Appendix A

Section of Legal Education and Admissions to the Bar
Special Committee on Transparency

REPORT

INTRODUCTION

In Part III of its report of May 29, 2007, the Section's Accreditation Policy Task Force considered how the accreditation process should be structured and administered to assure appropriate transparency while also safeguarding confidentiality for any information and aspects of the process that should be confidential. In summary, the Task Force agreed that there are a number of respects in which various parts of the accreditation process should be more open than they are today, and that the default position should be one of openness and accessibility. It was noted that public testimony and written submissions to the Task Force reflected concern about how Standards and Interpretations are applied during sabbatical examination of schools, and that there were complaints that the present process leads to varying applications of the Standards under circumstances in which schools have legitimate difficulty in knowing what is expected. Concern was expressed that, in the Section's accreditation work, decisions are made during closed session deliberations of the Accreditation Committee and reported in confidential action letters sent to schools; as a result, knowledge among the regulated about various actions taken by the Accreditation Committee and the Council occurs only when schools elect to disclose to others the results of these regulatory decisions. Also, the Section's current practices relating to what compliance information about schools is made available to the public does not differentiate between schools which operate fully-compliant programs of legal education and those that are habitually at the margins. There was a consensus that consumers ought to be able to know more about which schools are which.

In conclusion, the Task Force recommended the following:

> (1) The Section should take steps to achieve greater transparency in the accreditation process by disclosing as much information as is legally permissible about law schools and their compliance with the Standards. (2) The Section should seek to improve the quality and consistency of its site inspection reports and action letters and consider assigning a staff member to participate in each site inspection.

Section Chair Ruth McGregor appointed the Special Committee on Transparency in Fall 2007 and charged it to submit recommendations that would implement the Task Force's findings. Specifically, she stated that "this Committee will study the accreditation process to determine how it can be structured and administered to assure more transparency, and identify steps that can be taken to obtain more comments and feedback about the process. The Committee also will consider how schools can best prepare for increased transparency. The Committee should recommend procedures that further the default position of openness of and accessibility to the process." The Committee met twice, on December 8, 2007 and April 13, 2008; reviewed

materials describing the accreditation processes of other agencies; considered the views expressed by accreditation leaders in higher education; distributed a survey to a large number of legal educators; and debated the advantages and disadvantages of possible recommendations. This report includes brief excerpts of relevant materials, provides the Committee's best judgment on various matters, and recommends that further consideration be given by other Section committees to certain issues that were deemed to be beyond the Committee's jurisdiction. The report is labeled "preliminary" to reflect the possibility that the Council may want the Committee to undertake additional work on items related to its main charge or those which have been initially identified for attention elsewhere.

BACKGROUND MATERIALS

Many accrediting agencies, including the ABA, have policies requiring substantial confidentiality in the accreditation process. There are major exceptions, however, with a small number of agencies making almost all documents available to the public and even opening accreditation meetings to public observers. A March 2006 Occasional Paper issued by the Council for Higher Education Accreditation (CHEA) concluded that results of a survey:

> "make it clear that limited information is currently provided about the results of individual reviews or about institutional/program performance and student outcomes. [However,] accrediting organizations are increasingly considering expanding the information they provide in these areas. Providing such information, should an accrediting organization choose to do so, will always involve a delicate balance. Public reporting about individual institutional or program performance always runs the risk of distorting the candor that is essential for the accreditation process to operate effectively. On the other hand, continuing to report only accredited status runs the risk of sidelining accreditation as a credible national accountability mechanism and of increasing public perceptions of the process as secretive or obscure. Further discussion of these issues is clearly warranted..."

Also noted in the Executive Summary:

> "Eighteen percent of the [66] accrediting organizations responding to this survey provide information to the public about the results of individual reviews beyond reporting formal actions. The information may include descriptions of the results of a review with reference to specific accreditation standards, summaries of strengths or good practices, summaries of weaknesses and deficiencies, extracts of team reports or action letters, full team reports or action letters, and institutional or program responses. When asked about future plans, approximately 20 percent of responding accreditors indicate that they may develop a standard report format for this information."

