

# SYLLABUS

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

## Interpretation 301-6 Regarding Bar Passage Rates Adopted

**A**t the ABA Midyear Meeting in February, the House of Delegates concurred with the Council of the Section in the adoption of Interpretation 301-6 regarding law schools' bar passage rates. The Interpretation and Commentary appear here and are also posted on the Section's Web site: [www.abanet.org/legaled](http://www.abanet.org/legaled).

### Interpretation 301-6

(Interpretation approved by the Council of the Section of Legal Education and Admissions to the Bar and concurred in by the ABA House of Delegates, February 2008, effective immediately.)

A. A law school's bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:

1) That for students who graduated from the law school within the five most recently completed calendar years:

(a) 75 percent or more of these graduates who sat for the bar passed a bar examination, or

(b) in at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.

In demonstrating compliance under sections (1)(a) and (b), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

2) That in three or more of the five most recently completed calendar years, the school's annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions.

In demonstrating compliance under section (2), the school must report first-time bar passage data from as many

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## Strickland to Receive 2008 Kutak Award

**R**ennard Strickland, Professor Emeritus of Law at the University of Oregon School of Law, has been selected to receive the 2008 Robert J. Kutak Award.

A legal historian of Osage and Cherokee heritage, Professor Strickland is considered a pioneer in introducing Indian law into university curriculum. The announcement was made



by the Section's Kutak Committee: Peter A. Winograd, Chair; Jose R. Garcia-Pedrosa, Robert MacCrate, Harold L. Rock, Pauline A. Schneider, Randall T. Shepard, E. Thomas Sullivan, and Robert K. Walsh.

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# From the CONSULTANT

By Hulett H. Askew, Consultant on Legal Education

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## Consistency

A well-run and appropriate accreditation process that has credibility within the law school community must be understood to be viewed as consistent and fair. Given the confidentiality that surrounds the process, it can be a challenge to demonstrate to law schools the great lengths the Accreditation Committee and the Council go



to in order to ensure a consistent accreditation process.

Many processes have been established and followed by the Section to ensure consistency

of the accrediting process. The first, and perhaps most important, is training, which ensures that the people applying the Standards are well-qualified to do so. The Section annually conducts several training events in order to ensure that all site evaluators, site team chairs, law schools, committee members and Council members are fully apprised of the Standards and their application. Site team chairs for the coming academic year are trained in a one-day session in September. New site evaluators and representatives from law schools scheduled for site inspections within the next two years attend a one-day training event in February that covers the site inspection process and the application of the Standards. All new

members of the Accreditation Committee, who almost without exception are experienced site evaluators, attend a half-day training event before joining the Committee, and the full Committee frequently has training scheduled as a regular part of its meeting agenda.

The Council members, even though much less engaged in the school-by-school application of the Standards, also receive annual training. Lastly, every September, the Accreditation Committee and the Council hold a joint retreat at which issues of mutual interest or concern are addressed. Training is always a part of this agenda.

What mechanisms exist in the process itself to ensure consistency? First, the use of standard formats is a key element. Every site team follows a Format Memo that is carefully constructed to highlight each Standard and identify the facts the team should report that will permit the Accreditation Committee to make compliance decisions. The site visit itself follows a set pattern described in the Conduct Memo provided to all team members and to schools. By following a prescribed process and reporting the delineated facts, the Accreditation Committee receives the same information on each school.

As a check on this process, each site team report also is carefully reviewed by a staff member of the Section before it is sent to the school for response. If the staff member identifies deviations from the Format Memo, particularly the omission of

required factual reporting on Standards-related matters, the report is sent back to the team chair for further work.

When the site team report goes to the Accreditation Committee for review, it is assigned to one member of the Committee for a thorough review and analysis, and the preparation of a draft decision letter. These letters also follow a set format to ensure a consistent approach. Each member of the Committee, approximately two weeks before the Committee meeting, receives the draft letters, with all the supporting documentation, on each school to be considered at the meeting. The drafts are presented to the Committee by the members, and the full Committee discusses and votes on each conclusion regarding compliance. The role of the Consultant, the other staff members of the Section, and the Committee Chair is to be particularly attentive that this part of the discussion and decision process occurs.

If its discussions suggest a need, the Accreditation Committee also has the authority and a mandate to recommend to the Standards Review Committee the consideration of a new or revised Interpretation to provide additional guidance or to clarify the existing guidance for schools on the application of particular Standards.

A new feature of the accreditation process was added in 2007 when Council Chair Ruth McGregor appointed a Consistency Committee. Chaired by a Council member who is a former chair of the Accreditation Committee, the Committee is made up of five members, all of whom have served on the Accreditation Committee. The Committee's charge is to review the decision letters of the Accreditation Committee after each of its meetings. The Consistency Committee has

met twice, reviewing the decisions made at the October 2007 and January 2008 meetings of the Accreditation Committee. This new Consistency Committee informs the Council of its findings and will provide feedback to the Accreditation Committee of any findings or helpful suggestions going forward. So far, it has been impressed with the quality of work of the Committee and the consistency of its process.

For the accreditation process to be respected and credible

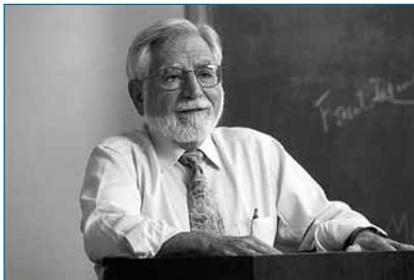
within the law school community and the community at large, the Council and Accreditation Committee understand that ensuring a consistent process is paramount. They take their responsibility very seriously and believe they have set up processes, mechanisms, and formats to ensure that consistency.

