ACCREDITATION POLICY TASK FORCE
AMERICAN BAR ASSOCIATION

Friday, February 9, 2007
1:30 p.m. - 3:45 p.m.

Hotel Intercontinental
201 South Biscayne Boulevard
Miami, Florida 33131

APPEARANCES:
TASK FORCE
Pauline A. Schneider, Esquire
Jose R. Garcia-Pedrosa, Esquire
Professor Randy A. Hertz
Dan Richard J. Morgan
Dean Karen H. Rothenberg
Dean Steven R. Smith
Barry Sullivan, Esquire
Dean Kent D. Syverud
Mr. Hulett Asker, Liaison
Mr. David Van Zandt
Ms. Paulette Williams
Ms. Kristen Gerdy
SPEAKERS:

Mr. Jon Garon
Mr. McKen Carrington
Mr. James Douglas
Mr. Richard Neumann
Ms. Claire Germain
Ms. Susan Hanley Kosse
Mr. Brad Clary
Mr. Craig Smith

MS. SCHNEIDER: Good afternoon. I am Pauline Schneider. I would like to get started. Welcome to this last session in connection with the dean's workshop. And it is a session in which we are looking at the accreditation.

At our last session here, for those of you who are deans, this session is going to deal with new accreditation clauses, as you now.

Before we begin, I would like to mention a couple housekeeping issues. I will then have my colleagues introduce themselves. And then we will get started with those individuals who were signed up in advance.

And after that we will take comments from the individuals who had not signed up previously but who might have signed up while we are in this meeting.

The housekeeping items are in the back of the room or on the side table, a sign-up sheet. If you choose to sign up you can be added to the list of speakers.

There, I believe, are also copies of memo that were circulated back in December which talked about our process, talks about some of the thoughts we had today. I ask you to focus on the issues and speak to
Let me ask my colleagues to introduce themselves, and then I will also acknowledge two of my colleagues who are not here. Let's start on the far end with Jose Pedrosa.

MR. PEDROSA: I am Jose Garcia Pedrosa. I formerly am a practitioner. I held a few different jobs at home and I run the National Parkinson's Foundation here in Miami.

MR. HERTZ: I am Randy Hertz. I teach at NYU Law School.

MR. SYVERUD: Kent Syverud, Washington University School of Law.

MR. SMITH: Steve Smith, California Western School of Law.

MR. MORGAN: I am Dick Morgan, Dean of the University of Nevada School of Law. I am current chair of Standards Review Committee.

MS. ROTHENBERG: I am Karen Rothenberg. I am the dean at the University of Maryland School of Law.

MR. SULLIVAN: I am Barry Sullivan. I am a lawyer in Chicago.

MR. ASKEW: I am Hulett Askew. I am in charge of CLE credits for this accreditation.

MS. SCHNEIDER: Three of our colleagues are not here with us. They were not able to join us. They are John Jeffries, Dean of the University of Virginia Law School; Randy Shepherd, Chief Judge of the Indiana Supreme Court and John Lahey, president of Quinnipiac University in Connecticut.

I am Pauline Schneider. I am an acquired practitioner in Washington D.C. I have been taught in law school. I have been close to the accreditation process, the education process through my work at the section of Legal Education.

I probably should not repeat the fact that I thought I was out of this business but then Mr. Ray who had an idea that we needed -- it was time to take a look, a fresh look at the accreditation process managed to twist my arm and ask me or convince me or tell me I was going to do this.

Bill's idea was if we were to start over
again and take a fresh look at accreditation of law schools, what should it look like? How would it differ from that process or those procedures or those rules we have in place today? What would we do differently?

The committee or the Task Force has met now on several occasions. We have not formed any conclusions but we have looked at a number of issues and formulated a number of questions that we think we ought to consider when we are thinking about what some of the accreditations might look like if we were to begin all over again today.

We began by looking at the current preamble to our existing standards and focusing in on the recognition in that preamble, that the system of law school accreditation should be designed and administered in a manner that protects the interest of the public law students and the profession.

We also believe, as our preamble suggests, that the standards that we establish should be minimum requirements designed to develop and implement a sound program of legal education.

We distributed in a memorandum to you in December some of our preliminary thoughts. And we asked you to focus on a few questions when you came to speak to us today or at our prior hearing that was held in January in Washington at the AALS meeting.

I am just going to briefly go through the eight questions we set out in that memo. And I would ask you also to think about one more which was not set out in our memo, but which we believe, and I think you were communicated with respect in the subsequent announcement that came out.

Our first question deals with the mission of the law schools and how those missions should be measured. If the primary mission of a law school is to prepare students for admission to the bar and effective responsible participation in the legal profession. But if a law school chooses to establish other missions and goals, how should the accreditation process think about measuring and evaluating whether the school is achieving those other goals.

Our second issue has to do with how you
measure it, as to the accreditation process. As you
know we focused pretty much on inputs. There has been a
lot of commentary that suggests that we ought to be
focused more on outputs. The question is if we are
going to focus on outputs, what we would be focused on.

Is it simply graduation rates? Is it simply
bar passage rates? Are there other measures? Are there
other outputs we ought to be focused on?

Third, I think we all concede that a process
to be effective has to have some degree of transparency.
But there are aspects of the accreditation process, I
think we all concede ought not to be entirely
transparent. We are dealing in many instances with
personnel issues, confidential matters that affect an
accreditation process.

The question is: What is the right amount of
transparency? How do we communicate it? And how does

it measure in? How should we think about the issues of
transparency in a process that inherently has some areas
which cannot be transparent.

Fourth, we have assumed that our standards
should be established to create minimum requirements.
Query, to what extent should we hold schools accountable
for compliance for standards that are beyond the
minimums? And how should we weigh a law school's own
pure pursuit of its aspirations.

Is it sufficient for a law school that says
we want to be the number one clinical program in the
country? But there is no way that the accreditation
process or there is no -- it is beyond the minimum
standard. So how should the accreditation process look
at that, measure it, evaluate that, communicate back to
the schools, take it into account in the accreditation
process?

At lunch many of you were there when Richard
Matasar and Dan Lau from the Access Group talked about
the cost of legal education. We all know some of the
things we do to ensure a quality legal education are
expensive. To what extent should the cost factor into
the minimum standards that we establish?

Six, should an accreditation process take
into account the types of practices that the majority of
the graduate of a particular law school are likely to engage in? Should an accreditation process, for example, South Dakota, be different from those for NYU because there are law schools in South Dakota are likely to stay with the state. The answer is yes.

Seven, we heard a lot of commentators talk about or suggest that schools that are doing well that are really adhering to the standards generally should be exempt from the same kind of rigorous review that other schools that are having problems are subject to.

Is there some issue of fairness if we apply the standards differently for different schools? Is there some question of fairness if we give a school a sabbatical, a sabbatical visit because they had a really good last sabbatical? If you're going to have such a system, how would you design it? What were the factors you would take into account?

Eight, if we assume that the goal is to create an institution with which it is a high level of satisfaction, how should we measure the accreditation process that tries to put those -- tries to establish those standards?

Nine, are there other issues that we ought to consider? And when we last communicated with you we asked one other question. We asked you to give us your thoughts on what might constitute a quality legal education.

We are going to begin today with the folks who signed up. Our first speaker will be Jon Garon at Hamline Law School.

There is a microphone table at the front. If you have not submitted a written statement, we would ask you to do it. If you do not have a written statement for us today, we would ask you to submit it for the record. Thank you very much.

MR. GARON: Good afternoon. My name is Jon Garon. I very much appreciate the work of the Task Force and the time to look into these issues. I have been in legal education for over 15 years as a faculty member of Western State University College of Law, faculty member at Franklin Pierce Law Center, and Hamline University School of Law. I attended law school at Columbia University School of Law. I speak my role as faculty member of deans, not on behalf of my
Unlike many of the legal educators active in this process, however, I also have experience outside the ABA arena. My career at Western State began at Western State, a law school accredited by a Committee of Bar Examiners for the State of California and the Western Association of Schools and Colleges, where I served as Associate Dean for Academic Affairs during the period of our successful application for provisional approval to the ABA.

In 2005 and 2006 I also served as Interim Dean at Hamline University Graduate School of Management, a college accredited by the Higher Learning Commission. I have chaired, self-studies and inspected, and of course, I served as a volunteer on the ABA inspection teams.