In a March 2004 "Letter from the President," Dr. Judith Eaton, CHEA's President, discussed the climate in which accreditation now operates, the dilemma caused thereby, and balancing competing interests. She noted that,

"while many of us are still uncomfortable with higher education treated as a consumer good, many students and the public are not. Increasingly, providing additional information about higher education quality is viewed as serving the public interest...It is understandable that college and university presidents may be less than enthusiastic about airing current institutional shortcomings..., however tactfully described."

She also stated her belief that, to be successful,

"accreditation needs to preserve some 'zone of privacy' in the course of an accreditation review in which a visiting team and college officials can speak frankly to each other about an institution or program, especially its shortcomings."

In a telephone conversation with the Committee Chair, Dr. Eaton indicated that the "zone of privacy" does not necessarily have the same breadth in all fields -- that we need to define it in legal education, taking into account our unique circumstances. On the other hand, she believes that schools of law, as all disciplines, must find a way to enhance transparency in order to be credible to the public. "In today's world, credibility is at stake, and the bar [for achieving credibility] has been raised considerably. To do nothing would be dangerous."

A December 2006 CHEA Occasional Paper included a section on weighing costs and benefits of a broader role with respect to information provided to the public, where the following appears:

"How will adopting this posture affect the accrediting organization's relationship with its primary constituencies?...An accrediting organization's primary mission of assuring academic quality within the academic community will always take precedence. The organization needs to address whether becoming more assertive in the public-information role may actively damage an accrediting organization's capacity to continue serving its primary constituents in its traditional role...How will adopting this posture affect the accrediting organization's internal workload and capacities?...A parallel question is the impact that adopting a broader public information role may have on the ways an accrediting organization spends its time and resources. Most accreditors have extremely limited resources with respect to personnel, communications, and information processing capacity. Redirecting these resources to address a new line of work -- especially if it is not a core function and may have little potential for cost-recovery -- is not a decision to undertake lightly."

Nevertheless, in a final paragraph, the paper suggests that accrediting organizations seeking to provide information to the public may consider, inter alia, continuing "to develop current plans to expand information to the public in the future, especially information about the results of institutional and programmatic review."

Professor William Mock, of The John Marshall Law School (Chicago), has written on transparency and related information theory issues and has developed a list (with links) of university and law school websites at which strategic plans and self-studies can be found (*see Appendix 1*). In correspondence with the Committee Chair, he wrote:

"With respect to websites, there are far more law school and university strategic plans online than there are self-studies, about which institutions tend to be more guarded. Nevertheless, there should be an organic interplay between self-studies and strategic planning, at least for those schools that actually do follow the advice to make the two a unified, ongoing process..."

He indicated that his list is not comprehensive.

[Example of agency with substantial confidentiality] The LIAISON COMMITTEE ON MEDICAL EDUCATION's Policy on Data Collection, Research, and Confidentiality includes the following:

"...All information compiled in preparation for accreditation surveys or collected on site, including the contents of the Medical Education Database, the program's self-study summary report, and correspondence regarding the program's prior accreditation history, is held in strict confidence by the Secretariat...All information received by the LCME that relates to a school's accreditation status (including survey reports and progress reports) is also treated as confidential data..."

Survey team members, LCME members and staff must sign confidentiality statements. Many agencies have similar provisions, usually with a provision that institutions may opt to release various documents in their entirety. The ABA Section's confidentiality policy is essentially this model. It should be noted, however, that the LCME requires an independent student analysis as part of each regular site evaluation. As stated in the publication, *The Role of Students in the Accreditation of Medical Education Programs in the U.S. and Canada*:

"At the same time that the school initiates its self-study process, the student leadership should begin an independent review of the medical education program, student services, the environment for learning, and the adequacy of educational resources. In performing their analysis, the group leading the student review will need to conduct a student opinion survey of all enrolled students in order to develop a comprehensive picture of how students perceive their institution. Medical school officials can provide logistical support and technical advice for students to help them conduct their analysis, but should not participate in the review or interpretation of student survey information. The results of the student survey can be combined with the results of the most recent AAMC Graduation Questionnaire (which the school should provide) to develop a student report similar to those of the self-study committees, highlighting student perceptions of the school's most notable strengths and achievements, and areas where it can do better. The report should be available to the self-study task force at the same time as the reports of the various self-study committees (about six months before the site visit), so that student opinion can be fully incorporated into the school's final self-study summary."

