THE ABA'S FIRST SECTION
ASSURING A QUALIFIED BAR

SUSAN K. BOYD
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Assuring a Qualified Bar

Susan K. Boyd

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

For Sandy Boyd who separated the trees from the forest

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Foreword

My term as chair of the ABA Section of Legal Education and Admissions to the Bar in 1992–93 coincided with the centennial of this, the oldest of the ABA’s sections. It seemed appropriate for us to commemorate the role of the ABA in regulating American legal education in a formal way. I was delighted when Susan Boyd, an author and former editor of the Section's
publication Syllabus, agreed to undertake the task of writing the history of the first one hundred years. We asked Susan to use the archival materials, to be objective in her review, and above all to make the book "readable." I believe she has succeeded on all fronts, and I thank her for all her hard work.

James P. White, the consultant on legal education to the American Bar Association, shared the archival materials freely; William B. Powers, research attorney and editor of Syllabus, shared his knowledge of the Section. Leverett L. Preble III, associate director of the Loyola University Chicago School of Law library, and a group of Loyola students assisted in this time-consuming task of reading reports of committees and meetings spanning the nineteenth and twentieth centuries. The book could not have been published without the assistance of West Publishing Company.

On behalf of the Council of the Section, I am pleased to introduce a book that we believe will prove to be informative for all those who care about the continuing quality of American legal education.

Dean Nina S. Appel
Loyola University Chicago School of Law
June 19, 1993

This publication will highlight and discuss the trends and developments of the Section, but one thread should always be kept in mind. Many problems have been solved. Many issues no longer exist. The ABA and the Section have moved forward; but problems that were high on the agenda one hundred years ago are still important today, most particularly whether law schools adequately prepare lawyers for practice. To this is added the contemporary concern that law schools reflect the demographics of American society with significant enrollments of women and minorities. This in turn is changing the composition of the legal profession.

Leverett L. Preble III
Associate Director, Loyola University Chicago School of Law Library
Director of student research for this book

Preface

Planning for this history of the ABA’s first Section began in 1991 when Dean Nina S. Appel, now chairperson of the Section of Legal Education and Admissions to the Bar, envisioned its appearance as a centennial year event to celebrate the Section’s founding in 1893. She and James P. White, consultant on legal education to the ABA, asked me, as former editor of the Section’s quarterly publication, Syllabus, to write the history.

Chairperson Appel, dean of the Loyola University Chicago School of Law, offered the
research assistance of Loyola law students, who would work under the direction of Leverett L. Preble III, associate director of the Loyola law library. James J. Faught, associate dean of student affairs at Loyola, identified outstanding students from whom Director Preble and I selected the researchers. We divided the research chronologically. William X. Elward took the 1893–1918 and 1990–91 periods; Barbara Martin Ryan, 1918–44; Maura Weidner, 1943–59; Daniel Ring, 1960–73; and Thomas Schippers, additional records from 1965 to the present. This group searched the minutes of Section meetings and shared their findings at sessions held in the law school library. Bill Elward and Thomas Schippers also participated in a long interview with Consultant James P. White. William Fedders read early records beginning in 1880.

Sherman Lewis, reference librarian at Loyola, was helpful in procuring additional records and periodicals. Principal sources of these records were the Office of the Consultant on Legal Education in Indianapolis and the Northwestern University School of Law. Oral histories provided another important source of information. I would have liked to interview more Section leaders, but I was limited by time, geography and the space limitations of this book.

We are grateful to West Publishing Company for printing this book in recognition of the Section's centennial. Roger Noreen, former vice president and manager of West's Law School Division and good friend of legal education, made the original agreement for publishing this book.

William B. Powers, research attorney in the Office of the Consultant and current editor of Syllabus, transformed the manuscript into camera-ready form. Lois R. Sincere, ABA production editor, contributed a keen eye and sound judgment.

1 In the Beginning

APPRENTICESHIPS IN LAW OFFICES GIVE WAY TO ACADEMIC PREPARATION IN LATE NINETEENTH CENTURY — EARLY CLASSES ARE IN LIBERAL ARTS COLLEGES OR PROPRIETARY SCHOOLS — UNIVERSITY LAW SCHOOLS FOLLOW — ORGANIZATIONS OF LAWYERS COME INTO BEING.

"Any white male citizen of the United States who is actually an inhabitant of this state and who satisfies any district court of this state that he possesses the requisite learning and that he is of good moral character, may by such court be permitted to practice in all the district courts of the state upon taking the usual oath of office." (Code of Iowa of 1851)

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Law schools did not become an important part of American legal education until the end of the nineteenth century. Most American lawyers, like Lincoln, read law and apprenticed in a lawyer's office. This long remained the most common form of legal education and one which was defended vigorously even after formal law schools were available.

Institutionalized legal education had its roots in England. In the days before the American Revolution, some two hundred law students studied at the Inns of Court in London, returning with a refinement gained in travel as well as useful links with London law offices. But
these students were a minority. Emerging law schools on this side of the Atlantic took three forms.

The first type enrolled students in liberal arts colleges, where law was a department or chair. Among the first of these was a chair held at the College of William and Mary in 1779 by George Wythe, who had taught Thomas Jefferson. Others followed: the College of Philadelphia in 1790, Columbia College in 1793, Transylvania University in 1799, and the University of Virginia in 1826.

A second type of institution was a self-supporting law school having no connection with any university or college. Connecticut's Litchfield School of Law, celebrated for the number of senators, representatives, governors, and U.S. Supreme Court justices among its former students, was an example of this type, which we now call a proprietary school. Any income beyond actual expenses belonged to the school's proprietors, who generally were its faculty. Litchfield, which was later to be absorbed by Yale, was a pioneer in developing a systematic experience in which law was regarded "as a science, and not merely nor principally as a mechanical business, nor as a collection of loose independent fragments."

The third kind of law school was the university law school. Harvard opened its university law school in 1817 and Yale in 1824, with Tulane and the University of North Carolina following.

By 1860, there were 21 schools in existence. The country's 24,000 lawyers in 1850 increased to 64,000 by 1880. Although the greatest number of these had trained through apprenticeships, the importance of a more rigorous intellectual experience was beginning to be valued. Training in a law school also gave luster to the professional status of lawyers. But the perceived need for an apprenticeship remained.

At first, several states required apprenticeships. Then the leadership of the bar began to think about further requirements for the profession. This gave rise to the notion of a general requirement of apprenticeship, part of which might be served in a law school, followed by an oral and informal bar examination.

Indiana's constitution of 1851 stated that any citizen and voter, provided he was a person of good moral character, could enter the practice of law. Opening the profession to women, however, was a struggle. Iowa became the first state to admit a woman, Arabella A. Mansfield, to practice law, although her initial application to become a member of the bar was denied in 1869. The Code of Iowa of 1851, like the law of nearly every state, limited membership in the bar to "any white male citizen of the United States."

Meanwhile, societies of lawyers that aimed at raising the level of legal training came into existence in New York City (1871), Kentucky (1871), New Hampshire (1873), Iowa (1874), Connecticut (1875), and Illinois (1877). By the 1870s, when the American Bar Association was founded, many jurisdictions required a formal period of either law school study or apprenticeship as well as written bar examinations.
The law school diploma privilege, which gave control of entry into the profession to legal educators instead of to the bar, began when three Hamilton College Law School students were admitted to practice in 1895 after being examined by three lawyers, all of whom were on the school's faculty. The law schools of Columbia and New York universities and the Albany Law School followed. The privilege spread to include many more law schools and was to receive disapproving attention from the American Bar Association later.

Law school education became centered around the case method. The method was developed at Harvard under the influence of Christopher Columbus Langdell, who considered the law a science and approached it through rigid doctrinal analysis. Students analyzed appellate decisions through a question-and-answer system with the professor. The result came to be called the Socratic method.

The Industrial Revolution was transforming the legal profession, and the emergence of the corporate lawyer led to the birth of the law firm. The leadership of the bar began to consider courses of study that should be recommended to state and local bar associations for admission to the practice of law. It was partly in response to this need that the American Bar Association was founded in 1878, that one of its first committees was the Committee on Legal Education and Admissions to the Bar, and that its first Section, founded in 1893, was the Section of Legal Education and Admissions to the Bar.

2 The ABA Is Organized

THE ABA IS ORGANIZED IN 1878 IN SARATOGA—LEGAL EDUCATORS ARE AMONG ITS FIRST LEADERS—ONE OF ITS FIRST STANDING COMMITTEES IS THE COMMITTEE ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR—DISCUSSIONS BEGIN CONCERNING WHETHER A LAW SCHOOL DIPLOMA SHOULD BE ESSENTIAL FOR ADMISSION TO THE BAR AND WHO SHOULD ADMIT LAWYERS TO THE BAR—OPINIONS EMERGE ON WHICH SUBJECTS SHOULD BE REQUIRED IN LAW SCHOOL.

"[T]here is little if any dispute as to the relative merit of education by means of law schools, and that to be got by mere practical training or apprentice-ship as an attorney's clerk. Without disparagement of mere practical advantages, the verdict of the best informed is in favor of the schools."

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The beginning of the American Bar Association is linked with American legal education. When the ABA was organized in Saratoga, New York, in August 1878, one of the first standing committees it named was the Committee on Legal Education and Admissions to the Bar. The new organization's assembly adopted the following resolution:

That the Committee on Legal Education and Admissions to the Bar be instructed to report, at the ensuing annual meeting, some plan for assimilating throughout the Union, the requirements of candidates for admission to the bar, and for regulating, on principles of comity, the standing throughout the Union, of gentlemen already admitted to practice in their own States.
These two subjects, legal education and admissions to the bar, were coupled from the ABA’s founding and remain so today. In 1878, law schools were beginning to emerge although much of legal education still took place in law offices. Even though most states required a bar examination, it was largely oral and informal until about the time of the ABA’s founding, when written examinations were coming into use. Bar examiners were shifting from the courts themselves to state-appointed committees of bar examiners.

The leading personalities of that founding ABA meeting had interwoven interests in legal education and a national organization of lawyers. Carleton Hunt, the first chairman of the Committee of Legal Education and Admissions to the Bar, also was the person who offered a resolution to create a committee to frame the ABA constitution and bylaws. Later that same August day in 1878, Simeon Baldwin, a practitioner and Yale law professor, pulled a complete draft of both the ABA constitution and bylaws from his pocket. He had prepared them while vacationing in the Adirondacks.

Baldwin's document, with few changes, has remained the basic constitution of the ABA. It defined its object: “to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.”

Baldwin also became a Connecticut Supreme Court judge, governor of the state, and president of the ABA. Shortly after the founding of the Section of Legal Education and Admissions to the Bar in the next decade, he served as one of its first chairmen.

As the Standing Committee's chairman, Carleton Hunt of New Orleans stressed the superiority of law school training when he made his report at the ABA’s second Annual Meeting. Hunt was both a practitioner and teacher of law at the University of Louisiana, later to become Tulane. He also became a member of Congress. He claimed in his 1879 report that there is little if any dispute as to the relative merit of education by means of law schools, and that to be got by mere practical training or apprenticeship as an attorney's clerk. Without disparagement of mere practical advantages, the verdict of the best informed is in favor of the schools.

The Standing Committee recommended in 1879 that a law school diploma be an essential qualification for admission to the bar.

The ABA also began to gather data on legal education, and in 1880 it considered resolutions to investigate and report on admission to the bar and the means of legal education in each state. The Standing Committee also was concerned with the need to raise standards for law schools. Resolutions asked that state and local bar associations recommend public maintenance of law schools with at least four "well paid and efficient teachers."

The Standing Committee recommended an ambitious, three-year course of study for all lawyers to include: moral and political philosophy, law of England (feudal, municipal, and
origin of the common law), law of real rights and remedies, law of personal rights and remedies, law of equity, the Lex Mercatoria (Law Merchant), law of crimes, law of nations, admiralty law, Roman law, Constitution and laws of the United States, including federal jurisdiction, state constitutions and laws, and political economy.

Although emphasis on the English law was decreasing with the years, only a century had passed since the Declaration of Independence. Before the Revolution, a number of Americans had studied in England. The Standing Committee also began to publish reports on state requirements for bar admission. In 1882, the ABA formally favored at least one law school in each state. A decade later, however, it expressed disapproval of the needless multiplication of law schools "conducted for the mere purpose of pecuniary gain."

The Standing Committee in 1892 encouraged states to pass legislation requiring that students be admitted to the bar only by state supreme courts and that those applicants have studied law for at least two years-as much of that as possible at a law school. The Standing Committee earlier had favored a three-year course.

It suggested a new "Practical Course of Study" that included real property, personal property, torts, contracts, procedure, and testamentary law. It stated that legal education must prepare the working lawyer for his job as a lawyer and therefore should teach practical common law, not diplomacy, history, political economy, or other social sciences. This was in contrast to the theoretical course of study that it had recommended earlier.

Furthermore, the Standing Committee favored a method of study directed to the development of basic lawyer skills. Students should "learn the abstract framework first, then learn how the courts apply it." The Committee said that a change was needed because students were learning "a mass of rules but not how to use them." In furtherance of this goal, it recommended that law schools encourage apprenticeships in law offices.

The Standing Committee requested that the United States Department of Education send a questionnaire to foreign countries for surveying their legal educational systems. The Committee summarized the results of that questionnaire, reporting that foreign courses of study included general principles of law, legal history, and practical application. It spent several pages comparing American legal education with that in foreign countries and found the United States wanting.

The Standing Committee noted that it was less successful in obtaining information from American law schools. However, it found that no two schools in the United States had the same course of study, and only a small proportion of the 72 schools in existence required a prior academic degree.

The Standing Committee also was concerned with what it considered an inferior system of bar admission. "The United States is about the only nation in the world, we believe, where [testing] is permitted to be done ex tempore, and much of the decline in professional learning and professional character, so commonly lamented, may be traced to this lack of well-trained and vigilant watchmen at the entrance gates."
Henry Wade Rogers, a Standing Committee member as well as president of Northwestern University, sent a "circular of inquiry" on bar admission requirements to the chief justice of each state, asking about the state's procedure for bar admission. The responses of the judges, who were cooperative about replying, indicated little uniformity among the states.

There was an underlying concern about whether supreme courts should have the sole power to admit to the bar or to create commissions to oversee bar examinations in their states. Many also questioned whether a law diploma should automatically admit one. A number of law schools, but not all, had gained the privilege of bar admission after examination by the law school. Columbia had such a privilege, but Harvard did not.

In 1892, the Standing Committee presented the following resolutions, which were adopted:

(1) That the American Bar Association strongly recommend that the power of admitting members to the Bar, and the supervision of their professional conduct, be in each State lodged in the highest court of the State ... 

(2) That at least two years of study should be required of every student before he presents himself for examination ...

(3) That, in the opinion of this Association, it is a part of the highest duty and interest of every civilized State to make provisions when necessary for the maintenance of law schools, and the thorough professional education of all those admitted to practice law.