The points that I would like to bring today is focus first on the accreditation team process itself. There are structural issues in the accreditation process. The ABA has chosen to rely on volunteer regimen of site inspectors. Despite the Justice Department's efforts to engage in a more nonacademic in the accreditation process, the role of judges, practitioners and nonlawyers involved in the accreditation process remains regretfully trivial. Nonacademic participants are volunteers. Many are without training expertise or time meaningfully influence the overwhelming number of deans, former deans or future deans, who are essential to the operation of the accreditation process.

While these nonacademics may serve as a safety check at key points in the process, they are far too little to influence the meaningful direct any aspects of accreditation. Moreover, there are so few in number, there is a real risk that the influence nonacademic participants wield may result in negative rather than positive change.

Within legal education the duty for regulation falls on the deans and faculty. As the deans we have a large constituency to serve, and therefore, we potentially reflect the broadest range in competing influences on legal education and profession. In the
abstract that should put us in a good stay. However, the inspection team is comprised of experienced law deans and faculty typically from elite schools who have been socialized to apply the standards in a cautious and conservative manner. Worse, we often interpret the standards as we are most comfortable with them. Further blunting revisions of the rules by reinforcing an unwritten common law to adapt revision and standards. Modification, accreditation process should therefore begin with reassessment of the teams. In addition, while not codified as an obligation, it has been the practice to put a clinician and librarian on most teams to make sure those sections of the report are comprehensively written. The consequence of this structural bias is to increase importance of these sections of the reports. Second, we allow the inspection to serve double duty with participation of one inspector who engages in all aspects of the site inspection to write a separate report on behalf of the Association of American Law Schools. As a result, even before we add the influence of the AALS membership requirements on law school operations, the structure inspection teams necessarily emphasizes faculty status and scholarship issues. Those aspects are emphasized AALS. Third, we moved in the wrong direction in attempting to diversify an inspection team, white theoretically judges and lawyers are the beneficiaries of our students, there is nothing empirically to suggest they have as a group the confidence to assess whether or not our students are being properly trained or mentored. We need only look to the attrition rate in our large firms to look at questions of the competency and training and developing of our graduates after the profession. So why would we turn to this body for looking to whether or not they were doing a competent job while they're in school. Instead, we should focus on the competencies currently not required on the inspection teams. Missing from the inspection process are professional educators who demonstrate the confidence regarding student assessment and training.
As a self-regulated industry made a value judgment that the ABA should rely on a volunteer system of self-accreditation, when we keep in mind Chair Rakes directive to take a fresh look at accreditation, it seems that competencies regarding student assessment and training are a glaring omissions from legal education and from our reports.

Senior university administrators provide valuable assistance for working budgetary issues on the teams which follow this example for student learning at the student outputs and student assessment.

The most direct consequence of structural model accreditation unfortunately is conflation of the standards regarding minimum competency necessary to receive ABA renewal from the laudatory but unrelated role of peer educators interacting and sharing insights regarding the law school educational model.

The conflation of minimum competencies and best practices leads to many of the problems that you have identified with remaining questions in your report. I hope to emphasize even the standard interpretations were advised to reflect a section of approved minimum competent standards and a separate section on Best Practices, the structure that we use of the site inspections process multiple meetings with faculty and staff, oral exit interviews, the team comprised of a librarian, a clinician, a nonlawyer and a lawyer, a dean chair and two senior done doctrinal faculty members, who invariably will comingle those two standards.

We currently do not have the luxury of standards of interpretations that separates minimum standards from best practices. As a result it is the process of the chair followed by the staff by the accreditation committee to make sure that what goes into the final reports separates out idiosyncratic issues from what are appropriate questions before the school, but the effect of that win-win process is a highly normative, very conservative document that makes very difficult for schools to show independence and creativity, before we even get to the standards of a structurally driven most creativity out of a legal education.

So let me move very quickly in my remaining
time to the consequences and to the questions that are presented.

First, the current model discourages innovation. It discourages it on a number of levels.

By not separating out the minimum standards from best practices, we are unable to make value judgment and financial judgments as regarding what parts of our program we should fund, what parts of our program we should choose not to fund precisely so we can keep costs down or we can allocate our income.

Rick Matasar already eloquently stated the cost of education in his presentation and at the last hearing he identified areas cost related to the physical facility, the time to complete the program, the rules barring simultaneous credit and pay, distance learning, which all highlights costs associated with legal education that has not been empirically demonstrated to improve the quality of our graduates' ability and to interpret this profession to practice law.

So perhaps, an appropriate question to be asked by the Task Force is which standards have resulted in measurable improvements to legal education and to the service to the public.

Common questions regarding a perceived disconnect between the academy and profession may be due at least in part the divorce of part-time and full-time faculty. A faculty standard that requires full-time faculty may indeed result in better education. The standards should be revised to focus specifically on the education impact of the faculty rather than their employment status.

Full-time faculty status may create a presumption of their faculty members are more available to their students than adjuncts, but this is a presumption. And the question should be addressed.

Another example illustrates the tension between Minimum Competency and best practices. Clinical education is quite valuable and undoubtedly a best practice in legal education. The standards, however, do not recognize it as a minimum competency to produce and effective lawyer, since the standards do not make clinical work graduation requirements.
Legal education of the public may be better served, therefore, by allowing schools to choose to reduce the cost of their part-time program by having night clinics. Other schools would choose to fund these night clinics as robust as their full-time options. Standard 301B erodes student choice without any concomitant demonstration of improvement should be available to our potential students.

While the standards similarly defined amount of time a faculty member is devoted to full-time status, defining the position of full-time faculty member by what a person cannot do has little relationship to the faculty member's obligation to her students. If instead the Revised Standards 402B stated that quote, to assure an institutional commitment to legal education and a professional faculty, a school must maintain at least a 30 to one student/faculty ratio of faculty who annually teach three to six courses per academic year.

That standard creates approximation which is still second tier for each school should demonstrate it has sufficient faculty to accomplish both education and law to effectively instruct the students in school's course of study.

So having given that as an introduction, there is a few of the questions I have not yet addressed I would like to briefly comment on. And my full statement, which is a little longer than my comments, I will provide to the committee.

If the accreditation process separates out the minimum competency and best practice, then it is appropriate for the minimum competency process to be uniform across all law schools, regardless of the school's mission. Beyond the minimum competencies the standards of best practices should be done in conjunction to the ABA and the other university accreditors, such that a research mission is primarily approved by the university of accreditation program assessing the university's Ph.D. Program. The ABA has a role to assure which representation about its mission to its student and the public which such a consumer protection role should be quite limited. I strongly believe the minimum
competencies should be quantified and output data should be used as a primary measure of a professional institution's success. We can get to minimum competencies quantitatively.

The question then becomes which statistic assure that a school meets its minimum competencies to assure graduates meet the ABA goals. I respectfully suggest that data derived from the bar examination be expanded, value be assessed pro bono participation be measured and long term graduate satisfaction be incorporated. While there may be other measures, these four quantitative criteria should provide sufficient measure to assure a school has met minimum competencies in its operation.

First, the bar examination results are a useful tool and a cumulative bar examination rather than first-time bar passage may be an appropriate reflection of a school's curriculum as it is valued by the profession in each particular state. Beyond the bar examination, however, I would suggest the scores earned on the Multistate Bar Examination, MBE, be collected by each school, obviously in participation with the ABA and state bar examination association so the ABA can use standardized comparator of students.

To confirm that the schools are teaching effectively rather than merely admitting highly qualified students, the data should be compared to a student's LSAT score to the MBE for each LSAT point or band.

For law schools admitting lower LSAT scores, a statistically improvement of scores over the national average would indicate that the academic program was promoting competency on the attributes measured by the test.

More importantly, a school that performed poorly could be identified and remediation taken to improve its academic performance.

Second, instead of measuring the spending per student, a threshold question that every school should face is whether or not it provides a student an appropriate value based on its tuition cost. This would create a minimum competency for student value. The appropriate value, you need to take into account, cost of attendance, including tuition, books, housing,
financial assistance, loans, scholarship payment
opportunity, but not loans themselves and long term
market value for degree salary level and employment
probably for at least ten years.

As with bar passage and placement there also
be the need to address regional variation for
urban/rural differences. Public dissemination of the
value index and the variables that comprise that index
would provide applicants with helpful information
regarding their choices. Schools that provided little
or no value would fail minimum competency standard.

Third, value of profession should be
quantified in numerical standards. If pro bono service
represents a core value of the profession, as was stated
in the preamble, then the number of pro bono hours
should be reported on the minimum competency standard.

