

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

Report of the Accreditation Policy Task Force

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Introduction

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."¹ Accordingly, the accreditation process should afford law schools a maximum degree of independence, autonomy, and opportunities for innovation and uniqueness.

¹ 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).

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 solicited comments from a wide variety of groups and individuals who are concerned with issues of legal education. The Task Force also held two public hearings: on January 5, 2007, in Washington, D.C., in connection with the Annual Meeting of the Association of American Law Schools (AALS); and on February 9, 2007, in Miami, in connection with the Midyear Meeting of the ABA.

To facilitate the gathering of information, the Task Force identified specific subjects for public input and invited comments and suggestions on any or all of these subjects as well as on any other aspects of law school accreditation on which any group or individual like to provide information or express a view. The written notice described the subjects as follows:

I. 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?

II. 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?

III. 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?

IV. 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?

V. 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?

VI. 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?

VII. 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?

VIII. 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?

IX. 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?

The Task Force received written submissions on these issues from several organizations and individuals. Those written submissions are available on-line at the following website: www.abanet.org/legaled and scroll down to Comments and Reports. At the hearings, the Task Force heard oral presentations from some who submitted written materials and some who did not. Transcripts of these oral presentations are available on the same website.

On the basis of the information that was submitted to the Task Force, supplemented by additional, independent research, the Task Force reached conclusions and formulated recommendations on the questions set out above. This report uses those subject matter categories to organize the presentation of the Task Force's views and conclusions.

- I. *Whether the accreditation standards should explicitly recognize 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))?*

Common Mission

There is agreement among members of the Task Force, as well as many providing comments, that ABA accredited law schools should have a mission of preparing students for admission to the bar and participation in the legal system and profession. Although stated in terms of student preparation, in fact this requirement is a public protection measure. Attorneys can be effective in fulfilling their obligations to clients, the courts and the public only if they are well prepared for the profession.

Commentators and the Task Force recognize that in accredited law schools there are some students who will never seek to participate in the legal profession. The presence of such students, however, does not reduce the obligation of the school to seek to prepare its graduates for such participation. ABA accreditation is closely tied to licensing in all states, and is an exclusive route to sitting for the bar examination in most states. The very reason an institution seeks ABA accreditation, as opposed to regional accreditation, for example, is so its graduates can sit for the bar and become part of the legal profession.

The Task Force believes that the current Standards and Interpretations identify this common mission and, apart from modest clarifications, does not recommend significant changes in this area.

Special Missions

Law schools invariably will seek to have missions that go beyond this common mission. Some may see a special mission in preparing students for an area of practice (*i.e.*, small firm or corporate practice), in a substantive area (health law or criminal law), a process (ADR or holistic lawyering), populations to be served (the disadvantaged) or a location (the state of x). Schools often also may have missions related to a level or quality, such as a commitment to research or creation of a particular atmosphere in the law school. The recognition of a variety of special missions is a common feature of other accrediting bodies.

The Task Force believes that such special missions are appropriate but discretionary. Schools should be free to adopt and announce publicly their own special missions. When a school announces a mission, however, the accreditation process should hold the law school responsible for fulfilling that mission or making significant progress toward doing so. This is appropriate, first, as a matter of public protection and honest disclosure. The public, including applicants, students, the bench and bar, donors and employers, should be able to rely on what the law school says it is doing or plans to do. In addition, if a law school that announces a mission

but does not honestly pursue that mission, it may be evidence of other fundamental issues at the school.

The Task Force believes that it is unnecessary and unproductive to try to draw distinctions between announced “missions,” “aspirations,” “approaches” or similar language. That would put form over substance. The school that claims a mission should be held to actively and sensibly that pursuing mission, under whatever name. The standard for evaluating school-specific, optional missions should be primarily focused on consumer protection.

The current Standards and Interpretations make reference in a variety of ways to the mission of law schools. For example, the self study must identify the mission, the school’s resources must be sufficient to accomplish the mission and a school may identify certain areas of emphasis. In some cases the Standards and Interpretations may refer to mission in other terms, notably “programs,” “objectives” or “goals.” The Task Force believes that it may be productive to consolidate some of these provisions and use more consistent language, but otherwise the Standards and Interpretations appropriately provide schools latitude in adopting their own special missions and indicating that the school will be held to achieving or moving toward achieving that announced mission.

Research and Service Missions

The Task Force considered the questions of whether all law schools should be required to have missions that require faculty (or institutional) research or service missions. This question, of course, is different than whether students should receive quality instruction in legal research and writing, or whether schools make public service and *pro bono* opportunities available to students.

Several of the current ABA accreditation Standards seem to require that law schools have a faculty scholarship or service commitment. Standard 401, for example, requires that the faculty possess “a high degree of confidence, as demonstrated by its . . . scholarly research and writing.” Standard 402 is somewhat ambiguous but may require that the full-time faculty be large enough to permit opportunities for the faculty to “conduct scholarly research . . . and participate . . . in service to the legal profession and the public.” Standard 404 requires the law school to have policies regarding faculty’s “responsibilities in teaching, scholarship, [and] service”

Law schools are unusual among graduate and professional schools in that the majority of research and service in many law schools is funded by tuition. The tuition that is used to cover legal research is, for most students, the equivalent of an involuntary fee that they must pay in order to obtain law instruction and a law degree. If a research or service mission is required, it may be a substantial cost to students.

Law school scholarly research provides much of the “pure research” in law, that is, research not required by or connected to specific cases or disputes. It provides a very wide range of thinking and creativity regarding the law, the legal system and lawyers. Assuming there are benefits to society from this research, it is not clear what law students receive from their schools’ research missions. Some believe that research contributes to better teaching, but the studies have not consistently demonstrated such a correlation.