From the ABA's inception, its committees were limited to only five members. As a result of its size, the Standing Committee effectively excluded many who wanted to voice their opinions about the direction legal education and admissions to the bar should take. Members of the ABA felt that time at the general ABA meetings had been inadequate to discuss their concerns about legal education and to act on the recommendations of the Standing Committee.

This dissatisfaction continued to grow until "a number of gentlemen interested in legal education" met informally at the 1892 ABA meeting in Saratoga and decided to call a more formal, general meeting the following year. Its purpose would be to organize a group permitting greater representation.

3 Standing Committee Discusses Legal Education

Standing Committee meetings bridge the time between the ABA's founding and the creation of the section of legal education and admissions to the bar—Members discuss what should be proper training for lawyers and look at the case method as opposed to textbook method.

"The student lawyer should not be so trained as to think he is a mere hired gladiator, fighting indifferently for one side or the other that pays his fee."
Speakers at early Standing Committee meetings showed concern about what should be the proper training for a lawyer. John Shirley gave a paper in 1883 calling for a combination of formal schooling and work in a law office. "There is no place for acquiring a mastery of general principles with apt illustrations like a thoroughly equipped law school," Shirley said. "There is no place where a knowledge of man and things and the use of law can be so mastered as in a law office."

The merits of the relatively new case method as opposed to the textbook method frequently were discussed at meetings. The Standing Committee's 1891 statement on "The Best Method for Teaching Law" recommended the textbook method, pointing to the problems of the case system. According to the Standing Committee:

The method of teaching mere rules and decisions without the principles upon which they are based leads directly to one of the worst evils with which the Bar has ever been reproached. It encourages and almost necessitates the habit of beginning or defending any actions that come into the young lawyer's hand and which promise to be profitable without a sense of the responsibility that attends such a course.

The habit of relying on digests and textbooks has led to the treatment of every reported case as an authority without reference to the principles upon which it was based, or even to the point actually decided. This has even gone so far that it may be said not merely that our courts legislate, but that their individual members who write the opinions, or the reporters who write the syllabi, are the only authors of most of the law to be found in our modern treatises and therefore in the large portion of the opinions which are merely a rehash of such treatises.

The lawyer is never troubled by ... confused and imperfect knowledge of principles [if he] studies law as he does arithmetic, by mastering the fundamental operations, addition, subtraction, etc., before he begins to learn the practical use made of figures.

The student cannot practice by simply listening to a teacher expound principles of practice, but opportunity must be afforded him for doing himself the things which he will have to do in case of actual litigation. To this end practice courts should be established in all schools of law.

The Standing Committee found further fault with the case method because it showed the student only the mass of precedent available for any position. It felt that although lawyers were capable of arguing for both sides, they were unable to advise a client of the right position. The Standing Committee concluded with a ringing statement: "The student lawyer should not be so trained as to think he is a mere hired gladiator, fighting indifferently for one side or the other that pays his fee."
Early discussions also centered on raising the quality of legal education. Edward J. Phelps, professor of law at Yale and a future Section chairman, suggested in 1882 that "[we] put ourselves on record in favor of an elevated standard, the most elevated standard it is reasonable to require of a legal education, looking to the time when a regular course of legal education at an institution will be both practical and a requisite."

A decade later, Phelps wrote the lead article in a Yale Law Journal symposium on methods of legal education. He recommended confining the business of the law school "to the groundwork of the law.... I would regard mental discipline, habits of thought, and learning to think clearly, accurately, and with the confidence that can come only from the consciousness of a sure foundation, as far more important than the premature accumulation of much knowledge."

4 The Section Is Created

The section of Legal Education and Admissions to the Bar is created in 1893 as the first Section of the ABA—its founders discuss minimum standards for admission to law school—members debate use of the case method.

"The door of admission to the bar must swing on reluctant hinges."

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In 1893, the ABA created its first section at the Annual Meeting in Milwaukee. The founding meeting of the Section of Legal Education and Admissions to the Bar took place in Milwaukee's Plymouth Church on August 30, 1893.

The Section was to complement the existing Standing Committee on Legal Education and Admissions to the Bar and would be a forum with a considerable measure of autonomy, although its recommendations would still go to the Standing Committee for approval before ABA action. The Section would have the power to elect its own officers, schedule programs, and debate and pass motions.

Judge Simeon E. Baldwin, who already had played such a vital role in the ABA and legal education, was appointed temporary chairman of the Section. He offered the following resolution, which was adopted and which indicated that the creation of the new Section did not replace the Standing Committee:

Resolved, That the Chairman and Secretary of the Section of Legal Education, and Chairman of the Standing Committee on Legal Education of the Bar Association, for the time being, shall constitute an Executive Committee for the Section with the usual powers of such a committee.

He also stated the Section's purpose: first, to "serve as an important feeder to the Association" and second, to provide an opportunity for discussion of legal education "with more fulness [sic] than might always be agreeable for the Association to entertain at its open meetings."
William G. Hammond, dean of the University of Iowa law school and later chancellor of the Washington University School of Law in St. Louis, presented the bylaws at the founding meeting of the Section. He reported that the organization should be as "simple and elastic" as possible.

Henry Wade Rogers, president of Northwestern University, was elected the Section's first chairman. Rogers eventually was to join the Yale law faculty, ultimately serving as its dean, and later was a federal appellate court judge. At the time of his death, he was planning to retire from the bench to become the first research professor in the newly created Institute of Research in Law at the University of Michigan.

In 1896, Rogers proposed a resolution, which the Section adopted, that the ABA adopt minimum standards for admission to law school. All those falling below those standards were to be considered not in good standing. Rogers noted that of 72 law schools in existence, all but 7 were associated with universities. However, only a small proportion, Harvard among them, required a prior academic degree.

The minutes of the Section's early meetings record frequent discussions of the case method. Rogers reported in 1894 that the majority of law schools used the textbook method, while a minority, which included Harvard, Yale, Boston, St. Louis, New York University, Columbia, Cornell, and Northwestern, used the Langdell case method.

Speakers at these meetings spoke both for and against the case method. Edmund Wetmore, later to be president of the ABA, found fault with the case method's "piecemeal approach," saying it failed to provide the student with a complete statement of the law and focused too much on the courts rather than on the law.

At the same meeting, William Keener, dean of the Columbia Law School, upheld the case method in the belief that law was a science and thus must adopt scientific methods of study. Teaching with decided cases and primary materials, he said, developed powers of observation, logical thinking, and judgment. Dean Keener argued that all textbooks and outlines merely abstracted the decided cases and drew general rules. The case method developed powers of analysis and judgment, the very skills needed as a lawyer, by forcing students to confront conflicting opinions and make their own judgment.

Dean Emlyn McClain of the University of Iowa College of Law stated in 1896 that preliminary training should stress mental capacity and maturity. He considered business experience useful and recommended three years of law study, either in a law school or law office. As an advocate of the case method, he recommended a curriculum including civil procedure and legal history.

Among others at that meeting were at least two who supported the teaching of procedure and evidence. Professors Blewett Lee of Northwestern University and Charles M. Campbell of the University of Colorado found that nothing was more important in judicial administration than a clear procedure and evidence system. Professor Lee reported a finding by the ABA that in 1894, half of all appellate cases in the United States turned on errors of procedure. Students
must learn procedure in the law school but not in practice, he warned, because consequences of mistake were so dire, and office lawyers lacked the time or talent to teach it.

Harvard Professor James Bradley Thayer favored having legal ethics taught when he spoke as chairman of the Section in 1895. He found that “little effort is made to train the student for the higher duties of his profession and citizenship.” Professor Thayer also reported the existence of 67 law schools with 8,644 students, 1,783 of whom had a B.A. degree and 6,379 of whom attended law schools in their home states. Twenty schools had three-year courses, 39 had two-year courses, and 27 schools required some sort of entrance examination.

Woodrow Wilson spoke on the legal education of undergraduates at the ABA’s Annual Meeting in 1894. Wilson said that every citizen should know what law was, how it developed, and how it gave “fibre and strength” to society. He expressed his regret that law school did not provide time for the law student to get the philosophical and historical view even though it was what he needed the most. Since the law student was too close to the mass of the law to observe “whence it came and whither it is tending,” Wilson said, the future lawyer must see the law’s greater proportions and principles before entering law school, where the details would confuse or mislead him. Associate Justice David J. Brewer of the United States Supreme Court warned that “the door of admission to the bar must swing on reluctant hinges.” He recommended that the study of law be difficult so as to build the lawyer’s character and prepare him for the complexity of modern law. To preserve community confidence, Justice Brewer said, only selected, trained lawyers should be entrusted with important interests.

The so-called Lincoln Objection was debated frequently in those early meetings. This was the objection against requiring formal legal education by pointing to the example of Abraham Lincoln who “read law” in a lawyer’s office and did not attend college. Dean Keener of Columbia took the position that the argument did not apply because Lincoln was a genius and would have persevered under any circumstance.

John Henry Wigmore of Northwestern recommended that law schools exclude outside work of any kind. He felt the schools should structure their programs to exclude night students by having only day lectures. Those who must work could not dedicate the necessary time to law school, Wigmore said, and therefore they should not aspire to a legal education.

The Section devoted part of its 1899 meeting to developing a list of questions to put to the fledgling Conference of State Law Examiners. It inquired whether the bar examination should be oral or written, in what form the questions should be, what subjects should be tested, and what weight each subject should be given. The meeting of the Section concluded by urging that evidence of good moral character be required of all applicants for admission to the bar. It resolved in 1900 that no law school degree should automatically admit an applicant to the bar and that only a state examination by the State Board of Examiners under authority of the state supreme court should have this power. The days of the diploma privilege were beginning to wane.

5 The Immigration Issue Is Raised
THE SECTION CALLS A MEETING TO CREATE THE ASSOCIATION OF AMERICAN LAW SCHOOLS IN 1900—NIGHT SCHOOLS AND OTHER PART-TIME LEGAL EDUCATION CAUSE CONCERN—PRACTITIONERS AND ACADEMICS WORRY ABOUT LACK OF ETHICS AMONG LAWYERS.

"There are men in our ranks who will do almost anything for bread and butter."

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In 1900 the Section recognized a need to regulate law schools, as the ABA had not yet undertaken accreditation. That year a committee of the Section called a meeting at Saratoga to create the Association of American Law Schools (AALS). Representatives of 35 law schools attended, and 11 other schools indicated interest in this undertaking. The AALS was created to improve legal education in America, especially in the law schools. Each member school could send up to four delegates to the Annual Meetings, which would be at the "time and place at which the American Bar Association meets," although additional meetings could be called by the executive committee if proper notice was given. It was not until years later that the AALS was to meet separately and follow a different agenda. But some shared activities, including law school accreditation, link the two organizations to this day. Charles Noble Gregory, Section chairman, chaired the AALS organizational meeting, and Harvard's James Bradley Thayer, its first president, had been a Section chairman a few years before.

To achieve its goal of improving legal education in America, the AALS set the following standards for member schools: high school or equivalent education before admission to law school, two years of acceptable study in law school, and the law school's ownership of or access to a law school library with a minimum collection of state reports and Supreme Court reports.

Meanwhile, through the first decade of the new century, Section meetings frequently took place at night during the Annual Meetings; Section bylaws prevented scheduling sessions at the same time as the ABA general meetings. And a frequent subject of concern was the burgeoning number of night law schools. Speakers at these meetings argued on both sides, some charging that a lack of ethics in the profession originated largely among graduates of these law schools. At this time, many of the part-time or night schools provided an education for immigrants, who lacked the time and the funds to attend a daytime law school, much less to earn an undergraduate degree that many full-time law schools required for admission.

Bigotry and prejudice permeated the established bar and law school world. There clearly was egregious discrimination against African-Americans, Jews, Catholics, and immigrants from places other than Northern Europe. A great deal of the criticism of night and proprietary law schools stemmed from the fact that these institutions provided access for a vast section of the population. Because this discrimination could not be justified on the grounds of a lack of mental ability, it was argued that only those with a shared background could share the values of a single code of ethics.

A future ABA president, Walter George Smith of Pennsylvania, saw difficulties in maintaining the standards of the profession if it opened its gates to certain immigrants. Speaking at the Section's meeting in Salt Lake City in August 1915, he said:
We have in the Eastern cities representatives of the most ancient race of which we have knowledge coming up to be admitted to the practice of the law. They are people gifted with a marvelous intellectual ability and great power of concentration, who exercise extreme self-denial in overcoming their environment of poverty. Frequently it has been my lot to see men of that character who were surprised when informed that they have done anything wrong. As was pointed out by Mr. Carson [Hampton L. Carson of Philadelphia was Section chairman in 1916–17] in his address, and by the other speakers before the Section last year, those men who have come to the Bar without the incalculable advantage of having been brought up in the American family life, can hardly be taught the ethics of the profession as adequately as we would desire. It is a frequent subject of remark and is a truism among us who practice in the larger cities—especially among men whose practice extends more than twenty years back—that there has come a change in the tone of the profession, a lowering of the standards and a commercializing.

Dean Andrew A. Bruce of the University of North Dakota argued for a greater degree of professionalism among lawyers. "There are men in our ranks who will do almost anything for bread and butter. We have ... the ambulance chaser and men who are incompetent for the practice of the profession. We have great firms whose leading men bid for trade and whose work can be done by clerks and underlings.... A man cannot serve two masters, and this is as true today as in Biblical times." Bruce asked that universities and colleges supply ethical training to counter these concerns.

The University of Wisconsin's Dean Harry S. Richards warned that "night schools enrolled a very large proportion of foreign names ... emigrants [sic] covet the title [of attorney] as a badge of distinction. The result is a host of shrewd young men, imperfectly educated ... all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes." Dean Richards' comment is quoted in Schooled Lawyers: A Study in the Clash of Professional Cultures by William R. Johnson.

Responding to remarks from Chairman Charles E. Shepard of Seattle on the advisability of teaching ethics, one member contended that the entire American nation suffered from greed. "I doubt very much whether a course of lectures on moral conduct will revolutionize the morality of the Bar," he said. "The differences between U.S. and English attorneys in their attitude toward public duty are more due to national character.... The English have, according to my observation, more public spirit than we, and in my opinion, this difference is not satisfactorily accounted for by differences in schooling or examination."

Edward T. Lee, dean of Chicago's John Marshall Law School, believed that lawyers could easily go bad after being admitted to the bar, and he suggested that candidates initially be admitted to practice before the lower courts before being allowed to practice in appellate courts. This, he said, would make a man mindful of the reputation he was making. Charles H. Griffin agreed and described the system then used in his state of New Jersey where candidates were sworn in but not admitted to the rank of counselor-at-law until they practiced law to the
satisfaction of the bar for three years.

