

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

**Informational Report to the ABA House of Delegates
July 2009**

The Section of Legal Education and Admissions to the Bar has engaged in a variety of important endeavors since its previous report in August 2008. The Section's objectives, as in the past, are to fulfill our mission to provide a fair, effective, and efficient accrediting system for American law schools that promotes quality legal education; to serve, through the Council, as the nationally recognized accrediting body for American law schools; and to be a creative national force providing leadership and services to those responsible for and those who benefit from a sound program of legal education and bar admissions. In furthering this mission, we have viewed our relationship and communication with Conference of Chief Justices as critical to the maintenance of respect for the Accreditation Project by the Supreme Courts in their dependence on the Project in maintaining the highest standards of legal education.

Accreditation Activities

As of August 1, 2009, a total of 200 institutions are approved by the American Bar Association: 199 confer the first degree in law (the J.D. degree); the other approved school is the U.S. Army Judge Advocate General's School, which offers an officer's resident graduate course, a specialized program beyond the first degree in law. As of August 1, 2009, eleven of the 200 approved law schools are provisionally approved: Atlanta's John Marshall Law School; Charleston School of Law; Charlotte School of Law; Drexel University Earle Mack College of Law; Elon University School of Law; Faulkner University, Thomas Goode Jones School of Law; Florida A & M University College of Law; the University of La Verne College of Law; Liberty University School of Law; Phoenix Law School; and Western State University College of Law.

During the past year, 48 site evaluation visits were undertaken involving 268 volunteers as site team members, including 67 persons who had not previously served on a site evaluation visit. Twenty-six of the visits were sabbatical site visits, eleven were of provisionally approved schools, four were third-year post-approval visits, one was in connection with an application for provisional/full approval of existing branches, three were in connection with applications for a major change and three were fact finder visits. Fifty-seven site evaluation visits to foreign programs, involving an additional 40 volunteers, will be completed by the end of the academic year.

During the year, the Accreditation Committee also considered and granted acquiescence in 24 applications from approved law schools regarding the establishment of new post- or non-J.D. degree programs. The Committee

approved the establishment of twelve foreign summer programs, three foreign winter intersession programs, and one new cooperative program of foreign study.

Standards for Approval of Law Schools

1. Interpretation 301-6

New Interpretation 301-6, regarding bar examination passage rates of law schools, was concurred in by the House of Delegates in February 2008 and the Interpretation became effective immediately. Interpretation 301-6 establishes several alternatives under which a law school can demonstrate compliance with Standard 301(a), which provides: "*A law school shall maintain an educational program that prepares its students for admission to the bar....*" The Council asked the Accreditation Committee to report to it in February 2009 on the impact of the new Interpretation on law schools.

Accreditation Committee Chair Catherine Carpenter and Deputy Consultant Dan Freehling reported to the Council on February 14, 2009 on the experience over the last year with new Interpretation 301-6. The new Interpretation increased the number of students that schools are required to track for reporting purposes. Schools must now report on at least 70% of the students who take the bar exam for the first time, even if information must be obtained from several jurisdictions. The Consultant's Office has supplied schools with templates for providing the required information to assist schools in reporting the bar exam pass rates.

Since April 2008, the Accreditation Committee has reviewed 35 schools and all have met the requirements of Interpretation 301-6. One school that was on probation for bar exam passage rates prior to the new Interpretation has been able to demonstrate compliance and is no longer on probation. To date, no school has been found out of compliance with the new Interpretation.

The biggest concern with the new Interpretation is that it is possible to be in compliance even if 25% of the students do not pass a bar exam ever. This could raise issues with Standard 303(c) (by potentially inculcating false hopes) and Standard 501(b) (by admitting students who do not appear capable of being admitted to the bar). One solution schools are employing is to place greater emphasis on academic support. In collaboration with the ABA's Membership and Marketing Division, the Section created a directory of bar pass programs as part of a conference on bar passage.