If legal writing instruction is a minimum
competency, then minimum and the average number of
instruction hours received per student should be
reported.

Fourth, the standards under value expectation
that law schools provide long term satisfaction to our
students. There should be a measured minimum competency
for graduates' success and satisfaction. I would
suggest that law schools begin a partnership with the

ABA, the state bar association require reporting of
professional activities and satisfaction for a period of
ten years following graduation.

If a school produced significantly
dissatisfied alumni or an alumni base disproportionately
leaves the profession, that would result in falling
below the minimum competencies for graduate success.

These kind of numerical assessments will
allow us to identify those schools which failed to meet
the American Bar Association objective of assuring
quality legal education to the students and a quality of
legal services to the profession. That then leaves open
the opportunity for the site inspection teams to do what
they do best, which is provide peer review and normative
support to those schools, by separating out the due
processes, the site inspection process, sabbatical
process, helpful normative and peer assessment and
review an opportunity to engage in best practices discussion. Schools who were falling below minimum competencies would be identified annually. There would be no reason to wait till sabbatical inspection. And professional accreditors would be engaged to be able to work with schools who are at risk for whose population were at risk.

Again, I want to thank you for taking the time to let me share my remarks. I would be happy to answer any questions. I will provide this to the committee.

MS. SCHNEIDER: Thank you. Does the Task Force have any questions?

Thank you very much. Dean Douglas and Dean McKen Carrington of Texas Southern.

Sorry, when I started I didn't say we were going to limit the comments to five minutes. I would like to remind you we would like to limit the members to five minutes.

MR. CARRINGTON: Good afternoon. My name is McKen Carrington. I am the Dean of the Thurgood Marshall School of Law at Texas Southern in Houston, which is the largest historically black law school in the nation. I know there was a question raised today. My issue is given the accreditation committees, the reading of Standards 301 and 501, whether it is a historical black institution and satisfied these standards given their diverse mission.

Let me identify the schools I talk about today. That is Texas Southern University, Florida A&M University, Howard University, North Carolina Central University, Southern University Law Center and District of Columbia. These institutions have a mission of diversity. They are the most diverse law schools in the nation. Texas Southern leads the way.

This morning we looked at the numbers that the LLVS forwarded, and if you look at the pool, the LSAT score for African Americans is 144. For all takers it is 153. The African American GPA, graduate GPA is 2.96 as compared to 3.25 for all takers of the LSAT examination. When you look at the matriculants, the average matriculant is 150. The other takers are 157.
The disconnect in terms of distribution, we were very pleased that the numbers went up. The number for African American matriculants is 3,300, but there are about 109 law schools. And if you were to average the student per law school, you're going to find there are about 16 per law school.

For the schools that admit students with scores below 150, which the African American law schools need to do because they would admit sometimes 100 to 150 African American students, so necessarily, some LSAT scores would be in the 140s. What if an African American law school chooses to admit a student on the average in the African American pool? That means that a student, a typical student will have a 144. I believe that the committee, when the committee looks at a score of 144 it might presumptively say that students at that level will not be qualified for law study. If students are admitted at African American schools at less 3.0, which is the average of the pool, then a conclusion can be made that study three of one might not be met.

Let me turn now to the study of 501 admission to the bar. I looked at Texas Law School and the other schools. In Texas the Agency of Law School is 80 percent minority. And the composite of the other eight law schools are 20 percent minority. In applying the standard of 501 there appears to be that the committee uses the bar passage rate for the entire state. And the cohort is all nine law schools in the state. It might be unrealistic for someone to think that a law school that is being set minority would perform the same as law schools or any student in the United States that would have just 20 percent minority.

It appears to me that there is a disconnect between the committee's rules as applied and the standards as applied by the committee and the reality of the commission of the historical black law schools in the United States.

I would agree -- let me suggest three or four observations. I agree with John that and the committee, that the committee, the Task Force needs to articulate minimum standards. I welcome the statement that minimum standards are a good idea.
Second, I would recommend perhaps a more holistic approach to looking at the quality of law schools. It appears to me that sometimes the committee gets stuck on one standard, and that the law school is more than the addition of individual standards. Rather, I think the committee would benefit if it were to articulate the sort of holistic approach to the quality of the institution rather than trying to individualize the standard and say a particular standard has been met or a particular standard has not been met.

Third, I would recommend that the approach to output be lumped together rather than taking a picture of one item. Let me give an example. In many instances the committee has looked at bar passage rates, first-time bar passage rates. Perhaps the better measure is to see whether the folks are becoming qualified to enter the profession. Why not look at more students, I will say, I will give you -- in one year of graduation or within two years of graduation. That might give the committee an opportunity to look at the various measures as to whether it is being done, whether or not students admitted at a certain level need to pass the second time. That is a quality measure of the quality of the institution.

Finally, let me say that for me after 23 years of being at a black law school and not having attended one, I have come to embrace the mission of the institution. We are the most important institution in our state, because we are the ones who are admitting the persons who do not give admittance anyplace else. When they come to us and then they become successful lawyers, that is a mission. That is a lot more important to us than the dance we will have to do with the Standard 301 or Standard 501.

And assume many have embraced that mission, that we would be always prepared to continue our mission irrespective of the difficulties and how other institutions would be measured. We don't think it applied to us. And for those reasons we think that our mission is normal and should be embraced, and that although it might be a variance within individual measure, we think it's something to be treasured, and we think that if the committee or if the standards want to embrace diversity, this is the type of diversity that
should be treasured in addition to the diversity we are
trying to get at other institutions.

Thank you very much.

MS. SCHNEIDER: Mr. Douglas.

MR. DOUGLAS: Good afternoon. I would like
to preface my comment by saying this is a professional experience for me, but this is a very personal experience for me.

For those who don't know me, I am James Douglas. I am the distinguished professor of law at the Thurgood Marshall School of Law at Texas University.

First I would like to thank the section for providing the opportunity for imputing the accreditation process. And second I want each of you to know I am aware and appreciative of the benefits of the process and the role of accreditation review played in the improvement of legal education. And I know personally that a number of law schools would not have achieved the quality of educational programs that they now exhibit, but for the accreditation process.

Today I have on here to talk about how to make that process better. My discourse today is not about what, but about who. To often we get hung up in the process that we forget whom the process affects.

Today I want to talk to you about who you affect, not what you affect.

I am going to divide my talk, my short talk, in two areas. First the problem and then the solution.

The problem: I would like to begin the problem with my story on a hot summer day in 1968. I stand here because of much what has controlled my professional life began on that day.

As I said in the law library at the end of my first year in high school. I sat glued to an article written the previous year by my first year torts professor Earl Carl, entitled "the Shortage of Negro Lawyers, Poralistic Legal Education and Legal Services for the Poor.".

The article explains the fact that first there were less than 3,000 African American lawyers in the United States. And of those 3,000 negro lawyers, less than 340 resided in the south and southwest portion
With most of those being in Texas and Virginia as a result of graduating from the law school of Texas Southern University and Howard University. And his 1967 article "Professional Carl" indicated that the Association of American Law Schools characterize this situation as an urgent problem, as an urgent problem.

I would now like to take you back through early spring of 1972. I am sitting in the office of Craig Christensen, Dean of the law school at Cleveland State University, as he explained to me why I should leave my teaching position at Texas Southern University and accept a faculty position at Cleveland State. As he explained to me the law school he deaned had over 1,400 law students and less than 30 of these were African Americans. He needed me to help him do something to change the complexion of this environment.

It is now the spring of 2000, and I have just completed a telephone conversation with Dr. Frederick Humphries, the president of Florida A & M University. He explained to me the State of Florida is going to establish a new law school of law at Florida A & M. The creation of this law school was influenced by a report that documented the fact that after years of various corrective actions, the number of African American lawyers in Florida remained less than two percent of the profession.

The mission of new law school was to assist in increasing the number of African American lawyers in Florida. Some years ago the American Bar Association revised its mission to include Goal IX as one of its objectives. Goal IX a goal to promote full and equal participation in the legal profession by minorities, women, and persons with disabilities. One arm of the association, the Presidential Advisory Council on Diversity In the Profession, even adopted the following as its admission state. "To increase the racial and ethnic diversity of attorneys admitted into the bar through focusing on the pipeline issues."