Nathan William MacChesney of the Illinois bar suggested 10 years after bar admission as an ideal testing period of an attorney's fitness. He argued that considerable character deterioration occurred during this decade. As for initial admission, Illinois placed its character certificates on file for 10 days, during which time candidates were investigated by a lawyer hired by the local bar association, MacChesney reported.

Hollis Bailey of Massachusetts reported that his state's bar association asked recommending attorneys to list their basis for the recommendation of candidates for admission. Candidates had been barred from admission in Massachusetts for being deaf, for practicing law too soon, and, in one case, for procuring an abortion.

Other Section speakers defended the part-time schools and challenged their opponents for proof that these night-school graduates acted less ethically than those attending full-time law schools.

MacChesney in 1906 urged the Section to acknowledge the presence of night law schools and to study them to determine that the right courses were being taught in a proper manner. "We must recognize that the night school is a factor in legal education, whether we desire it or not, that it has a legitimate place under conditions as they actually exist, and that it would be unfortunate to have an impression go out that this body is opposed to night law schools as such."

In reaction to concern over night law schools, the Section in 1908 recommended that part-time schools extend their programs to four years. At the same time, the Section took a position recommending, but not requiring, two years of college before entering law school.

The diploma privilege, which granted state bar admission without bar examination, also was the subject of considerable discussion. The Section formally expressed its disapproval in 1905 and again in 1908.

As a means of improving all law schools, Section Chairman William Draper Lewis, dean of the University of Pennsylvania Law School and founder of the American Law Institute, suggested in 1906 that comparative budget studies of better-funded law schools might also work to the advantage of smaller schools. Lewis noted that a state university was spending only $800 a year for its law library until the governing board learned that some other law schools spent far more. The allotment was then increased to $1,700.

In his chairman's address on "The Education of the Lawyer in Relation to Public Service," Shepard noted the shift in legal education from law offices to law schools. He found fault with the "Lincoln Objection" to a college requirement and noted that knowledge of such subjects as international law, legal history, economics, and political science were essential to the lawyer. Shepard mentioned the "rising threat of socialism," the need for social reform, and growing disputes between labor and capital as reasons why lawyers should understand politics.

Familiar themes continued to surface. A committee on standard rules for admission to
the bar passed a motion at the 1915 meeting that admission to the state bar be regulated by the supreme court of each state. A nother resolution disapproved of the diploma privilege. A proposal that candidates for bar admission be U.S. citizens also was passed by the committee. The committee further noted that bar admission should be raised to an acceptable level in certain states and that law schools with high standards tended to have three-year programs.

Felix Frankfurter spoke of the effects of the Industrial Revolution on the profession when he addressed the 1915 ABA Annual Meeting. He said that the courts were overworked as a result and the profession was inundated with the data of the law. Frankfurter felt that the job of assimilating and restating new material belonged in the law schools:

What we need are doctrinal writers—men who labor steadily upon law as an organic whole, who produce tentative working hypotheses to be tested, revised and modified as the actualities of the controversy require. For the work of the law schools must meet the tests and suffer the modifications of practical experience. Bench and bar will apply such tests and make such modifications.

Simeon Baldwin, one of the Section's founders, requested law schools to make better use of the three years they now had available, rather than expanding law school to four years, "which the American public will not accept." Northwestern's John Henry Wigmore wanted law schools to require two years of college before admission. Although such an education was available to anyone who wanted it, he felt law schools lacked the influence and inclination to make it mandatory. The states, therefore, should require it, thus effectively reducing the number of lawyers by half and weeding out "incompetent, shiftless, ill-fitted lawyers who degrade the methods of the law and cheapen the quality of services by unlimited competition."

Henry Wilson of the University of Nebraska argued for preliminary inquiry into a student's character and fitness when he entered law school. He felt it unfair to allow a student to undertake years of study only to be told later that he lacked the necessary character.

The chairman of the Committee on Character for the New York bar, David Leventritt, outlined the following "Practical Methods of Ascertaining the Moral Character of Candidates for Admission to the Bar." Candidates must speak English. Moral fitness was the most important requirement, and inquiry should be conducted by a committee appointed by the Appellate Division of the Supreme Court of New York, since the court would not have time to conduct such an investigation. Each candidate should sign a sworn statement stating name, address, schools attended, jobs in law offices, and whether the candidate had ever been party to a legal action. The candidate also had to submit affidavits on character from attorneys personally known to some member of the committee. Failing that, a letter from a teacher or minister might be substituted.

There was no presumption in favor of the candidate, who had the burden to satisfy the committee as to his moral qualifications. The committee had the services of a special officer of the appellate division who made further inquiries, if necessary, into the background of candidates. It published a notice of proposed candidates. If there was a complaint regarding a candidate, a complete investigation followed.
The same rigorous rules applied to candidates seeking admission from sister states. They also needed character affidavits, and furthermore the committee sought prominent attorneys in the cities where the candidates practiced. When a serious question about the moral character of a candidate arose, witnesses for and against the candidate were called to a hearing, which had all the formalities of a trial.

The Section proposed other Standard Rules for Admission to the Bar in 1916 and 1917. These required candidates for admission to satisfy the board of law examiners that they had passed the necessary requirements for entrance to the state university law college or other colleges approved by the board. After meeting this qualification (graduation from high school or its equivalent, passing an entrance examination to college), candidates should be made to study law for three years full-time or four years part-time.

6 The Root Committee and the Reed Report

Root committee produces Section's first Standards in 1921—Reed report suggests a stratified bar.

"We believe that adequate intellectual requirements for admission to the Bar will not only increase the efficiency of those admitted to practice but will also strengthen their moral character."

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The persistent growth of part-time schools that did not meet the requirements of the ABA and the AALS was a significant development during the 1920s. Equally significant was the advance of entrance requirements in full-time law schools.

The 1921 ABA Annual Meeting marked a watershed for Section organization and action. It was in that year that Elihu Root's Committee on Legal Education gave its report, which was to provide the first Standards for Legal Education. This committee was part of a new Council on Legal Education.

This new Council actually succeeded another council which had existed only briefly. The first one came about when the Section proposed that the ABA abolish its Standing Committee and establish a new Council on Legal Education. The Standing Committee was still the conduit through which Section proposals had to pass to reach the ABA for action. The Section was concerned in 1916 and 1917 about the increasing number of "inferior schools" and began to press for stronger rules. The AALS, although it had not held joint meetings with the Section since 1914, shared the concern.

Judge Henry Wade Rogers, the first Section chairman and then chairman of the Standing Committee, which he wanted replaced, proposed the new Council on Legal Education in 1917. Rogers had ambitious plans for the Council, but they were to be rejected before reaching the ABA. Rogers wanted to pattern the Council after the Council on Legal Education in England,
where 20 judges and barristers appointed by the four Inns of Court supervised the subjects, the 
teachers, and the examinations of those desiring to be called to the bar. Judge Rogers also 
pointed out that the American Medical Association (AMA) had formed a Council on Medical 
Education in 1904.

The new Council proposed by Rogers would "inspect the law schools of the country and 
may, subject to the approval of the Association, classify them." This would follow the example 
of the AMA Council on Medical Education, which inspected and graded all medical colleges. 
Following inspection, schools were placed into three categories, with the lowest tier requiring 
complete reorganization to make them acceptable. Rogers' proposal was supported by the 
AALS, which formally requested the ABA to appoint such a council.

Discussion among Section members present made it apparent that there was no consensus 
on Rogers' proposal. A Section member objected from the floor that Judge Rogers' committee 
undertook to resolve too hastily some matters that had been debated for nine years in the Section:

Which is to control the judgment of the Association? Which ought to control, for 
we can't have time to debate details here, the act of the [Rogers] Committee or the 
judgment of the experts in the Section after nine years of debate?

Although the minimum educational standards proposed by Judge Rogers were defeated 
on the floor, the ABA passed a resolution by voice vote establishing the new Council on Legal 
Education. The Council was to inspect and classify law schools. The ABA president then 
appointed Judge Rogers as chairman of the new Council and, as its four members, the deans of 
four outstanding law schools: John Henry Wigmore (Northwestern), William Vance 
(Minnesota), Harlan Fiske Stone (Columbia), and Roscoe Pound (Harvard).

The inspection of law schools remained a dream instead of reality because the Council 
lacked the money to carry it out. In its first report at the 1918 Annual Meeting of the ABA, the 
Council said it was having difficulty in obtaining funding from the ABA for the purpose. The 
new Council asked for $2,500 in 1917 and was appropriated but $750, and in 1919 it received no 
money. The Council proposed that in order for law schools to be recognized as "first class" 
schools, they must require two years of prior college training before admission. This proposal, 
along with Judge Rogers' proposed standards for admission to the bar, was approved by voice 
vote from the floor.

The ABA Executive Committee then decided to abolish the freestanding Council and 
establish an even newer one controlled by the Section. A constitutional change would take the 
Council out of the hands of the ABA president, who had appointed its members, and into the 
control of the Section. The proposed new entity within the Section would be called the Council 
of the American Bar Association on Legal Education and Admissions to the Bar and also would 
be the Council of the Section. The constitutional change passed by a two-thirds vote over the 
unanimous objection of Judge Rogers' Council. The leading law schools fought the move but 
lost at the ABA's 1919 Annual Meeting. The AALS responded by raising its own requirements 
for membership, in effect excluding part-time schools. Great numbers of AALS members then 
attended the 1920 Annual Meeting to have a voice in Section policy and to pressure the ABA
into appointing a Committee on Legal Education, which was chaired by Elihu Root.

Dean Edward Lee of John Marshall worried that the AALS would take over the Section and that the standards would not represent the opinion of the profession or even of the ABA. He looked with suspicion at the fact that the ABA and the AALS were meeting in the same city and on the same date for the first time in seven years.

Bristling at what he considered an elitist plot, Lee maintained that he was for high standards in education himself. He said, "I believe that the students of evening schools, a large percentage of whom work in law offices and are taught by practicing lawyers, are worthy of the sympathy and support of the American Bar Association."

Outgoing Section Chairman Charles M. Hepburn of Indiana made the following observations, reflecting an ambivalent feeling toward "outside" law schools, in his 1920 address:

The American Law School Association [sic] has grown to a membership of 49 well-equipped three-year law schools, thoroughly organized and, as a rule, of high ideals; among them are 24 state-supported law schools in as many states. Outside the Law School Association are about twice as many other law schools, 96, in other words, as against 49. Of many of these outside schools, it can only be said that, notwithstanding their claims, they in effect oppose the essential standards of legal education and are a detriment to the state. Many of them, not all, are superficial in their methods of study, devoted chiefly to coaching for Bar examinations, and run for revenue only.... But, on the other hand, we should not fail to recognize that among the outside schools are many which, although not able to qualify in this or that particular, because of local conditions, are yet meeting the situation honestly. They are not catchpenny schools, but schools of work, and character, needing help rather than censure.

Elihu Root, former U.S. secretary of state, winner of a Nobel Peace Prize and former president of the ABA, was elected Section chairman in 1920. He appointed a committee of seven, which he chaired, to report at the next meeting on what action might be taken by the Section and ABA "to create conditions which will tend to strengthen the character and improve the efficiency of persons to be admitted to the practice of law." He sent a questionnaire to every law school dean, state and local bar associations, every state board of bar examiners, and a number of individual lawyers. The committee also held hearings, and witnesses included Reginald Heber Smith, a Boston lawyer who had pioneered legal aid for the poor; Harlan Stone, the Columbia law school dean who would ascend to the Supreme Court; and Roscoe Pound of Harvard.

At the 1921 Annual Meeting in Cincinnati, Senator Root presented his committee's lengthy Root report containing minimum standards for law schools. The report required at least two years of study in a college before law school and a course of full-time law study of three academic years or the equivalent for part-time study. It formally disapproved of the diploma privilege for bar admission. The Root report also called on the ABA to invest the Council on Legal Education with the power to accredit schools.
When Root moved for the adoption of his committee's report, his motion was seconded by no less than William Howard Taft, the chief justice of the Supreme Court and former president of the United States. Taft had taught constitutional law at Yale following his 1912 presidential election defeat.

Defenders of the report were challenged by the night-school group, who attempted to postpone action. Dean Lee of John Marshall rose to the floor. Although he referred to both Root and Taft as "legal lights" and called Root "the Nestor of the American Bar," he was bothered that both men favored four years of college and three years of law school. To Root's declaration that the "young man of today was not worth his salt who could not secure a college education," he posed these objections:

Mr. Root hardly needed to be worth much to gain a college education, for his father was long an honored professor of Hamilton College, whose home was across the way from the college buildings. Nor did Mr. Taft have to be worth more, for his father was Attorney-General of the United States, a graduate of Yale, and it would have been a throw-back if he did not spend four years beneath the "elms of dear old Yale."

Despite the opposition, Root's recommendations were adopted first by the Section, then by the ABA on the following day. The resolution also authorized the Council of the Section, in the name of the ABA, to call a Special Conference on Legal Education to take action to "create conditions favorable to the adoption of the principles set forth" in the Standards.

The conference was held in Washington, D.C., in February 1922, and it endorsed the Standards. Representatives of more than 150 state and local bar associations and numerous law schools attended. Jerold S. Auerbach wrote in his book, Unequal Justice, that the conference was called to rally support for the ABA proposals from those professional groups with maximum influence on state legislatures, which bore the ultimate responsibility for bar admission requirements. "We believe that much can be accomplished by the intelligent cooperation between committees of the Bar and law school faculties," the Section recommended at the conference. Root told a group of national bar leaders that the two-year requirement was a way of cleansing the applicant of earlier influences and inculcating "the moral qualities that underlie our free American institutions."

Ross L. Malone noted the importance of the Root report and the Washington conference, which followed it, in his presidential address to the ABA at Miami Beach in 1959:

It is doubtful if this Association has ever taken action which had a more far-reaching effect upon the legal profession or its relationship with the public. Had the Association never accomplished anything more than the adoption of the resolutions in 1921, implemented by the National Conference of 1922, and the system of the inspection and approval of law schools which has followed, the existence of the American Bar Association would have been fully justified.

One month after the Root report was published, a study of legal education entitled
Training for the Public Profession of the Law by Alfred Z. Reed, a non-lawyer staff member of the Carnegie Foundation, appeared. Back in 1913, the Committee on Legal Education and Admissions to the Bar had requested this study because it had been impressed by an earlier Carnegie Foundation study, the Flexner report. The Flexner report had resulted in reducing the number of medical schools that operated part-time, were poorly equipped, or had inferior faculty.

The Reed report came to a very different conclusion, in the case of legal education, from the Flexner report, in the case of medical education. Instead of requiring higher standards for one kind of medical school, as Flexner demanded, Reed concluded that more than one kind of law school deserved to survive. He suggested that a stratified bar be accepted.