Feedback from the law school community and other interested persons and entities is vital to the process. We welcome your comments and suggestions. 🏠

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## In Memoriam

# Roy M. Mersky, Law Professor and Law Library Director, University of Texas Tarleton Law Library



**R**oy M. Mersky, law professor and law library director at the University of Texas Tarleton Law Library and Jamail Center for Legal Research, died Tuesday, May 6 at the age of 82. Under his direction since 1965, the law library attained recognition as one of the

premier law libraries in the country. A prolific writer, Professor Mersky was the co-author (with J. Myron Jacobstein) of one of the classic research texts, *Fundamentals of Legal Research*, first published in 1975. Professor Mersky also mentored a host of law library directors throughout the United States. He earned a J.D. and a master's degree in library science from the University of Wisconsin-Madison. At the University of Texas, Professor Mersky held the Harry M. Reasoner Regents Chair in law and the Hyder Centennial faculty fellowship in law.

A Section member since 1974, Professor Mersky served on a number of law school site teams as well as the Law Libraries committee, the Law School Facilities committee, and the Technology and Education committee. He was also active in other ABA Sections, the Association of American Law Schools, the American Association of Law Libraries, Scribes-The American Society of Legal Writers, and many other professional organizations. 🏠

# SYLLABUS

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Christina D. Williams, *Assistant to the Deputy and Associate Consultants*

# Nominating Committee Announces 2008-2009 Council Slate

The Nominating Committee has forwarded its recommendations to Honorable Ruth V. McGregor, chair of the Section of Legal Education and Admissions to the Bar. All of the listed individuals have indicated their willingness to have their names placed in nomination. The election of Section officers and Council members will occur at the Section's Annual Business Meeting on Saturday, August 9, 2008 at the InterContinental/Barclay Hotel, 111 E. 48th Street, New York.

## **Chairperson (automatic under the Bylaws)**

**Randy A. Hertz** is a professor of law at New York University School of Law. Professor Hertz holds a B.A. from Carlton College, and a J.D. from Stanford University, where he was a member of the editorial board of the *Stanford Law Review*. He clerked for Chief Justice Utter of the Washington Supreme Court and served as a public defender in the District of Columbia from 1980 through 1985. Currently, Professor Hertz is an editor-in-chief of the *Clinical Law Review*. He is a past member of the Section's Standards Review Committee and also served as a consultant to the MacCrate Task Force on Legal Education and as a reporter to the Wahl Commission on the Accreditation of Law Schools. A member of the Council since 2000, Professor Hertz currently serves as Vice Chair.

## **Chairperson-Elect Nominee**

**Jerome C. Hafter** is a partner in the Jackson, Mississippi, office of Phelps Dunbar, LLP. He practices in the areas of business, corporate, and commercial law

with an emphasis on representing agribusiness industries. Mr. Hafter has served as president of the Washington County Bar Association, is a member of the American Law Institute and the American Judicature Society, and a fellow of the Mississippi Bar Foundation. Since 1979 he has served as chair of the Mississippi Board of Bar Admissions; from 1989 to 2000 as a member of the Board of Managers of the National Conference of Bar Examiners and its chair from 1998 to 1999. Mr. Hafter received his undergraduate degree, *summa cum laude*, from Rice University where he was a member of Phi Beta Kappa and president of the Student Association. He attended Oxford University in England as a Marshall Scholar, obtaining a BA/MA with First Class Honors in Modern History and attended law school at Yale University, where he served as associate editor of the *Yale Law Journal*. Mr. Hafter is the author of numerous published books and articles. He has served on the Accreditation Committee from 1998 to 2002 and the Council since 2000.

## **Vice Chairperson Nominee**

**Christine Durham** is Chief Justice of the Supreme Court of Utah and an adjunct professor at Brigham Young University School of Law. She has served on the Supreme Court of Utah since 1982 and became chief justice in 2002. Justice Durham earned a bachelor's degree from Wellesley College and a law degree from Duke University School of Law. Before moving to Utah, she practiced law in Durham, North Carolina and was an instructor of legal medicine at Duke University

Medical School. She is a trustee of Duke University, a member of the American Inns of Court Foundation Board of Trustees and a member of the Council of the American Law Institute. Justice Durham is a founding member and past president of the National Association of Women Judges. She leads the Education for Justice Project, a partnership between public education, the judicial branch, and the legal profession to improve education about the justice system in Utah public schools. In 2007, Justice Durham received the William H. Rehnquist Award for Judicial Excellence from the National Center for the Arts. She has served on the Section's Council since 2004.

## **House of Delegates Representative**

### **Election to Three-year Term**

**Pauline Schneider** is a partner in the Washington, D.C. office of Orrick, Herrington & Sutcliffe LLP where she practices primarily in the area of public finance. Prior to joining Orrick, Ms. Schneider practiced public finance at Hunton & Williams LLP for 21 years. Ms. Schneider holds a B.A. from Glassboro State College, an M.A. in urban studies from Howard University and a J.D. from Yale Law School.

Ms. Schneider is a member of the National Association of Bond Lawyers and is a former member of the Board of National Association of Securities Professionals. She served as both secretary and president of the District of Columbia Bar and was a member of its Board of Governors. She is a past Chair of the Council of

the Section of Legal Education and Admissions to the Bar and a former chair of the Section's Accreditation Committee. She is also a former member of the ABA Board of Governors where she chaired its Executive Compensation Committee as well as serving as a member of the ABA Nominating Committee, the Standing Committee on the Federal Judiciary, and chair of the Standing Committee on Election Law and the Accreditation Committee. In 1999, Ms. Schneider received the ABA's Margaret Brent Women Lawyers of Achievement Award.

#### **At-Large Council Member Nominees**

#### **Re-election to Three-Year Terms**

**Honorable Charles Wilson** is a judge in the U.S. Court of Appeals in Tampa, Florida. In 1999, President Bill Clinton appointed him to the U.S. Court of Appeals for the 11th Circuit. He earned a B.A. and a J.D. from Notre Dame Law School. After a clerkship with Judge Joseph Hatchett of the U.S. Court of Appeals for the 5th Circuit, Judge Wilson practiced law for five years in Tampa. Subsequently, he was a County Judge in Florida, an U.S. Magistrate Judge in the Middle District in Florida, and a U.S. Attorney

for the Middle District in Florida. Judge Wilson is a member of the Advisory Council of the University of Notre Dame Law School, the American Inns of Court, and the American Law Institute. He currently serves on the Section's Accreditation Committee.