Having a mechanism for looking at ultimate bar passage rates and tracking a larger percentage of students have been very positive developments. It appears that schools are investing significant energy and resources in academic support and that bar exam passage rates are on the increase nationally.

2. Repeal of Standard 104

At its January 2009 meeting, the Standards Review Committee considered a report of a subcommittee recommending elimination of Standard 104. Standard 104 requires approved law schools to continually “seek to exceed” the Standards. While that is clearly a laudatory goal for all law schools, the Committee concluded that the language of 104 was vague and likely impossible to enforce. The Committee unanimously recommended repeal of Standard 104. Final approval by the Council was given at its meeting in June 2009 after consideration of any comments that were submitted. The matter will be before the House of Delegates of the ABA on August 3, 2009 for concurrence.

3. Repeal of Interpretations 402-1 and 402-2

The Standards Review Committee also considered a recommendation that Interpretations 402-1 and 402-2 (setting the formula for determining a law school’s student/faculty ratio) be repealed. This recommendation was the subject of a public hearing on Friday, January 9, 2009 in San Diego. Although many of the comments and testimony of speakers favored the current rule, the Committee overwhelmingly agreed that the Interpretations should be repealed. The Committee agreed with two former Consultants on Legal Education that the informational value of the ratio was marginal at best and that consumers of that information had better information about educational assets available in the *Official Guide to ABA-Approved Law Schools*. However, several committee members expressed concern over the likelihood that law schools would have no guidelines to apply in the event that they decided to publish their student/faculty ratio. Therefore, the Committee decided that before any formal action on Interpretations 402-1 and 402-2 is submitted to the Council, a subcommittee would consider whether Standard 509 (consumer information) be amended to require an appropriate disclosure if an approved law school publishes a student/faculty ratio.

4. Comprehensive Review of the Standards

In September 2008, the Council of the Section of Legal Education and Admissions to the Bar began a comprehensive review of the *ABA Standards for the Approval of Law Schools* and the associated *Rules of Procedure for the Approval of Law Schools*. The Council will rely on its Standards Review Committee to complete this project, which is expected to take at least the next two academic years.

The last comprehensive review commenced in September 2003 and was completed in 2006. Since that time, the Council has received reports from the Accreditation Policy Task Force, the Special Committees on Outcome Measures, Transparency, and Security of Position, and adopted a Strategic Plan. Each of those reports or plans suggested changes to the Standards, ranging from very

specific language changes to new conceptual approaches. Thus, this round of comprehensive review comes at a very appropriate time given the ideas and momentum that have already been generated.

Bar Admissions Committee

The Bar Admissions Committee, chaired by Chief Justice Rebecca Berch of the Arizona Supreme Court, consists of four law school deans, one faculty member, four supreme court justices, and four bar examiners. In June 2008 the Committee concluded work on a Model Rule for Registration of In-House Counsel. The Model Rule was approved by the House of Delegates in August 2008.

Re-Recognition by the Department of Education

On December 18, 2007, the Council filed a petition with the Department of Education for re-recognition of the Council's authority to accredit law schools in the United States. As part of the re-recognition process, the Council was required to file a compliance report addressing several areas identified in a prior review of the Council's petition. The Department required that the Council provide the following documents with its compliance report, for the period from January 2006 through December 2007: (a) any and all site evaluation reports of any school; (b) any and all studies, determinations, conclusions, transcripts, memoranda, and/or recommendations as to whether a school complies, or does not comply, with the Council's standards; and (c) minutes, agendas, and transcripts of any and all meetings of the Accreditation Committee, Council, and Executive Committee of the Council. The Council provided the Department with copies of all documents that fell within any of these categories, which resulted in a transmission to DOE of over 40,000 pages of documents involving 145 law schools.

