

SYLLABUS

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



Message from the Chair

By Jerome C. Haffer, Phelps Dunbar LLP
Chair, Section of Legal Education and Admissions to the Bar

In 2008, American legal education crossed an important milestone with the addition of the 200th law school to the list of law schools approved by the American Bar Association. Graduation from an ABA-approved law school continues to represent the gold standard not only for



sitting for the bar but also for preparation for a career in law practice in the United States and around the world. ABA-approved law schools are the primary gateway to the legal

profession. Consistent with that role, the ABA's Standards for Approval of Law Schools reflect the critical goals and values set forth in their Preamble, among which are diversity; ethical responsibility; a sound program of legal education encompassing legal theory, practical skills, communications and problem solving; and an understanding of the law as a public profession that serves the entire community.

During 2009-2010, the Section on Legal Education and

Admissions to the Bar will focus on several major developments.

Review of the Standards for Approval of Law Schools

The role of the Section on Legal Education and Admissions to the Bar is to keep American legal education the best and most accessible and diverse in the world. This year, the Section's Standards Review Committee will continue its review of the Standards for Approval of Law Schools and the associated Rules of Procedure. A principal goal will be the incorporation of more outcome measures, transparency and consistency into the Standards. The review of the Standards will consider recommendations from the seminal report on legal education and the legal profession sponsored by the Carnegie Foundation, *Educating Lawyers: Preparation for the Profession of Law*. Upon adoption, the revised Standards will be implemented by the Section's Accreditation Committee composed of judges, practicing lawyers, law teachers and public members.

Interim reports from the Standards Review Committee, including drafts of proposed changes to the Standards, Interpretations

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Florida A&M University College of Law and Western State University College of Law Granted Full ABA Approval

By Mary McNulty, Editor

At the July 30, 2009, meeting of the Council of the Section of Legal Education and Admissions to the Bar, Florida A&M University College of Law and Western State University College of Law were granted full approval.

Florida A&M University College of Law

In the spring of 2000, the Florida legislature approved a bill creating and funding the Florida A&M

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From the CONSULTANT

By Hulett H. Askew, Consultant on Legal Education

H1N1 Flu and Standard 304

The Consultant's Office is monitoring the H1N1 flu situation and will be developing policies and processes for schools to follow as quickly as necessary. For now, I am providing a link (www.cdc.gov/h1n1flu/schools/) to the guidance provided by the CDC for institutions of higher education and encourage you to consult and follow the guidance

to the extent it applies to your school. In the CDC materials, there is advice about educating individual students who miss substantial time as well as what to do in case of a school closure.

We do not endorse any particular approach, but you should be aware of this guidance. In addition, Associate Dean Aric Short of Texas Wesleyan has created a "wiki" that aggregates school materials on the subject and provides a platform for possible

collaborative drafting. You can access the wiki by going to <http://lawdeansflu.wetpaint.com>.

At this stage, I can say the following:

1. If a student misses classes, but the school does not close, that situation should be covered by your current policies and procedures. The ABA Standards most likely will not be implicated in such a situation.

2. If the school closes (either by university mandate, government requirement or board decision), the Standards could be implicated depending on the length of closure [see Standards 304(a) and (b)]. Hopefully the school will be able to make up the lost class time in the weeks or months remaining in the semester or academic year. If this is impossible (lack of time remaining, other intervening factors, etc.), then we anticipate implementing an "emergency variance" procedure pursuant to Standard 802. This was done after Hurricane Katrina and worked well for the schools affected. The school

affected would submit a variance request to the Consultant's Office and be asked to provide all relevant information. The variance request would be processed as quickly as feasible and appropriate. The Consultant's Office will be working over the next several weeks on a template for that submission, specifically delineating the kinds of information the school would be expected to provide. I can imagine that at a minimum the Accreditation Committee and Council would want to know the reasons for the closure, the reason why the classes cannot be made up and the steps the school has taken to ensure the delivery of the full course content for the semester. We will be in further communication once these procedures are put into place.

Our goal is similar to yours—to avoid disruption to the extent possible while respecting the health concerns of students, faculty, staff and the institution. The primary objective will be to get the educational program delivered to all students in a safe and secure environment, and at the same time, to make certain the Standards are followed.

I encourage you to contact the Consultant's Office as soon as it is evident to you that disruption to the school calendar will likely occur. 🏠



UPCOMING CONFERENCES

March 10–12, 2010

Brick, Bytes and Continuous Renovation
Philadelphia, Pennsylvania

May 30–June 1, 2010

New Deans Seminar
Jackson Hole, Wyoming

June 1–4, 2010

Law School Development Conference
Jackson Hole, Wyoming

June 24–27, 2010

Associate Deans Conference
Minneapolis, Minnesota

CHAIRPERSON'S DINNER



Incoming Section Chair Jerry Hafter presents Randy Hertz, 2008-2009 Chair, with a plaque honoring his service to the Section.



Outgoing Council members honored for their service to the Section included (l to r) Peter A. Winograd, Professor Emeritus, University of New Mexico School of Law; Sidney S. Eagles Jr., Esq., Smith Moore LLP; Barry Sullivan, Professor, Loyola University-Chicago, School of Law; and Randy A. Hertz, Professor, New York University Law School.