**J. Martin Burke** served as dean of the University of Montana School of Law from 1988 through 1993. Currently, Professor Burke teaches Federal Tax, Taxation of Property Transactions, Taxation of Business Organizations, Federal Estate and Gift Tax, and Exempt Organizations at Montana and has been a visiting faculty member in the graduate tax programs at New York University, the University of Florida, and the University of Washington. He holds a J.D. from the University of Montana School of Law and an LL.M. from New York University School of Law. Professor Burke is the author of two books: *Taxation of Individual Income* and *Modern Estate Planning*. His Section activities include serving on the Accreditation Committee from 1996 to 2002, serving as chair in 2001-2002; the Standards Review Committee from 2002 to 2005, serving as chair in 2004-2005; and on the Task Force on Accreditation

Processes from 2001 to 2003. Professor Burke is a current member of the Section's Council.

**Martha Craig Daughtrey** was the first woman appointed to the United States Court of Appeals for the 6th Circuit, a position she has held since 1993. Previously, she served as a judge on the Tennessee Court of Criminal Appeals and as an associate justice on the Tennessee Supreme Court. Judge Daughtrey was also the first woman on the faculty at Vanderbilt University Law School and the first woman assistant U.S. attorney in Nashville. She earned both a B.A. and a J.D. from Vanderbilt University, where she was named to Phi Beta Kappa and the Order of the Coif. In 2003, she was awarded the ABA's Margaret Brent Women Lawyers of Achievement Award. She was the first woman chair of the ABA's Judicial Division and has served on the Section's Standards Review Committee. Judge Daughtrey has been a Council member since 2005.

**Robert Dinerstein** is professor of law at American University Washington College of Law, specializing in the Americans with Disabilities Act and the rights of people with intellectual disabilities and mental illness, homelessness, civil rights, criminal justice,

## **Bar Exam Passage Conference**



### **How to Improve Bar Passage Rates**

October 16-18, 2008

Renaissance Chicago O'Hare Suites Hotel

Register online at [www.abanet.org/legaled](http://www.abanet.org/legaled).

*Sponsored by ABA Section of Legal Education and Admissions to the Bar and the Law School Admission Council*

lawyer-client issues and clinical legal education. Professor Dinerstein was the law school's associate dean for academic affairs from 1997 to 2004 and directed the clinical program from 1988 to 1996. He was a member of the Clinton transition team in 1992. Before joining American University, Dinerstein worked as an attorney in the U.S. Department of Justice's Civil Rights Division, Special Litigation Section. He has written extensively on clinical legal education and disability rights, and is coauthor and coeditor of *A Guide to Consent* (American Association on Mental Retardation, 1999). Professor Dinerstein has served on the Section's Standards Review Committee and has been a member of the Council since 2006.

**John O'Brien** has been dean of New England School of Law since 1988. From 1977 to 1985, Dean O'Brien was a senior attorney in the Office of the Chief Counsel of the Internal Revenue Services. In 1985, he joined the faculty of New England School of Law, teaching Constitutional Law and Federal Income Taxation. He served as associate dean for two years before being named dean. Dean O'Brien earned a B.A. from Manhattan College, a J.D. from New England School of Law, and an LL.M. in taxation from Boston University School of Law. He is admitted to practice in Massachusetts, the United States Tax Court, and the United States Supreme Court. Dean O'Brien has served as chair of both the Section's Accreditation Committee and the Independent Law School Forum. He has served on the Council since 2005.

#### **Public Member Nominees (Three-Year Term)**

**Marjorie Speers** is president and CEO of the Association for the Accreditation of Human

Research Protection Programs, Inc. (AAHRPP). Before joining AAHRPP in 2001, she was a senior consultant with the National Bioethics Advisory Commission, deputy associate director for science at the Centers for Disease Control (CDC), and also held several positions in the CDC's Division of Chronic Disease Control and Community Intervention. From 1984 to 1987, Ms. Speers was an assistant professor in the department of preventive medicine and community health at the University of Texas in Galveston, and was an instructor at the University of Connecticut from 1981 to 1983. She has written extensively in the fields of human research and accreditation. Ms. Speers earned a B.A. from Dickinson College, and master's degrees in psychology and psychology/epidemiology from Yale University.

#### **(Two-year term to fill vacancy left by Rebecca Ceperley)**

**Edward N. Tucker** is a senior director with the accounting firm of Ellin & Tucker, Chartered. He has more than 40 years of experience with the firm as a certified public accountant (CPA), specializing in management advisory services, particularly mergers, acquisitions, divestitures, strategic planning, human resources, real estate development, dispute resolution, investment, syndication, business valuation, and litigation support. Mr. Tucker earned a bachelor of science degree in business administration from the University of Maryland and received the designation of CPA in 1963. In addition, Mr. Tucker holds the Accredited in Business Valuation (ABV) credential awarded by the American Institute of Certified Public Accountants. He is active in numerous professional and civic organizations including the American Institute of Certified

Public Accountants, the Maryland Association of Certified Public Accountants (MICPEL), the Suburban Club of Baltimore County, and the Lancers Greater Baltimore Walk for the Homeless, and is a faculty member of the MICPEL Business Law Institute and the Judicial Institute of Maryland. Mr. Tucker served on the Section's Accreditation Committee from 2001 to 2007.

#### **Law Student Division Member**

**Daniel R. Theis** is a first-year law student at Harvard Law School where he is the founder and president of the Harvard Law School Student Bar Association and senior editor of the *Journal of Law and Public Policy*. He graduated *magna cum laude* and Phi Beta Kappa with a B.A. from Yale University. While at Yale, Mr. Theis headed the Yale Political Union and the Tory Party debating society, and was a volunteer music teacher.