In most cases, upper class medical students are both able and willing to find time in their busy schedules to produce substantial, thoughtful reports. As a result, the student analyses receive careful consideration by both the teams that visit medical schools and the LCME itself.

[Example of agency with substantial openness] The NATIONAL ARCHITECTURAL ACCREDITING BOARD's Procedures for Accreditation provide a high degree of confidentiality before the accrediting decision, but,

> "to stimulate broad-based participation, the program is encouraged to distribute the Architectural Program Report (APR) [equivalent to a self-study, prepared by the school in advance of the site visit] within the school community before and during the site visit. The draft and final visiting team report (VTR) may also be distributed internally before the accreditation decision, but the report must not be made available in any form to persons or groups outside the institution until the program has received its term of accreditation...After the accreditation decision, the program is required to disseminate the APR, the final VTR, and pertinent attachments...These documents must be housed together in the architecture library and be freely accessible to all...The program is required to inform faculty and incoming students that access to the current student performance criteria and any addenda may be read or downloaded from the NAAB website...the NAAB makes available in its office the APRs and the VTRs of all accredited programs, candidate programs, or programs that have lost accreditation..."

Exit meetings are held with the program head, school or college administrator, chief academic officer, faculty and students. "The faculty and student sessions are typically combined as a school-wide meeting. Questions and comments are not entertained at the school-wide meeting, which normally concludes with team members and observers providing their insights on the visit."

The NAAB conducts an annual workshop on APR preparation. A school's APR must be submitted to the NAAB by September 7 of the calendar year before the term of accreditation expires; a late fee is assessed for late submissions. The team chair reviews the APR for completeness and clarity, and recommends that it be accepted, accepted with additional information requested, held pending additional information, or rejected with a new report required before scheduling the site visit.

In a telephone conversation with the Committee Chair, the NAAB Executive Director said that architecture deans are comfortable with the agency's procedures. The current level of transparency evolved as a result of prior discomfort with what some viewed as "hidden decisions." There now are "no secrets" about what standards a school is being measured against, anyone can learn about a school by accessing its self-study, and anyone can determine how the site team reacted to a school's particular situation. The open exit meeting with students and faculty, which occurs after the team meets with the president and dean, works well, although it was confirmed that this consists of the team presenting its observations without any questions from the audience. Schools understand what they are expected to do in preparing the APR. The exercise is outcomes-based: "Show us how the school knows students can do -x-." There is a student on each team of four or five people, and two students on the Accreditation Board of 13 voting members. Training sessions are held for schools on preparing a self-study and setting up an on-site team room; workshops are held for team members and team chairs. The Executive Director stated that the NAAB takes pride in transparency, that it is a real strength of the program, and that it helps schools think about where program adjustments need to be made. This

was confirmed in a conversation that the Committee Chair had with the Dean of the University of New Mexico School of Architecture and Planning, who has served a three-year term on the NAAB. He indicated that there are very few requests for public review of accreditation materials, that this has not been a contentious issue, and that such requests usually are related to negative accreditation decisions. When asked whether he believed there was any lack of candor in such an open process, he responded negatively, suggesting that ALL accreditation self-studies, even in processes that are highly confidential, are drafted by schools with an inherent interest in achieving a positive result.

[2nd example of agency with substantial openness] The ACCREDITING COUNCIL ON EDUCATION IN JOURNALISM AND MASS COMMUNICATIONS' Policies of Accreditation provide:

> "All meetings of the Accrediting Council and its committees are open to the public. This includes meetings of the Accrediting Committee and the Appeals Board. Votes on accrediting decisions are taken in open session. The Council may go into closed session when the discussion centers on individuals; however, no official action may be taken in closed session, and all other discussions that do not focus on individuals will be open."

The ACEJMC makes site team reports and self-studies available to the public.