Reed divided the schools into four categories, three of which had merit and one of which was "clearly destined to disappear." This latter group was small and composed of schools whose work could be completed in less than three years of either part- or full-time study. He found value, in varying degrees, among the others. One group was composed of "[h]igh-entrance [requirement] full-time schools...[which on the whole] acknowledged the leadership of Harvard and [taught] national law by the case method." Another group was composed of full-time schools with low requirements, which served students able to afford three years of full-time study, yet unable to take the prelaw training demanded by the first group. The last group, part-time schools, largely proprietary and not attached to universities, formed the largest group (39 percent) in the study. This group earned Reed's approval because "it is neither possible, nor having due regard to the fundamental principles for which the American commonwealth has been supposed to stand, would it be desirable, to abolish this now definitely established and rapidly growing educational type. Efforts had much better be directed toward transforming it into something far better than it now is."

Reed suggested that the "public" functions of a lawyer would be served by redirecting the goals of part-time legal education. The part-time schools would graduate men competent to perform the relatively routine tasks within the confines of a single jurisdiction. They would be well-trained to do that and no more.

The Root committee was given advance copies of Reed's book. Its report took the position that "we do not agree [with] the suggestion that there must be different kinds of training to produce different kinds of lawyers. In spite of the diversity of human relations with respect to which the work of lawyers is done, the intellectual [and high moral] requisites are in all cases substantially the same."

Reed observed in 1922 that the idea of a differentiated bar "is the one feature ... that has been almost contemptuously dismissed. The indivisibility of the legal profession is as much a fetish of the existing generation of lawyers as it was forty years ago."

He also cited the Section's recommendations made at the Washington conference in 1922: "We believe that adequate intellectual requirements for admission to the Bar will not only increase the efficiency of those admitted to practice but will also strengthen their moral character."
Dean Edward T. Lee of John Marshall accused certain professors of hypocrisy for criticizing correspondence law schools while they wrote the texts for these very schools. Dean Lee quoted Eugene Gilmore of the University of Wisconsin, who said, "We have plenty of lawyers, and we do not need to sit up nights devising ways for poor and worthy individuals to get to the Bar." Dean Lee then noted that Gilmore had written a 15-volume library of law for the Blackstone Institute of Law, a correspondence school, as well as writing for the LaSalle Extension University Correspondence School. He pointed out that University of Pennsylvania's William Draper Lewis, former chairman of the Section, also wrote for correspondence schools. Lee himself admitted to writing for a correspondence school but added that he never criticized the enterprise.

Dean Lee helped write the rules for bar admission in Illinois, which offered a series of tests through the University of Illinois so persons could qualify for law school. The Illinois Supreme Court determined fitness of candidates to practice law through the use of written and oral examinations. Lee called this plan "efficient, just, adaptable, and democratic" and felt the role of the state courts was being usurped by allowing the "AALS clique" to determine who would be admitted to the profession. West Virginia allowed the AALS to directly determine admission to its bar.

In the appendix to his 1921 report, Reed stated that one of the obstacles in the path of educational progress was the lack of cooperation between the ABA and the AALS. He added, however, that "before the year was out, the two associations united on a common platform of reform for bar admission systems and for law schools; and in the spring of 1923 they again participated in a still more notable example of cooperative activity— the organization of the American Law Institute, in which practitioner and scholar work side by side to simplify the law that is practiced by the one and taught by the other."

Later in the decade Reed noted in his book, Present-Day Law Schools in the United States and Canada, that the two groups had worked out "numerous technical problems that have arisen in the application of their standards with the result that, in the spring of 1926, their two lists of United States law schools— those that are approved by the Council and those that are members of the Law School Association— became for the first time identical." This joint list of 62 included 56 of the high-entrance, full-time group and 6 institutions that maintained separate divisions for full-time and for part-time students. Those six were "mixed" law schools that offered both full- and part-time study and included Georgetown University, the George Washington University law school, DePaul University College of Law, Loyola University Chicago School of Law, the University of Maryland School of Law and the University of Richmond T.C. Williams School of Law. Of the 108 schools in existence and not on that list, 73 conducted their classroom sessions exclusively in the evening or late afternoon. In the prior year, there were 68 such schools.

7 The First Standards

Office of the Advisor to the Section is created— Members debate the right of poor and immigrant students to legal education.
"The fellows who did not have this college training, who did not associate with the American boys, were not apt to realize they were doing anything wrong."

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By adopting the Root report in 1921, the American Bar Association was on its way to becoming an accrediting agency. Now the Section's Council was charged with the duty of implementing the policies adopted. This included the periodic publishing of a list of those law schools that complied with the Standards passed in 1921 and those that did not.

But the question of Section financing arose once more. The Council lacked the financial resources to hire an accreditation staff and had to rely on the volunteer service of Section members. Former ABA President Robert MacCrate, in his "Background Notes Regarding the ABA's Consultant on Legal Education," states that ABA approval of law schools relied at that time primarily upon investigations made by the AALS.

In 1927, therefore, the Section petitioned the Executive Committee, predecessor of the ABA Board of Governors, to increase its financial support to the Council of the Section. It wanted to "organize an executive force" to carry out the responsibilities assigned to it by the ABA. This time the response was heartening. The executive committee appropriated funds permitting the full-time employment of H. Claude Horack of Iowa City as advisor to the Section.

The Council's minutes of September 2, 1927, recorded an annual salary of $10,000 to Professor Horack on the understanding that he "devote his time to the duties of his position but that it is not incompatible with these duties for him to teach during one short summer session in a law school."

Horack, at the time of his appointment, was retiring as president of the Iowa State Bar Association and was both a law teacher and "a practicing lawyer who had experience with law school investigations," according to MacCrate. Horack carried out his advisory duties from his office at the University of Iowa.

The Council had already published a list of approved law schools, which was subdivided into Class A schools, those that already complied with the Standards, and Class B, those expected to comply by a certain date. Class B was eliminated in the summer of 1926.

At the beginning of the academic year 1925–26, only one state required bar admission applicants to have two years of college before studying law. By the fall of 1927, six states required this.

Reed's second report, Present-Day Law Schools in the United States and Canada, noted that in 1927, "largely as the result of the activities of the ABA and the AALS," 166 of 176 law schools had a course lasting three years or more, and 100 had at least a nominal requirement of two college years for admission. The number of full-time law schools that had both requirements grew from 2 in 1900 to 70 in 1927. Reed also noted a significant increase in the number of night or part-time schools. In 1890, fewer than one-third of the law schools were
part-time and were attended by only one-fourth of the law students. In 1928, Reed wrote, part-time schools exceeded full-time schools both in number and attendance.

Reed quoted Elihu Root as commenting in 1921, "The democratic necessity for afternoon and evening schools compels a lifting of these schools to the highest standards which they can be expected to reach."

Perhaps the most important of Reed’s observations, in light of what was to happen in law schools, concerned clinical legal studies. He devoted a chapter, "Inadequate Provision for Practical Training," to the subject. It included the following statements:

The admission directly into practice of applicants who have received no training outside the college and professional school cannot be justified on the ground that they are adequately prepared for the practice of law. ... Because these institutions cannot provide this sort of training within their own walls, it does not follow that they might not do something to restore this vanishing element to legal education.

The 1920s were to see some shifting back to the practical. In Colorado, law schools were required to allot one of their three years of legal education to office study. Wisconsin had required six months of office work from its students since 1916. Reed, however, favored clinical experience through legal aid work rather than office work. Although the Universities of Pennsylvania, Denver, Cincinnati, and Southern California, and Harvard, Northwestern, and Duke universities had some clinical legal aid programs, they did not become an important part of the curriculum until significantly later.

The admission requirements, however, continued to dominate Section meetings. Silas H. Strawn, founding partner of the law firm of Winston & Strawn, presided over the 1927 Section meeting at which the 1921 report requiring two years of college again was discussed. The Section passed resolutions requiring that the law schools have an adequate law library and that students have at least two years of college education before admission.

Opposition to the educational prelaw requirement developed in several states, partly as a result of the inadequacy of local facilities and partly because of college expenses. Acknowledging this, the Section also passed a resolution recommending the establishment of "free or at moderate cost ... opportunities for a collegiate training" in states where such schools did not already exist "so that all deserving young men and women seeking admission to the Bar, may obtain an adequate preliminary education." This recommendation was to be incorporated into the Standards. Its mention of women students was unusual for its time.

Gleason Archer, dean of Suffolk Law School in Boston, strongly opposed the two-year requirement at a meeting the following year. He favored opening law schools to the "poor boy," who could not work his way through college. Dean Archer then read excerpts, which he found undemocratic, from written reports of former Section meetings:

I have had a feeling for a long time that the morals of our profession, as far as they can be affected by a system of legal education, will never be satisfactory
until we do what the medical profession has done.... The thing which we should
do is to see to it that every man, before coming to the Bar, goes through a law
school, and also see to it that the law school from which he graduates is the right
kind of school. (William Draper Lewis, 1915)

The number of lawyers should be reduced by one-half. As a method of
elimination for the future, a stricter requirement for preparation is a sensible
method, and a requirement of two years of college is a rational and beneficent
measure for reducing hereafter the spawning mass of promiscuous semi-
intelligence which now enters the Bar. (John H. Wigmore)

When some Section members objected that there was no time to discuss Archer's
proposal to eliminate the prelegal requirement, Dean Lee of John Marshall was particularly
vocal. Lee also offered an amendment to a 1927 resolution that required a school to provide an
adequate library of "no less than 7,500 well-selected, usable volumes for the use of students."
He proposed changing it to read, "It shall provide an adequate library available for the use of the
students, either owned by the school or made available to the use of the students in a public or
other law library of the city."

Lee's reason for offering the amendment was that all law students in Chicago had access
to the library of the Chicago Law Institute, which had the required number of books. Although
evening schools did not possess nearly enough volumes to satisfy ABA requirements, he argued,
they should be approved because of their students' access to such places as the Chicago Law
Institute Library. Dean Lee's motion for the amendment was defeated. A decade, therefore, was
devoted to discussing the Standards introduced in the Root report of 1921.

Under the Standards, candidates for bar admission had to graduate from a law school
with an admission requirement of two years of college, and the law course was to be of three
years' duration for full-time students and longer for part-time students. Library requirements
were set at "not less than 7,500 well-selected, usable volumes ... owned and controlled by the law
school or university." The faculty had to include "a sufficient number giving their entire time to
the school to ensure actual personal acquaintance and influence with the whole student body."
The teacher-student ratio was set at a minimum of one to one hundred, and "in no case shall the
number of such full-time instructors be less than three." The diploma privilege was disapproved.
The Council, as in 1921, was directed to publish the names of law schools complying with the
Standards, designating them "Approved" or "Unapproved."

The Council had voted in July 1928 to hold in abeyance a ruling inserted in the Standards
three months earlier that outlawed proprietary schools: "A school shall not be operated as a
commercial enterprise and the compensation of no officer or member of its teaching staff shall
depend on the number of students or on the fees received." The statement appeared only as a
footnote in the published Standards.

William Draper Lewis, the Section's chairman, opened his 1929 address by remarking:
"Our report having come into the hands of a person whom we all love, he sent me a telegram,
which I received yesterday and which I would like to read to you,"
I wish to express my gratification at the number of schools complying with the standards set by the American Bar Association, and the improvement in this respect is very marked and will be most helpful. I congratulate you.

(Signed) William H. Taft

The Section's advisor, H. Claude Horack, reported that 59 schools had been visited since his office was created. That October, he said the number of states that had increased their bar admission requirements by demanding at least two years of college work as prelegal study had almost doubled in the past two years. Thirteen states now had such requirements. With the subsequent addition of Idaho and Virginia, the states cited in the report represented 76 percent of U.S. lawyers.

Walter C. Douglas, Jr., secretary of the Pennsylvania Board of Law Examiners, delivered a paper at the 1929 Section meeting that claimed a connection between college education and good moral character.

Whereas we have four times as many men who register on college degrees as those who seek to register not on college degrees, four times as many are rejected for want of character among those who do not hold college degrees as among those who do hold college degrees which has its bearing, I think, on the debated question.

Mr. Clark (probably John Kirkland Clark of New York City, who was to chair the Section from 1931 to 1934) defended the emphasis on the proper character of lawyers for admission to the bar. Fifty years earlier, lawyers practiced in small communities where almost everyone knew them, he argued, and further, lawyers were trained in the office, and by the end of that person's legal training, the other lawyers and the courts knew what type of person the apprentice was. Without the nurturing by and association with practicing attorneys, Clark stated, there had to be some other means of discerning the character of a potential lawyer. He believed this was necessary since large corporations were springing up with their own legal departments.

Suffolk's Dean Archer, whose comments at the 1928 Section meeting had not been discussed because of lack of time, now delivered a paper entitled "Facts and Implications of College Monopoly of Legal Education."

Now, just a word about the Root committee. You remember that Senator Root was the son of a college president and lived across the street from a college. He never had to suffer and struggle and sacrifice to get his education, and all of us, gentlemen, are governed very largely by our own backgrounds....

How long will we ... help a group of law schools that are admittedly not training the majority of students? Only about thirty percent of the law students of America are being trained in those university schools. Why not give the evening schools of the country, that are bearing the burden of this thing, some aid and
assistance? I assure you that the evening law schools are as baffled over this influx of students as anybody else, that is, real schools, non-commercial schools, and we ought to have some impartial tribunal to which we could come for assistance.

A fiery session, with attacks on both the Standards and the Section, followed Archer's talk. Dean Edward T. Lee of John Marshall felt that both the Standards and the Section were undemocratic:

Is it a contest between low standards and high standards? If it was, I would take my place at once on the side of the higher standards. [It is] a contest between arbitrary quantitative and plutocratic standards and reasonable quantitative and democratic standards ... whether we shall say that a man must have his education in an institution, or he may show that he was able, by struggle and sacrifice and extraordinary application, to get those requirements outside of any educational institution.

Lee then objected to a provision that all schools have three full-time professors. To him, this made no sense in an evening school:

What are [the professors] going to do? Are they going to sit down and put their heels upon the desk and read the newspapers and wait for the classes to come in the evenings? ... Now are you going to close up those schools? There is not an evening law school in the country that is on the approved list of the American Bar Association. Now, I say, do you want to exclude those students that have to study law in the evening while they are working in the day time? That, of course, is within your power, but it is not consonant with the spirit of the American Bar Association nor with its history, because the law has always been more or less of a brotherhood, and if you gentlemen will look back at the time you were admitted to the Bar, and then compare the students that are coming to the Bar today, you would not decide that they were so much inferior to you in those days. Now you have prospered and are well groomed, you have elaborate offices. You are likely to forget the humble position from which you started. You might think these fellows don't amount to anything. Give the acorn the chance to grow.

Lee stated that the ABA should "confine its recommendations to the general provisions that may be applicable everywhere, and it is not necessary that this Section should employ at great expense a man to go around— I won't say on a kind of educational snooping expedition at all, but in a manner that is rather offensive and is open to objection." He then offered his own set of revised standards.