Randy A. Hertz, 2008-2009 Section Chair, hosted the annual Chairperson's Dinner during the ABA Annual Meeting, on Thursday, July 30, at the University of Chicago's Gleacher Center overlooking the Chicago River. After dinner, incoming Chair Jerry Hafter regaled the dinner guests with well-researched tributes to the outgoing members of the Section Council: Sidney Eagles, Irving Freeman, John Lahey, Gary Munneke, Barry Sullivan, and Peter Winograd. Each received plaques in recognition of their service. Professor Hertz, who remains on the Council in 2009-2010 as immediate past chair, also received a plaque. 🏠

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Striving for More Accurate Statistics for Native Americans in Law School Admissions

By Mary L. Smith, Former Native American Bar Association Delegate to the ABA House of Delegates

Law school administrators and faculty are well aware of pipeline issues that prevent minority students from applying to law school. The issues are complicated, and they do not appear first in high school, but even before grade school. If the pipeline is the front-end of the problem that is restricting the flow of minorities into law school and the legal profession, statistics reflect a back-end check on how well the legal profession has addressed this problem. Many articles have addressed pipeline issues, and the purpose of this article is not to address these issues or to provide a solution to this complicated and multifaceted problem. Rather, this article will address one unique problem with respect to statistics regarding Native American law school applicants and graduates that affect the accuracy of these statistics in certain cases and urge law school administrators and faculty to be cognizant of this issue and to work together to try to ameliorate it.

The National Native American Bar Association (NNABA) shares many concerns with other bar associations of color, such as increasing the number of minority lawyers and judges. There is a large systemic problem, however, that seems to be unique to the American Indian community: providing false information about being Native American on law school applications. While few people would indicate they were Asian-American or African-American on a law school application unless it was a part of their

identity, for some reason there is a level of comfort among some applicants about self-identifying as Native American even though they are not, in fact, Native American. This is particularly disconcerting considering being Native American is not just an ethnic identity, but is an actual citizenship that carries with it a formal tribal enrollment number, not unlike a Social Security number.

Current statistics do not accurately reflect the number of Native Americans who attend or graduate law school. To highlight this issue, one only need compare Native American graduation rates with census data. From 1990-2000, ABA-accredited law schools reported graduating over 2,600 Native Americans.¹ During the same time period, the U.S. Census only reported an increase of just over 200 Native American attorneys (from 1,502 to 1,730).² Even accounting for variables, there is a significant discrepancy between these statistics.

These statistics highlight what many in the Native American legal community have observed on an anecdotal basis for years. Accordingly, in 2007, NNABA joined with the Coalition of Bar Associations of Color (CBAC) and passed a resolution condemning the “large percentage of individuals in law school who identified themselves on their law school application as Native American, [who] were not of Native American heritage and in fact had no affiliation either politically, racially, or culturally with the

Native American community.”³

This article first will discuss the legal status of being considered Native American, which distinguishes Native Americans from other racial and ethnic groups. The article then will discuss Supreme Court jurisprudence on this issue and statistics in the law school context that demonstrate inaccuracies in these statistics. Finally, this article will discuss how NNABA can work with the American Bar Association, Law School Admission Council (LSAC), law school administrators, and faculty to explore the problem and to work to improve the process.

Native American Status Under Federal and Tribal Law⁴

There are over 560 independent Native American tribes still located within the United States. Much like any other nation, each of these Tribes determines the qualifications for its own citizenship through the adoption of constitutions and the enactment of laws. Tribal citizenship, or “membership” (the terms are used interchangeably), is not unlike any other citizenship; with it comes certain rights and responsibilities, including but not limited to the right to vote, the right to own land, the responsibility to serve on juries and to pay tribal taxes.

It is a complex and imperfect story as to how the current format of tribal citizenship came to be. The federal government was instrumental in creating the current structure for its own identification

purposes. During the 1800s, U.S. federal officials engaged in the creation of “tribal rolls” to help the federal government identify the members of particular tribes for the implementation of certain federal treaty and trust responsibilities. In particular, in 1887, with the General Allotment Act (also known as the Dawes Act),⁵ the creation of tribal rolls was hastened in order to determine who was entitled to land allocations for Native Americans.

In 1934, with the passage of the Indian Reorganization Act (IRA),⁶ it was codified that tribal governments had the inherent authority to determine their citizenship (membership), and these standards were to be delineated in the tribe’s constitution.

The Bureau of Indian Affairs at that time formulated a model constitution that included blood quantum requirements and a relationship to the federal “tribal rolls” of the 1800s. Many tribes at that time adopted this model constitution. Some have kept that model, but many have amended it. As a result of this 1934 law, however, each tribe’s constitution, including the citizenship provisions at discussion in this article, are reviewed by and filed with the federal government.

Today, most federal programs, laws and regulations rely on tribal citizenship for the definition of being “Native American” for all federal governmental purposes. For example, the 1978 Indian Child Welfare Act,⁷ which provides for adoption rules, references tribal membership. And, in order to receive federal Indian Health Services and to partake in federal land trust programs, tribal membership also is referenced.

Tribal constitutions provide the requirements for membership. For instance, the Nez Perce Tribal Constitution, Article IV, provides at least two avenues in order to

become a member: (1) a listing on the 1956 Nez Perce Tribal Membership Roll “as corrected by any action of the Secretary of Interior;” or (2) children possessing a minimum of one-fourth degree Nez Perce ancestry with a parent who is a member of the tribe and filing an application before the age of eighteen years . . .⁸

Most federal programs, laws and regulations rely on tribal citizenship for the definition of being “Native American.”

In sum, Native American tribal identity is not some amorphous, ill-defined concept. It is a very concrete citizen requirement, detailed and well-defined in tribal constitutions and laws, and recognized by the federal government.