In a telephone conversation with the Committee Chair, the ACEJMC Executive Director said that there are very few requests from the public to see materials; someone seeking a faculty position might want to review a school's documents, and there are occasional media requests following an adverse decision. She believes that transparency makes her job easier -- people can attend accreditation meetings as observers to hear what transpires but cannot participate unless a member of the committee calls on them. The Executive Director does not have to interpret what is open for others to see for themselves, and this helps schools understand the process.

QUESTIONNAIRE

The Committee drafted an online Survey Monkey questionnaire that was distributed in mid-February to deans, associate/assistant deans, members of the Section Council, chairs of Section committees, and others. The questionnaire remained open for approximately one month, and reminders encouraging participation were sent to each of the listservs. A total of 154 responses were received, including 55 from deans and another 55 from associate/assistant deans. Although this is a decent return, the relatively low absolute numbers and the possibility that respondents may have been skewed in one direction or another (the result of an unscientific sample) should be kept in mind. Summary data for all respondents with responses to open-ended questions can be found at http://www.abanet.org/legaled/nosearch/survey.html. It should be noted that 56% (30) of the deans indicated they would support an accreditation requirement that one or more key documents be made available on a regular basis; of the five listed documents, Accreditation Committee decision letters and school follow-up reports had the highest percentages of affirmative responses (70% and 50% respectively). Of the associate/assistant deans, 48% (25)supported an accreditation requirement that one or more key documents be made available, with Accreditation Committee decision letters and self-studies garnering the highest percentages

of affirmative responses (60% and 59% respectively). Of the total responders, 55% (80) supported required availability of one or more key documents, with Accreditation Committee decision letters, school follow-up reports, and self-studies receiving the most affirmative responses (70%, 57%, and 58% respectively).

RECOMMENDATIONS OF THE COMMITTEE

I. AVAILABILITY OF DOCUMENTS

The Committee discussed at length the advisability of making certain accreditation-related documents available and, if so, to whom. It was unclear whether the members of the Accreditation Policy Task Force recognized the full range of implications when they recommended disclosure of as much information as is legally permissible. There was general Committee support for the view that we should try to move in the direction proposed by the Task Force to the extent that recommendations would have a reasonable chance of being accepted. The Committee sought to address the desire for openness on the one hand with concern for insuring candor and enhancing the quality of education on the other. Modest changes adopted now could, after a period of implementation, lead to more changes later as law schools become comfortable with greater openness; suggesting a 180-degree reversal of past practices, however, might ensure that no proposals could gather adequate support to be implemented. The fact that a modest change to some individuals may be seen as radical by others, however, highlights the importance of balance and careful line-drawing in this situation.

Various concerns were noted in the background materials and in responses to the online questionnaire, particularly regarding a potential loss of candor in self-studies and team reports if they were routinely to become public documents. There is a possibility -- perhaps a probability -- that generally available materials may be misused (e.g., by organizations that rate law schools), and that lay persons unfamiliar with legal terminology might misunderstand materials made available to them. The Committee proceeded through a series of motions including, inter alia: (1) a proposal to include a sunset provision that would mandate reassessment of any implemented procedure after a certain number of years (rejected because retrenching under such circumstances would be difficult if not impossible); and (2) redacting school names (rejected because redacting is difficult to do well, would require substantial staff time, and, even then, school identity might be discernible to anyone familiar with facts described in the particular document).

After having weighed several alternatives, the Committee, on a vote of 5 to 4, RECOMMENDS that unredacted accreditation decision letters and follow-up correspondence between a school and the Accreditation Committee be available prospectively on the Section's website, password-protected, to deans of approved law schools and, as determined by each dean, to other faculty members "for use in the accreditation process." This would likely include faculty members of a school's self-study committee, but some deans might interpret the restriction more broadly, while others might not share these materials at all. Implementation of this proposal should help schools understand the genesis of problems coming to the Accreditation Committee and the bases for decisions

regarding them. Such information may be particularly helpful to new deans approaching their first ABA site evaluation and should allay concerns about any lack of consistency in the process.