The Task Force has not found sufficient justification for ABA accreditation Standards to require that all law schools have research or service missions. We expect that many law schools will choose to do so, and AALS member schools may be required to do so as a condition of membership in that organization. For that reason, the Task Force recommends that the Standards and Interpretations not require that law schools have research and service missions.

Seeking to Exceed the Standards

The current Standards have what some see as an anomaly in that Standard 104 requires that fully approved law schools “seek to exceed” the minimums required by the Standards. This principle is based on the sound proposition that higher education should always seek to improve what it is doing. At the same time, the meaning of the Standard is unclear and it is seldom cited as an area in which a law school is deficient.

Standard 104 also may mean that law schools will have missions beyond the common or basic mission. In that case, the Standard is unnecessary because it is covered by other sections of the Standards.

The Task Force believes that the “seek to exceed” provision of Standard 104 is unnecessary and should be deleted in favor of other provisions related to schools’ missions.

RECOMMENDATIONS:

1. ABA accreditation standards should provide for all law schools to have a common mission of preparing students for “admission to the bar, and effective and responsible participation in the legal profession.”
2. ABA accreditation standards should encourage law schools to establish additional missions beyond the common mission and hold schools to such missions.
3. The ABA accreditation standards should not require that schools establish research or public service missions.
4. The requirement that schools “seek to exceed” the minimum standards is unnecessary and should be deleted.

II. *Whether the accreditation process should rely, to a greater extent than it currently does, on output measures, and, if so, which outputs should be the focus of examination, and how such outputs should be assessed?*

The Task Force noted with approval the growing trend among accrediting bodies to evaluate programs on the basis of fulfillment of stated goals, as assessed by “outcome measures.” In this sort of assessment, a program whose mission is to develop certain capacities in its students must show that those capacities exist, at least in most of the students, at the time of graduation. Theoretically at least, the program’s “inputs”– physical plant, library, number of faculty, budget and the like – are subordinated to the main question: Did the program fulfill its goal to develop the requisite capacities in its students?

In theory, it is hard to argue against programmatic evaluation through outcome measures. If a program can achieve its mission and goals using fewer resources or inputs than other programs, it ought to be encouraged to do so, particularly at this time of skyrocketing costs of higher education. Evaluating outcomes provides this encouragement, since in an entirely outcome-based system, inputs (all of which cost money) are irrelevant, so long as the program accomplishes its goals.

However, to evaluate programs based on outcomes requires appropriate measures by which the evaluators can determine that the school is meeting its mission and goals. If the goal is to develop certain capacities in the students, how can the program demonstrate that its graduates have those capacities? Until there is agreement on an appropriate number and type of outcome measures, it would be difficult to move the theoretical benefits of outcome assessment to the practical plane of reality.

The Task Force discussed this difficulty and sought to identify outcome measures that would facilitate a move to less reliance on input assessments in the accreditation process. Not surprisingly, that discussion included criticism of our existing output measures – bar passage rates and employment statistics – but also concluded that the development of additional, appropriate measures is very difficult. The Task Force also sought help from the legal community with the development of outcome measures. In a widely-distributed memorandum, the Task Force asked for input, either at the public hearings or in comment letters, on the question of how the ABA could move to a system of outcome measurements and what measures should be used. Unfortunately, little comment was received that was useful to the Task Force on these questions.

Notwithstanding the difficulties involved in moving to a more outcome-based evaluation system, the Task Force recommends that the ABA move in that direction as rapidly as possible. If implemented, the system would measure directly the fulfillment of goals that we are now trying to assess indirectly, through input measures and requirements. Not only is direct measurement better than indirect, it also will permit and encourage cost reduction, so long as the goals are met.

The Task Force also recommends that the ABA take the lead in facilitating multi-party discussions aimed at improving the quality and meaning of our existing output measures, bar exam and employment data. With bar exams differing markedly from state to state in coverage, quality, rigor and standards, comparing programmatic performances in a meaningful way is difficult. Bar exams, and the value of their results, might well be improved by a multi-state effort to develop a uniform bar exam with common coverage, with standardized training for graders, and with a uniform standard setting process. Of course, whether to participate in such a uniform approach would be up to each state, just as adoption of proposed uniform laws is within the discretion of each state.

With respect to employment data, the ABA should ensure that the data it uses is adequately refined. Unrefined data can result in positive statistics even when graduates who wish to obtain employment enhanced by the law school's educational program are unable to procure such employment.

The Task Force also recommends that the ABA facilitate work on the development of additional outcome measures. A task force should be appointed to consider the development of output measures. Such a task force might, for example, consult with other accrediting bodies about their measures and how they developed them; seek advice from consultants on outcome measures; consider newly-issued reports, such as those of the Carnegie Foundation for the Advancement of Teaching² and by Roy Stuckey,³ in an effort to develop outcome measures; sponsor workshops at AALS and ABA meetings to discuss, with members of the legal community, how to develop appropriate outcome measures; and survey law school faculty and administrators on these matters.

Until there is agreement on a set of outcome measures that will support programmatic evaluation, inputs will remain an important part of the evaluation process. The Task Force believes that we are a long way from a system that relies entirely on outputs. In fact, we are doubtful that such a system will ever be achieved, although we think that we should at least try to move in that direction through the efforts recommended in this report.

Our doubts about the viability of an *entirely or primarily* output based system are consistent with the views expressed by one very helpful commentator at one of the Task Force's hearings.⁴ Notwithstanding doubts and difficulties, outcome measurement is worth pursuing. We recommend a task force to do so.

² WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

³ ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* (2007).

