accreditation process assess and weigh a law school's pursuit of its aspirations?

5) It has been suggested that the law school accreditation process should take costs into account before imposing requirements on law schools, in order to ensure that students of limited means have access to the legal profession. It is widely acknowledged that standards that seek to ensure or to increase quality of legal education may substantially increase costs and thereby reduce access. Should costs be taken into account, and, if so, to what extent, and how?

6) In assessing a law school's program of legal education, should the accreditation process take into account the types of practice (e.g., solo or small-firm practice in rural areas) that the law school's graduates typically enter? If so, how should the accreditation process be structured to reflect this consideration?

7) Some commentators have suggested that fairness dictates that all law schools be evaluated with a uniform set of criteria applied in an evenhanded manner, while other commentators have urged that schools with a longstanding record of compliance with accreditation standards be subject to less exacting standards or to a streamlined process of review. If less exacting standards or a streamlined process are to be used, what standards should be applied, and what should the streamlined procedure be? Do such changes give rise to possible concerns about unequal treatment of law schools?

8) Assuming that an excellent accreditation process should engender a high level of satisfaction on the part of accredited institutions, the profession, and the public, what, if any, steps should be taken to obtain feedback on the quality of the accreditation process?

9) What other areas and issues should the Task Force consider? Is the focus of the analysis of the Task Force a correct and useful focus?