Although the Committee did not recommend similar action regarding self-studies and team reports, it noted that such documents are usually available from public law schools through FOIA requests or otherwise. There was interest in encouraging schools to make them available voluntarily on the Section's website; however, this might necessitate development of a process for identifying self-studies worthy of being used as examples by others and, thus, requires further exploration.

II. OTHER ACCREDITATION MATERIALS

At the Committee's December meeting, Hulett A. Askew, Consultant on Legal Education, described the full accreditation process from start to finish, noting how procedures are in place to ensure, to the extent possible, that team reports are complete and that decision letters are both consistent and focus on issues of compliance.

The Committee RECOMMENDS that a memorandum, reflecting the Consultant's presentation, be placed prominently on the Section's website and brought to the attention of deans and others on a regular basis. It should be available to the public without restriction. This should help "demystify" the process for schools and the public alike, while setting forth the many efforts undertaken to maximize consistency among decisions.

Consultant Askew also indicated that, at each meeting, the Accreditation Committee receives a "consistency report" in the form of a chart containing data on each school currently reporting back to the Committee, the Standard(s) at issue in each case, and the number of times each Standard is cited across all schools. These reports are annually combined in an Accreditation Issues Summary, without school identification, covering the most recent three years. The Summary lists approximately twenty accreditation issues, reflecting major requirements, and indicates how many schools have been cited for each during the period.

The Committee RECOMMENDS that the Accreditation Issues Summary be available on the Section's website. Such information would highlight particular Standards and Interpretations with which significant numbers of schools are having difficulty and might thus suggest possible further action by individual schools and/or the Section.

The Committee noted that some schools have difficulty understanding how to comply with certain provisions of the Standards that are not self-defining. For example, Standard 302(a)(4) states that, "A law school shall require that each student receive substantial instruction in...other professional skills generally regarded as necessary for effective and responsible participation in the legal profession...". Several schools have been found to be out of compliance with this requirement. These schools would find it helpful to have a description of what other schools have done to successfully meet the requirement.

The Committee RECOMMENDS that, in appropriate circumstances, the Consultant's Office prepare a "Consultant's Memo" to assist schools in coming into compliance with the

Standards. These Consultant's Memos, after approval by the Accreditation Committee and the Council, should be placed on the Section's website and made available without restriction. Depending on the volume of memos, this recommendation could have staffing implications.

III. THE WEBSITE

The Committee agreed that the Section's website should be more accessible, user-friendly, and interactive. One possibility would be to link Standards, Interpretations, and explanatory commentary (such as the recent memorandum concerning bar passage), so that a user could easily move among related items. Many of these materials are already on the website, but putting them in something more than PDF format should make them more accessible and the website more user-friendly. Ideas could also be solicited for further upgrades, and the websites of other accrediting agencies should be checked to discover additional potential improvements.

The Committee RECOMMENDS that a committee be appointed to undertake this project.

The Committee received a suggestion that Section committee membership lists, meeting dates, agendas, and minutes be posted promptly on the website, with comments invited. The latter is already being done by the Standards Review Committee, which circulates its anticipated agenda for the year in early Fall and encourages responses. Possible exceptions, requiring special consideration, would be executive sessions of the Council and meetings of the Accreditation Committee.

The Committee RECOMMENDS implementation of this suggestion.

IV. STAFF MEMBERS ON TEAMS

Some accrediting agencies include a staff member on many site evaluation teams in an attempt to enhance consistency. Because the Section sends full sabbatical teams to 25-30 schools each year, such a procedure would involve multiple staff members, and it is unclear whether this would lead to greater consistency among reports. Even if greater consistency were to result, the Committee was unsure whether this would justify the significant cost to hire and utilize staff in such a manner. One Committee member suggested that the Section consider recruiting six "super volunteers" who would be nominated annually by their home schools, would remain on their school's budget, but would agree to serve on four or five teams during the year with their travel expenses covered by the schools being visited. **Further consideration of this and other alternatives is recommended.**

V. EDUCATIONAL/TRAINING SESSIONS

The Committee RECOMMENDS that the Section consider additional ways in which accreditation information can be shared with deans, law schools, and the public. For example, accreditation might be a topic at the New Deans' Seminar in June or the Deans' Workshop in February. Another possibility would be to open the training workshop held at O'Hare each February for new site team members and schools with upcoming site evaluations, and invite others who could attend for a fee. It is also recommended that podcasts and/or

webinars of the training sessions be created, thereby further expanding the universe of potential observers.