Henry S. Drinker, Jr., drew on his experience as chairman of the Committee on Grievances of the Law Association of Philadelphia to comment on "the type of lawyer that this Association wants to keep from studying law, if it can." At the 1929 ABA Annual Meeting in Memphis, he made the following comments:
The man who has the law school training and the college training, where he has gone wrong— and some of them of course do go wrong— he knows he has gone wrong, he is immoral, he is consciously doing wrong ... but these fellows that came up out of the gutter and were catapulted into the law, have done the worst things and did not know they were doing wrong. They were merely following the methods their fathers had been using in selling shoestrings and other merchandise, that is the competitive methods they use in business down in the slums.... [These people] who come over to this country are all afire with a tremendous ambition that somebody in their family shall make good, and that if they have four or five boys and two or three girls, when they get big enough they pick out the one that is the smartest, and they all make a sacrifice to let that boy get an education, and they put him through school and try to get him to be a professional man, and lots of them become lawyers and doctors. Well, the boy comes on, works in a sweat shop or somewhere in the daytime and he studies law at odd times mostly— some of them send them through college, but most of them cannot, and he comes to the bar with no environment at all except that out of which he came, and, with the tremendous pressure back of him to succeed, he has to make good; the whole family have been sacrificing themselves so he can. He does not have a chance— he has not had a chance to absorb the American ideals.

Referring to the Lincoln Objection, Drinker felt sure that "if Abraham Lincoln had lived in a civilization that required a college course and a three-year law school course, then Abraham Lincoln most certainly would have found a way to go to college and law school, and would have done it with much less trouble than walking all those miles to school and back." He then described the American spirit of fair play as

the most important thing that anybody learns in college ... at a place where you go to school all day with other boys, meet them on equal terms. When you are in college with a lot of fellows, the first thing you have to learn is that if you don't play the game fair, somebody is going to bust you one. ... I would say three-fourths of the offenders who came before our committee were young fellows who had not had such training, but came right up out of the gutter into the Bar, and did not realize what they were doing wrong.

J. Lawrence Hurley of Massachusetts described the United States as a land in which equal opportunity was guaranteed and went on to say the following:

It should be our boast that any real, intelligent, hard working man can aspire to the legal profession and to the judiciary, but we do say he must have an education. ... It makes no difference how he gets it, or where he gets it, so long as he gets it. How many of you members have reached the peak of your profession? What was the cause? Was it your college education? Was it your law school education? Or was it by dint of the hardest work? ... All education is self-education, whether it be stimulated by a college or college professors, or whatever it may be. If it is gotten at home, then the man shows tremendous will power. If it is gotten in college, he has had the benefit and the stimulus of college training, but the point is
this, it is all self-education.

Silas Strawn supported the college requirement:

The question is whether the men who have gone through a college and law school are better qualified to undertake the responsibilities of the lawyer today. It seems to me there can be but one answer to the proposition. If you say they are not, then you strike down with one blow all the great systems of education we have attempted to build up during our national life. I will go further, and I assert that a man today is a jackass that undertakes to practice law that is not well qualified for the undertaking, and I never can get lachrymose about the poor boy. The colleges of this country are open to the poor as well as to the rich, and the fact is that a very large percentage of the boys and the young women who are going to law schools and universities in this country are paying their own way. They have abundant opportunities today, and I have not heard any complaint about this rule from the poor boy. The complaint that I hear [comes] from the lachrymose teachers of these law schools that want to fatten on the poor boy, if I may say that. I refer to no particular law school, and my suggestions are entirely impersonal and take the facts as they are.

James Brennan, a lawyer active in the banking profession in Massachusetts, commented on Strawn's glorification of poverty:

We all admire Mr. Strawn. He is a lovable man; we all love him, but I might say to Mr. Strawn that I think that the best argument in favor of the democracy of the Bar, in favor of the principle of the preservation of the democracy of the Bar, is Mr. Strawn himself when he said, "I never attended a college; I never attended an evening school or a law school." Yet he is one of the biggest men in Chicago and one of the biggest lawyers in America. But now Mr. Strawn has become a multi-millionaire, he is a representative of big business, he has an office staff of thirty to forty assistants, and he forgets the struggling days of the poor boys.

Brennan concluded by saying that he was all for high standards but did not want an aristocracy with respect to admission to the Bar. He wanted a democracy.

Some of those attending the 1929 Section meeting, during which the Root report became the Standards, still complained that the 1921 Section meeting, at which the Root report was adopted, had not been run fairly. There were references to a "packed body" representing the interests of another organization at the 1921 meeting. The organization referred to was the AALS, whose members had been instrumental in the creation of the Root committee, which produced the Root report. Section minutes record that Charles Boston of New York, a former Section chairman who had attended the 1921 meeting, denied the charges.

8 Section Sponsors Organization of the National Conference of Bar Examiners

The Section is actively engaged in the founding of the National Conference of Bar
EXAMINERS IN 1931—THE SECTION'S ADVISOR HEADS THIS NEW ORGANIZATION—BAR EXAMINERS FEAR OVERCROWDING OF PROFESSION—SECOND REED REPORT RECOMMENDS LEGAL CLINICS.

"The bar was complaining that they were admitting too many new lawyers, and I think (bar examiners) sought solace and companionship from the examiners in other states."

* * *

The Section suggested the creation of the National Conference of Bar Examiners (NCBE or Conference) in 1931, much as it had suggested the creation of the AALS in 1900. Once the Section sponsored the formal organization of the NCBE, Will Shafroth, who then was the Section's advisor, assumed the position of the NCBE's first secretary, apparently because of his standing among the bar examiners of the various states. Shafroth was responsible to the Council both for the program to support the ABA's educational standards and for the program in support of common standards for bar admissions. He carried out his dual duty from his office in Denver.

The NCBE was founded, according to its first statement of policy, to increase the efficiency of the state boards of admission to the bar. The Conference also was to cooperate with other branches of the bar in dealing with the problems of legal education.

In a retrospective report in 1967, John T. DeGraff, president of the New York Board of Law Examiners and former chairman of the NCBE, said:

I think the promise has been fulfilled, and ... this Conference has become a truly educational institution. It's the only institution where bar examiners can get an education in their chosen field, and I use "chosen" in quotes, because sometimes you are chosen by force rather than by your own volition.

DeGraff went on to say that the NCBE was organized with a "mixture of motives":

It's hard for us to remember that in those days the main emphasis of the bar was on limitation, on overcrowding, and, to be perfectly frank, the motives of the examiners were not entirely altruistic. I think that each one of them was faced with the problem in his own state where the bar was complaining that they were admitting too many new lawyers, and I think they sought solace and companionship from the examiners in other states.

In his report, DeGraff also reviewed a history that included the first written bar examination in 1855 (in a particular area of Massachusetts), the first statewide bar examination committee in 1890 in New Hampshire, bar examination committees in every state but one in 1915, and unsuccessful meetings to organize a conference of bar examiners in 1898, 1904, 1910, 1914, and 1916.

DeGraff, who attended the founding meeting in 1931, described himself as "the only person present at that meeting who did not make a speech." The meeting's format, which
featured three simultaneous round-table discussions with four panelists each, set a pattern that was followed for years.

The Bar Examiner, the Conference's publication that now comes out four times a year, began in pamphlet form in an annual series of nine. The Conference also published a 1931 issue of The Examiner's Handbook as a precursor of The Bar Examiner's Handbook, which began to appear regularly in 1968. That 1931 issue included three articles reflecting current attitudes in the profession: "The Threatened Inundation of the Bar," "The Rising Tide of Advocates," and "Fewer Lawyers and Better Ones." DeGraff drew laughter from his audience by reporting that the 1933 issue reprinted a resolution adopted by the German bar favoring a three-year moratorium on admissions to the bar. "This was quite seriously considered, and a number of speeches ... stressed that there should be some limitation on the number of lawyers," he said. "In those days there was a quota system. Only a certain number could be admitted to the bar each year in each of the local jurisdictions."

There were careful studies of the number of lawyers per capita and surveys of the average income. "Members of the bar in the city of New York earned an average income of less than $3,000 a year," DeGraff said. "I remember reading those figures at the time. I never believed them, but there they were."

He noted that The Bar Examiner's concern about overcrowding in 1931 was followed by alarm over low admissions in the early 1950s, "primarily caused by the fact that there was pretty low pay for lawyers when they got admitted. A young lawyer ... got less than a truck driver."

Bar examiners changed during the first decades of the Conference, DeGraff reported in 1967. "Back in the 1930s we were admitting about half of the candidates. As of today, we're admitting 75 percent or better, on the average, and in many states considerably more than that. It's simply fantastic how low the admissions were in those days. ... In Massachusetts at one time, they flunked about 80 percent of the candidates."

Reed's second report had appeared in 1928 and commented extensively on the bar examination. After discussing its advantages and shortcomings, Reed wrote:

To hold, as some do, that those who have made a large investment of time and money in preparing themselves for a particular profession acquire thereby something like a vested interest in the opportunity to practice that profession is to confuse individual right with social privilege. In a word, the authorities who control admission to practice are urged to take the boldly drastic action that the public interest demands, and to ignore the sentimental appeal of tenderness for the individual.

Reed also remarked favorably on a trend among educators and licensing authorities to attempt to weed out students at an earlier point in their education.

The 1941 Section meeting focused on a standardized National Bar Examination, to be modeled after the National Medical Examination, with questions to be prepared by experts and to
be offered on the same day across the country. The Section approved the proposition that these standard examinations should be made available to boards of bar examiners who desired to use them. It considered sending a resolution to the ABA House of Delegates for approval but decided not to act too hastily and instead moved to study the issue further through a committee.

The Section had embarked on a joint project with the NCBE, which involved the investigation of the character of foreign attorneys applying for bar admission based on comity. Thirteen states were using the service, and 16 cases from California alone had been investigated as of 1934.

Accreditation of law schools also concerned the Section. As of its 1931 Annual Meeting, the ABA had inspected 84 law schools since 1927 and approved 77. The Section also considered and rejected dues for the Section. In 1935 it established a category of provisionally approved law schools.

Hawaii, then a territory, became the first "state" to fully adopt ABA Standards requiring graduation from a law school approved by the ABA as a requirement for taking the bar. New Mexico adopted the ABA Standards in their entirety in 1930 and also was the first state to establish a probationary bar. By 1935 there were 83 approved schools, and 90 percent of them were located in just 8 or 10 states.

Chairman James Grafton Rogers of Boulder reported rapid progress in observance of the Standards in 1936. Three-quarters of all law schools were enforcing ABA Standards through state bar groups, and 32 schools had two-year prelaw requirements. The Council undertook editing of the Annual Review of Legal Education formerly done by the Carnegie Foundation. Character training was the theme of papers presented at Section meetings. Rogers himself said, "We realize that the requirement of a college background for the lawyer is adding something to the breadth of his outlook, to the balance that he keeps at any rate to his general approach to life, and perhaps to the moral and character requirements of the profession."

Rogers expressed concern the following year over the variety of legal education available in the United States, finding night schools particularly troubling. He doubted that even a fine night school could produce the same results as a full-time day school because of lack of contact with its students and it would have, therefore, little influence on their professional pride and ethical standards. Part-time students also had the distractions of families, jobs and finances. He concluded, however, that night schools seemed to have a permanent place in American legal education.

Will Shafroth reported that 24 states containing 63 percent of the lawyers now required two years of college education. A resolution concerning publication of lists of approved and unapproved schools was passed. Shafroth reported in 1939 that 101 of a total of 180 law schools in the United States had been approved. However, 13,000 students still attended unapproved schools. Five new jurisdictions adopted the ABA’s minimum standards, bringing the total to 41.

The House of Delegates passed an important additional Standard providing that "any decision of the Council as to 'reasonably adequate facilities and a sound educational policy' shall
be subject to review by the House of Delegates on the petition of any school adversely affected."

In the chairman's address of 1941, W. E. Stanley warned that the limited budget was a barrier to reaccreditation visits. Stanley was concerned about performing "shoddy inspections." "We cannot approve a law school and then go away and leave it for time and eternity to simply go on its own or toss it into the lap of the Association of American Law Schools and expect that group to cause compliance with the Standards which we as the rating association are expected to enforce," he said.

Lamenting the lack of funds to inspect a school periodically, Stanley continued that a law school "may have complied with our Standards one hundred percent" since accreditation. On the other hand, "it may have completely gone to the 'bow wows' in the meantime. And yet it still remains on our approved list as an approved school."

The best the Section could do, said Stanley, was to get "periodical reports from the AALS which will give us information and point out the defects which will thereafter give us a chance to make an inspection ... and bring that law school back on the path which it should get back on."

In its discussions of legal education, the Section devoted considerable attention to legal ethics. The NCBE was later to introduce the Multistate Professional Responsibility Examination referred to in chapter 19. At the time, however, the ABA did not want to lay down a definite curriculum for a compulsory course. In 1931, the Section stated:

We are not critical, but it does seem to us, and it seems to most practicing lawyers, that Harvard, Yale, Columbia, etc., were not taking the responsibility which is apparently necessarily imposed upon the law schools for doing something for the instruction of those who are coming to the bar in the basic principles of professional conduct. They are not doing it at Yale.

By this time, 79 percent of the AALS member schools offered some sort of ethics course, and 59 percent of those offered professional ethics as a formal course. Non-members did even better, with 85 percent of those schools offering some sort of course in ethics and 68 percent of those giving a separate, formal course.

But the 1936 chairman, James Grafton Rogers, had "very little faith in the value of simply teaching legal ethics upon the campus." He suggested that the literary and legal profession had yet to devise a means to teach a student "the way in which the trained lawyer acts in the emergency and in the little detail of his attention to the case." He recommended the use of biography and history and referred regretfully to "exceedingly little history [taught] in the American law school." He also stressed the importance of "the general influence, as contrasted with the purely scholastic influence, of the teacher."

The Section's 1935 topic, whether American law schools provided adequate training for public service, was preceded by Chairman Rogers' comment that European legal training not merely trained for the profession but for many other occupations in life. One speaker, Thomas I. Parkinson, president of the Equitable Life Assurance Society and a member of the Columbia University School of Law faculty, concluded:
The greatest opportunity is in service. The greatest need is to the public. Whether you represent private interest or represent the public interest primarily, the greatest opportunity of the legal profession is in leadership for a better government, a better law, a better social and economic order in this country. We are not realizing, either in the law profession or in the law schools which are the source of the profession, the fullness of this opportunity. [...]

The teaching profession [should] proceed to produce not only competent law clerks, refined by the analysis and the training of the case method, but students of human relations as controlled by law and government, tried by example and by teaching and by inspiration, to increase the number of those who go out from the schools prepared to do and enthusiastic about doing a real public service in the practice of law.

Karl N. Llewellyn of the Columbia law faculty suggested that legal clinics, comparable to those used in medical schools, become part of a legal education.