In February 2008, the Council informed deans of all law schools whose materials were part of the DOE submission that information pertaining to their law schools was provided to the Department. The letter to the deans explained that accompanying the submission to the DOE was a letter from the Consultant explaining that the documents were considered confidential under the Council's rules and, therefore, under the Department's rules, should continue to be treated as confidential. The Council requested of the Department that none of the school-specific documents provided to the Department be released pursuant to a Freedom of Information Act request. Having not received a response from the Department, the Consultant felt that it was appropriate to notify the deans about the submission of the materials. In fact two FOIA requests were received by the Department: from *The New York Times* and the *Wall Street Journal*. The ABA's General Counsel wrote the Department's General Counsel several times between January and October of 2008 reiterating that the materials are confidential and should not be released pursuant to FOIA.

The Council was informed in early May 2008 that the Section's appearance before the Advisory Committee would be postponed from June to December 2008. One of the reasons given was "the great volume of documents submitted by the Council in accordance with the Secretary's final agency decision dated June 20, 2007" The Department requested that the Section submit responses to third party comments (from Cooley Law School and Wallace Reilly, a former president of the ABA) by June 4, 2008, which the Section did.

On October 31, 2008 the General Counsel of DOE informed the General Counsel of the ABA that all of the arguments made by the ABA as to the confidentiality of the documents were rejected by the Department, and that therefore the documents would be released to the two requesters on November 20, 2008. However, the Department stated that it would redact the documents to remove all financial, competitively sensitive, and school-identifying information.

The December 2008 meeting of NACIQI was cancelled as required by provisions of the newly enacted Higher Education Act. No NACIQI meeting has been scheduled. The Department has not as of this date provided the standard "draft staff analysis" of the Section's application, and has not informed the Section as to what the next steps in the process will be. However, as this is all pending, the Section continues as the DOE-recognized accrediting authority for the award of the J.D. degree in the U.S.

Finance Committee

Chief Justice Ruth McGregor, Section Chair in 2007-2008, appointed a Finance Committee to look at the long-range financial and staffing needs of the Section. The Committee, chaired by Council member Barry Sullivan, submitted a comprehensive report to the Council in February 2009. The Council approved the five-year growth plan and projected budgets for the Section recommended by the Committee; which call for gradual growth of the Section from fourteen to twenty staff members by 2012. This will strengthen both the Accreditation Project in necessary ways and add to the Section services provided to members and law schools. The Council also agreed to post notice of its intent to increase law school fees by 5% for FY2010.

International Issues Committee

Section Chair Randy Hertz created a Special Committee on International Issues to identify the international issues that may affect the Section or legal education more broadly. The Committee, which is chaired by Justice Elizabeth Lacy, plans to report to the Council in August 2009 and will identify areas in which there is a need for the Section to undertake initiatives and identify ways in which those needs should or could be addressed. Some areas being studied by the Committee are accreditation of foreign law schools, accreditation of foreign LL.M. programs, admission of foreign lawyers, and coordination with other entities such as CCJ and other divisions of the ABA.

Coordination with Related Entities

The so-called “Mayflower I Meeting” is an annual meeting of the leadership of the Section, the Law School Admission Council and the Association of American Law Schools. The “Mayflower II Meeting” is a second day of meetings that includes leadership of the Conference of Chief Justices, the National Association for Law Placement, National Conference of Bar Examiners, American Association of Law Libraries, Clinical Legal Education Association, Access Group, and National Conference of Bar Presidents. Sponsorship of this meeting rotates among the Section, LSAC and AALS. Last year, the Section hosted and facilitated the discussions, and in May 2009 AALS served as host.

Deans/Conference of Chief Justices Meeting

A joint meeting of the chief justices and the deans of ABA-approved law schools was held in Scottsdale, Arizona in January 2009. The chiefs extended the invitation to the deans to join them in a half-day discussion of issues of relevance to both groups. Then the deans spent the next day and a half in the annual Deans Workshop sponsored by the Section. One hundred and forty deans were in attendance. Typically, the Workshop is held once a year in conjunction with the ABA mid-year meeting. However, at the request of many deans, this year a second workshop will be held in Chicago in conjunction with the ABA Annual Meeting. The focus of the workshop will be the economy and its effects on legal education.