⁴ Professor Thomas E. Perez of the University of Maryland School of Law, who has worked on output measurement in the context of non-law school accreditation, cautioned that

RECOMMENDATION:

1. The Council should form a task force to examine ways to revise the accreditation process to rely, to a greater extent than it currently does, on output measures.
- III. *How the accreditation process should be structured and administered to assure appropriate transparency while also safeguarding confidentiality for any information and aspects of the process that should be confidential?*

The Task Force is in agreement that there are a number of respects in which various parts of the accreditation process should be more open than they are today. The default position should be one of openness and accessibility. Access to decisions and the decision-making process should be denied only when a level of confidentiality is required by law or regulation or serves some important goal.

Public testimony and written submissions to the Task Force reflected concern about how Standards and Interpretations are applied during sabbatical examination of schools. There were complaints that the present process leads to varying application of the Standards under circumstances in which schools have legitimate difficulty in knowing what is expected. Some said that the use of “common law” by the Accreditation Committee (a few called it “secret law”) increases the risk of arbitrary and capricious application and argued that Standards should be more concrete and more uniformly applied.

Making the Standards and Interpretations more concrete, of course, also would render them more prescriptive and less susceptible to flexible application depending on the mission and character of individual schools. We think it unlikely that deans and faculty would, in the long run, regard this as a favorable development.

Instead, the Task Force concludes that there are several actions that would address the “transparency” issues identified during the course of hearings and meetings.

First, we see quite a difference between common law and secret law. The legal profession lives every day with common law — the application of tangible principles to the facts of individual situations. In the Section’s accreditation work, however, this common law is developed and applied during the closed session deliberations of the Accreditation Committee and through confidential action letters sent to schools.

As a result, knowledge among the regulated about various actions taken by the Accreditation Committee and the Council occurs only when schools elect to disclose to others the results of these regulatory decisions. This often can occur under what some have called the

outcome measurement is so difficult that it often leads, ultimately, to the use of input measures that are disguised to look like output measurements.

“gleeful dean syndrome,” that is, when a school celebrates by disclosing what it regards as a “victory” achieved during the accreditation process. Schools not a party to the proceeding that produced the “victory” necessarily find such disclosures frustrating in the sense that they sometimes seem to demonstrate that there is one standard for those who adhere precisely to the Standards and another for those who press the envelope.

The level of confidentiality also may prevent the Council and the Standards Review Committee from adequate performance of their work. Actions taken by the Accreditation Committee that relate to individual schools are not regularly disclosed to other bodies of the Section. If the Accreditation Committee sanctions a given practice that the Standards Review Committee did not intend in drafting a Standard or that the Council may not have voted to condone if it had foreseen its use, those bodies may not know that schools have been found to be in compliance on a basis that the committees might think inadequate if they knew about it.

We recommend that decisions of the Accreditation Committee and the Council be made public, either as various processes are under way or after they are concluded. We have been unable to identify any U.S. Department of Education regulation or other rule that requires the level of confidentiality presently maintained by the Section. We also know that other recognized accrediting bodies (the architects, for example) regularly permit the regulated and the public more access than the Section does to this sort of information. Making regulatory decisions available to schools would go a long way toward addressing complaints that the Section's process is less transparent than it could and should be.

It also would provide students and prospective students a good deal of consumer information that could be used to make decisions about their education. At present, the Section's accreditation practices relating to what compliance information about schools is made available to the public does not differentiate between schools which operate fully-compliant programs of legal education and those schools that are habitually out of compliance with minimum standards. Consumers ought to be able to know more about which schools are which. Preventing them from knowing the difference may lead consumers to rely on *U.S. News and World Report* rather than the Section's published information.

Whether the regulated would regard more openness as favorable is subject to doubt. There is comfort in the knowledge that one can be written up as failing to comply with minimum standards only in private. Still, granting such comfort comes at a high cost: criticism of a lack of transparency, frustration among those who strive the hardest to be “law-abiding”, and cover for those who regularly fall below the line to portray themselves as more than they are.

Quite aside from considerations of openness, the Task Force also believes that the Section should work to raise the level of consistency in site inspection reports and action letters. Substantial improvement is likely to be difficult until there is a member of the Section staff on each inspection team to record more consistently the conclusions reached and the bases on which actions are taken.

RECOMMENDATIONS:

1. The Section should take steps to achieve greater transparency in the accreditation process by disclosing as much information as is legally permissible about law schools and their compliance with the Standards.
 2. The Section should seek to improve the quality and consistency of its site inspection reports and action letters and consider assigning a staff member to participate in each site inspection.
- IV. *Whether the accreditation process should go beyond ensuring compliance with minimum requirements by encouraging law schools to identify and pursue greater aspirations in their educational missions and programs?*

There is agreement among members of the Task Force that the primary purpose of the standards and the accreditation process should be to apply *minimum* standards for an approved law school and not to police the degree to which law schools achieve their unique missions or their aspirations (which in many cases exceed the Standards). As the current Preamble to the Standards appropriately states, the Standards are “*minimum* requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education” (emphasis added). The primary role of accreditation where a school meets these minimum requirements should be a quite limited form of consumer protection, designed to address a school that misleads students and the public to expect a very specific service or program beyond the minimum.

On occasion, site visitors and accreditors, under the guise of policing whether a school meets its mission or its obligation to “seek to exceed the standards,” have offered management and strategic advice to schools (advice which law schools may welcome). There is agreement among members of the Task Force that such mixing of the accreditation function (appropriately focused on minimum standards) with the strategic advice function (which, by its nature, generally focuses on aspirations) has to be handled with great care. Over time, it can produce regulatory creep, as regulators come to assume that new uniform accreditation rules are the solution not just to substandard legal education, but also to how to implement their strategic advice about how legal education should be made even better. While there is nothing wrong with providing strategic advice when requested by a school, accreditation teams and the accreditation committee need to remain focused on minimum standards. Regulatory accreditation should not be the primary driver of efficient quality improvement in legal education once a school has complied with minimum standards.