At an earlier time the Law School Admissions
Council, through its Minority Affairs Committee undertook as a part of its mission a goal of increasing the number of minority students enrolled in various law schools of this country. And, in fact, LSAC has conducted numerous studies, created ten programs and spent millions of dollars, yet, in its latest report of last year the council indicated that the admission of African American law schools had been flat over the last few years, and that the admission of African American males is in decline.

I discovered about an half hour and a half ago this number had increased slightly this past semester. One must remember we introduced about ten new law schools over last three years, with one of them being Florida A & M College of Law, which is located at an historical black university. It alone accounts for about half of the increase this year.

I know that by now most of you are probably asking what does this have to do with us. What does this all have to do with the accreditation process. The answer is everything.

Law schools are the gateway to the legal profession and the gateway is nearly closed to African Americans. Why do I raise this issue? Simple, the LSAT. Between U.S. News and World Report and accreditation process law schools have begun to increase the LSAT requirement necessary for admission.

We know or should know that this increase doesn't improve the prospect or admission for minorities, especially African Americans.

For years LSAC cautioned law schools over the over reliance on LSAT scores in the admission process. The data shows that the LSAT and GPA taken together, are the best quantitative prediction for the first year performance. However, experts agree that even though taken together, these indicators are the best predictors.

We know there are other factors, but the other factors are not quantifiable, therefore, do not reduce themselves to simple numbers. Factors such as motivation and overcoming obstacles in life are two, even though there are many others. This lack of limited predictability by there LSAT and the undergrad GPA is the reason the LSAT wants law schools not to rely
heavily on these indications for making admission decisions and yet we do.

We also know that one fifth of those predicted by the LSAT and GPA to finish in the bottom of the class will finish at the top of the class and one fifth of those predicted to finish in the top of the class will in fact finish in the bottom. In the last few years accreditation process has not rewarded schools that want to address the ABA's Goal IX objective or even the accreditation diversity standards. Instead, those law schools have been punished when they have attempted to address the diversity issue by the committee's action of holding us hostage to LSAT panel.

We all know most minorities fail to have test score as high as white applicants, and African Americans tend to be at the lower end of the test spectrum. Requiring a law school to raise its LSAT admission standards at the same time increases the diversity of the student body is an impossibility. If the law school raises their LSAT requirement it must reduce its minority for enrollment and conversely if a law school increases its minority it must lower is LSAT requirement. The law schools as a whole find they simply cannot achieve both.

What the aforementioned actions have led is not an increase in an overall law school diversity, but if anything a shift in the diversity levels between law schools. Since the number of applicable, acceptable African Americans applicants have remained flat over the years, it means whatever law school "A" increases its African American enrollment in law school "B" decreases.

In order to increase our overall African American role, we must be allowed to work from a large pool. I know much has been done by a lot of educators to address this issue from MILE to the pipeline, to Wingspread and many others. I know because I worked nonstop on this issue since fall 1971. And no matter how hard we work we always seem to have hit a wall.

What I suggest today is that there are many applicants in the lower LSAT range capable of doing law school work and becoming successful members of the bar. I know because I admitted them as students at Texas
Southern University, at Cleveland State and Syracuse University, at Northeastern University and Florida A & M University.

The solution: At this point I would like to give you two examples of how to increase the number of African Americans in the legal profession and not just influence an individual to graduate from school "B" rather than law school "A".

During my tenure as an associate dean of Syracuse when the LSAT range was 200 to 800, and this is going to surprise a lot of people, I admitted an applicants with an LSAT score of 200. Yes, the score one receives just by turning in an answer sheet. That applicant enrolled at Syracuse and graduated in three years and became a successful member of the bar.

During my tenure as dean at Texas Southern University when an LSAT range was ten to 49, I admitted an applicant with an LSAT score of ten. Once again, the score one is received just by turning in an answer sheet.

That applicant enrolled in Texas Southern, graduated in three years in the top quarter of her class and became a successful member of the bar. These are just two examples of many more whose quantitative predictors said clearly an automatic denial.

And most of these automatic denials I have admitted are presently practicing law all over this country. I understand the nature of admitting applicants at the lower level of the LSAT range and the academic enhancement required to assure this successful matriculation.

Please know there are excellent academic enhancement programs available and the committee is correct in assuring that a law school admitting non-traditional students must have support programs to address their academic issues and must assure that the law school adequately prepare them to pass various state bar exams. However, I believe the accreditation process should not prohibit a law school committed to addressing the stated goals of the ABA in general and the section of legal education and specific from carrying out the diversity issue.
I do not suggest to you that this type of diversity mission should be dictated by the process. I do, however, suggest if the law school decides to address this tremendous societal issue, it should not be prohibited by the organization charged with assisting in its solution.

I beg you please become a part of the solution to this racial divide problem and not a part of the problem. Thank you.

MS. SCHNEIDER: Thank you. Questions anyone?

Next speaker, Richard Neumann.

MR. NEUMANN: My name is Richard Neumann. I am the Dean at Hofstra Law School. I serve on a number of site teams. I teach both doctrinal skills courses. I will hand up a submission that I prepared. I will give it to Buck.

I want to talk about our accreditation and architecture and medicine. Architecture has accomplished a level of transparency that would be quite controversial for us in law. They do it in several ways. First of all, the self-study and the teams site report after their version of the accreditation committee has made its decision become public documents. I know that is kind of frightening. They might write them different from the way we do. The fact they have been doing this for a long time suggests it is possible, there doesn't seem to be any movement in architecture against this. It may be we do need some more transparency, not necessarily the exactly the same thing.

Secondly, the exit process at the end of a site inspection. The last thing that happens is a school wide meeting in which the team addresses the faculty and entire student body. The team doesn't explain as it would for us and also architecture to the dean and the university. They don't preview what is going to be in the site report.

What they do is give their impressions of the site visit in an informal way to all people affected by it.

The third thing they do is that each school is under an obligation every year to tell each member of the faculty and each student where on the accrediting
authority web site can be found a thing called the 34
Student Performance Criteria, which gets into the other
thing that architect does, which is very interesting.
They probably have the best method in higher education
of testing outputs.

This has been going on since the 1970s, all
the number of criteria falls each time they codify it.
It used to be 55. Now it's 34.

What architecture did was come up with a
statement of competencies that should be true of every
graduate from an accredited architecture school. What
the site team does is appears from the documents to be
most of what a site team does, is to spend their time
reviewing the student portfolios for evidence that all
students are developing or have developed all 34 of
these competencies. Their pragmatic problems for us, if
we were to do that, because a lot of what a lawyer does
is oral, whereas virtually everything an architect does
results in a building design. On the other hand, with
E-mail attachments and MP3 files, this kind of
examination doesn't even have to be done on site. It
can be done by the site team before showing up.

If we could post what -- if kids can post on
U2 whatever they feel like, surely through the use of a
web site of E-mail attached MP3 files, we can get the
equivalent of a student portfolio of tapes,
negotiations, tape or oral arguments, taped examination
of witnesses. It used to be we would go to the VCRs.
We no longer need that.

This kind of site valuation is more nerve
racking for an architecture school dean than our site
valuations. A dean who is a student that has a
significant amount of experience with law school
accreditation ought to be able to predict with a fair
amount of accuracy as a result of a examination. But
the management of an architectural school dean whose
site -- the results of the site inspection depends on
how the students have done and how well the student has
done educates the students.

What I think this means for us is that the
only way we can really measure outputs is to completely
reenvision 302, standard 302. If we were to replicate
what architecture does, we would have to incorporate
into 302 some summary form the statements of skills and
values that was developed by MacCrate's Report. In
essence, we have already done what architecture is set
to do. We have developed a statement of competency
of a lawyer, something that every law graduate ought to
be able to do every part of. All that remains now is to
convert that into something that can be part of

accreditation.

When I looked at both our architecture and
medicine I discovered some other interesting things.
They both regulate far more intensely than does the
section. Architecture does it focusing on outputs.
Medicine does it focusing on inputs. In both cases the
regulation is much more intense compared to those two
professions.

The section does not micromanage it. It
under regulates it, if medicine and architecture set the
bar. It is also true that in architecture and medicine
there is no equivalent. There is no group of deans
lobbying for less regulation, even though in those two
fields regulation is more intense than it is here.

The difference in regulation is especially
intense when you look at the curriculum. 302 is the
sketchiest approach at regulation of any of those three
professions, law, architecture and medicine.