VI. BEST PRACTICES

The Committee considered whether memoranda regarding "best practices" in accreditation should be prepared. It was suggested that possible topics might include: (1) discussion of whether (and, if so, how) a school should make available to the full faculty the team report and decision letter resulting from a recent on-campus site evaluation; and (2) whether (and, if so, how) students should be involved in the process. The Committee was concerned that such "best practices" might be interpreted by some deans as requirements and, in any event, might be controversial. Reaching agreement would likely be difficult. **Nevertheless, the Committee believes that this deserves further consideration and so recommends.**

VII. ASSISTANCE IN PREPARING SELF-STUDIES AND STRATEGIC PLANS

The Committee discussed the interaction between self-studies and strategic plans and concluded that many schools do not appreciate the difference between the planning entailed in a strategic effort and the self-reflection and analysis required in a self-study. Faculties may also be skeptical about the value of the substantial effort required to produce these documents. The situation is complicated by the fact that Standards 202 and 203 are not self-defining, and it is not clear what is expected in this area by the Accreditation Committee when it reviews a school.

The Committee RECOMMENDS that the Standards Review Committee consider clarifying Standards 202 and 203 soon. Once this has occurred, the Section should schedule a workshop focusing on the self-study and strategic planning processes, and new interpretive materials should be prepared. It was suggested that this might be an appropriate joint-endeavor with the Association of American Law Schools, and a large attendance might be ensured by holding the workshop during the AALS Annual Meeting. Access to well-prepared self-studies and strategic plans would be helpful.

VIII. EXPANDING CONSUMER INFORMATION

The Committee determined at its December meeting that possible expansion of consumer information falls outside of its charge, although some emerging issues highlight what may be a developing problem. The reporting of bar passage data, for example, should be reviewed given the minimum "ultimate" rate of only 75% required by new Interpretation 301-6. It is now possible for a school to have a miniscule bar passage rate in the bottom quartile of its class and still be in compliance if the passage rate in higher quartiles is decent. At present, such information is not available to prospective applicants, but the Accreditation Committee has required one school to provide it to enrolled students. Specifically, the school's decision letter stated that:

> "...each semester, within thirty days of the completion of assigning and distributing grades for the Law School's students, the Law School will advise each Law Student, in writing, of the following in the same communication: (a) the [State in which Law School is located] first-time bar passage rates, by class quartiles, for Law School graduates

sitting for [State in which Law School is located] bar examinations over the six administrations preceding the semester, and (b) the class quartile in which the student falls. For example, at the conclusion of the fall 2006 semester, the Law School would advise its students of the results from the February 2004 through the July 2006 [State in which Law School is located] bar examinations."

Consideration should be given to whether such data should be made available on a broader scale and, if so, how. A subcommittee of the Standards Review Committee has been charged with this issue, but concerns have also been raised about the adequacy of data reporting in the areas of financial aid, employment, and tuition among others.

The Committee RECOMMENDS that these matters be referred to an appropriate Section committee for consideration.

IX. STUDENT INVOLVEMENT

The Committee observed that current methods of involving students in the accreditation process (a meeting open to all students and a lunch with student leaders) have not been very effective in generating insights from the perspective of student consumers. Some accrediting agencies have found positive ways to include students in the process. One approach might be to ask students to voluntarily complete a Survey Monkey-type questionnaire using standard questions developed by the Section. Schools might be encouraged to participate in the Law School Survey of Student Engagement ("LSSSE") as a way to enhance student involvement. If a "best practices" project were to be launched, discussion of student involvement could be subsumed in that. Another suggestion is to consider establishing (and publicizing) a separate law student area on the website. There are occasional mailings from the Section to Student Bar Association presidents, and these could be enhanced.

The Committee RECOMMENDS that further consideration be given to these and other possibilities for involving students more meaningfully in the accreditation process.

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