Supreme Court Recognition of Political Status of Native American Tribal Citizenship

The Supreme Court recognizes the political status of Native American citizenship. In 1974, the U.S. Supreme Court held, in *Morton v. Mancari*,⁹ that individual Indians enjoy their rights not as a race, but as members of a political entity: a federally recognized tribe. In *Mancari*, non-Indian employees of the Bureau of Indian Affairs (BIA) unsuccessfully challenged the Indian preference in hiring and promotion policies.¹⁰ The Supreme Court traced the origins of the Indian preference policy back to 1834 and found that the preference arose from the “Government’s trust obligation toward the Indian tribes; and to reduce the negative effect of having non-Indians administer matters that affect Indian tribal life.”¹¹ The Court went on to hold that the Indian preference policy did not constitute racial

discrimination as it was “not even a ‘racial’ preference.”¹² In the most important pronouncement of the case, the Court explained that the preference applied to members of federally recognized tribes and, therefore, was “political rather than racial in nature.”¹³

In 1978, the Supreme Court again touched on the issue of the inherent political and cultural grounds of tribal membership, in *Santa Clara Pueblo v. Martinez*.¹⁴ In *Martinez*, Julia Martinez charged the Santa Clara Pueblo with gender discrimination because its 1939 ordinance denied Pueblo membership to the children of female members who married outside the tribe, but not to similarly situated children of male members who married non-members.¹⁵ *Martinez* claimed the ordinance violated the Indian Civil Rights Act (ICRA) of 1968,¹⁶ which has the dual goal of protecting persons subject to the authority of tribal governments with most of the basic constitutional rights and of protecting the autonomy of tribal governments to exercise their authority in accordance with their customs and culture.¹⁷

In *Martinez*, the Supreme Court held that tribes were “separate sovereigns pre-existing the [U.S.] Constitution” and, therefore, were not subject to the constitutional restraints placed upon federal and state governments.¹⁸ In reviewing the ICRA, the Court emphasized that Congress had drafted the statute so as “not to intrude needlessly on tribal self-government.”¹⁹ The Court characterized tribal membership decisions as dependent on tribal custom and tradition, leading to the conclusion that tribal courts were the proper forums for review of such matters. In framing tribal membership decisions as central to tribal sovereignty, the Court stated:

A tribe’s right to define its own membership for tribal purposes

has long been recognized as central to its existence as an independent political community. Given the often vast gulf between tribal traditions and those with which federal courts are more intimately familiar, the judiciary should not rush to create causes of action that would intrude on these delicate matters.²⁰

The U.S. Supreme Court recognizes that tribal membership confers a political status. When a person is an enrolled member of a federally recognized tribe, then that person is considered an “Indian” and a tribal citizen under both federal and tribal law.

Application of Federal Law and Supreme Court Jurisprudence to the Law School Admissions Context

As set forth above, being “Native American” is not solely an ethnicity; it is an actual citizenship. As the Supreme Court held in *Morton v. Mancari*, the designation of Native American is a political status similar to individuals who are citizens of states, the United States, or foreign nations. As such, Native Americans are citizens of their tribes.

In general, a tribal government’s constitution outlines eligibility for citizenship, and it is an intensive citizenship enrollment process, usually more stringent than even U.S. citizenship. Citizenship requirements vary from tribe to tribe, but usually include factors such as lineage, place of birth or residence, cultural and linguistic knowledge, and community relationship. Each tribal citizen receives a tribal “enrollment number” much like a Social Security number or passport number.

Honesty in the identification of Native Americans has more than just academic implications; it has broad legal implications. Just as other citizens must qualify

for rights and entitlements, such as residents or citizens of the 50 states receive in-state tuition or vote in local elections, Native American tribal citizens can claim the political identity, participation, and program entitlements only if they have tribal citizenship. For example, one must have tribal citizenship to qualify to vote in tribal elections, own land, or run for elected tribal office.

Citizenship requirements vary from tribe to tribe, but usually include factors such as lineage, place of birth or residence, cultural and linguistic knowledge, and community relationship.

Nonetheless, there are exceptions and variations on this general rule of enrolled tribal citizenship, and many Native American communities include descendants of tribal citizens and non-citizen (or non-enrolled) individuals who are native by ethnicity and active in the community. However, generally the Native community does not consider it appropriate to self-identify as Native American for official academic and legal purposes, if an individual has only a very loose and tenuous affiliation with a very distant, unconfirmed, and unidentifiable Native American ancestor; combined with no current tribal membership or citizenship; and/or no ethnic, cultural, community, or personal affiliation.

Distant relations are appropriately considered a part, and encouraged to be included in, one’s family story and personal ancestry. But distant ancestry is unlikely to be a part of a person’s current ethnic identity, or qualify one for tribal citizenship.

“Box-Checking”

The fraudulent self-identification as Native American on applications for higher education is particularly pervasive among law school applicants. Anecdotally, it is well documented within the Native American legal community that a large percentage of individuals in law school who identified themselves on their law school application as Native American, were not of Native American heritage and have had no affiliation either politically, racially, or culturally with the Native American community. This phenomenon is so pervasive it is commonly understood and referred to within the Native American community as “box-checking,” i.e., law school applicants who blithely check the Native American box without having either a tribal membership or even a current connection to a particular tribal community or the Native American community at large.

Because of this problem, the actual number of Native American law students and lawyers is most likely dramatically less than that as self-reported by ABA-accredited law schools. The 1990 Census report shows 1,502 American Indian lawyers. In 2000, that number increases to 1,730²¹, an increase in American Indian lawyers of only 228 in ten years. That is an overall growth of 15 percent. Nonetheless, during the same time period between 1990 and 2000, ABA-accredited law schools claimed to have graduated approximately 2,610 Native American lawyers.²² Even controlling for a variety of factors, there is a vast disparity between 2,610 and 228.