The Council, in an early discussion of continuing legal education, encouraged offering institutes, lecture courses, and organized formal discussions of current legal topics. It also noted that it needed additional funds to offer professional education on a level with that offered to doctors and engineers. Having increased its activities and functions, it now found itself short of money.

In 1939 a joint meeting was held between the Section and the Section of Bar Organization Activities to discuss issues of continuing legal education. Dean E. Blythe Stason of the University of Michigan Law School reported that he found continuing legal education very beneficial. He added:

I think it was Tacitus who once said that when states are most corrupt their laws are most multiplied. I presume your drive or movement in the direction of legal institutes is a sort of reflection or response to the corruption of the modern state in the form of a multiplication of its laws. The need of keeping abreast of a great mass of rapidly changing law is the motivating force back of all this. So I have thought to myself that at least the law institute is a device primarily to enable and stimulate practicing lawyers into self-education to keep themselves abreast of current developments in the law.

In 1936, the Section approved a resolution in favor of continuing legal education. W. E. Stanley of Wichita, chairman of the Section's Committee on Advanced Legal Education, reported that more than 30,000 attorneys had taken part in legal institutes during the previous year and noted that Cleveland, Cincinnati, and certain other cities in Ohio were among the first to offer them. He perceived this as the beginning of a new movement of the ABA.

Burt J. Thompson of Forest City, Iowa, who followed Stanley as chairman of the Section's Committee on Advanced Legal Education, described institutes as important factors in bar organization. The ABA must reach out to the local communities of lawyers, Thompson said. ABA members must do more than have their names on the roll and pay dues.
When Shafroth retired in 1940 as advisor to become chief of the Division of Procedural Studies and Statistics of the Administrative Office of the United States Courts, the Council of the Section adopted a resolution in his honor. It took special note of "the tremendous progress made during [his advisorship] in the elevation of standards of bar admission and the improvement of legal education in the 48 states."

9 War Affects Law Schools

World War II affects law school enrollment—Section stresses importance of keeping standards high but makes concessions at individual law schools—Plans made for returning veterans—Refresher courses designed.

"There has been no lowering of the substance and spirit of the Standards."

* * *

Lawrence DeMuth of the University of Colorado was appointed advisor on Will Shafroth's retirement in 1940, but a 1941 Section report lists Captain DeMuth as being on leave of absence for military service. DeMuth's absence was typical of what was occurring in law schools.

World War II caused a dramatic impact on law school enrollments. When the Section met jointly with the National Conference of Bar Examiners (NCBE) in 1942, attention was on the war. Dean E. Blythe Stason of Michigan reported at that meeting that his school's normal enrollment of 650 students was expected to drop below 50 percent in the fall.

The effort to improve legal education included opposition to a bill to prevent discrimination against the graduates of certain law schools and those acquiring their legal education in law offices in the making of appointments to legal positions in the government service. The bill had passed in the U.S. Senate. Believing that it would impede the ABA's efforts to bring about higher standards in legal education, the Section opposed the bill, which eventually was defeated.

John Kirkland Clark, chairman of the NCBE and a former Section chairman, watched law school faculty members head to Washington, D.C., and commented, "The various departments are so filled with deans and professors, it must be a very large proportion that Uncle Sam has taken to his breast, not for fighting, but for intellectual pursuits." Clark added that bar candidates soon would include "only women and men incapable of military service."

In an attempt to communicate systematically with and seek the counsel of state bar associations, the Section resolved in 1941 to appoint a liaison with each state bar association, the resulting entity to be called the 49 Committees Representing the Council in the Various States and the District of Columbia. Few records of this project survive, and it was noted as ending shortly thereafter.
Advisor Lawrence DeMuth, who had served only a year before entering military service, was replaced by a temporary advisor, Russell Sullivan of the University of Illinois. Chairman Charles Racine noted this turnover as a partial reason for the dramatic decrease in the number of law school inspections. The Section also lacked the funds to reinspect and had to settle for periodic written reports from approved schools.

Racine also remarked on the "breaking down of [admission] standards in the various states ... allowing [the boys] to march off happy with the thought that they who were entering the war could come back and be a member of the Bar." Some states wiped out examinations and admitted anyone with a degree from an approved school.

The Section was determined to prevent "blanket relaxation of standards." Yet its members realized that there were particular schools which needed help. An Emergency Committee consisting of Chairman Racine, Dean Albert Harno of the University of Illinois, and former Chairman W. E. Stanley of Wichita was appointed. They were "to pass on any of the requests that any of the schools might submit which would require some modification, to some degree, of our standards," Racine reported.

ABA President Walter P. Armstrong of Memphis signed a letter to the state bar representatives stating the ABA's desire that standards not be relaxed unless approved by the Emergency Committee. At another joint meeting of the Section and the NCBE in 1943, Chairman John Kirkland Clark of the NCBE predicted that if the war continued for another year, perhaps 20 to 40 of the nation's law schools would close due to lack of enrollment. Clark insisted, however, that the standards be upheld:

What good is it to win the war if we should again lose the peace and [the] chance for the creation of a world of law and order and the abolition of future wars? That will be the task of liberally educated men—a majority of whom will no doubt be lawyers. Lawyers, because of their training and their liberal education, are the natural leaders in a post-war world.

Both the bar examiners and the Section agreed that ABA standards should be maintained for returning veterans. Yet, law schools were desperate for new students and faculty, and at least some were willing to accept a lower quality of both students and faculty.

Herbert W. Clark of San Francisco, who was to serve twice as Section chairman, felt that lowering of standards was inevitable. "Prior to December 7, 1941, the whole trend of education for the law was in the direction of better and longer legal education," he said. He added regretfully that things had changed. He cited "a great Eastern school" as an example of a school lowering its standards by adopting an accelerated program for the war's duration. In furtherance of the war effort, that school had replaced the two-semester and 10-week summer session arrangement with a three-term plan continuing throughout the calendar year. Clark voiced his objections:

What has been done since December 7, 1941, permits a comparatively poor quality of law students, mentally harassed by war conditions and taught by a
numerically inadequate and overworked staff of instructors, to complete in three years of 27 practically continuous months, or even in two calendar years, a law course that a much better quality of student, adequately taught in the undisturbed atmosphere of peace, was not supposed to be able to complete satisfactorily in less than three traditional academic years. And so, in the name of war emergency, there may be foisted upon the public, the courts, and the profession successive crops of poorly equipped, poorly taught lawyers to aid [in] solving problems whose importance, complexity and difficulty cannot be equalled in history.

Clark concluded that if the quality of both the student and the education were lowered, then the standards of the bar examination must be lowered as well. Subsequent accelerated programs would not be associated with lowered standards, however.

It also was reported at the 1943 Section meeting that in Illinois, the supreme court permitted draftees with no more than one semester of law school remaining to take the bar examination before leaving for the war. The Illinois bar examiners also were permitted to give exams out of the state or even at army posts. Also, many men were continuing their studies while in the service.

Section Chairman Albert Harno, law dean at Illinois, began his afternoon address at that 1943 meeting by stating that the Council had reaffirmed, and thus given added emphasis to, the position it took in 1942 that there be no blanket relaxation of its standards. "When I say that, I mean there has been no lowering of the substance and the spirit of the standards," Harno said. "The Council has approved some adjustments in the school programs that were essential because of decreases in enrollments, and on account of the loss of faculty members to the armed forces and to government service. Concessions were made to 13 schools."

Dean Harno also presented statistics that reflected the war's effect on enrollment at the nation's law schools.

2

**Combined Enrollments of 110 Law Schools**

<table>
<thead>
<tr>
<th>Year</th>
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<tr>
<td>1938</td>
<td>28,184</td>
</tr>
<tr>
<td>1941</td>
<td>18,449</td>
</tr>
<tr>
<td>1942 (fall)</td>
<td>7,887</td>
</tr>
<tr>
<td>1943 (March)</td>
<td>5,686</td>
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"It is safe to assume that by the end of the school year last June, enrollments ... were less than one-sixth of what they were in 1938," Dean Harno said. "By next fall ... this company will
have dwindled yet further—indeed, almost to the vanishing point—for we can anticipate that it will then be restricted, with few exceptions, to men classified 4-F and women.

He then referred to a shortage of trained lawyers during the war. In 1942, government departments had a total of 1,736 legal positions of which only 427 were filled. Private practice demand amounted to 1,886, but only 530 lawyers were available for those positions. These statistics are interesting in light of the earlier concern over too many lawyers as well as the tight market young lawyers face today.

Chairman Harno predicted that returning veterans would have special needs and problems, such as psychological readjustment and refresher courses. He anticipated a changing law school curriculum to address these needs:

It would seem clear, with the changing emphases in the social, economic and political environment of our day, that heavier stress will have to be placed on public law courses, e.g., on taxation, administrative law and industrial relations. With the tremendous growth and pending developments in aeronautics and radio transmission, we should, I believe, give attention to air law.

Arthur T. Vanderbilt, chief justice of the New Jersey Supreme Court, agreed with a statement by Dean Harno that the case system was both a blessing and a limitation. "I don't see how we can improve on the case system for the teaching of many of the topics of law on the substantive side, particularly in the field of private law," he said. "But quite obviously, the case system will not carry us through all the requirements of the new law school curriculum."

Justice Vanderbilt had also been dean of the New York University School of Law and was a former ABA president. He went on to suggest that law schools take advantage of wartime shortages to improve their use of the case system:

Now is the time, when our students are few and our professors are on leave, to reshuffle the courses, to break down the water-tight compartments that separate in the minds of both professors and students what they teach and learn in one subject as against what they teach and learn in another, to develop more cross-reference from one course to another.

Vanderbilt saw a need to emphasize procedural rather than substantive law, i.e., the "fundamentals of the judicial process" and the "essentials of the legislative process." He listed essentials of the legislative process as including statutory construction and interpretation, administrative processes, the process of jurisprudence, and various aspects of public law.

In 1943, the Section considered but rejected elimination of marginal schools because of its concern that there would be a sharp influx of postwar students and that it was better to have them attend marginal schools than unapproved ones. The Section also addressed other concerns created by the war. For example, those students with less than half a term remaining before graduation were allowed to receive their degrees before entering military service. Dickinson School of Law in Philadelphia was permitted to employ fewer full-time teachers because of its
decreased enrollment. However, the Section denied a request in 1944 by Vanderbilt University to close its law school and tutor the remaining students who had not graduated by June 1.

Also in 1943, the Section withdrew approval of the University of Georgia law school because of political control of the university by Governor Herman E. Talmadge. Following his defeat later at the polls, the law school was reinstated.

When the Section met in September 1944, law school enrollment had decreased 83 percent since 1936. Ten schools had closed, but one intended to reopen that fall. Of the 4,803 students registered in the fall of 1943, 1,049 were women. This was the first time that women appeared in any numbers in Section records. Women law students and women lawyers formed such a tiny minority that they had gone largely unrecognized.

A further argument against relaxing the law school and bar admission standards arose as the war neared an end. Student enrollments were expected to balloon as the G.I. Bill of Rights brought law school within the economic reach of many veterans. In spite of the war, states continued to adopt the ABA Standards, and as of September 1944, the only exceptions were South Carolina, Georgia, Mississippi, Arkansas, and Louisiana.

The Council began to consider the issue of prelegal credit for those in the armed forces. Because the army and navy offered a variety of educational opportunities for men and women, the Council approved a resolution allowing prelegal credit to veterans. Under this plan, approved law schools could admit veterans on the basis of prelaw credit provided that applicants had been discharged honorably. Additionally, a veteran could receive no more than eight hours' credit for military training and received credit only for that "study or intellectual growth" while in the armed forces that could be evaluated through a testing program or examination by either the army or an approved college. Furthermore, the applicant's performance record and number of credits had to meet certain standards.

By 1944 the Section was turning its attention to refresher courses for law graduates as it had begun to do in the thirties. A Committee on Refresher Programs was created to plan a program to facilitate the lawyer-veteran's return to professional work. The ABA Board of Governors in 1944 authorized the Council to cooperate with the Practicing Law Institute (PLI) in conducting a national refresher training program for graduate lawyers.

The PLI would conduct the courses, which were to be approved by the Section. The program was to consist of practical instruction and training in the lawyer's approach, working methods, and techniques. Emphasis was placed on refreshing lawyers on the basics of practicing law, such as handling the affairs of clients. Lecture courses and publications would be prepared especially for this purpose by practitioners and law teachers. These would be short, intensive courses of two to three weeks' duration, each consisting of about 88 hours, with a tuition fee of $75 and a charge of $25 for printed matter. The expense to the Section was estimated at $6,700 above its regular budget.

At the close of the war, it was proposed that all approved schools be inspected. The Section also noted that it had made little progress in its nine years of effort to improve lawyer
training after law school. It expressed the need to utilize resources of the PLI.

Commander Richard Bentley, chief of legal assistance, Office of the Judge Advocate, Navy Department, suggested at the 1944 meeting that returning veterans be able to use correspondence courses. Bentley, by then a civilian, became Section chairman in 1949. At this time, it was noted that England also conducted correspondence courses for the aid of veterans.

Also at the 1944 meeting, the Section passed a resolution stating its opposition to the lowering of standards for returning veterans. The Council decided, too, that there would be a "good psychological effect" on the veterans if they were not isolated from non-veterans in review groups. Therefore, both groups attended the first refresher lectures conducted in New York City in 1945 under joint sponsorship of the ABA, the PLI, the New York State Bar Association, and the War Committee of the Bar of the City of New York. The average age of the students was 32, and the program consisted of 84 hours of lectures, clinics, and demonstrations.

These veterans had entered military service after having been out of law school for an average of six and one-half years. Those attending the course found it valuable, and a number of them wrote letters. One included these statements:

This course has enabled me to refresh my knowledge of legal principles which was dormant during my service with the army. My mind can again focus clearly on and analyze legal problems. Further, the experience of the lecturers has greatly supplemented my own and makes usefulness to the clients greater than before.

Many bar associations and law schools, including four law schools in Michigan, showed interest in the plan for a refresher course. These four set up a committee and conferred with Dean Stason of the University of Michigan Law School. Although it was expected that the G.I. Bill of Rights would make the course available to all veterans, the Veterans Administration's interpretation of the statute restricted payment of tuition fees to less than one-third. The committee's report indicated it would try to persuade the VA to be more generous.

A number of lawyers wrote manuals on various phases of general practice for use in the refresher programs. These were to be available to lawyers whether or not they took the course.

There also was concern that some law schools might seek to recoup wartime losses by admitting as many students as possible, causing over-crowding problems. The Council sought to guard against excessive enrollment by relying on the Standard requiring at least one full-time teacher for every 100 students. The Section also discussed the problem of securing competent full-time law instructors.