#### **2007-2008 Nominating Committee**

Chair: Steven R. Smith, Dean, California Western School of Law  
Honorable Martha Craig Daughtrey, U.S. Court of Appeals for the 6th Circuit  
Honorable Elizabeth B. Lacy, Supreme Court of Virginia  
Jeffrey E. Lewis, Dean, Saint Louis University School of Law  
Leo Martinez, Professor of Law, University of California-Hastings College of Law  
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William R. Rakes, Esq.; Gentry Locke Rakes & Moore, LLP  
Edward N. Tucker, CPA/ABV, Ellin & Tucker, Chartered  
Barry Vickrey, Dean, University of South Dakota School of Law  
Paulette J. Williams, Associate Professor of Law, University of Tennessee College of Law 🏠

# Provisional Accreditation Granted to Drexel University Earle Mack College of Law

**D**rexel University Earle Mack College of Law received provisional accreditation at the February 2008 meeting of the Council of the Section of Legal Education and Admissions to the Bar. The College of Law is affiliated with Drexel University, a privately controlled, non-sectarian, co-educational institution founded in 1891. The law school is located on the university campus in Philadelphia. Concentrations include intellectual property, health law, and entrepreneurial business.

The university's noted co-operative educational program is also an integral part of the law school's program, which offers placements in more than 100 law firms, businesses, the courts, and public-interest organizations. Students enter the co-op program after their first year and perform 20 hours of work per week. Drexel also requires students to complete 50 hours of pro bono work.

Planning for the law school began in 2002 with a stated mission to educate students to become knowledgeable, skilled and



Drexel University Earle Mack College of Law

caring practitioners. Through the co-op program, the school aims to fulfill this mission by teaching students to be reflective, self-directed and ethical lawyers and by assisting them in the development of professional knowledge and skills by integrating their classroom learning with their

hands-on field experience.

Drexel's first class of 180 entered in August 2006; the law school currently has 278 students. The 24 full-time faculty, 13 adjunct and visiting faculty, and 39 staff members are headed by Dean Roger J. Dennis [▲](#)

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## UPCOMING CONFERENCES

**June 12-15, 2008**

### **Associate Deans' Conference**

The Changing Role of the Associate Dean  
Inverness Hotel • Englewood, Colorado

**October 16-18, 2008**

### **Bar Exam Passage Conference**

How to Improve Bar Passage Rates  
Renaissance Chicago O'Hare Suites Hotel

**March 12-15, 2009**

### **Brick, Bytes and Continuous Renovation**

Philadelphia, Pennsylvania

**May 26-29, 2009**

### **Law School Development Conference**

Jackson Hole, Wyoming

American Bar Association  
Section of Legal Education and Admissions to the Bar  
**2008 Annual Meeting**  
New York, New York • August 7-10, 2008

The Section's portion of the 130th ABA Annual Meeting will take place August 7-10 in New York. Headquarters for the Section is the InterContinental/Barclay Hotel, 111 E. 48th Street.



## Section Schedule At-A-Glance

### Thursday, August 7

- |                     |   |
|---------------------|---|
| 7:00 a.m.-6:00 p.m. | Section Office                            |
| 7:30 a.m.-5:00 p.m. | Section Council Meeting-Executive Session |
| 5:30 p.m.-7:00 p.m. | ABA Equalitea Tea/ Reception/Rally*       |
| 6:00 p.m.-9:30 p.m. | Chairperson's Dinner (Invitation Only)    |

### Friday August 8

- |                                     |   |
|-------------------------------------|---|
| 7:00 a.m.-6:00 p.m.                 | Section Office  |
| 7:30 a.m.-5:00 p.m.                 | Council Meeting— Open Session   |
| 10:30 a.m.-12:30 p.m. (Grand Hyatt) | Section of Legal Education/ Section of Business Law Program: Law Students and Practitioners |

### Friday August 8, con't

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|---------------------|--|
| 5:30 p.m.-7:00 p.m. | Kutak Award Presentation and Reception |
|---------------------|--|

### Saturday, August 9

- |                       |  |
|-----------------------|--|
| 7:00 a.m.- 6:00 p.m.  | Section Office   |
| 7:30 a.m.- 9:30 a.m.  | ABA/AALS/ LSAC Deans Breakfast   |
| 10:00 a.m.-11:30 a.m. | Section Program: Curricula Changes in Light of Carnegie and Best Practices |
| 11:45 a.m.-12:15 p.m. | Annual Section Business Meeting  |

## Section Programs

### Law Students and Practitioners: Students Showing What They Know and Practitioners Teaching What They Know

Co-sponsored by the Communication Skills Committee of the Section of Legal Education and Admissions to the Bar and the Education Committee of the Section of Business Law, this program will present new ways for students to demonstrate their skills during the interview process and explore how practitioners can engage in the law school education process.

### Curricula Changes in Light of Carnegie and Best Practices

In the year since the publication of *Educating Lawyers: Preparation for the Profession of Law* (The Carnegie Foundation for the Advancement of Teachers, 2007) and *Best Practices for Legal Education* (Clinical Legal Education Association, 2007), several law schools have launched innovative experiential programs of study. Hear from a panel of law school deans, including Rodney Smolla from Washington and Lee University, Edward Rubin from Vanderbilt University, Lisa Kloppenberg from the University of Dayton, and Raymond Pierce from North Carolina Central University, about how their schools are implementing some of the recommendations put forth in these two studies.

### \*Equalitea

Cosponsored with the ABA Commission on Women in the Profession, the Equalitea marks the conclusion of the ABA Day of Equality. It celebrates the accomplishments of the Commission over the past 20 years, and issues a call to action to achieve full equality for women in the profession. For more information on the ABA Day of Equality, visit [www.abanet.org/women/dayofequality.html](http://www.abanet.org/women/dayofequality.html). The Equalitea takes place at the Hilton New York, West Ballroom, 3rd floor. Admission is free.