Ways to Address the Issue of Inaccurate Statistics

The law school admissions process is a highly detailed process. Law schools use the information on law school applications

not only for admissions decisions, but for scholarships and for statistical purposes, among others. Law schools employ a variety of practices in using and verifying the information provided by applicants. The Native American legal community is respectful of the expertise of the individuals involved in the law school admissions context, and it is not NNABA's intent to interfere with that process or to try to impose a burdensome solution on law schools. Rather, NNABA's purpose is to ensure that there is also a respect and recognition of the legal status of Native Americans. In addition, NNABA's purpose, which it shares with the ABA, LSAC, and law school administrators and faculty, is to ensure that the statistics regarding Native American law school applicants and lawyers are as accurate as possible.

NNABA looks forward to working with the ABA's Section of Legal Education and Admissions to the Bar (the Section) in exploring and analyzing this problem and working to come up with solutions to address it. The problem cannot be addressed unless all these different groups work together. As an initial matter, it may be useful to survey law schools on how the statistics on law school applications are verified and used. In addition, after

consultation with all the relevant persons, one solution may be to amend law school applications to require more information from applicants claiming to be Native American, such as tribal membership numbers or a short heritage statement setting forth an applicant's affiliation with an American Indian or Alaska Native community. This solution would at least put an additional minimal burden on a law school applicant claiming to be Native American and provide at least some deterrent to an applicant who seeks to misrepresent his or her race or ethnicity.

NNABA has begun a dialogue with the Section and looks forward to hearing from Section members and staff in the upcoming months in working together to ensure that the statistics regarding Native American law school applicants, students and lawyers are as accurate as possible. Comments may be sent to Mary McNulty, *Syllabus* editor, at mcnultym@staff.abanet.org. 

Notes

1. See *Minority Degrees Awarded 1990-2004*, at www.abanet.org/legaled/statistics/minidegrees.html.
2. U.S. Census Bureau, *Census 2000 special tabulation*, available at www.abanet.org/minorities/links/2000census.html.
3. Coalition of Bar Associations of

Color (CBAC) Resolution: Academic Application Ethnicity Fraud (2007), available at www.nationalnativeamericanbarassociation.org/?page_id=19#stopacademic.

4. Portions of this section were taken from Angelique EagleWoman, Associate Professor of Law, University of Idaho College of Law, "Native American Identification and Status Under Federal and Tribal Law" (2008) (unpublished article).

5. 25 U.S.C. §§ 331-358.

6. Indian Reorganization Act of 1934, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461-479 (1983)).

7. 25 U.S.C. § 1903(3).

8. See 1999 Revised Constitution and Bylaws of the Nez Perce Tribe Art. IV(A) and (B).

9. 417 U.S. 535 (1974).

10. *Id.* at 555.

11. *Id.* at 541-42.

12. *Id.* at 553.

13. *Id.* at 553 n.24.

14. 436 U.S. 49 (1978).

15. *Id.* at 52.

16. 25 U.S.C. §§ 1301-1303.

17. See *Santa Clara Pueblo v. Martinez*, 436 U.S. at 62.

18. 436 U.S. at 56.

19. *Id.* at 71.

20. *Id.* at 72, n.32 (citations omitted).

21. U.S. Census Bureau, *Census 2000 special tabulation*, available at www.abanet.org/minorities/links/2000census.html.

22. See *Minority Degrees Awarded 1990-2004*, at www.abanet.org/legaled/statistics/midegrees.html.

CORRECTION:

The Fall 2008 Law School Enrollment chart that appeared in the 2009 issue of *Syllabus* contained errors in the figures for Total First Year Enrollment. A corrected chart appears below. We regret the error.

	2008	2007	Net Change	Percent Change
Total Law School Enrollment	152,033	150,031	2002	1.3%
Total J.D. Enrollment	142,922	141,719	1203	0.8%
Total First Year Enrollment	49,414	49,082	332	0.7%

2009-2010 Council Members Elected

At the Section's annual business meeting on Friday, July 31, 2009, the following members were elected or reelected to serve on the 2009-2010 Council of the Section of Legal Education and Admissions to the Bar:

Chairperson

(automatic under the Bylaws)
Jerome C. Hafter, Esq.
Phelps Dunbar, LLP
Jackson, Mississippi

Chairperson-Elect

Honorable Christine Durham
Chief Justice
Supreme Court of Utah
Salt Lake City, Utah

Vice Chairperson

John F. O'Brien, Dean
New England School of Law
Boston, Massachusetts

Secretary

J. Martin Burke, Professor
University of Montana
School of Law
Missoula, Montana

At-Large Council Members

(election or reelection to three-year terms)

Tracy Allen Giles
Giles & Lambert, P.C.
Roanoke, Virginia

Joan S. Howland, Associate Dean
University of Minnesota Law School
Minneapolis, Minnesota

Dennis O. Lynch
Dean Emeritus and Professor
University of Miami School of Law
Coral Gables, Florida

Morgan T. Sammons, Dean
California School of
Professional Psychology
Alliant International University

San Francisco, California
(two-year term)

Kent D. Syverud, Dean
Washington University
School of Law
St. Louis, Missouri

Honorable Charles R. Wilson
U.S. Court of Appeals
11th Circuit
Tampa, Florida

House of Delegates Representative

Honorable Ruth V. McGregor
(retired)
Phoenix, Arizona

Law Student Division Member

(one-year term)
Daniel R. Thies
Harvard Law School
Cambridge, Massachusetts

The following members are continuing on the Council:

Immediate Past Chair

Randy A. Hertz, Professor
New York University
School of Law
New York, New York

At-Large Members

Joseph F. Baca, Esq.
New Mexico Supreme Court
(retired)

Honorable Martha Craig Daughtrey
U.S. Court of Appeals, 6th Circuit
Nashville, Tennessee

Robert D. Dinerstein, Professor
American University
Washington College of Law
Washington, D.C.