Current Standard 104 provides that “[a]n approved law school should seek to exceed the minimum requirements of the Standards.” Accompanying Interpretation 104-1 states that, “[c]onsistent with the aspirations, missions and resources of a law school, it should continuously

seek to exceed the[] minimum requirements [set by the Standards] in order to improve the quality of legal education and to promote high standards of professional competence, responsibility and conduct.” Although the Task Force views the goal of exceeding the Standards as laudable, the Task Force believes that the accreditation process should not be an instrument for inducing law schools to embrace this goal or monitoring the degree to which they do or do not exceed the minimum requirements established by the Standards. Accordingly, the Task Force recommends that the Council remove current Standard 104 and its accompanying Interpretation. The Council may wish to employ the approach used in some other accrediting bodies’ standards of using the Preamble to the Standards to recognize the value of a school choosing to exceed the minimum requirements of the Standards while simultaneously making very clear that the Standards and the accreditation process are focused on minimum requirements.

RECOMMENDATIONS:

1. Remove Standard 104 and Interpretation 104-1. (Some of the language in this Standard and/or its Interpretation may be appropriate for the Preamble to the Standards.)
 2. Ensure that all of the Standards are in accordance with the current Preamble’s appropriate characterization of the accreditation standards as a set of “minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education.”
- V. *Whether 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?*

The accreditation process, even when it is functioning in precisely the way it should, can have a significant impact on the cost of legal education. By requiring that law schools attain a minimal level of quality — in, for example, the curriculum, faculty-student ratio, or facilities — the Standards impose upon law schools the obligation to expend the funds necessary to reach this minimal level of quality. Although such expenditures of funds certainly benefit students by improving the education they receive, the expenditures often can result in a significant burden to students as law schools pass on some of the costs to students in the form of tuition increases.

Such financial considerations are important, especially given the already-high cost of legal education and the degree to which law students are already having to shoulder prohibitively high debt.⁵ At the same time, the Council is obligated to protect the public interest in ensuring that law school graduates are well prepared for the legal profession. Keeping in mind these

⁵ See, e.g., John A. Sebert, *The Cost and Financing of Legal Education*, 52 J. LEGAL EDUC. 516 (2002).

considerations, the Task Force believes that the Council should take costs into account when adopting new accreditation standards or when reviewing existing standards. Although the factors at work may not be susceptible to the scientific precision of a cost-benefit analysis, the Task Force believes that the Council should always keep in mind the risk that enhanced requirements may result in costs being passed on to law students in the form of higher tuition, thereby exacerbating the already severe problem of student debt.

There are many ways, of course, to address the debt burdens facing law students. The task force does not believe that lowering accreditation standards to lower costs is the most appropriate or productive approach. Assuming standards appropriately focus on “minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a strong program of legal education,” we think the costs associated with those standards are entirely appropriate. We believe schools should be encouraged to meet those standards in a cost-effective way, and that they have many incentives to do so. The Council may wish to consider the extent to which its annual questionnaire inquiries related to law school expenditures sometimes create perverse incentives for schools to increase expenditures so as to improve their rankings.

As discussed in Question VII, the process of accreditation itself also imposes costs. Some of these costs are those incurred by the ABA and the Section to fulfill their obligations in evaluating schools. Some of these costs are the costs of schools in providing information to the ABA and in hosting site visits and responding to ABA reports and action letters. The Task Force encourages the Council to keep these significant costs in mind, and to seek to minimize these costs wherever appropriate given its important mission and responsibilities.

VI. *Whether the accreditation process should take into account the types of practice (e.g., solo or small-firm practice in rural areas) that a law school’s graduates typically enter?*

The Task Force reviewed the accreditation standards of other accrediting agencies and found that — like the ABA’s standards — the standards of those other agencies make no provision for adjustments based on the type of practice that a professional school’s graduates typically enter or the geographic area in which they tend to practice. There was no clear sentiment among the members of the Task Force to add prescriptive standards in this area. Several members expressed concerns about the manner in which a law school prepares students in particularly identified areas and about the ways in which ABA accreditation Standards might be used to ensure the accuracy of information disseminated by a law school about areas of specialization.

In considering these issues, the Task Force also noted the overlap between this Question VI and issues contained within other Questions, including the missions of legal education, the use of output measures generally, and, particularly, the possible development of output measures that would identify and evaluate the skills required by students seeking to use their legal education in a particular way or context or geographic area.

It also was noted that historically lawyers have often gone from small towns to big cities and vice versa, as well as changing from a litigation practice to a transactional practice and vice versa, raising serious questions about the accuracy with which it can be predetermined that a law graduate will practice in a given area or setting. Of particular concern was the question of whether the ABA accreditation Standards properly protect the public in cases in which large numbers of graduates of a law school go into solo practice, without a period of apprenticeship and without effective guidance from more experienced practitioners.

On the other hand, the Task Force was cognizant of the consumer-protection aspects of this Question. Specifically, it was noted that if a law school chooses to focus its program of legal education in a particular manner or area (e.g., environmental law) and so advises potential applicants for admission, a good argument could be made in favor of holding the school to the fulfillment of that program or mission, in a way that is different from the way in which a school with a broader mission will be evaluated. Some felt that the proper way in which to require accountability in such a situation is through the accreditation standards that focus on consumer protection and ensuring that the representations made to potential applicants are reasonable and accurate.

In the end, the prevailing view of the Task Force was that the issues raised in this Question ought not to be treated separately but should be included in the discussion and recommendations with respect to Question I (different missions), Question II (output measures), and perhaps Question V (the cost of legal education).