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## INTERPRETATION 301-6 ADOPTED

*Continued from page 1*

jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.

B. A school shall be out of compliance with the bar passage portion of 301(a) if it is unable to demonstrate that it meets the requirements of paragraph A (1) or (2).

C. A school found out of compliance under paragraph B and that has not been able to come into compliance within the two year period specified in Rule 13(b) of the *Rules of Procedure for Approval of Law Schools* may seek to demonstrate good cause for extending the period the school has to demonstrate compliance by submitting evidence of:

(i) The school's trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school's favor, a declining or flat trend against it.

(ii) The length of time the school's bar passage rates have been below the first-time and ultimate rates established in paragraph A: a shorter time period will be considered in the school's favor, a longer period against it.

(iii) Actions by the school to address bar passage, particularly the school's academic rigor and the demonstrated value and effectiveness of the school's academic support and bar preparation programs: value-added, effective, sustained and

pervasive actions to address bar passage problems will be considered in the school's favor; ineffective or only marginally effective programs or limited action by the school against it.

(iv) Efforts by the school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the school will be considered in the school's favor; ineffective or limited efforts by the school against it.

(v) Efforts by the school to provide broader access to legal education while maintaining academic rigor: sustained meaningful efforts will be viewed in the school's favor; intermittent or limited efforts against it.

(vi) The demonstrated likelihood that the school's students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school's favor, providing the school has undertaken counseling and other appropriate efforts to retain its well-performing students.

(vii) Temporary circumstances beyond the control of the school, but which the school is addressing: for example, a natural disaster that disrupts the school's operations or a significant increase in the standard for passing the relevant bar examination(s).

(viii) Other factors, consistent with a school's demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school's efforts to improve them.

## Commentary on Interpretation 301-6

*(Commentary approved by the Council of the Section of Legal Education and Admissions to the Bar, February 2008.)*

Proposed Interpretation 301-6 establishes *several* alternatives under which a law school can demonstrate compliance with Standard 301(a) as it relates to bar passage. Compliance may be demonstrated under *any* of these alternatives.

### **A. Demonstrating Compliance with 301-6(A)(1)(a) and (b)**

The first listed alternative for demonstrating compliance focuses on *repeat-takers*, within a five-year look-back period, for purposes of establishing compliance. In demonstrating compliance under (A)(1)(a) and (b), the school must first account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took

the bar exam and proceeding in descending order of frequency. Under this alternative a school can demonstrate compliance with the bar exam passage portion of Standard 301(a) by demonstrating *either*:

- that for the most recently completed five *calendar* years, 75 percent or more of the school's students who graduated during this period and sat for a bar exam, passed a bar exam [301-6(A)(1)(a)];

OR

- by showing that for each of at least three of those same five calendar years, 75 percent or more of the school's students who graduated during those years and sat for a bar exam, passed a bar exam. [301-6(A)(1)(b)].

Again, under both alternatives, the school must first report bar passage results from as many jurisdictions as necessary to account for a cohort of at least 70 percent of its graduates and then, within that cohort, pass at a rate of 75 percent or better over the entire five calendar years or 75 percent for each of at least three of those years. In addition, under both of these alternatives, the look-back period is the five most recently completed calendar years. Thus, in a matter before the Accreditation Committee in 2008, the look-back period would be 2003-2007.

As noted above, for purposes of demonstrating compliance under 301-6(A)(1), the performance of *repeat-takers* of the bar exam is taken into account. This alternative is responsive to third-party comments that noted that bar exam pass rates for many of their students increase significantly on the second (or, possibly, subsequent) testing. To avail itself of the alternative methods for demonstrating compliance in 301-6(A)(1), a law school would be required to "track" its graduates and provide reliable data indicating a graduate's bar exam pass status. Schools must make their best efforts to locate and provide reliable data on the bar pass status of their graduates, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency until *at least* 70 percent of the school's graduates in the relevant time period are accounted for. A school may provide data on additional jurisdictions (i.e., beyond 70 percent) but must continue to do so from highest number of takers to lowest number of takers. (For example, suppose in reporting 70 percent of takers a school is not in compliance but by showing data on 80 percent of takers it would be in compliance. The school may do this as long as the additional jurisdictions included are a continuation of

the descending order of frequency of takers.) Schools must report on all students who make up the "at least 70 percent" cohort (even those for whom their pass status is unknown). Once a jurisdiction is included in the computation for a given year, all of the school's graduates taking the bar in that jurisdiction in that year must be reported, even if a student's status is unknown and even if it results in the school reporting on more than 70 percent of its graduates taking a bar exam. A cohort of 70 percent takes into account the difficulties, expressed by several commentators, a school may experience in locating all of its graduates over a period of years, and in getting appropriate data from bar admissions authorities. Note that the Section is working actively with the National Conference of Bar Examiners and state Supreme Courts to develop a mechanism for improved reporting of bar passage data. Pending the implementation of such a mechanism, schools, as noted above, must make their best efforts to locate and provide reliable data on the bar pass status of their graduates when demonstrating compliance under 301-6.

The five-year look-back is a rolling time frame for both (A)(1)(a) and (A)(1)(b)—e.g., if a school came before the Accreditation Committee in 2008, the time frame would be 2003-2007; if the school was not in compliance with 301(a) at that time, and came before the Committee again in 2009, the look-back period for demonstrating compliance under 301-6(A) would be 2004-2008, and so on. Note that in reaching the 70 percent cohort under 301-6(A)(1), "non-persisters" (i.e., those who took a bar examination once and failed but did not take a bar examination again in *any* jurisdiction over the next two examination opportunities) are not counted; however, non-persisters must be identified and tracked separately by the school. Also, if a graduate elects never to sit for a bar examination, he or she is not counted in computing the school's pass rate (under (A)(1) or (2)).