Alliance for Legal Education

Under U.S. Department of Education rules, federally guaranteed loans cannot include “costs associated with preparing the student for the test . . . required for licensure.” In the past, students were able to work around this restriction by obtaining non-federally-guaranteed student loans to cover bar-exam-related expenses. However, the downturn in the economy has led several lenders to suspend their private loan offerings, including bar exam loans, or to set stricter credit criteria and substantially higher interest rates. To ensure that students have access to the funding they need, the Alliance for Legal Education has been created and has proposed that either (i) the Department of Education amend its rules to “permit the inclusion of bar exam-related expenses in the calculation of cost of attendance”; or (ii) Congress amend the Higher Education Act of 1965 to permit such inclusion. As the Alliance points out, “funding must be available no later than April 2009” in order to be of use to this year’s graduating law students. Access Group is leading this effort and the Section is very supportive of this very important undertaking.

Section Membership:

May 2009

●Lawyers: 9,892 ●Associates: 1,048 ●Law Students: 2,035 ●Total: 12,975

May 2008

●Lawyers: 9,502 ●Associates: 939 ●Law Students: 2,179 ●Total: 12,620

Conferences, Workshops, and Special Events

The Council and its Committees offered and supported a number of conferences and programs during the past twelve months:

- Bar Exam Passage Conference: Outcome Measures and Student Achievement. Co-sponsored with the Law School Admission Council, October 16-18, 2008. (205 participants from 117 law schools)
- 38th Annual Deans' Workshop: Held in conjunction with the Conference of Chief Justices, January 2009 (140 deans of ABA-approved law schools)
- Workshop for Site Evaluation Team Chairs, September 12, 2008 (30 participants)
- Workshop for New Site Evaluators and Schools Undergoing a Site Evaluation, November 15, 2008 (100 participants)
- Training Sessions on the Law School Site Visit Questionnaire and the Law School Annual Questionnaire will be held July 11, 2009 and August 8, 2009, respectively.

During the 2009 Annual Meeting, the Section will host the ABA/AALS/LSAC Deans' Breakfast and hold its annual business meeting. The Section will also hold a specially-convened Deans Workshop to address challenges facing the legal academy in the current economic downturn.

Robert J. Kutak Award

The Robert J. Kutak Award is given annually to recognize outstanding contributions to legal education in the United States. The 2009 recipient is the Honorable Gerald W. VandeWalle, Chief Justice of the North Dakota Supreme Court. In 1975, Justice VandeWalle was appointed First Assistant Attorney General in North Dakota and spent 20 years working in the Attorney General's office. During that time, he held several portfolios, including the education portfolio for elementary, secondary, and higher education. Justice VandeWalle also served as the legal advisor to the State Board of Education and many of the colleges and universities administered by the board. He served as Chair of the Section from 2001 to 2002 and co-chaired the Section's Bar Admissions Committee from 1991 to 1999. Supreme Court Chief Justice Rehnquist appointed him to the Federal-State Jurisdiction Committee of the Judicial Conference of the

United States, a post he held from 1997 to 2004. Justice VandeWalle will be honored at a reception on Friday, July 31 during the ABA Annual Meeting

Publications

The ABA Standards and Rules of Procedure for Approval of Law Schools was updated to reflect all changes to the Standards and Rules approved during the year. *Syllabus*, the Section's newsletter, was published three times during the year and distributed free to all members. Other Section publications produced include the *Official Guide to ABA-Approved Law Schools*, published in conjunction with the Law School Admission Council; *The Comprehensive Guide to Bar Admission Requirements*, published in conjunction with the National Conference of Board Examiners; and the *Annual Report of the Consultant on Legal Education, 2007-2008*.

Respectfully submitted,
Randy Hertz
Chair, Section of Legal Education and Admissions to the Bar

Hulett H. Askew
Consultant on Legal Education
Section of Legal Education and Admissions to the Bar

August 2009