Phoebe A. Haddon, Professor
Temple University
James E. Beasley School of Law
Philadelphia, Pennsylvania

Mary Kay Kane, Professor
University of California
Hastings College of Law
San Francisco, California

Rennard Strickland
Professor Emeritus
University of Oregon School of Law
Eugene, Oregon

Edward N. Tucker, CPA/ABV
Ellin & Tucker, Chartered
Baltimore, Maryland

House of Delegates Representative

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Orrick, Herrington & Sutcliffe, LLP
Washington, D.C.

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Amelia H. Boss, Professor
Drexel University
Earle Mack School of Law

Young Lawyers Division Liaison

Susan G. Gainey, Esq.
Evansville, Indiana

Dr. Anthony Caprio, President of Western New England College, withdrew his name for consideration for a public member seat on the Council of the Section. Chair Jerry Hafter asked the Nominating Committee of the Section, chaired by former Chief Justice Ruth McGregor, to present two names to the Council to fill the vacant seat (see Article VIII, Section 3 of the Section Bylaws). The Committee met and sent two names of potential public members forward to the Council. The Council has elected Diane Camper of Baltimore, Maryland, to serve the remainder of this year's term on the Council, and then the Section membership will elect the public member to fill the remainder of the term at next

year's Section Business Meeting.

Diane Camper has served since 2008 as communications officer for the Public Welfare Foundation, a private philanthropy based in Washington, D.C. A former journalist, Ms. Camper has worked as an assistant editorial page editor at the *Baltimore Sun*, a member of the editorial

board at the *New York Times* and a Washington bureau correspondent for *Newsweek*. She has written on a number of issues that affect families and children, including education, early childhood development, criminal and juvenile justice and child welfare. From 1997 to 2004, she was with the Annie E. Casey Foundation

in Baltimore, serving as public affairs manager and as a Senior Fellow. She has an undergraduate degree in journalism and political science from Syracuse University and a master of studies in law from Yale University. Ms. Camper first served on the Council from 2003 to 2008. 🏠

In Memoriam: Honorable Andree Yvonne Layton Roaf

The Council of the American Bar Association Section of Legal Education and Admissions to the Bar was deeply saddened to learn of the death of Judge Andree Yvonne Layton Roaf on July 1, 2009.

Judge Roaf, a former member of both the Arkansas Supreme Court and the Arkansas Court of Appeals, served on the Accreditation Committee from 1999 to 2005. In addition to carrying the heavy burden of regular committee work, Judge Roaf contributed significantly in countless other ways including serving on the Foreign Programs Subcommittee and the Special Subcommittees on Facilities, Bar Passage, and on Multi-Location/Multi-Sponsorship of Foreign Programs. As a diligent and engaged committee member, Judge Roaf was a particularly strong and well-reasoned voice in support of broadening access to legal education and to the legal profession for all segments of the population. Her wise counsel and informed insights were invaluable, especially in regard to law school admissions practices and bar passage issues.

Judge Roaf served on ten ABA site evaluation teams, chairing the teams that visited Mercer University in 2006 and Texas Southern University in 2008. She also served as the site evaluator for six foreign summer programs.

Born in Nashville, Tennessee,

on March 31, 1941, Judge Roaf earned a B.S. in zoology from Michigan State University and began her professional career as a scientist. In 1969, she moved to Pine Bluff, Arkansas, where her husband Dr. Clifton Roaf established a dental practice. She continued her scientific career as a biologist at the National Center for Toxicological Research. At the age of 34 and as the mother of four small children, Judge Roaf entered the University of Arkansas at Little Rock Law School. She became articles editor of the *Law Review* and graduated in 1978 with high honors. After teaching at the law school for one year, she entered general practice in Little Rock and became a leader in the Arkansas legal community.

In 1995, Governor Jim Guy Tucker appointed Judge Roaf to the Arkansas Supreme Court to serve out a vacancy. The following year, Governor Mike Huckabee appointed her to the Arkansas Court of Appeals when it expanded from six to twelve judges. She was elected to a full term on the Court of Appeals in 2000 and served until 2006. Judge Roaf was the first African-American woman to sit on both courts, and the second woman to sit on the Arkansas Supreme Court. Postponing retirement, Judge Roaf accepted U.S. District Court Judge Bill Wilson Jr.'s request in 2007 to

serve as the director of the Office of Desegregation Monitoring, which is charged with overseeing desegregation cases in the Little Rock, North Little Rock, and Pulaski school districts.

Recognized as one of Arkansas's Top 100 Lawyers for five consecutive years, Judge Roaf was the recipient of numerous awards including the Gayle Pettus Pontz Outstanding Arkansas Woman Attorney award from the University of Arkansas. She was inducted into the Arkansas Black Hall of Fame in 1996 and subsequently received an honorary doctor of laws degree from Michigan State University.

The members of Council who had the privilege of knowing and working with Judge Roaf remember her as passionate and confident yet never strident. In all that she said and did, Judge Roaf exemplified personal courage, integrity, and self-sacrifice. Judge Roaf's commitment to the legal profession and social justice was surpassed only by her pride in and dedication to her family. In almost every conversation, she referenced her great love for her husband Cliff, their four children, and nine grandchildren.