#### **B. Demonstrating Compliance with Standard 301-6(A)(2)**

The next alternative [301-6(A)(2)] for demonstrating compliance with the bar exam passage portion of Standard 301(a) focuses on *annual* (i.e., combined February and July) *first-time* bar pass rates. In the case of demonstrating compliance using first-time pass rates, there is one way (discussed below) to demonstrate compliance.

In order to demonstrate compliance under A(2), a school would have to show that in each of at least three of the most recently completed five calendar years, in the jurisdiction(s) that account for at least 70 percent of the school's graduates who take the bar exam for the first time:

- the school's pass rate is not more than 15 points below the first-time bar pass rate for graduates of ABA-approved law schools taking the bar exam in the same jurisdiction(s) in the relevant years.

In demonstrating compliance under section (A)(2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for *at least* 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. Once a jurisdiction is included in the computation for a given year, *all* of the school's graduates taking the bar exam in that jurisdiction for the first time must be reported. As was noted above, a cohort of 70 percent was chosen in response to comments about the difficulties of getting data for 100 percent of a school's graduates, particularly when a graduating class may sit for the bar exam in numerous jurisdictions and the number sitting in many of those jurisdictions may be quite limited. This, too, is being addressed in discussions with NCBE and state Supreme Courts.

When 70 percent or more of a school's graduates take the bar exam in the same jurisdiction, the determination of whether this performance requirement is met is easy to compute. By way of illustration, consider the chart above reflecting hypothetical annual first-time bar exam pass rates from 2002 to 2006, for a school being reviewed in 2007 where 70 percent or more of its graduates sit for the exam in a single jurisdiction.

In each of the three years marked by asterisks,

Year	School's Annual 1st Time	ABA 1st Time	Rate Difference
2002	73	79	(-6)*
2003	63	81	(-18)
2004	70	77	(-7)*
2005	67	84	(-17)
2006	71	78	(-7)*

the school's annual (combined February/July of the same year) first-time bar pass rate is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar exam in the same jurisdiction. Hence, under 301-6(A)(2) the school would be in compliance with the bar pass portion of 301(a).

For some schools, however, graduates may sit for the bar exam for the first time in a variety of jurisdictions, and the percent taking the bar exam in any one jurisdiction may be less than 70 percent of the cohort. In this situation 301-6(A)(2) requires the school to report first-time bar passage data from as many jurisdictions as necessary to account for *at least* 70 percent of its graduates, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. The *weighted average* of the results in each jurisdiction will be applied to determine whether a school complies with the Standard. The following illustrations demonstrate how 301-6(A)(2) would work in this circumstance.

*Illustration 1:* Assume a school had 250 graduates in a given year who took the bar exam for the first

ILLUSTRATION 1:		Year = 2006		
	State A	State B	State C	Weighted Average
Weighted average				
# takers from school	90	45	45	
% takers from school	50	25	25	
# passers from school	81	27	18	
Pass rate for school	90%	60%	40%	
Weighted average for school	45%	15%	10%	70%
ABA pass rate for states	90%	80%	60%	
Weighted average for states	45%	20%	15%	80%

<b>ILLUSTRATION 2:</b>		<b>Year = 2005</b>		
	State A	State B	Weighted Average	
# takers from school	50	20		
# passers from school	40	8		
Pass rate for school	80%	40%		
Weighted average for school	57.1%	11.4%	68.6%	
ABA pass rate for states	80%	70%		
Weighted average for states	57.1%	20%	77.1	

time, 90 in State A, 45 in State B, 45 in State C, 30 in State D, and the other 40 scattered in multiple jurisdictions. The 90 from State A represent 36 percent of the graduates. The additional 45 each from States B and C would bring the number of graduates taking the bar in these three states to 72 percent of the graduates (180 of 250, or 72 percent). Thus, this school would have to report the bar exam pass data for its graduates taking the exam in States A, B, and C, but not for those taking the bar exam in State D or other jurisdictions.

In order to measure compliance with the performance requirement of 301-6(A)(2), the Interpretation requires a comparison of the weighted average first-time pass rate for the 180 graduates of this school who took the bar exam in States A, B, and C, with the comparable weighted average of the overall first-time pass rate for graduates of ABA-approved law schools in the same three states. The table for 2006 illustrates how the weighted averages for the school and for the states would be calculated.

The weighted average for the school is calculated by taking the pass rate for the school in the three states and weighting it in proportion to the number of students taking the bar exam in the three states. Here, of the 180 graduates taking the bar exam in these three states, 50 percent took the exam in State A, 25 percent took the exam in State B, and 25 percent took the exam in State C. So, by multiplying the pass rate for the school in each state by its proportional weight, and adding those results together, one arrives at a weighted average pass rate of 70 percent for graduates of the school who took the bar exam in these three states.

The school can demonstrate compliance under 301-6(A)(2) by showing that it is no more than 15 points below the overall first-time taker pass rates for graduates of ABA-approved law schools in these

states (i.e., in the example, states A, B and C) using the same weighted average formula. Using the hypothetical data in the example for 2006, in order to compare the 70 percent pass rate for the school's graduates with the performance of all first-time takers from ABA-approved law schools in these three states, one must take the overall first-time taker pass rates for graduates of ABA-approved schools in these states and calculate a weighted average, based on the same weighting applied to determine the school's weighted average pass rate. So, by multiplying the overall pass rate in each state by the proportional weight determined by looking at the number of the school's graduates who took the exam in each state (here, 50 percent, 25 percent, and 25 percent), and adding those results together, one arrives at a weighted average pass rate of 80 percent for all first-time takers from ABA-approved law schools in these three states.

Since, for this hypothetical year, the school's weighted average for its graduates taking the bar in these three states is not more than 15 points below the first-time ABA weighted average for these same states, the performance requirement would be met for this year. Compliance with 301-6(A)(2) would be determined by doing a similar calculation for the most recently completed five calendar years, to ascertain whether the school could meet the "not more than 15 points below" standard in each of at least three of those five years.