VII. *Whether schools with a longstanding record of compliance with accreditation standards should be subject to less exacting standards or to a streamlined process of review?*

The Task Force reviewed the policies and approaches of other accrediting agencies and it appears that other agencies employ the same approach the Section does, that is, setting a uniform set of standards and employing a uniform process of review. The Task Force unanimously agreed that setting a dual process of review – one for one set of schools and a more intense system of review for a second set of schools – would not be appropriate. The difficulty of establishing what the benchmarks would be for differentiating among schools and the potential for giving the appearance of “classifying” schools argues against this approach.

However, the Task Force believes that all would agree that the accreditation process should not engage in needlessly long, overly-intrusive or cumbersome reviews. Indeed, the “Wahl Commission” in 1995 specifically called upon the ABA to “develop and implement means to reduce the cost of and time involved in all aspects of the site evaluation process.”⁶ Thus, it would be productive to consider Question VII in terms of a broader discussion of ways

⁶ ABA Section of Legal Education and Admissions to the Bar, Report of the Commission to Review the Substance and Process of the American Bar Association’s Accreditation of American Law Schools 39 (August 3, 1995, as revised, October 31, 1995).

to streamline the accreditation process and reduce its costs. In the opinion of the Task Force, the current framing of Question VII could raise equal protection challenges and lead to perceptions that the Section is not applying the rules evenhandedly to all schools. If, instead, the matter is approached from the direction of what cost-cutting and efficiency-promoting measures may be appropriate, the Council might well conclude that it is appropriate to employ a less exacting site review process if a school has a longstanding history of compliance *and* an initial, streamlined review of the school's current status indicates no apparent problems.

RECOMMENDATIONS:

1. Continue to explore the use of e-mail and electronic processes in the site inspection and Accreditation Committee processes in order to both cut down on the amount of paper and regular mail, but also to streamline and facilitate a more efficient exchange of data.
2. Study other graduate education accrediting processes regarding the streamlining of the review process. Specifically, the business school model of a pre-visit review and negotiation, which leads to a narrowing of the issues so that the team will have a narrower and more specific set of issues to explore while on site, is worthy of study.
3. Staff should visit with other accreditors (e.g., Association for the Accreditation of Human Protection Programs) to determine if there are other models of site reviews that are worthy of consideration while remaining compatible with the Section's responsibilities.
4. The review should extend to the Standards as well. Consistent with the changes recommended by the Task Force, particularly with respect to Question I, the Council should consider whether there are ways to streamline the Standards as well as the site review process.

VIII. *Whether the ABA should attempt to measure satisfaction on the part of accredited institutions, the profession, and the public, and, if so, what steps should be taken to obtain feedback on the quality of the accreditation process?*

The Task Force believes that the Section should make efforts to remain in ongoing communication with, and seek feedback from, its constituencies. Among the constituencies whose feedback should be sought are the approved law schools, the Supreme Courts of each state and the Territories, and the volunteers who perform valuable services for the Section by serving on site visits and on Section Committees. This not only helps inform the policy-making role of the Council, it is an important piece of the "transparency" efforts discussed in response to Question III.

In 2006 as part of the Strategic Planning process, the Council did a survey of all approved-schools regarding the Standards, the site visit process, the utility of listservs, the value of the Section's conferences and publications and other miscellaneous items. The responses to the survey (145 responses from Deans and Associate Deans) were very helpful to the Council generally and to the Strategic Planning Committee specifically. The Task Force believes these kinds of surveys of the approved-schools should be done on a regular basis, perhaps every two years.

Another group that should be surveyed is the volunteers who comprise the site inspection teams and serve on the myriad of Section Committees. Any effort to streamline or improve the site inspection process will be greatly informed by the experiences and ideas of the substantial number of volunteers utilized by the Section, without whom the Section's mission could not be accomplished. In addition, surveys of Chief Justices regarding knowledge of, and satisfaction with, the accreditation project should be considered. There should be regular and ongoing communication with this very important constituency, both through surveys but also participation in Conference of Chief Justices' meetings. As an extension, a survey of bar admissions authorities regarding involvement in Section activities and the impact of accreditation on bar admissions issues and policies also should be done on a regular basis.

The Council on Education in the veterinary medical education field conducts a survey every four years of veterinary practitioners, members of state veterinary medical associations, veterinary college deans and faculty members, and current students, to evaluate the adequacy of current accreditation standards. The Task Force is inclined to think that a survey of this sort could be very useful. It believes, however, that the Council should learn more about the possibilities by contacting the Council on Education of the American Veterinary Medicine Association and acquiring detailed information about the nature of the survey the Council conducts, the costs of the survey (and who underwrites those costs), what kinds of information the survey produces, how useful that information tends to be, and whether (and, if so, how) the Association has actually used that information in improving the accreditation process.

Knowledge of the accreditation process tends to be centralized in the dean's office in most law schools, and the familiarity of faculty members, practicing lawyers and judges with the accreditation process is often limited. Therefore, a survey of faculty or practicing lawyers or judges or any other entities within the legal system may not produce much useful information. However, the idea of surveys beyond the obvious constituencies should be explored.

RECOMMENDATIONS:

1. Conduct regular surveys of approved-law schools for satisfaction and suggestions as to how to improve Section activities, including the accreditation project.
2. Conduct regular surveys of the volunteers.

3. Consider surveys of state Supreme Court Chief Justices regarding the accreditation project.
4. Consider surveys of other constituencies less directly connected to the accreditation project (i.e. faculty, practicing lawyers, judges and so on).
5. Maintain regular and ongoing communication (in addition to surveys) with the Conference of Chief Justices and other constituent groups important to the accreditation project.

IX. *What other areas and issues should the Task Force consider?*

An issue raised by a number of members of the Task Force, Bill Rakes in his charge to the Task Force, and several commentators is whether the Standards relating to accreditation of law schools should address “terms and conditions of employment” for those employed by the law school. It is an issue that has been raised and discussed by various committees and task forces of the Section in the past. On at least two or more prior occasions, the Council has voted on some variation of the question and has concluded on those occasions not to change the Standards.