The Council extends its deepest sympathy to Judge Roaf's family, and expresses its great appreciation for her many contributions to the legal profession and legal education. 🏠

Standard 104 and Interpretation 104-1 Deleted from the *ABA Standards and Rules of Procedure for Approval of Law Schools*

The deletion of Standard 104 and Interpretation 104-1 was approved by the Council of the Section of Legal Education and Admissions to the Bar in June 2009 and concurred in by the ABA House of Delegates on August 3, 2009, effective immediately.

Standard 104. SEEK TO EXCEED REQUIREMENTS

An approved law school should seek to exceed the minimum requirements of the Standards.

Interpretation 104-1

As stated in the Preamble, 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.” Consistent with the aspirations, mission and resources of a law school, it should continuously seek to exceed these minimum requirements in order to improve the quality of legal education and to promote high standards of professional competence, responsibility and conduct.

Commentary

The essential quality of a Standard is that it articulates clearly defined requirements that are binding on all accredited law schools, the violation of which can trigger disciplinary action. Under Standard 103, a law school must be in compliance with each Standard. A school that is in compliance with each Standard is entitled to obtain or retain full approval by the ABA.

In its report to the Council, the Standards Review Committee of the Section indicated its belief

**For more information
about Standards,
visit the Section’s
Web site at:
[www.abanet.org/
legaled/standards/
standards.html](http://www.abanet.org/legaled/standards/standards.html)**

that Standard 104, which provides that schools “should continuously seek to exceed” minimum accreditation requirements, is an aspirational statement rather than a clearly articulated and enforceable Standard. In this regard, the Committee also indicated that there are concerns about potential difficulties in applying Standard 104, for example, whether or not schools have to seek to exceed every Standard, and if not, which ones must be exceeded. Further, the Standard is not clear regarding what should happen if a school seeks, but fails, to exceed any of the Standards. Moreover, if Standard 104 was fully enforced, a school that is in compliance with every other Standard could be cited for not trying hard enough to exceed the minimum requirements of the Standards and be faced with penalties including removal from the list of accredited schools, notwithstanding its compliance with all other Standards.

The Standards Review Committee also concluded that Standard 104 articulates an aspiration that is widely shared and

demonstrated by approved law schools and expressed the hope that all law schools would seek to strengthen and improve their programs and their opportunities for their students. Indeed, schools should be encouraged to continuously strive to improve their ability to educate their students and contribute to legal education.

As stated in the Preamble, 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.” No doubt schools seek to exceed the Standards in a variety of ways; but the aspirational goals set forth in the Preamble are not the same as required minimum standards for approval. Therefore, the sentiment expressed in Standard 104 and Interpretation 104-1 is better placed in the Preamble to the Standards and will be incorporated in that section.

At its June 7, 2008, meeting the Council considered the report of the Standards Review Committee with respect to Standard 104. After discussion, the Council agreed to publish for notice and comment the proposed elimination of the Standard. The proposed changes were published on the Section’s website, www.abanet.org/legaled and were circulated broadly for notice and comment in August 2008 and again in November 2008. The Standards Review Committee held a public hearing on January 9, 2009. No comments were received either in writing or in the public hearing in opposition to the Committee’s recommendation. ♣

Chief Justice of the Supreme Court of Ghana an Honored Guest at Opening of Fordham Summer Program

In June, Associate Consultant Camille deJorna traveled to Accra, Ghana, to participate in the review of the new Fordham-Ghana Summer Law Program at the Ghana Institute of Management and Public Administration (GIMPA). The Chief Justice of the Supreme Court of Ghana, Her Ladyship Mrs. Georgina Theodora Wood, was an honored guest at the proceedings. Justice Wood reminded the students, as future lawyers with access to a professional education of the highest quality, of the importance of having a “culture of service,” remembering to help the indigent and remembering their role as future guardians of the rule of law. Camille presented Her Ladyship with a copy of *Obama: The Historic Journey*, published by the *New York Times*. The gift was particularly fitting as the country was awaiting President Obama’s visit to Ghana in July. Justice Wood was appointed Chief Justice in June 2007 and is the first woman in Ghana’s history to hold that position. 🏠



2009 Site Team Chairs Workshop



Seven new site team chairs, all veterans of the site evaluation process, participated in the 2009 Site Team Chairs Workshop in Chicago. (Back row, left to right) Professor Craig T. Smith, Vanderbilt University Law School; Associate Dean Eric Gouvin, Western New England School of Law; Dean Brad Saxon, Quinnipiac University School of Law; and Professor Malcolm Morris, Northern Illinois University.

(Front row: left to right) Dean Margaret L. Paris, University of Oregon School of Law; Dean Nell Jessup Newton, Notre Dame Law School; and Dean Patricia Haner White, University of Georgia School of Law. 🏠

If you are interested in serving on a site evaluation team, please contact one of the following persons for more information:

Dan Freehling, Deputy Consultant Phone: 312/988-6743 • Email: freehlid@staff.abanet.org
Camille deJorna, Associate Consultant Phone: 312/988-6742 • Email: dejornac@staff.abanet.org

Justice Gerald Vande Walle Honored at Kutak Reception



Dean Kathryn Rand of the University of North Dakota School of Law (fifth from right), along with law school faculty, North Dakota Supreme Court justices, and other members of the North Dakota legal community joined Justice Vande Walle at the Kutak Award Reception.