One illustration of this is to look at the
typical medical students graduated transfer, with a
typical law student's graduate transcript and the same
with architecture. It is impossible in the other two
professions for a student to graduate with 60 or 65
percent of the credits having been earned in electives.
In the other two professions the accrediting authorities

have developed very strong statements of what graduates
ought to know and ought to be able to do. That results
in a very high number of required courses.

The typical medical student doesn't run into
significant numbers of electives until the final year of
a four-year program. That is especially true, not just
with curriculum, but with the skills curriculum. I
think there is a fair amount of dissatisfaction among
the bar that is no coalesced here.

Last year I was asked by a national law firm
to do a two-day course for its mid associates, mid-level associates, people who had been working at the firm for three or four years. I had to write persuasively better. I looked at a wide range of persuasive memos written by these associates. These are people who all graduated from top schools, in a highly competitive environment.

I put together a program that would essentially reach -- only 30 of them -- I could only do 30 in two days. Before I met with the associates and started to teach them, I met with some senior partners. They asked me whether what I was going to teach was something that could be taught only practicing lawyers. I had to say no.

Every third year student is in a position to learn everything I was going to teach their associates. They asked why it's not true that every graduate from a law school that has that learning. I have to say that what would have to be taught would have to be taught in the third year, which is when students have the ability to learn mature persuasive writing skills, but no school requires a course like this in the third year.

I have hardly ever seen so much anger expressed by the group of people as those partners expressed. It was anger at legal education. I haven't done anything to provoke it, other than to tell them why their associates didn't have what they were going to pay me significant numbers of dollars to teach them. It is very frustrating to them as lawyers who higher young lawyers. I think the bar has not yet figured out that law has not done what architecture and medicine have done, which is to develop a comprehensive statement of competencies and to accredit schools on the basis of their ability to deliver those competencies to all of its students.

Thank you.

MS. SCHNEIDER: Thank you. Any questions?

MR. HERTZ: I want to ask you a question regarding the MacCrate skills of values to be used as a measure of competency and the kind of competencies that would be taught in law school. As you know, the MacCrate skills and values presupposes that those are
skills that all lawyers can achieve in order to be able
to achieve a level of competency but doesn't presuppose
that all those skills be learned in law school. And it
specifically states it should not be used as a measure
of accreditation.

Are you imagining that in fact those skills
would be used as a template or rather that would be
regarded as the model of the end product? You would
work backwards to figure out what things should be
taught in law school?

MR. NEUMANN: No. You're absolutely right.
The SSV was developed as a more comprehensive advanced
statement than what you can expect every third year law
student to learn. It would take very little to convert
that into a reasonable expectation of what every law
student should learn.

I would like also to mention that the
Carnegie Foundation ten years ago studied this method of
accreditation in a comprehensive report on architecture
schools general. And I am going to quote from the
report. "The system of architecture accreditation that
has evolved is exemplary amongst the best in higher
education. This is the same foundation as the published
report on legal education, which is not particularly
complimentary to us. Although, I don't think it goes
into accreditation.

THE COURT REPORTER: I cannot hear you.
MR. SULLIVAN: Richard, I know medical
institutions bring in one to two percent of the revenue
and medical student education is heavily subsidized by
clinical earnings. Therefore, each medical student's
tuition leads to about a quarter of the cost of
competency education. Assuming a competency education
in law could entail some costs not already incurred, how
would you pay them?

MR. NEUMANN: That might be the toughest
question in legal education today. In my written
submission I do deal with this to some extent. The
faculty practice plans you're talking about in medical
schools, the most recent figures I saw from 1999 and
2000 are the most recent studies of medical school
finances was published. In the medicine's version of
the Journal of Legal Education, if I remember the figure
correctly, the average medical school of about third of
the operating expenses of the school as a whole,  
including the cost of operating the teaching hospital  
were generated from the faculty practice plan. The  
result is there are clinicians, many clinicians in  
medical schools who do very little teaching and the  
average medical school number of clinicians greatly  
exceeds the number of basic science teachers. In fact,  
the most recent figures I have seen is 82 percent of the  
faculty and 75 percent of the deans in medical schools  
are clinicians. Many of those people are not teaching.  
They are in fact earning money to generate money to  
operate the school.  
I am not recommending that we do that. We  
have completely foreclosed that by our motto of legal  
education. We have virtually forsworn except in a  
single law school any significant income from the clinic  
in order to support the skills teaching at all. We  
might want to at least open up that questioning, even if  
we decide not to change what we were doing.  
MR. SULLIVAN: Barry Sullivan. You said that  
the big question is how you pay them. Isn't another  
question, a big question who are they and who do you  
hire?  
MR. NEUMANN: Yes, it is. And it would take  
probably many days for many creative minds to be sitting  
in a room with the door locked not letting them out for  
any reason -- it is not an emergency -- until they came  
up with good creative ways to do this.  
I think we have probably underestimated the  
value of the practicing members of the Bar that  
contribute here.  
Certainly, some of the richest teaching  
situations I have seen in law schools have involved  
collaborations between full-time clinical teachers or  
full-time skills teachers. Large groups of  
practitioners in architectural schools is considered a  
great privilege for even the most prominent architects  
in the community to come spend a half a day a week at  
the architecture schools. Of course they don't bill by  
the hour. They bill piecework. It doesn't feel in the  
same way the income is being lost, but I think creative  
ways of using members of the bar working closely with
the full-time teachers as not have been full-time
members of the bar can provide things that we as
full-time clinicians cannot. We can provide things they
can't.

MS. SCHNEIDER: Thank you very much. We have	hree more people who are signed up. Unless we are
going to be forced to leave this room promptly at 3:00
we will continue until we have heard from everyone who
signed up. We have six people who signed up. Craig
Smith and Kristen Gerdy.
MR. SMITH: My name is Craig Smith. I am
director of Vanderbilt University Law School. I am
currently president of the Association of Legal Writing
Directors. The association has more than 210 members
from over 110 law schools. Most of them are current or
former directors of legal research writing programs.
I want to start by thanking you for the Task
Force itself and work it is doing. It is very
important, and I think you have articulated some
excellent questions. I am going to try to go through
those questions very briefly and make comments on each
of them. But as an overarching comment I want to say I
agree that the MacCrate for itself does articulate a
very workable vision and interchange you just had Randy
with Richard, obviously that has to be massaged
somewhat, but that is very doable. I think there is a
broad consensus about that. I think really the
important question is how do we implement that.

To your first question, should the
accreditation standards explicitly recognize other
missions, I would answer no. And the reason is, this
past focusing on minimum standards and preparing our
students for practice is a huge task. It is a very
difficult task. And I would suggest the ABA ought to
focus very closely on doing that task extremely well, as
well as it does now, it could, that task could be done
better. Again, focus doing the job very well. That

would be my suggestion.

For the second question, should the
accreditation process rely on more output measures. As
I said, if output is understood, sort of in the terms of
the MacCrate Report identifying competencies, that is
useful and helpful. I know that a colleague of mine who
is president of the Legal Writing Institute will speak
next and will say more about that.
I want to make a point that it is not
possible to not focus solely on outputs in education.
You really have to look at end inputs as well. I think
it is very important that the ABA in its accrediting
project ensure simply that somehow or another some
graduates entering the profession have some skills, but
you're accrediting law schools you really want to focus
on ensuring that the law schools actually do it and not
force the profession to do it, for example, through
summer clerkships or otherwise, or commercial bar
preparation services to do it. The ABA's focus should
be on these are the minimums and law schools have
responsibilities to ensure those minimum standards are
-- they pursue those minimum standards.
The third question, how should the
accreditation process be structured to ensure
transparency? I agree that there seems to be a lot of
consensus on the certain information needs to be
confidential. What is mostly important for
transparency, I believe, is that the official decisions
of the accrediting audience and the reason underlying
those decisions be made public and publicized widely.
That is the place to look for to ensure there is
transparency, make sure all participants in the process
believe that the process is fair. And I would suggest
that a model for this is the way courts handle this.
Courts will publicize their decisions, publicize the
reasons underlying their decision. Even if some of the
decisions of the parties are not kept under.
I remember what we are trying to do really is
create an efficient market and information is very
important to discipline that.
The fourth question, should the accreditation
process go beyond ensuring compliance with minimum
requirements? Certainly there is nothing wrong with
encouraging aspirations, and perhaps there is a real
consumer protection role, but again, I would suggest
that the ABA ought not to lose its focus. Should stay
very closely focused on minimum standards and on the
skills, values identified by the MacCrate Report. And
this can be done. And there are schools that are
showing how it can be done.