10 LSAT Comes into Use

Law School Admission Test is discussed, goes into use in 1948—Continuing legal education moves from Section committee to ALI/ABA program—Council surveys profession to report on prelegal education.
The House of Delegates and the Board of Governors should give "thought to the future of the advanced legal education program, whether they will allow it to drift, or whether it shall be a major activity of the Association."

* * *

Meanwhile, a Section resolution in 1944 voiced dissatisfaction with the quality of preparation among students entering law school. It appointed a committee to confer with the Association of American Colleges about means to improve "the training and equipment of college students who are looking forward to the study of law."

The issue of aptitude testing was raised. Former Advisor Claude Horack reported on the Graduate Record Exam developed by the Carnegie Foundation. Although the Council made no final decision regarding usage of this test, law schools were encouraged to try it experimentally.

Millard H. Ruud, a University of Texas professor emeritus who held office in the formative years of the Law School Admission Council (LSAC), remembered the beginnings of the LSAC. In 1948 Willis L. M. Reese, professor of law at Columbia and chair of the Admissions Committee of the AALS, and Dean Young B. Smith of Columbia were interested in having some additional criteria by which to evaluate potential students. "Because of the G.I. Bill, they were getting applicants from colleges they had heard of but knew nothing about. If the applicant was a Columbia College graduate or from Yale or Amherst or any other Ivy League school, they knew the institution and which departments were stronger than other departments, et cetera," Ruud recalled. "What they were getting were people from the University of Tennessee and so on." The Columbia professors contacted Yale and Harvard. Dean Erwin N. Griswold of Harvard was interested. Columbia, Harvard, and Yale then went to the Educational Testing Service (ETS), which was being formed at Princeton. They asked ETS to develop a new test for law school admission. The three law schools agreed to share the cost with a small group of other schools. An experimental test was tried at several schools, and the Law School Admission Test (LSAT) went into use in 1948. By 1949, a participating group of 20 schools, all of which invested approximately $500, had a contract with the ETS. This group then realized that more schools would join them.

"ETS was interested in making a single contract with an entity representing all of the schools instead of separate contracts with each school using the test," Ruud recalled. "ETS decided to contract with the AALS, but at that time, the AALS had no secretariat and so was not able to respond. If things had been different, there would have been no LSAC [Law School Admission Council]. It would simply have become part of the AALS."

Ruud, who would later become consultant to the ABA on legal education and eventually executive director of the AALS, was an early officer of the Law School Admission Test Council, which was incorporated in 1968 and renamed the Law School Admission Council.

At the close of World War II, the Council presented plans and recommendations to reactivate a program of continuing legal education. "Thus came the constitution of the Joint
Committee of 22 of ABA and the American Law Institute (ALI/ABA),” John G. Hervey, the Section's advisor, was to write in 1968. "[The] work of continuing legal education was vested in the Joint Committee."

His report further stated: "Those who have charged that the Section and the Council 'missed the boat' on continuing legal education are not conversant with the record." Hervey added that as far back as 1936 the House of Delegates had made a resolution in favor of continuing legal education at the ABA Annual Meeting in Boston. The task of implementing the resolution was delegated to the Section at the Kansas City ABA Annual Meeting in 1937. For the next three years, a Section committee prepared, printed, and circulated a pamphlet containing a list of 29 topics suitable for institute programs along with a list of 130 available speakers. Some 209 separate institutes for practicing lawyers were held in 23 states in 1939–40.

Hervey described this continuing education program as "one of the outstanding accomplishments of the Section and of ABA." Three men, Dean Albert J. Harno of the University of Illinois, W. E. Stanley of Wichita, Kansas, who was to become a Section chairman, and Burt Thompson of Forest City, Iowa, formed the Section's continuing education committee in the 1930s.

The Section itself paid for this program on which no funds derived from ABA dues were spent. When the Section exhausted its finances, its plea for money went unheeded, Hervey reported. The Section Report for 1940 invited the House of Delegates and the Board of Governors to give "thought to the future of the advanced legal education program, whether they will allow it to drift, or whether it shall be a major activity of the Association."

Then came the war. At its close, the Section's Committee on Refresher Courses for Veterans looked into the possibility of extending the program. At the 1944 Midyear Meeting, the ABA House of Delegates instructed the Section to undertake an overall study of legal education. The House also unanimously adopted resolutions that the ABA initiate and foster a national program of continuing education to the bar and that the development and coordination of this program be implemented by the Section acting through its Committee on Continuing Education to the Bar.

The Section's 1947 report, however, proposed that the American Law Institute (ALI), rather than the Section, should develop a national program of continuing education to the bar. That year, ALI and the ABA entered into an agreement. With the cooperation of the ABA, ALI would organize, develop, and carry out the national program of continuing education to the bar. ALI/ABA courses have been offered ever since.

The Council also created a Survey of the Legal Profession for a report on prelegal education. Its first director was Arthur T. Vanderbilt. The Annual Report for 1947 listed John DeMuth, the Section's advisor, as a new member of the Council, apparently filling the unexpired term of Herbert W. Clark of San Francisco, who was elected chairman. DeMuth's successor was Dean John G. Hervey of Oklahoma City University School of Law, who was to serve in that position for 20 years.
11 Reinspection Becomes an Issue

The Council's concern over absence of reinspection visits since 1922 results in 1956 ABA funding for reaccreditation visits—use of diploma privilege wanes—speakers at several Section meetings wrestle with definition of prelegal education—Council discusses whether to raise the minimum volume requirement for law school libraries, whether a course in ethics should be mandatory, and whether law schools should allow outside employment.

"If it is to be the policy of the Section ... to lay down standards of proficiency for American law schools, then it would seem to be mandatory that the Section should have the tools to determine whether schools which it approves are conforming to these standards."

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In the 1950s, the Council of the Section acted upon its concern that reaccreditation had been neglected. Many law schools that were originally approved in the early 1920s had not been reinspected because of funding problems, and the Council had no reliable information concerning existing conditions among these law schools.

Proceedings of the ABA Board of Governors for 1955 reflected these concerns. It stated that the Section did not attempt to reinspect schools after they were placed on the approved list, unless a specific complaint suggesting that standards were not being complied with was brought to its attention. The Section officers felt it was not feasible to ask the law schools to help finance such a reinspection program. It considered the program necessary, however, and felt that the ABA should provide the necessary appropriations. The Board of Governors concluded its report by recognizing the importance of law school reinspection but stated it had been unable to find funds to support the project.

ABA President E. Smythe Gambrell appointed a subcommittee under Dean Elwood H. Hettrick of Boston University School of Law to consult with the Council and evaluate the need for reaccrediting. Dean Hettrick's committee contacted persons in the Section and in the law schools to determine the need for additional inspection. They found the answer to be almost uniformly yes, according to a history of the Section written in 1968 by John M. Allison of Tampa, who had been Section chairman from 1953 to 1955. The Hettrick committee estimated the additional cost of what it considered a realistic program of reinspection at $17,000 to open a Chicago office, appoint an assistant advisor and secretary, and pay expenses and honoraria for non-salaried inspectors.

The issue of whether the accrediting office should be at the ABA headquarters or at a law school was to be a recurring issue. The advisor was always a law professor and not a professional ABA staff member. Southern Methodist Dean Robert G. Storey, a former ABA president, urged in a note to the current ABA president that the advisor stay in Chicago. The idea was raised at the Board of Governors' proceedings for 1955, but no action was taken.

A year later, the Section took up "the move" again. Chairman Herbert W. Clark expressed the opinion that this would involve more expense in rent, secretarial service and
operating cost, and that it was doubtful whether the professor-advisor would be willing to move to Chicago. Again, no action was taken.

The Section then gave its attention to the type of inspection needed. It concluded that "any enlarged inspection program of real merit, whether by fee or by appropriation, should be part of our generalized general headquarters program." It listed arguments for and against funding by the ABA as opposed to funding by the schools. Its report noted, however, that if it was to be the policy of the Section to lay down standards for American law schools, then the Section should have the tools to determine whether schools it approved were conforming to these standards. "This requires not only perfunctory inspections but it requires inspections which evaluate the spirit of compliance as well as the letter," it reported. "To have this, mere frequency of inspections is not the sole answer, for the quality of inspection is far more important than quantity or numerical frequency."

It also noted that where any substantial non-compliance was found, it was equally important that "sanctions be imposed, that corrective action be taken by the school, and that such action be carefully checked and evaluated by the Section." The report made no recommendations, however, and the Board took no action.

In 1956, Clark and Allison appeared before the ABA Board of Governors at its Dallas meeting to request an additional appropriation for a reaccreditation program. Clark made a "vigorous and eloquent plea for funds to permit a regular reinspection program," Allison wrote later in his 1968 history of the Section. Clark, a Californian, was the first person in Section history to serve two separate terms as chairman. His previous term had been in 1947–49.

Proceedings of the Board of Governors recorded the "lack of a consistent program for reinspection of the fully approved law schools on the ABA list...because there has been no money to pay for such reinspection. When a school applies for approval, it pays the cost of the original inspection, and this sometimes requires several visits by the inspector before the requirements are completed. The cost ... must be borne by the Section, and that ... would require a substantial additional appropriation."

The Section's reinspection program began in 1956. It contemplated the regular reinspection of all approved law schools at least once every five years. The advisor was to be present for at least one day of the inspection.

This program was in addition to the annual inspection of provisionally approved schools, the inspection of schools first applying for approval, and those special circumstances in which the Council felt that reinspections were required.

"During my service on the Council, this program of reinspections was not without its vexing moments," Allison wrote in 1968.

The Council patiently endured the trials and tribulations of certain law schools, which were causing us concern, but finally achieved a happy issue out of these afflictions, and saw the problems resolved in a satisfactory manner. Today those
schools, in the main, are healthy institutions. When certain schools were causing us concern, upon requesting specified officials to appear before the Council for an interview, all too frequently we encountered an atmosphere of active hostility, which we later found was largely engendered by misunderstanding. It was truly a test of infinite forbearance. If thoughts had been words, no doubt we were often roundly excoriated. I am delighted to say that most of those same representatives later quietly came to the Council, and expressed their gratitude at our insistence in standing firm upon our standards in their behalf, insisting upon better salaries, better libraries, and better plant facilities, practically all of which were achieved.

It was suggested in 1957 that there be a manual for inspectors. A committee was appointed by the chairman to prepare and submit a draft.

And in 1956, Dean Paul Dunakin of the LaSalle Extension University explained the operation of his correspondence school to the Section. Questions to Dean Dunakin disclosed that the school had no formal requirements for admission; only two states permitted an applicant to take the bar exams solely on the basis of correspondence law study; the LL.B. degree was conferred only on those students who passed a bar exam; and 4,000 students had enrolled at LaSalle. Dean Dunakin suggested that the ABA create a category of law schools into which correspondence schools might fit. After consideration, the Council reaffirmed its condemnation of correspondence law study for admission to practice.

Howard University drew the joint concern of the Council and the AALS at the 1959 Council meeting. Dean William Prosser of the University of California at Berkeley and incoming president of the AALS reported that Howard's "deficiencies lie almost entirely in the student body" as a result of inadequate prelegal preparation. The school, he said, deserved "friendship, encouragement, and assistance." The consensus was that the school's president, dean, and even interested members of Congress should be invited to meet with the Council the following year to explore all the school's problems.

Although a few states were reported as still having a diploma privilege in the late 1950s, they were in the minority. Allison's 1968 history took satisfaction in the gradual disappearance of the diploma privilege. Many states had offered such a privilege in the early 1920s. "The Council realized this was a problem to be handled by the states and, as early as 1921, adopted a firm and resolute stand in opposition to it. The diploma privilege has now been abolished by local action in all but a few jurisdictions," Allison wrote.

In 1950, the Standard enacted in 1921 requiring two years of college work before admission to law school was changed to three years. The Section proposed and the ABA House of Delegates approved the change.

At this time, Arthur T. Vanderbilt, about to retire as director of the Survey of the Legal Profession, gave a report on prelegal education. He cited the approved list of law schools as "the great contribution of the American Bar Association to the uplifting of standards of legal education in this country."
Then he turned to the question of prelegal requirements. Should they be something that a man must have so he can be admitted to law school and to law school work and be admitted to the bar? he asked.

"It seems to me," Vanderbilt said, that "law schools have got to face the situation very frankly and say that the primary objective not only of prelegal education but of legal education itself is to train a very select body of men for public leadership in the broadest sense of the term." He included in this not only holding public office but molding public opinion and making policy. "We have got to recognize that fact by remolding our curriculum to a very marked degree," he said.

Vanderbilt had sent a questionnaire to the justices of the United States Supreme Court; the chief justices of all the states; the chief judges of the federal circuit courts of appeals; all the state bar associations; the president and past presidents of the ABA, the AALS, and the NCBE; and college presidents who had at one time practiced law.

He reported an 80 percent response and marked agreement on two topics: (1) everyone answering was against any required courses for prelegal education, "notwithstanding the fact that almost every one of them said how terrible it was that students did not know how to write English, much less talk it"; (2) two-thirds "paid their respects in no uncertain terms to the social sciences, and as if they had all learned the phrase somewhere, at least half of them used the term 'the so-called social sciences.'"

Vanderbilt found this comforting, he wrote, because "it showed me that there was still a very sturdy core of individualism in the legal profession." He also was favorably impressed by the emphasis placed on the teacher who was described in the questionnaire response as "far more important than the subject taught."

He then attempted to analyze the work of the lawyer to determine the elements of lawyer competency:

(1) The ability to grasp facts and to grasp conflicting facts and keep them carefully sorted out and not to be overtaken with heart trouble when those facts are suddenly varied at the trial without any previous warning to you. You come to expect that sort of thing and to make the necessary instantaneous adjustment; and the mark of your ability will be your capacity for doing that without any change of facial expression.

If [the lawyer] does not learn in college the art of assembling large quantities of facts and classifying them and keeping them in mind as long as he needs to keep them in mind— he must forget them the instant the trial is over, or else he will have a mind which will resemble a ragbag or a garbage can— he is not going to make a good lawyer no matter how much law he may know.

(2) Knowledge of whether the law is applicable to those facts in every law suit. Our law schools do a magnificent job [of this] in those fields that they teach.
(3) Knowledge of human nature. The student gets that from his knowledge of humanity ... from rubbing shoulders with his fellows. ... But he had better get started on it in college.

(4) Knowing the environment of the case ... the assumption of the age. ... If he is drawing a contract that is not going to terminate for 20 years ... he had better not be content with the opinions of the United States Supreme Court [today]. College is the place where he should get [a broad and deep knowledge of the social sciences], and he should be told how important it is for him to have it before he comes to law school.

(5) The ability to reason as a lawyer regarding the facts, and the people involved in the case. [Vanderbilt noted that this skill was being taught successfully in law schools.]

(6) The ability to express his thoughts about these other five elements in speech and writing.