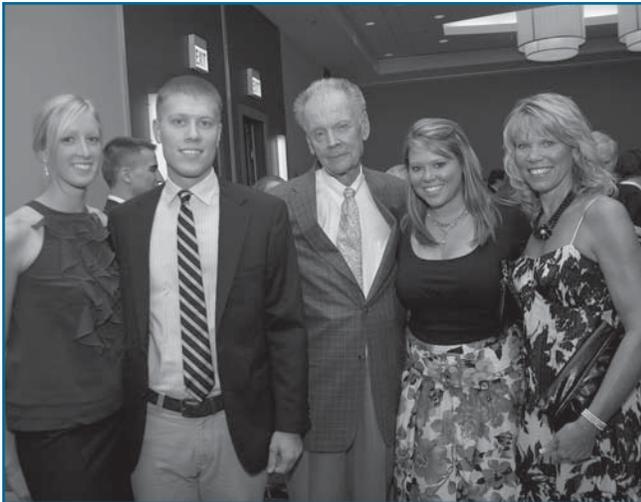
“ Justice Vande Walle’s dedication to the profession and zeal for bringing constituencies together are the hallmarks of the Kutak Award. ”



Donald Lewis, dean of Hamline University School of Law, with University of Akron C. Blake McDowell Law Center students Stephen Gombita and Ann Marie Sutter.



Among the law students enjoying the Kutak Award Reception were Chris Tanner, Florida State University College of Law; Yasmin J. Gabriel, Howard University School of Law; Alcide King III, Howard University School of Law; and Jackie Dove, Loyola University-New Orleans, College of Law.



Members of Justice Vande Walle's family were on hand to celebrate his award.

Colleagues, family, friends, and Law Student Division leaders were in abundance as the Honorable Gerald W. Vande Walle, Chief Justice of the North Dakota Supreme Court, received the 2009 Robert J. Kutak Award at a reception during the ABA Annual Meeting in Chicago on Friday, July 31. Over a

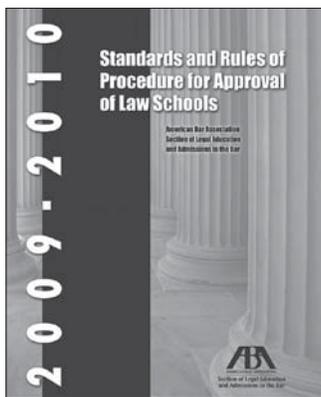
span of 50 years, Justice Vande Walle has advocated for the legal academy, the judiciary, and the practicing bar. His reputation for championing collaboration between the three branches of the legal profession is well known and lauded by his colleagues. As one of his many nominators stated, "Justice Vande Walle's dedication to the profession and zeal for bringing constituencies together are the hallmarks of the Kutak Award."

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. 

For more information about the Kutak Award, visit:
www.abanet.org/legaled/committees/committees.html

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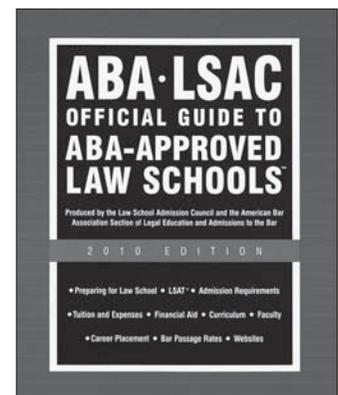
Standards and Rules of Procedure for Approval of Law Schools 2009-2010 Edition

The 2009-10 edition of the *Standards and Rules of Procedure for Approval of Law Schools* is available for purchase. The publication sets forth the standards that law schools must meet to obtain ABA approval. The edition reflects all changes and/or revisions made at the August 2009 Council/Annual Meeting.

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The Official Guide to ABA-Approved Law Schools, 2010 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, enrollment data, graduation rates, curricular offerings, bar passage data, and post-JD programs.



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MESSAGE FROM THE CHAIR

Continued from page 1

and Rules of Procedure, are being posted on the Committee's Web site: www.abanet.org/legaled/committees/comstandards.html. The Council and Standards Review Committee encourage all Section members to follow the Standards Review process and to provide comments and suggestions.

Economics of Legal Education

The Section is particularly interested in the economics of the legal profession in the current recession and the impact on legal education of reduced legal work and legal positions in law firms and business. This topic was the subject of a conclave of all interested constituencies conducted by the Section in June 2009 and will be the topic of follow-up meetings. Short-term pressures during the current economic slowdown have raised long-term issues including whether law schools are adding value to the lives of their students equivalent to the current cost of legal education and whether the present system of legal education is economically sustainable in 21st century America. The answer to these questions may lie in emphasizing what American legal education does best: providing relevant doctrinally sound classroom instruction, training future lawyers in professional skills so they are prepared for practice and inculcating in all students the shared values of the legal profession in order to make them more effective lawyers. If legal education rededicates itself to these core activities, the current recession may prove a valuable wake-up call.

Connecting Legal Education and the Practicing Bar

As a practicing attorney, I am particularly interested in the connections between legal education and the practicing bar. The Section on Legal Education and Admissions to the Bar should encourage law schools and law firms to develop mutually enriching relationships among legal educators and cutting edge litigation and transactional law practices. Legal educators should be widely engaged in CLE activities for the practicing bar and encouraged to produce legal scholarship that is meaningful to current law practice.

Uniform Bar Examination

The Section, through its Bar Admissions Committee, is involved in the adoption of the Uniform Bar Examination (UBE) currently in the final stages of implementation on a nationwide basis. The Uniform Bar Examination will incorporate the existing Multistate Bar Exam (now used by 48 states and the District of Columbia), the Multistate Essay Exam and the Multistate Performance Test to provide a UBE score that

will be uniform and reliable across jurisdictions.