The phrase “terms and conditions of employment” is a broad and ambiguous one. Most commentators use the phrase to refer to what might best be termed the “security of position” provisions of the Standards (Standards 206(c), 405(b), 405(c), 405(d), and 603(d)). Defined more broadly, however, the phrase could encompass a large number of employment-related aspects of the Standards, including, for example, those governing the selection/appointment of a dean (Standard 206(d); Interpretation 206-1); the definition of “full-time faculty” (Standards 402(b)); faculty members teaching at two law schools (Interpretation 402-3); and outside activities of faculty members (Interpretation 402-4). In this discussion, we will focus exclusively on the “security of position” provisions.

Although the “security of position” provisions of the Section’s accreditation standards are often discussed collectively, adequate discussion of the purposes, functions and justifiability of these provisions requires a recognition, at the outset, of the significant differences among the provisions. The current version of the Section’s *Standards and Rules of Procedure for Approval of Law Schools* contains five provisions affording security of position, to varying degrees, to different categories of law school faculty members: Standard 206(c), which covers deans;⁷ Standard 405(c), which covers clinical faculty members;⁸ Standard 405(d), which covers legal

⁷ “Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.” Standard 206(c).

⁸ “A law school shall afford to full-time clinical faculty members a form of security of

writing teachers;⁹ Standard 603(d), which covers law librarians;¹⁰ and Standard 405(b), which covers all other faculty members.¹¹

An examination of these provisions reveals that the Standards employ four very different approaches to security of position. The provisions create a norm of tenure for two categories of faculty members: the dean (who is to “hold appointment as a member of the faculty with tenure” “[e]xcept in extraordinary circumstances,” Standard 206(c)), and the law library director (who shall “normally” receive a “tenure or tenure-track appointment” as a member of the faculty, “not in the administrative position of director,” Interpretation 603-3). For the rest of the faculty, Standard 405(b) requires that “[a] law school . . . have an established and announced policy with respect to . . . tenure,” and Interpretation 405-1 prohibits “[a] fixed limit on the percent of a law faculty that may hold tenure under any circumstances.” Subsection (c) of Standard 405 affords some degree of “security of position” for clinical faculty but does not require “tenure.” Rather, subsection (c) permits a law school to employ clinical faculty members on “renewable long-term contracts,” as long as those contracts provide “[a] form of security of position reasonably similar

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.” Standard 405(c). Interpretation 405-6 elaborates: “A form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long-term contracts.” This Interpretation goes on to provide further commentary about a clinical “tenure track” system and a “program of renewable long-term contracts.”

⁹ “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)(2), and (2) safeguard academic freedom.” Standard 405(d). Interpretation 405-9 elaborates: “Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers.”

¹⁰ “Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.” Standard 603(d). Interpretation 603-3 elaborates: “The granting of faculty appointment to the director of the law library under this Standard normally is a tenure or tenure-track appointment. If a director is granted tenure, this tenure is not in the administrative position of director.”

¹¹ “A law school shall have an established and announced policy with respect to academic freedom and tenure of which Appendix I herein is an example but not obligatory.” Standard 405(b). Interpretation 405-1 elaborates: “A fixed limit on the percent of a law faculty that may hold tenure under any circumstances violates the Standards.”

to tenure.” Subsection (d) of Standard 405 also affords some degree of “security of position” for legal writing teachers but does not require “tenure.” It also permits “the use of short term contracts for legal writing teachers,” as long as these are sufficient to “attract and retain a faculty that is well qualified to provide legal writing instruction as required by Standard 302(a)(2), and ... safeguard academic freedom.”

In assessing whether the “security of position” provisions are an appropriate part of accreditation standards governing law schools, the central questions are: (1) What purposes are the provisions designed to achieve? (2) Are those purposes appropriate for a system of accreditation of law schools? and (3) Can those purposes be achieved better by some other mechanism?

In the submissions that were made to the Task Force and in the hearings that the Task Force held, one group (the Board of Directors of the American Law Deans Association (“ALDA”)) asserted that any purposes effectuated by the “security of position” provisions could be better achieved by other means. No organization or individual came forward to present justifications for Standard 206(c) (the provision concerning tenure for deans) or Standard 405(b) (the provision concerning tenure for faculty members generally). However, commentators have previously written and spoken about the need for Standards to address tenure for faculty members.¹² With regard to Standard 405(c) (the provision on “security of position” for clinical faculty), the Task Force received submissions supporting its retention from not only the Clinical Legal Education Association (CLEA) and individual clinical teachers but also from two deans, each of whom expressly disagreed with the ALDA Board’s position regarding this provision. One of the deans stated that “many other deans” share his viewpoint and disagree with the ALDA Board on this issue. In these submissions, several justifications were offered for retaining Standard 405(c), including a highly specific need to protect clinical faculty members’ academic freedom from outside interference with the litigation and other forms of advocacy that often constitute part of clinic coursework, a need to attract and retain well qualified clinical faculty, and a need to ensure adequate opportunities for participation by clinical faculty in law school governance decisions. With regard to Standard 405(d) (the provision on “security of position” for legal writing faculty), the Task Force received a submission from the Association of Legal Writing Directors (ALWD) stating that this standard, like 405(c), rests on the need to protect academic freedom, the interest in attracting and retaining well qualified faculty, and the interest in ensuring that law school governance decisions that can affect curriculum will have the benefit of the comments of a sector of the law school faculty whose knowledge and perspective otherwise might be unrepresented. Finally, the Task Force received a submission from the American Association of Law Libraries (AALL) with respect to Standard 603(d) (the provision regarding law library directors), stating that this provision rests upon the need to protect academic freedom.