The fifth question, should the accreditation take costs into account? Again, I think that the way to answer this question is to focus on the fundamental necessities. With regard to the minimum skills necessary or people to practice in the profession, that is where the cost arguments should have less force. The argument that preparing students should not be a persuasive argument. Instead, the cost to be concerned about are costs for other kinds of things that law schools try to do. That would be the place where there should be more room to look at the cost question.

The sixth question, should the accreditation process take into account the types of graduates. I suggest, again, thinking in terms of minimum standards and minimum competencies, the answer is no. The MacCrate report has envisioned that applies to all of it regardless of what they do.

The seventh question, uniform sets of criteria. Should they be applied -- should it be applied in a uniform manner? I believe, yes, because it's a fundamental question of fairness. However, to streamline the process of review, I think that the ABA should seriously consider whether there might be some room for innovation there. I was interested to hear what Richard Neumann had to say on that. One could suggest law schools have the burden to show why there should be such a streamline process. Maybe if the law schools would pay attention to those standards and say if we come up with good measures and we can prove to the ABA that we are doing a good job, we can have the benefit of a streamlined accreditation process that would be good.

Also, there may be some ways, I agree, also that that technology can help in that process. There could be a lot accomplished virtually.

With regard to the eighth question, how should the accreditors obtain feedback from the quality of the process? Like to suggest this Task Force is an important first step here. Perhaps one that should be repeated in the future kept on going.

Another suggestion I would have that the
documents that this has Task Force creates and this Task Force receives should be publicized. This is a terrific discussion if you have fostered here. I would like to see more people involved in this discussion and find ways to get this discussion, get participants in the discussion, other constituencies in legal education.

Your final question, what other areas and issues should the Task Force consider? I am going to leave that to my immediate past president of Legal Writing Directors Kristen Gerdy. Thank you.

MS. GERDY: My name is Kristen Gerdy. I am the past president of the Association of Legal Writing Directors. I am also member of the board of directors of the Legal Writing Institute. I am professor and director of the Rex E. Lee Advocacy Program.

The Task Force and others who are examining the proper role of accreditation for law schools often ask: What makes a sound program of legal education? The end product of sound legal education is a graduate who is qualified to and capably practice law effectively. We know that, but how do we get there? As Professor Neumann said the vision for some legal education really is found in the skills and value statement in the MacCrate Report supported by the forthcoming report of the Carnegie Foundation on legal education. But if that is true, it has been 15 years since the MacCrate Report was issued. We haven't done very much to realize that vision. Why not? What is the problem? Perhaps, and what I would suggest to you today is the reason is because many of the decision makers at the table when it comes to putting together law school curriculums are those that have not been enthusiastic adopters of the real vision behind MacCrate and its practical and oriented nature.

One way to make sure that that vision is realized is to regulate the decision making structures of law school faculties. We need to make sure that people who are interested in and dedicated to practical education are actually at the table. This will ultimately lead to better curriculum that will better prepare our students for the practice of law. As the summary that has come up for the Carnegie Foundation
states. Law schools do a better job of preparing legal scholars than they do preparing practicing lawyers. Standard 405 is the best vehicle for ensuring these people are at the table, despite the characterization that for standard 405 is about employment conditions and should be done away with. Primarily Standard 405 is about governance and academic freedom. Teachers who are least involved in governance and who have the greatest risk to those academic freedom are those who are off tenure track and are predominantly women, the very people who spend the time helping each student one at a time to become capable and effective legal practitioners.

Statistics from the last ten years showed that those on tenure track are the overwhelmingly male, more than two thirds are male, while those off tenure track overwhelmingly are female. Steady figures for the last several years is right around 70 percent. Those are the people that are not at the table most the time. The academic freedom of these faculty members can more likely be in jeopardy with only about 18 percent of the faculty members teaching practical skills don't really understand or don't value practical skills in the same way that those 18 percent do. They're more likely to infringe upon the academic freedom without realizing they are doing it.

One simple example, despite the fact that the ALWD Citation Manual was sponsored, written and reviewed by professionals, some deans and faculty and real world practices, have mandated against its use. Referring to something written by a law student who have never stepped into a courtroom. No one would ever tell a torts professor that they cannot use a particular text. It is just a given. Some deans have made that decision for a skills faculty member.

Standard 405C is originally written and applied but not as recently reinterpreted and applied strikes the correct balance. It gets key, practice-oriented teachers to the table and protects their ability to teach and mentor a student, and ultimately promotes a law school's ability to make the
MacCrate vision into reality. Thank you.

MS. SCHNEIDER: Thank you. Any questions?

Thank you. Susan Hanley Kosse.

MS. HANLEY: Good afternoon. My name is Susan Kosse and I am a professor at the University of Louisville Brandeis School of Law. I am president of the Legal Writing Institute. The Legal Writing Institute is a nonprofit corporation founded in 1984. And its purpose is to exchange ideas about legal writing and to provide a forum for research and scholarship about legal writing legal analysis. We have over 2,000 members representing all ABA accredited law schools in the United States and from other countries, as well as from English departments independents as well as practicing bar members of the Legal Writing Institute.

I want to be very brief, but start with the Carnegie Report. The Carnegie Report identifies two major limitations in legal education. First, most law schools give only casual attention to teaching students how thinking in a complexity of actual law practice. And second they failed to focus on skill in legal analysis with effective support for developing ethical and social skills.

The argument has been made that law schools should be left to their own devices to address these inadequacies. Yet, the Carnegie Report finds that this laissez-faire mentality has failed to produce the desire results. It finds the efforts to improve legal education have been piecemeal, not comprehensive, and that few schools have been attempted to address these issues systematically.

These, I think, concerns go to the heart of defining what the minimum standards for accreditation should be. And we should reject excuses for preserving the status quo. The course, the standards demand policy quality education must require inputs and outputs. We need the design define what output measures should be.

I want to follow up on what Professor Neumann talked about on an output that would beyond the bar exam. So measuring output would be looking at student's actual work. So we can compile this portfolio like the architect students have done, and in there would be documents and experiences that indicate a minimum
competency and skills and a readiness to practice law. So this portfolio might include a client letter, a deed, a contract, a bill analysis. It also could include DVDs of depositions, negotiations, counseling sessions. The site teams have looked at representative samples of these portfolios to determine that students are actually prepared to practice law. I don't consider these best practices. These are just what is minimally necessary to effectively practice. This would not be impossible to achieve because some schools are doing such a thing. If we actually integrate skills in each course all three years, writing or skills across the curriculum approach, we would accomplish much of the Carnegie suggestion. We could not do it in a vacuum. We will have to look at inputs too to get to the outputs. So we would need structures in place and people in law schools to evaluate these outputs. I think this approach would also answer the question of what makes our sound legal education. All these experiences are necessary for sound legal education. And we need to be doing this in a law school and not just depending on the bar and bar association after our students graduate. So I think this approach would answer the Carnegie Report and the profession's plea to prepare graduates for effective and responsible participation in the legal profession. Finally, accreditation standards must require advancement. As evidence of the need to demand advancement, we know how long it has taken for legal education to affirmatively open wide to faculty doors to women and people of color and provide necessary assistance to the students suffering from educational and cultural disadvantages. We can also note how difficult it has been to move to pedagogy in the direction of lawyering skills training, particularly clinical education and legal research and writing. Moreover, advancing in connection between developing sound lawyering skills program and assuring employment security for their faculties has been extremely difficult. But the ABA council has played an
instrumental and appropriate role in demanding
advancement in these areas. And in doing so it is
understood that the minimum accreditation standards
require assuring responsiveness to the legal profession
and society.

We are confident that the council will
continue to meet these responsibilities. Thank you.

MS. SCHNEIDER: Questions?

MR. HERTZ: Yes. Thank you for your
statement. You mentioned there are schools that are
already providing student portfolios that would be
appropriate for accreditation review. It doesn't have
to be now, but at some point if you could give us the
listing that will be terrific.

MS. SCHNEIDER: Do you have a statement
you're going to submit for the record?

MR. SULLIVAN: I have sort of a general
question I would like to ask. I have a general question
I would like to ask. It seems to me that two elements
here; one is what our goals are for the profession and
how as a learned profession we seek process of legal
education. The other is a matter of consumer protection
and whether students are really getting what they are
bargaining for. Earlier in your remarks you said that
one of these arguments is that law schools are just to
be left to their own devices. I think that probably
 teased up the issue pretty nicely.