The Uniform Bar Examination will enhance portability of bar results and thus promises significant benefits to not only candidates for bar admission but also for the law schools that prepare new lawyers, for the law firms, businesses and governmental legal departments where newly admitted lawyers practice, and for clients who need to be served on a multistate basis. The Uniform Bar Examination is scheduled for its first administration in 2010 with at least 10 states involved in the initial administration. Nearly half of all American jurisdictions have indicated that they are prepared to participate once changes in local bar admissions rules are adopted. The Uniform Bar Examination has recently been described as one of the biggest advances in bar admissions since the first statewide written bar exam was administered in Delaware in 1763.

International Issues

The Section on Legal Education and Admissions to the Bar is deeply involved in international issues including conditions under which lawyers educated in other countries may practice in the United States, either temporarily or on a permanent basis, and reciprocal admission of American lawyers to practice in other countries. Continuing the work of the Section's Task Force on International Legal Education, the Section will be involved in applications for ABA approval of law schools outside the United States, in recommending rules on the admission of foreign-trained lawyers in the United States, and in studying the regulation of the multinational practice of law.

The admission to practice of attorneys educated in foreign law schools raises fundamental issues. The ABA and the supreme courts of most jurisdictions have long been committed to the principle that education in a law school meeting ABA Standards should be a requirement for admission. Bar admissions generally involve three separate prerequisites: a high quality experience in a law school focused on preparing students to practice within the American legal system, demonstrated performance on a written bar examination and a thorough investigation of the applicant's character and fitness. Each of these prerequisites is important in assuring the public that new lawyers are prepared to enter the legal profession. As any experienced bar examiner, including myself, will attest, a two- or three-day bar examination is not a substitute for completion of an appropriate course of legal education in a law school organized and operated in accordance with the ABA

Standards or their equivalent. The Section, together with our colleagues on the bench and in the bar, must address how these basic prerequisites for admission in American jurisdictions will be balanced with a globalized legal profession and the growth in quality legal education throughout the world.

Participation in Section Activities

The Section of Legal Education and Admissions to the Bar devotes itself to issues that will shape the future of the legal profession. We welcome the input and participation of all Section members and other members of the American Bar Association. 🏛️

FULL ABA APPROVAL GRANTED

Continued from page 1



Florida A&M University College of Law

University College of Law (FAMU Law) in Orlando. FAMU Law was granted provisional ABA approval in August 2004. From 89 students in its first year of operation, the law school has grown to its current enrollment of 600.

The school has both full-time and part-time divisions; twilight courses allow day and evening students to interact. The academic year consists of two 15-week semesters and one 10-week summer session. To graduate, students must complete 90 credit hours. The law school operates four in-house clinics: Community Economic Development, Guardian Ad Litem, Homelessness and Legal Advocacy, and Housing. Field placement clinics include Prosecution, Criminal Defense, Death Penalty, and Judicial. The recently opened Center for International Law and Justice focuses on research, training, and advocacy in the international and comparative law of developing nations.

The Florida A&M University is a comprehensive land-grant public university with 13 schools and colleges and an enrollment of approximately 10,800.



Western State University College of Law

Under federal law, FAMU is a Historically Black College or University and is the largest such single campus institution in the United States.

Western State University College of Law

The College of Law at Western State University has operated in Orange County, California, since 1966 and has been located in Fullerton since 1975. Provisional approval was granted in February 2005. The school operates as part of the Argosy Group within the Education Management Corporation. Current enrollment is 400.

Full-time and part-time programs are offered with two 14-week semesters. A Criminal Law Practice Program places students in the offices of the Orange County District Attorney, Public Defender and Associate Public Defender for 12 to 15 hours per week. Through the Business Law Center, students receive academic and practical preparation for advising corporate and small business clients. Second-, third-, and fourth-year students in good standing are eligible to apply to work in the law school's onsite legal clinic. Students can also earn an MBA through Argosy University while concurrently earning a law degree. 🏛️

For more information about the accreditation process, please visit:

www.abanet.org/legaled/accreditation/acinfo.html

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CALENDAR

NOVEMBER 2009

- 14** Site Evaluators Workshop
Rosemont, Illinois
- 15** Foreign Programs Committee Meeting
Rosemont, Illinois

DECEMBER 2009

- 5-6** Council Meeting • Miami, Florida

JANUARY 2010

- 21-23** Accreditation Committee Meeting
Palm Beach, Florida

FEBRUARY 2010

- 3-9** ABA Midyear Meeting • Orlando, Florida
- 4-5** ABA Deans Workshop • Orlando, Florida

MARCH 2010

- 10-12** Bricks, Bytes and Continuous
Renovation • Philadelphia, Pennsylvania
- 19-21** Council Meeting • Memphis, Tennessee

APRIL 2010

- 22-24** Accreditation Committee Meeting
La Jolla, California
- 24-25** Standards Review Committee
La Jolla, California

MAY 2010

- 30-June 1** New Deans Seminar
Jackson Hole, Wyoming

JUNE 2010

- 1-4** Law School Development Conference
Jackson Hole, Wyoming
- 11-13** Council Meeting • Washington, D.C.
- 24-26** Accreditation Committee Meeting
Washington, D.C.
- 24-27** Associate Deans Conference
Minneapolis, Minnesota

AUGUST 2010

- 5-10** ABA Annual Meeting
San Francisco, California