¹² See, e.g., Michael A. Olivas, *Reflections on Professorial Academic Freedom: Second Thoughts on the Third “Essential Freedom,”* 45 STAN. L. REV. 1835 (1993).

All members of the Task Force agreed that it is entirely appropriate for the Standards to employ suitably-framed mechanisms to protect academic freedom. Academic freedom is an essential pillar of legal education. If implemented properly, it protects faculty against dismissal when they have upset powerful interests, it provides an assurance of protection that eliminates the “chilling effect” on important academic functions and it provides a cadre of faculty who have sufficient protection that they together can create an atmosphere of open inquiry and discussion. Tenure has for many years proved to be an effective mechanism for protecting academic freedom and has helped avoid the serious problems with academic freedom that occurred before the widespread use of tenure.¹³ It certainly has costs,¹⁴ but the protection it provides to academic freedom should not be dismissed lightly. At the same time, a credible argument can be made that law schools should be given flexibility in protecting academic freedom where they can demonstrate convincingly that adjustments to tenure, or alternatives to it, will clearly be effective in providing that protection.

All members of the Task Force also agreed that it is entirely appropriate for the Standards to employ suitably-framed mechanisms to assure that law schools will attract and retain well-qualified faculty members. This is a goal that is entirely consistent with the goal of accreditation standards to protect the “consumers” of legal education — law students — and also protect the public by ensuring that the lawyers who graduate from law school and thereafter represent members of the public receive instruction during law school from well-qualified teachers.

In assessing whether — and, if so, to what extent — the “security of position” provisions further these legitimate purposes of accreditation, it is useful again to differentiate the provisions rather than treating them as a group.

¹³ For tenure to protect academic freedom successfully, it must not only provide specific protection when an incident arises, it also must provide reliable, clear and unmistakable assurance that academic freedom will be protected. Indeed, the real value of tenure is that it gives faculty the reassurance that they can discuss controversial topics and insult powerful interests without risking their careers. In short, it prevents the “chilling” effect on faculty that can result from a vague sense that insulting the wrong interests can be career-threatening.

¹⁴ For example, a tenure system requires that law schools undertake a very careful review of the work of faculty who are eligible for tenure. Moreover, a tenure system makes it somewhat harder to get rid of marginal faculty because it requires an internal process in which the burden of proof is on the institution. There are quality control benefits of tenure reviews, of course. The costs may not be as great as they are claimed to be by the critics. The claim that tenure protects “deadwood,” however, contains some truth but often is overstated. Allowing schools to drop tenure may well lose the value of tenure in protecting academic freedom without doing much about whatever deadwood there is.

Standard 405(d) (regarding legal writing teachers) is explicitly framed in terms of the underlying goals of safeguarding academic freedom and attracting and retaining well qualified faculty. Standard 405(d) provides: “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)(2), and (2) safeguard academic freedom.” Interpretation 405-9 elaborates: “Subsection (d) of this Standard does not preclude the use of short-term contracts for legal writing teachers.” Accordingly, the rule itself incorporates a mechanism for determining whether “security of position” will further these goals and is necessary to accomplish the goals. The Standard requires only “such security of position and other rights and privileges of law faculty membership *as may be necessary*” to accomplish these goals (emphasis added).

Standard 405(c) affords a greater degree of security of position for clinical faculty. Supporters of this rule make a credible argument that there is a particularized need to afford explicit, concrete protection of academic freedom for clinical faculty given the long history of attempts at outside interference with advocacy by clinics as part of the students’ coursework.¹⁵

Standard 603(d), which affords to law library directors even greater protection by requiring that “a law library director shall hold a law faculty appointment with security of faculty position” “[e]xcept in extraordinary circumstances,” is said to assure “[a]cademic freedom for law library directors” and thereby to “provide[] them with the latitude necessary to acquire materials espousing all viewpoints, on even the most controversial of topics, in order to guarantee the strongest library collections possible” and to “provide[] the atmosphere necessary to innovate, to create, and to enhance library services, thereby carrying out the spirit of the Standards and advancing the law school’s mission.” Statement of the American Association of Law Libraries to the Accreditation Policy Task Force, Council of Legal Education and Admissions to the Bar, at 4 (Feb. 5, 2007).

The Task Force reviewed the standards of other accrediting bodies to ascertain whether they have standards that address “security of position.” The Task Force concluded that legal education may be the only accrediting body that has standards designed to explicitly address terms and conditions of employment. Standards of some other accrediting bodies are supportive of the concept of academic freedom but tend not to explicitly require “tenure” or a “form of security of position reasonably similar to tenure.” It may be, however, that, at least with respect to Standard 405(c) regarding clinical faculty, the legal education field is distinguishable from

¹⁵ For discussion of this history of attempts at outside interference and the implications for academic freedom, *see, e.g.*, Peter A. Joy & Charles D. Weisselberg, *Access to Justice, Academic Freedom and Political Interference: A Clinical Program Under Siege*, 4 CLIN. L. REV. 531 (1998); Robert P. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 FORDHAM L. REV. 1971 (2003); Elizabeth M. Schneider, *Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom*, 11 J.C. & U.L. 184 (1984).

other fields of higher education because of the documented history of repeated attempts at outside interference with litigation and other forms of advocacy by law school clinics.

The vast majority of the Task Force was in agreement that if it were beginning with a clean slate today, it would recommend that the Council continue to require standards that strongly protect academic freedom and call for the attraction and retention of well qualified faculty, but that these laudable systemic interests be effectuated through mechanisms more direct and concrete than the existing provisions on “security of position.” Task Force members acknowledged, however, that we are not beginning with a clean slate. The current Standards, and particularly those specifying the terms and conditions of employment of several types of faculty members (tenured faculty, clinical faculty, and legal writing faculty), are the product of difficult and prolonged negotiation and compromise over many years. The negotiations and compromise arose in the context of real disputes in legal education and real problems at member schools. There has been substantial reliance on those terms by many institutions and individuals.