*Illustration 2:* Assume a school had 100 graduates in a given year who took the bar exam for the first time in several jurisdictions, 50 in State A, 20 in State B, and the other 30 in several other states (none with more than 20, or that state would be number two on the list). The 50 from State A represent 50 percent of the graduates. The additional 20 from State B bring the number of graduates taking

the bar exam in these two states to 70 percent of the graduates. Thus, this school would have to report the bar pass data for its graduates taking the bar exam in States A and B, but not those taking the bar exam in other jurisdictions.

Illustration 2 shows the first-time bar pass data for the 2005 graduates of this school in State A and B, and for all takers in States A and B.

The passing rate for graduates of the school in State A is identical to the state-wide passing rate. By comparison, the passing rate for the school in State B is 30 percent below the state-wide passing rate. However, only two in seven graduates of this school who took the bar exam in either of these two states elected to take it in State B. So, the weighted average pass rate for the graduates of this school who took the bar in these two states is 5/7ths (.71430) weighting to the pass rate in State A, and 2/7ths (.28572) weight to the pass rate in State B. And, similarly, when comparing the school's graduates in these two states to the overall performance of test takers in these two states, the pass rate for State A is given 5/7ths weight, and the pass rate for State B is 2/7ths weight. Thus, the weighted average for graduates of this school taking the bar exam in States A and B is 68.6 percent, and the weighted average for all takers in these two states is 77.1 percent.

Since for this hypothetical year, the school's weighted average for its graduates taking the bar in these two states is "no more than 15 points below" the weighted average for these three states, the performance requirement would be met for this year. Again, compliance with 301-6(A)(2) would be determined by doing a similar calculation for the most recent five-year period, to ascertain whether the school could meet the not more than 15 points below standard in each of at least three of those five years.

### **C. Provisional Schools Seeking Full Approval— Application of Interpretation 301-6**

The application of Interpretation 301-6 to provisionally approved schools seeking full approval tracks that of fully approved schools: the cohort size (70 percent) is the same, the first-time pass rate (not more than 15 points below . . .) is the same, and the ultimate pass rate (at least 75 percent . . .) is the same. The one area where there is some difference in application is with respect to the time periods covered when a provisional school applies for full approval. Thus, when a provisionally approved school applies for full approval, the application of 301-6 necessarily takes into account the fewer number of bar exam sittings these schools have in order to demonstrate full compliance with the bar passage portion of Standard 301(a).

Interpretation 301-6 sets out three different ways for a school to demonstrate compliance with the bar passage portion of Standard 301(a). In applying for full approval, a provisionally approved school may demonstrate compliance under *any* of the three tests. As applied to provisionally approved schools seeking full approval, the three tests would work as follows:

- 1) That for students who graduated from the law school *since provisional approval was received*, at least 75 percent of these graduates who sat for a bar examination have passed a bar examination prior to the time in which the school is considered by the Council for full approval. (301-6(A)(1)(a)).

OR

- 2) That in each of at least *two* calendar years since the school received provisional approval, at least 75 percent of the graduates who took a bar examination in those same years have passed a bar examination prior to the time in which the school is considered by the Council for full approval. (301-6(A)(1)(b)).

In demonstrating compliance under either of the above requirements, the school must report bar passage results from as many jurisdictions as necessary to account for at least 70% of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. Non-persisters (i.e., those who took a bar examination once and failed but did not take the bar examination again in *any* jurisdiction over the next two examination opportunities) must be identified as such but are not factored in when determining compliance under either of the two tests above.

OR

- 3) In each of at least *two* calendar years since the school received provisional approval, the school's annual *first-time* bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions. (301-6(A)(2)).

To demonstrate compliance under this test, the school must report first-time bar passage data from as many jurisdictions as necessary

to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance. (The application of weighted average is discussed elsewhere in the Commentary.)

Under all of the above tests, only those who graduated *after* the school received provisional approval are counted. Thus, if a school received provisional approval in February 2008, only those who graduated and took a bar exam after that date would be tracked and reported by the school. In determining “calendar” years, if the first opportunity for a school’s graduates to take the bar from a provisionally approved school is in July, then that would count as the first calendar year. Subsequent calendar years would, of course, include the entire January–December period. Note that schools that receive full approval undergo a site visit three years after this approval and at that point they must meet the five-year look-back as set out in 301-6.

#### **D. Noncompliance Under 301-6 (B) and (C)**

A school that is unable to demonstrate compliance under any of the tests set out in 301-6 (A), after having had an opportunity to do so, will be found out of compliance with Standard 301(a). If a school is found to be out of compliance with Standard 301(a) (or any other Standard), Rule 13(b) of the *Rules of Procedure for the Approval of Law Schools* provides that a school has two years to demonstrate compliance unless the Accreditation Committee or Council “extends the period for demonstrating compliance for good cause shown.” This two-year limitation is mandated by DOE regulations (34 CFR 602.20). If a school fails to demonstrate compliance with a Standard within two years (unless the time for achieving compliance is extended for good cause) the Accreditation Committee must recommend to the Council that the school be removed from the list of accredited law schools.

If a school is found out of compliance for two years, 301-6 (C) provides that a school may seek to demonstrate good cause for extending the period for coming into compliance. 301-6 (C) (i – viii) provide guidance to schools as to how they may be able to demonstrate good cause. Note that a good cause extension is not automatic nor is it indefinite in its duration.

301-6 (C) sets out the types of evidence the school may use to seek to demonstrate “good cause” for extension of time to come into compliance with the bar passage portion of Standard 301(a). Examples of this evidence include: the trend (up or down) in the school’s bar passage rates; the length of time the school’s bar passage rate has been marginal or poor; effectiveness and value of the school’s academic support and bar preparation programs; and efforts by the school to facilitate bar passage of its graduates who were unsuccessful in their attempts to pass the bar in previous attempts. This last example—the school’s efforts to facilitate bar passage of its graduates who were unsuccessful in previous attempts—warrants additional comment. Schools that rely on second or subsequent bar pass rates in order to demonstrate compliance with the bar pass portion of Standard 301(a) must not only track their graduates but they may also be asked to provide information regarding post-graduation support programs they offer to their graduates who are unsuccessful in their first attempt to pass the bar.