Let's suppose that we have a law school that
has an excellent academic reputation in a very narrow
sense, has no trouble luring students to attend,
students know it is going to translate into good jobs.
Law firms, because somebody put it this afternoon,
because the law school was collecting talent, the law
firms really like this raw talent and they're willing to
vote a lot of resources to training them after the fact,
and so on.

Well, why is it, just a theoretical matter,
why should we be concerned with an accreditation point
of view, just to be the devil's advocate, with a law

school like that? Everyone is happy. The faculty is
happy. They are doing what they want to do. Students
are happy because they are getting the kind of education
they know coming in they're going to get and employers are happy because they know they're getting what are bargained for.

MS. HANLEY: First I would wonder about the substance, because all the people I talk to in the bar are not happy. Maybe there are some that are or they feel like there is a huge learning curve.

More importantly, if you look at the preamble in what was in the original memo, it says that the accreditation is to make sure they are competent, effective practicing attorneys. And if you want to be an ABA accredited school you should have minimal things that people are able to practice. There might be a place for schools that don't want to teach practicing attorneys. But I don't think that is the ABA mission on credits in those schools. Your accrediting people that are learning skills and practicing law.

So I think that is why ABA should care.

MR. SULLIVAN: Also it was mentioned here that society has some stake in this as well as the constituency.

MS. HANLEY: Exactly.

MS. SCHNEIDER: Thank you. Claire Germain.

MS. GERMAIN: My name is Claire Germain. I am the immediate past president of AALL, American Association of Law Librarians, which represents over 5,000 librarians and about 1,800 academic law librarians.

We have submitted written comments focusing on our expertise and the impact of our accreditation policies on academic law libraries. So we will not repeat comments here. I would like to highlight a few items of interest.

As a whole we believe that the standards provide sound, basic structure for libraries in support of the law school educational program. We recognize from time to time the single law school or administrator will draw conclusions by the ABA. In general, however, we feel that the system works.

Academic law librarians in the United States are models upon which other countries base their function centers. And an example, following this meeting I will be travelling to Brazil where I was invited by the Chief Justice of the Supreme Court to
talk about libraries. A response to several of the specific questions asked by the Task Force, we offer the following comments: As to question two, we feel that it could be an area in which the standards could be improved. And we support the consideration of identifying and including appropriate output measures in the standards including for law libraries. Several books I have started working on that output measures, including the AALL, Accredited Law Libraries, special intrasection. Also we understand the law libraries committees of ABA section. As to question three, we carry to the continuation of the process by which subject specialties, must especially librarians and also clinicians and administrators are required members of the site visit teams, the Accreditation Committee and the Council. How else can the complex problems of a modern law school be fairly viewed and then evaluated other than by active participation of subject specialists? Question seven, the AALL supports the existing review process in which all law schools are evaluated by means of uniform set of criteria applied in an even-handed manner. Treating all law schools in a like manner minimizes claims of unfairness and lack of transparency in the review process. And as to question nine, we believe that the standards are generally sound and remarkably flexible, allowing for effective evaluation and comparison of libraries that are very diverse. Given the recent comprehensive review of Chapter Six, Library and Information Resources and their furtherance of a sound educational experience, we see no benefit from extensive modification of the standards at this time. The current process by which individual provisions are amended and updated is effective generally as exemplified by the discussions at present regarding ways to evaluate effectively the collection's volume count, title count and electronic resources. In particular, we encourage the retention of Standard 603D and its accompanying interpretations. The status requirements are especially
important for the protection of women faculty members and minority faculty members. Both categories are often and are under represented on faculties and their viewpoints might differ from those of the majority. Academic freedom is an important component of guaranteed status. We explained in our -- we elaborated on this in our written statement.

Possibly the most important point that I would like to make today is the following: We believe that the sound legal education is more than studying law and society. We believe that the fundamental mission of a law school is to train lawyers who will have the ability to practice law effectively, ethically and completely. We believe legal research is fundamental to the education.

As you know, the National Conference of Bar Examiners is currently contemplating adding a test of legal research skills which indicate how important the legal profession and legal research is to a sound legal education.

We believe that for the law library to be an active and responsive force in the life of law school the director needs to be on par with the rest of the faculty. The legal research in many respects is a separate legal subject matter. No one else on the faculty keeps up with how they would like to practice law.

If this specialty is diminished by rank or lack thereof, the respect that is deserved is diminished as well. We also feel that the faculty tenure for library directors lends itself to attracting the best and brightest lawyer librarians to the position. A law school has to think long and hard before making an offer.

Thank you very much.

MS. SCHNEIDER: Questions?

MR. MORGAN: Dick Morgan. In light of the prevalence of electronic research and the way lawyers and law students actually do research these days, in light of the costs of libraries and possible differentiation of missions among law schools, would your group favor requiring that every single law school
having a major law library, no matter what its mission, or would you think of regional libraries or some kind of shared resources?

MS. GERMAIN: I think it's a very interesting suggestion. We are in no way talking about sharing more and more resources and establishing the regional -- yes, that is an excellent suggestion, yes.

We are also working in our section in state and federal governments and federal government authenticating official digital information so that everyone can be sure that there is everything and you don't rely on print as much.

MS. SCHNEIDER: Other questions? I have two more people who have signed up. David Van Zandt representing ALDA. After David Paulette Williams representing CLEA.

MR. VAN ZANDT: Yes. I am Dave Van Zandt. I am the president of the American Law Deans Association. I have spoke to you before. I will be very short.

I will make the following statement to reflect the use of individual member of board of directors of the American Bar Deans Association. Doesn't necessarily reflect the views of the membership.

It supports the formation of the Task Force and the purpose of reviewing our accreditation. The ALDA board is confident that the Task Force would do responsible and thoughtful work in providing guidance to improve the accreditation standards and process. The ALDA board continues to support the ABA. The ALDA board continues to provide to the Task Force a statement. At this time we simply want to reiterate the Task Force should articulate the task of accreditation as set forth to enforce minimum standards necessary to provide sound legal education.

In particular, as set forth in our statement we believe that terms and conditions employment are not such minimum standards. We also believe that diversity in the legal education is a core value as expressed in the amicus brief filed by the Grutter case.

That is all I have to say. I would happy to answer questions. You may not have any.

MS. SCHNEIDER: Yes.

MR. HERTZ: Are you polling a membership by diversity issues?
MR. VAN ZANDT: We are polling our entire membership to comment on our statement and also on the issues of diversity. I don't know whether that will result in the board making any statement.

MS. SCHNEIDER: Other questions?

MR. GARCIA-PEDROSA: With respect to terms and conditions of employment history. For example, the accrediting body should not require tenure as a condition for accreditation?

MR. VAN ZANDT: That is the position of the board, yes, across the board. We are not saying we would tender from one group of employees and not for another group.

MR. GARCIA-PEDROSA: Thank you.

MS. SCHNEIDER: Any other questions? Thank you.

Paulette Williams.

MS. WILLIAMS: Good Afternoon. My name is Paulette Williams. I am the associate professor at the University of Tennessee College of Law. I am pleased to submit to this statement to the Accreditation Policy Task Force in my capacity as president of CLEA, the Clinical Legal Education Association.

In January when I spoke to the Task Force in Washington D.C. I focused my remarks on a recent application of standard 405C relating to security of position for clinicians in law schools. I stand by those remarks, and I urge the Task Force to continue to address that issue in whatever ways it deems appropriate.

Today I would address an exciting opportunity that all of us in legal education have to engage in a dialogue aimed at dramatically improving the quality of legal education at schools across this country.

Recognizing that the law school accreditation process should be designed and administered in a manner that protects the interest of the public law student and its profession. I strongly support this standard which requires that a law school's educational program must prepare its graduates for admission to the bar and effective and responsible participation in the legal profession.
This Standard invites us to look carefully at what law schools are doing and to what extent the schools are effectively preparing students to practice law.

Two very important studies of legal education have just been completed. I urge the Task Force and law schools all over the country to take advantage of the many opportunities that will be coming up this year to engage in discussions on this important topic. One study, a report issued by the Carnegie Foundation that has been mentioned earlier today has been published just this year and concludes that significant changes are needed in legal education.

The other study, Best Practices for Legal Education, "A vision and a Road Map, written primarily by Roy Stuckey of the University of South Carolina School of Law will be published this spring. Best Practices invites process of discussion to debate and implementation of the principles contained in it or other principles that will promote improvements in legal education.