Even if the existing system is imperfect, it is far from self-evident that adequate alternative mechanisms can be fashioned. The removal of all “security of position” provisions from the Standards would have implications that go far beyond simply allowing law schools to determine for themselves whether to have a tenure system for doctrinal faculty or one that affords “a form of security of position reasonably similar to tenure” for clinical faculty. If the current provisions are deleted, and no other provisions for “security of position” are promulgated, a law school could choose to staff all or a major part of its programs with faculty members who serve as at-will employees or in some similar capacity. (A new school might choose to fill all of its positions in this way, while an established school, encumbered by existing practices and relationships, might choose to do so with respect to only “non-doctrinal” faculty. In either case, there might be little continuity of personnel, particularly in areas of lesser real interest to the law school administration.) It seems highly doubtful that such arrangements would promote the goals of a sound program of legal education, academic freedom, and a well-qualified faculty. In the absence of any specific standard, however, that would have to be determined on a case-by-case basis. If that inquiry were taken seriously, the likely result would be an accreditation process far more intrusive, costly, and labor-intensive than that which currently exists. On the other hand, if that inquiry were not taken seriously, there would be little point in having an accreditation process at all.

In sharp contrast to the other issues the Task Force addressed — on which it was able to reach broad consensus — the Task Force was unable to reach a consensus on what should be done with respect to the “security of position” provisions. One group of Task Force members felt that the Task Force’s examination of the subject of “security of position” provisions in the Standards points to the need for more careful study of the issues, including additional gathering of data, that is best done by a committee that is devoted to this particular task. This group of Task Force members concluded that the Council should appoint a committee with a specific mandate to study whether the “security of position” provisions of the Standards should be replaced with alternative Standards that more directly and effectively safeguard the underlying

systemic interests in protecting academic freedom and ensuring the existence of a well-qualified faculty and a sound program of legal education.

A second group of Task Force members felt that any attempts to change the existing “security of position” provisions are unlikely to produce Standards better than what are currently in place and that the time and energy devoted to these ultimately fruitless attempts will not only detract from the legal education community’s ability to focus on the other important issues addressed in this report but also may have adverse consequences for the entire system of law school accreditation. This second group of Task Force members favored a recommendation to the Council to eschew any new *higher* standards governing terms and conditions of employment, and to consider removing particular individual standards as they are rendered obsolete by changes in the world (such as the changes in information technology that have transformed libraries).

A third group of Task Force members felt that the Task Force should issue a recommendation at this time that the Council review and consider elimination of most if not all Standards that address terms and conditions of employment and specifically the Standards that require tenure or a system reasonably similar to tenure. This third group felt that any such changes in the Standards should be combined with the creation of alternative mechanisms for protecting academic freedom for all faculty members, guarding against outside interference with advocacy by clinics, and ensuring adequate opportunities for active and responsible participation of clinical faculty in the governance of a law school.

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Dean Steven R. Smith
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The Honorable Randall T. Shepard, dissenting as to Question IX only.

The hearings and the deliberations of the Task Force have produced useful observations and recommendations on a variety of questions, and I endorse all of them, except for the section on Question IX.

Question IX produced more public testimony and more Task Force discussion than any of the others. There has been widespread and intense interest in what the Task Force should say with respect to tenure and other Standards covering security of employment. Moreover, the Chairperson of the Council convened us for the very purpose of bringing forth fresh analysis and proposals with respect to a host of issues, including the present Standards about terms of employment. The broad community of the regulated obviously anticipates that the Task Force will say something normative about this topic.

Against this backdrop, the Task Force has elected simply to describe the various points of view its members have expressed in the course of our deliberations. Interesting as these varying observations are, at the end of the day, the Task Force report stands as a document favorable to the status quo.

The object of the Standards is to describe what human and physical resources are minimally necessary to provide a basic legal education for students who wish to become lawyers or engage in other careers for which such legal training will be beneficial. A crucial element to maintaining such an educational experience is attracting and retaining the most able law teachers and providing them with an adequate work environment and sufficient academic freedom to permit good scholarship and good teaching. Tenure and security are among the multiple tools available for accomplishing these goals, but they are not ends in themselves.

Many able people regard mandating tenure in accordance with AAUP's 1940 statement as indispensable to producing a good law faculty. Others assert that tenure is crucial for instructors who teach the doctrine of, say, contracts, but not crucial for those who teach how to write contracts or teach how to litigate contracts.

My own conclusion is that the present Standards about employment security contain a level of prescriptiveness that is greater than that necessary to assure a minimally adequate education at every accredited school. We should recommend that the Council reduce this prescriptiveness.

For one thing, the stark requirements of the existing Standards prevent new or relatively new law schools from attempting to demonstrate that quality faculty and academic freedom can be assured through methods developed sometime after 1940.

Quite aside from that, I think the Council's decisions over the last fifteen years, a few of which occurred on my watch, have led to a regulatory regime that fosters in schools and in the

national arena a form of interest group politics that has not been healthy for our profession. Even the effort to afford security to clinical professors, according to the testimony at our hearings, has devolved contentiously to a determination that one-year contracts constitute a form of security “reasonably similar to tenure.”

All this suggests to me that the status quo does not do all that could be done to foster recruiting and supporting the best faculty and the best scholarship across the wide range of instructional activities that are part of modern legal education. The prescriptiveness of the existing Standards should be replaced with a new paradigm more effectively tailored to those ends.

Jose R. Garcia-Pedrosa, Esq., joins in the statement of the Honorable Randall T. Shepard, and also says the following:

The regulatory requirements of the Standards should not include terms and conditions of employment such as tenure, leaving accredited law schools free to provide tenure or not, as they may deem appropriate to their needs and circumstances.