While not part of proposed Interpretation 301-6, Rule 27 of the *Rules of Procedure for Approval of Law Schools* permits the Accreditation Committee and Council to require a school to report back on its bar passage status. Thus, if a school were otherwise in compliance but was near noncompliance or had shown a pattern of decline in bar exam passage results, the Accreditation Committee or Council may require the school to report back so that the school’s continued compliance can be tracked.

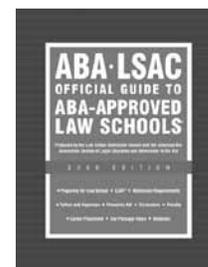
This Interpretation will be reviewed following issuance of the report from the Special Committee on Outcome Measures and assessment of that report by the Council. In addition, the Council will direct the Accreditation Committee to report by February 2009 on the impact of 301-6 on law schools. 🏠

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### **The Official Guide to ABA-Approved Law Schools, 2009 edition**

The *Official Guide* is published in cooperation with the Law School Admission Council and pursuant to the Section’s Standard 509, modeled after U.S. Department of Education regulations requiring law schools to “publish basic consumer information in a fair and accurate manner reflective of actual practice.” Categories include admission data, tuition, fees, living costs, financial aid, enrollment data, graduation rates, composition and number of faculty and administrators, curricular offerings, library resources, physical facilities, placement rates, bar passage data, and post-JD programs.

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## STRICKLAND TO RECEIVE 2008 KUTAK AWARD

*Continued from page 1*

Professor Strickland served as dean at the University of Oregon School of Law from 1997 to 2002. Previously, he served as dean and professor at the Oklahoma City University School of Law, professor at the University of Wisconsin Law School, dean and professor at Southern Illinois University School of Law, and John W. Shleppey Research Professor of Law and History at the University of Tulsa. From 1990 to 1995, Strickland was the director of American Indian Law and Policy Center at the University of Oklahoma. Strickland has written and edited more than 35 books and is frequently cited by courts and scholars for his work as revision editor of the *Handbook of Federal Indian Law*. He has served as president of the Association of American Law Schools, as chair of the Law School Admission Council, as a

member of the ABA Task Force on Accreditation Processes and is a member of the Section's Council.

Robert J. Kutak was a founding partner of the national law firm of Kutak Rock, LLP. Kutak, who passed away in 1983, dedicated his career to public service and the improvement of legal education and the legal profession. The Section of Legal Education and Admissions to the Bar and Kutak Rock established the Robert J. Kutak Award in 1984. The award is given annually to an individual who has contributed significantly toward increased cooperation between legal education, the practicing bar, and the judiciary.

Professor Strickland will receive his award during the ABA Annual Meeting at the Kutak Award Reception on Friday, August 8, at 5:30 p.m. at the Inter-Continental/Barclay Hotel in New York. 🏠

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# CALENDAR

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## ■ ■ ■ JUNE 2008

- 7-8** Council Meeting • Seattle, Washington
- 12-15** Associate Deans Conference  
Englewood, Colorado
- 25-28** Accreditation Committee Meeting  
Boston, Massachusetts

## ■ ■ ■ AUGUST 2008

- 7-12** ABA Annual Meeting • New York, New York
  - 7** Chairperson's Dinner
  - 7-8** Council Meeting
  - 8** Kutak Award Reception
  - 9** Deans' Breakfast,  
Section Annual Meeting

## ■ ■ ■ SEPTEMBER 2008

- 12** ABA Site Chairs Workshop  
Rosemont, Illinois
- 25-27** Accreditation Committee Orientation  
and Retreat • Rosemont, Illinois
- 27-28** Council Orientation and Retreat  
Rosemont, Illinois

## ■ ■ ■ OCTOBER 2008

- 16-18** Bar Exam Passage Conference  
Rosemont, Illinois
- 23-25** Accreditation Committee Meeting  
Napa Valley, California

## ■ ■ ■ DECEMBER 2008

- 12-13** Council Meeting • New Orleans, Louisiana

## ■ ■ ■ JANUARY 2009

- 22-24** Accreditation Committee Meeting  
Los Angeles, California
- 26-27** Deans' Workshop at Conference of  
Chief Justices • Scottsdale, Arizona

## ■ ■ ■ FEBRUARY 2009

- 11-17** ABA Midyear Meeting  
Boston, Massachusetts
- 13-14** Council Meeting

## ■ ■ ■ MARCH 2009

- 12-15** Facilities Conference: Bricks, Bytes &  
Renovation • Philadelphia, Pennsylvania

# We Bid Farewell to David Rosenlieb

**A**fter six years as the Section's Data Specialist, David Rosenlieb is leaving his position to pursue a new opportunity in San Francisco. As an integral part of the Section's role as the national accrediting agency for programs leading to the J.D. degree, the data specialist administers the annual questionnaire of all ABA-approved law schools, produces statistical reports on legal education and plays a major role in the annual publication of the *ABA-LSAC Official Guide to ABA-Approved Law Schools*. Soon after joining the staff



in 2002, David tackled the conversion of the annual questionnaire, the site evaluation questionnaire, and the foreign summer program annual questionnaire from the Foxpro-based client server application to a Web-based application, which streamlined the submission process, allowed school-managed access, and provided the ability to view statistics from the previous year. Working with the volunteer members of the Questionnaire Committee, David completed regular updates to the questionnaire to keep pace with changes in the Standards for Approval of Law Schools and significantly improved questionnaire training sessions and instructions for law schools. We wish David all the best and thank him for his many contributions to the work of the Section and the ABA. 🏠

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