Best Practices which is being self-published by CLEA is the product of six years of work by a group of law professors, legal education scholars, and law school administrators, who undertook a thoughtful and deliberate way to improve legal education consistent with sound educational theories and practices. Best Practices presents a well-researched and well-documented information on instructional goal setting and on organization, delivery and evaluation of a program of legal instructions. It provides a comprehensive look at how schools can best prepare students to practice law. It also is a useful tool for schools focusing on particular aspects of curriculum development and assessment. Best Practices is a comprehensive guide for the legal educator to the substance, structure and methods of delivery of legal education. It provides analysis of effective and diverse teaching methods with a concrete and useful how-to examples. It also has a very helpful focus on assessment of outcomes.

Using the principles of Best Practices
several schools have already used the document or prior versions of the document to evaluate their curriculum and/or to prepare for site evaluation. The Carnegie Foundation report that has been mentioned earlier cites the Best Practices book very favorably. I am really excited by the opportunities these two studies provide for us to engage in the important dialogue about what we are doing and how to do it better. There will be conferences this year to discuss this Best Practices project and lots of opportunities. It will be distributed very widely. I urge us all to engage in the dialogue. Finally, I want to add a word or two about the importance of clinical programs to a law school's program of legal education. Clinical programs include a wide range of professional skills training opportunities, including live-client representation, simulation courses, externship and other kinds of lawyering skills courses. Clinical experiences are some of the most powerful learning experiences that law students have. For many, the opportunity to apply the principles and theories they that they have studied in nonclinical classes presents an opportunity for all that clinical education to come together and make sense. I believe that increasing the number of clinical opportunities available to law students and ensuring the high quality of those offerings are two of the most important things we can do in law school. By valuing and promoting a quality clinical program as part of its curriculum, a law school is better able to recruit and retain high quality faculty to teach its clinical courses. The clinical programs within the law school are often the primary interface with the community in which the law school was located. And helps the school to fulfill its public and community service missions. Clinical programs also contribute the diversity in the institution, given that clinical faculties tend to be more diverse than the nonclinical faculties in terms of race, gender, national origin and cultural backgrounds.

In conclusion, I want to thank the Task Force
for the opportunity to participate in this discussion, and we at CLEA look forward to our continue conversations.

Thank you very much.

MS. SCHNEIDER: Thank you. Are there questions?

MS. ROTHENBERG: I would like to thank you. I didn't ask this as well to some of the other people who testified. Do you think based on the Carnegie Report and Best Practices law schools need to engage in scholarship?

MS. WILLIAMS: I don't have a position on that. I accept the fact that law schools do engage in scholarship and that is a way that we have grown up to be. I don't see that changing any time soon.

MS. ROTHENBERG: Could you in fact imagine there might be some schools might really be very good at doing a lot of writing and a lot of clinical work, and some might be very good in scholarship area and/or should they all be good in all those things? It is a hard question to ask, but it is something that you have to struggle with when you are trying to figure out minimum standards for a school.

MS. WILLIAMS: Right. I don't have a position on that, I must say. And what I see in schools is that there is quite a variety of the ways schools are handling the issue of scholarship versus practice and skills oriented training.

So it does seem to me that both are part of it. Clinical scholarship is a major area that CLEA is very concerned about. And we see a huge value in scholarship that relates to teaching methodology, how law students learn best. I see that as extremely valuable, together with the other kinds of scholarship we have in law schools.

MS. ROTHENBERG: Probably outputs as well.

Thank you.

MR. SMITH: Steve Smith. You mentioned the Best Practices provisions that are nearing completion, but not yet ---

MS. WILLIAMS: They're completed. I expect they will be published in the spring.

MR. SMITH: If it would be possible for the Task Force to have an early copy of those to be able to
look at some of the things you mentioned, I would find it very helpful.

MR. MORGAN: You make a very compelling case for the benefits of clinical legal education. I have to agree with that case. But, I guess, given all those benefits, why should we require that -- why wouldn't schools -- why wouldn't benefits speak for themselves and schools have the opportunity to choose to adopt an educational program that passes those benefits or perhaps adopts an educational program that focuses more heavily on scholarship, not so much on practical skills, then let the consumer and market decide which is better?

MS. WILLIAMS: I am not taking a position whether clinical education should be required. I think there are ways that the accreditation body can set standards that say that schools need to be offering these opportunities to their students and find ways of encouraging the offerings of those opportunities to as many students as possible.

MS. SCHNEIDER: Any others questions?

MR. SULLIVAN: Barry Sullivan. You would say that whether clinical education per se is required, that ideally clinical education leads to development of certain skills, attitudes and so on, and that however the law school decides to fulfill that part, that part is the part of its mission?

MS. WILLIAMS: Absolutely. To the extent that law schools are attempting to preparing students for the practice of law, clinical education is the best way that we know of to achieve that goal.

MS. SCHNEIDER: Any other questions? I think we have one other person who would like to speak.

MR. CLARY: I am Brad Clary from the University of Minnesota Law School. I am past president of the Association of Legal Writing Directors. And in light of the most recent questions I thought I would add a thought or two from our perspective.

The issue of scholarship versus clinical training is not an either or proposition. I have been practicing law for 32 years before I joined the U of M Law faculty. I was a partner at a major law firm. I hired law school graduates. I still thought of myself
as a scholar of the law and had to be one to give representation, but at the same time had to have other skills. Those skills were not tested by the bar exam.

I don't think we should be adopting accreditation standards that cause law schools to teach to the test. We are trying to prepare lawyers to practice law. Law schools are not simply departments like the philosophy department of universities. They are professional schools. And the American Bar Association, of which I am a member, and a proud member, is the voice of the profession trying to turn out really good lawyers to represent the public.

So I would urge this group as you think about your accreditation role, to think about in terms of protection of the public and competent skills of law school graduates. That includes both the ability to talk to people to make sense, to solve problems, to negotiate and try lawsuits and do a variety of things.

Thank you.

MS. SCHNEIDER: Do you have a comment?

MS. ROTHENBERG: No. I think they are all very good points. I think it is an interesting question about the relationship between the law school and the bar. Because if you look at what other professions are doing with respect to certifying people following graduation, it is also very different than what we do in law. I am much more concerned in some way about the breadth of competencies. If you're aware of all that. So a lot of the things we are actually hoping to accomplish in law school, I think we get to a point, but we also need to have a partnership with the members of the bar once students graduate.

There is only so much we can do while they are in school. And, historically, I think the bar took a lot more interest in educating and continuing to educate throughout individual careers. And so I think it's a two-way street. We only have these students for a few years. I would hope that the bar association,

members of the firms and other places that students work must, once they graduate, can also be partnership with us over that. That really has changed.

MR. CLARY: I am inclined to agree with that.
Having been a partner in a major law firm, my perspective on that myself is that it has become incredibly expensive to train new lawyers. In Minneapolis, for example, the overhead in a downtown firm is $150,000 a year. Now, let's assume for the sake of math you pay a new associate $100,000. That is $250,000 as they walk in the door. If their billable rate is only $100 an hour, that means they have to bill 2,500 hours during that year to be break even. That doesn't include write-offs, inefficiencies, bad debt, et cetera.

So a lot of law firms can't afford the training expense and they're looking for law schools to do more. I think that is reality. I think, yes, competency builds over an entire lifetime. I would like to think I am becoming more and more competent each year that goes by and my competency training does not stop. But in terms of minimum standards, I do think we have to get closer to the MacCrate vision. Within law school it is a fallacy to assume that, gee, everyone will just get the training when they get out.

MS. SCHNEIDER: Any other questions? Thank you. I want to thank all of you for coming. I want to thank those who testified and to remind you to please, please submit your written statements for the record, so we have them. Some of us took notes. I am sure we didn't hear everything you said. The Task Force has a goal of issuing its report by June. We will spend the next couple months synthesizing what you told us, looking at other sources and trying to come up with conclusions and recommendations. We thank you for your participation. We look outside and see that beautiful blue sky. It is remarkable that you're still here on a Friday afternoon. Thank you very much.
CERTIFICATE

STATE OF FLORIDA )
COUNTY OF DADE )

I, the undersigned authority, hereby certify
that the foregoing transcript, page 1 through 73, is a
true and correct transcription of my stenographic notes
taken before me at the time and place set forth on the
title page hereof.

IN WITNESS WHEREOF I hereunto set my
hand and affix official seal this 14th day of February,

2007.

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RANDI GARCIA, COURT REPORTER, RPR
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