Vanderbilt then admitted that a great many of the above points were not taught in college and probably could not be taught there. "What college ever assumed to teach a man how to remember names of people?" he asked. "Yet some have gone far in public life, far beyond their capacity in other directions, simply because they could remember names and tie them to the proper face.

"The keynote we should strike is that all education in the last analysis is self-education ... that in law schools we are only going to attend to two things, giving them the art of legal reasoning and some of the main principles of law."

Between 1950 and 1960, H. Eugene Heine (an ABA staff member and its first general counsel) noted in his history of the Section that the work of the Section, as discussed in the annual reports of the Association, consisted almost entirely of granting provisional or full approval for a number of law schools. At the 1955 Annual Meeting, for instance, John Marshall Law School of Chicago received full ABA approval. It had been provisionally approved in 1951.

By 1952, Heine wrote that all of the general committees of the Section had been abolished, leaving only the "Committees Representing the Council in the various States." These state committees do not appear to have been very active. The state chairmen were reappointed year after year.

At the 1953 Midyear Meeting, the ABA Committee on Scope and Correlation of Work noted that some Sections, including Legal Education and Admissions to the Bar, were not yet charging membership dues and reported: "We believe that the dues-paying sections have a more interested membership, on the whole, and a somewhat more closely knit organization." The Section considered and failed to recommend dues in 1959 on the grounds that "the Section is
strictly a public service." It finally set dues at $2 in 1964, however.

At Section meetings in the mid-1950s, there were also proposals to raise the library minimum from 7,500 to 15,000 volumes, with annual expenditures of not less than $34,000 for additions. Some members expressed the view that it might be better strategy to raise the minimum gradually, which might overcome any objection from the schools that the Council was allied with the law book publishers.

Other matters judged worthy of consideration were: whether a course in ethics should be required; whether schools should have a policy on outside employment of students; and whether the Section should set out a pattern of desirable law school practices to which a school might aspire. No action was taken on these matters or the proposal to increase library volumes.

The Section did, however, resolve to support the American Association of Law Libraries in its application for a grant to develop a classification scheme and improve index systems for legal periodicals and foreign legal literature. As for employed students, opinions varied at the 1958 summer meeting. A chapter of a book on part-time legal education contained a chapter on the fatigue of working students. Dean Erwin N. Griswold of Harvard suggested scholarships as a remedy and coined a motto, "Don't work. Take a loan." University of California Dean William L. Prosser suggested, as a remedy, making the law program so tough that the student simply could not work on the outside as well.

Finger-printing of bar candidates was described as a "red-hot issue" by a member who said it was required in New Jersey, California, Florida, and one division of the bar in New York. "Law school people" were described as opposing it.

A special committee of Lawyers in the Armed Services appeared before the Council in 1959. It referred the matter of reciprocity for legal work in the armed services to the NCBE but supported a need for armed services lawyers to attend civilian law schools for such specialized study as Russian law.

Accreditation was once again a topic of discussion during the 1959 meeting. Some members believed that the AALS should defer to the ABA the task of accrediting schools for purposes of bar exams. Dean Prosser, president of the AALS, responded by saying that while the AALS did not distrust the ABA, the AALS should retain its power to accredit should it ever become necessary. A representative of the National Commission on Accrediting, an association of agencies accrediting professional curricula, felt that professional accrediting agencies would do a better job if membership on the committee consisted of both teachers and practitioners.

Financial aid for law students, begun through the G.I. Bill, continued to interest the Council. It approved a resolution in 1959 "that the ABA recommends to the Congress the adoption of legislation to amend the Internal Revenue Code of 1954 to provide a 30 percent tax credit against the individual income tax for amounts paid as tuition or fees to tax-free public and private institutions of higher education."

The question of whether prelegal courses should be required surfaced again in a panel
discussion at the August 1959 meeting. Samuel D. Thurman, then acting dean at Stanford and later dean at the University of Utah, reviewed the history of this subject and quoted from an earlier report of the AALS, which had appointed a three-man committee to study the issue in 1909. Its report noted considerable difference of opinion among the members, one of whom was Roscoe Pound. Since 1909, it considered the subject almost annually and in the late 1940s offered a statement that "education of students for a full life is far more important than mere education for later professional training and practice." It concluded:

The Association's responsibility in matters of prelegal education cannot best be met by prescribing certain courses and extra curricular activities for the students planning later to study law. Such an endeavor is foreclosed by the wide range of a lawyer's tasks and the correspondingly wide range for a choice of relevant prelaw preparation. More important, any attempt to prescribe a single course of preparatory work would be invalidated by the fact that the quality of instruction necessarily varies among subject matter areas and among schools.

In commenting on the statement, Dean Thurman of Stanford included the ABA as having similar objectives. "The prelaw student will be well advised to take advantage of the best undergraduate teaching available in his institution," he said.

Thurman and another panelist, Dean Frank E. Maloney of the University of Florida, both pointed out that the strengths of colleges differ. "We ought to take note that the strongest courses in one college may be in the field of history, another in sociology, and a third in economics," said Dean Maloney. "It is more important that a student master rigorous courses than it is to cover particular subjects so long as some coverage in these and related areas is attained."

"A particular student's reasoning processes may better be developed at a particular institution, for example, by working with a specified teacher of biology than with another teacher of logic," Thurman suggested. Much depends on the undergraduate counselor's judgment. "I can't think of a role much more important," he added. Yet no one on the Stanford law faculty, nor probably elsewhere, he said, wanted to serve as undergraduate advisor to students intending to study law.

12 The John Hervey Years

John G. Hervey serves 20 years as Section advisor—Development of inspection report and questionnaire—Consultant's position is created with appointment of Millard H. Ruud.

"I certainly would not send a copy of the inspection report to the dean, because it might lead to trouble."

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Dean John G. Hervey of the Oklahoma City University School of Law was appointed
advisor to the Section in 1948. He was to stay in that office for 20 years, until 1968. In leaving, Hervey alleged that the ABA Board of Governors' action in establishing a required retirement age of 68 was unfairly directed against him.

Hervey served what the late Robert McKay, former New York University law dean, described as a "useful and creditable function." He gathered the most detailed information on enrollment collected up to that time by the Section. Although he did much of the inspecting on his own, half a dozen or so others also made site visits. Hervey spent considerable time working toward the elimination of some law schools unaffiliated with universities and the merger of others with institutions of higher learning.

Seventeen independent law schools became affiliated with universities during the Hervey years. These included the Westminster Law School in Denver, which was merged into the University of Denver, the National University School of Law into George Washington University, and the McGeorge School of Law into the University of the Pacific. Ten others, like the John Marshall College School of Law in Jersey City, New Jersey, were discontinued. John Marshall, which had no connection with the law school of the same name in Chicago, was discontinued after an unsuccessful appeal to the House of Delegates following the decision of the Council against recommending provisional accreditation.

Millard H. Ruud, who succeeded Hervey, read some of Hervey's reports and was aware that Hervey felt "very free to speak firmly and categorically on behalf of the Council and the Section of the ABA about what an institution should do and shouldn't do. A product of his being that firm means that he and he alone, maybe, was responsible for terminating a lot of unimportant schools around the country, which no longer exist or were taken over by some university."

Harold Gill Reuschlein, founding dean of Villanova University School of Law and a Council member during the late Hervey years, felt that Hervey displayed a degree of thoroughness not previously applied to provisional application and reaccreditation. Reuschlein contrasted Hervey's approach with that of Will Shafroth as advisor when law school inspection was a "perfunctory affair, in which faculty or students were not consulted. There was no questionnaire or self-study or very little advance notice." Reuschlein remembers a 1935 inspection under Shafroth in which the assistant dean scurried about to be sure the lights were on in the law library. An inspection took most of the afternoon, Reuschlein recalled, but most of this was largely spent in pleasant conversation.

Although Hervey, too, did many solo inspections, he expanded the team to two and sometimes three at the prodding of the Council. Dean Reuschlein remembered that Hervey spent time not only in the law school but with the university administration, where he was very effective in pressing for financial support.

"The advisors, who had an average tenure of two and one-half years, did not leave a personal imprint on the Section until John Hervey," Reuschlein said. Hervey was dean of law at Temple University before becoming dean of the Oklahoma City University law school.
“He liked to tell university administrators reluctant to spend money on law schools that he had received an LL.B. from a 'run-of-the-mill law school' and a Ph.D. in history from the University of Pennsylvania, an Ivy League school, but he had worked much harder to earn the law degree,” Reuschlein recalled.

Hervey used that argument to change the law degree from LL.B. to J.D. Erwin N. Griswold, former dean of the Harvard Law School, remembered that Hervey worked toward this for years. "I'm proud of my Harvard LL.B., and I don't regard it as the equivalent, in research terms, of a true Ph.D.,” Griswold said. But he recalled that law professors in schools other than the top 12 or 15 were discriminated against because they didn't have doctoral degrees. "Hervey was very much interested in these people in the middle and lower schools, and so he forced everybody to change to J.D.,” Griswold said. "I can only say that this happened after I ceased to be dean at Harvard."

There is a story, possibly apocryphal but sometimes referring to Marquette University Law School, which is told of Hervey's arriving to inspect a school after hours when it was locked. He came, looked in the windows, and made his report. When Robert Boden, a member of the Council during the Ruud years, became dean at Marquette, he asked Ruud for a copy of Hervey's inspection report. Apparently, it had not been sent to the school by Hervey.

Millard H. Ruud, Hervey's successor, quoted one piece of advice he received from Hervey: "I certainly would not send a copy of the inspection report to the dean, because it might lead to trouble."

"Reports in those days were very skimpy, and you had the impression that Hervey operated the office out of his vest pocket and he decided things," Samuel Thurman, former Section chair, recalled. "Some months after my election to the Council, John Hervey phoned to let me know this election had taken place."

Shortly before Thurman became dean at the University of Utah, Hervey wrote an inspection report saying Utah had the worst physical plant of any law school in the nation. "His report had some influence on the central administration and certainly on the legislature," Thurman said. "They practically named the hall at the University of Utah after him."

But American legal education had become much bigger during Hervey's tenure, and he could be quite categorical in his demands. He also operated from Oklahoma City. Thurman remembered that Bert Early, executive director of the ABA, wanted to centralize as many of the ABA activities as possible in Chicago. One glaring exception, said Thurman, was that the Section's accrediting of law schools took place outside Chicago.

Hervey's own report, written at the time of his leaving office in 1968, aimed to set the record straight. He referred to a meeting at which he was informed of the Board of Governors' adoption, three days earlier in October 1967, of a compulsory retirement age of 68, which would end his career on March 1, 1968. It was "not a 'conference' but a 'confrontation,'" Hervey declared. He further described it as "the most despicable and high-handed treatment of a constituent by a parent organization that the writer had ever witnessed."
At the time of Hervey's departure, the Council was reminded by the ABA that the Section budget was fixed by the Board of Governors, Reuschlein said. The Council eventually reached a compromise that kept Hervey working on unfinished site visits and other matters until August 31, 1968.

Reuschlein described a series of meetings which then followed. They involved influential members of the ABA, including candidates for president, influential law school deans, officers of the Section, and Bert Early. "The matter under serious discussion was the emasculation of the Section of Legal Education and Admissions to the Bar and a transfer of the work of the Council, namely the approval and accreditation of American law schools, to ABA headquarters," Reuschlein said.

Reuschlein, who was then chair-elect, felt he lacked the power to stop this move but did enlist the effective support of Edward L. Wright of Little Rock, a former student of his at Georgetown. Wright later was to become ABA president. William T. Gossett, incoming ABA president, helped save the day. Gossett was vice president and general counsel of the Ford Motor Company. Reuschlein and other Council members at the meetings recall Gossett's declaring decisively that the advisor's office was going to stay in a law school. The Section had been saved.

The work formerly done by the advisor was to be divided between a staff director of Section activities in Chicago and "a law school consultant to the ABA," Hervey commented in the report written at the time of his retirement.

"Bert Early, to his credit, threw himself fully into the search for Hervey's successor," Reuschlein recalled. The position was to have a new title, consultant on legal education to the American Bar Association. The purpose in changing the title was to emphasize that the person performing the Hervey role was not simply a staff member of the Section and Council but was to serve legal education interests throughout the ABA. Sam Thurman, who headed the search committee for the consultant, knew that the committee members wanted a person who had made a reputation in legal education. "It was a hard one to fill. We wanted an outstanding legal educator, but we had no particular pattern."

While asking for name suggestions from Millard H. Ruud, University of Texas law professor and chair of the LSAC, Thurman realized he was in the presence of the perfect candidate. Thurman asked, Ruud indicated interest, and he became the first consultant on legal education to the ABA in September 1968.

**13 Millard Ruud Becomes First Consultant on Legal Education to the ABA**

**Millard H. Ruud serves in the newly created post of ABA consultant on legal education — Accreditation Committee established — Joint ABA-AALS accreditation visits begin as a pilot project.**

"[Members of the inspection teams] thought that legal education was a lot better than when they
were in school, even with the rose-colored glasses of looking back."

* * *

Millard H. Ruud continued to teach half-time at the University of Texas, and he recalls receiving "half-time pay for full-time work" as ABA consultant on legal education. In spite of secretarial help three-fourths of the time, his wife Barbara, a lawyer, still had to help in typing his reports and correspondence. He finally got a full-time secretary. Once again, the desire was voiced from ABA headquarters that the consultant be based in Chicago. Ruud and his successor, James P. White, both felt, however, that their credibility with colleagues in legal education would be higher if they were seen as peers and legal educators, not as former legal educators turned inspectors. The Council has consistently agreed with this position.

Ruud recalls that law school inspection in 1968, as compared with inspection today, was "a fairly casual thing." At the time Ruud started, the Chicago staff of the ABA was concerned with the Section's failure to reinspect. Although a two- or three-page questionnaire existed when Ruud began, it was used for provisional approval only. Ruud introduced a modest, short inspection questionnaire as a systematic way to get basic information.

Originally, Ruud alone inspected applicants for provisional and full approval as well as doing some of the reinspections himself. He hired a law student to handle statistics for "take-offs." Take-offs are data from the annual questionnaire, and each one deals with a separate subject, such as salary, enrollment, or library holdings. This take-off practice was begun by Russell Sullivan, who was advisor in 1941–46, and continued by his successors. Ruud expanded it somewhat. Ruud also began to use other law faculty as inspectors and provided instruction for them. He later added non-legal educators, largely practitioners or judges, to inspection teams. "They all seemed to enjoy it," Ruud said. "I can't recall having a negative response. They thought that legal education was a lot better than when they were in school, even with the rose-colored glasses of looking back. So that was successful in a kind of political sense."

In the more substantive sense, Ruud found, it brought a perspective to the school that was useful in legal education. During the end of his tenure, he expanded the group to include higher-education representatives-university vice-presidents and professors of political science, for example-who were not law teachers. Public members were to join the Accreditation Committee later.

Although there was not yet a law student representative on the Council, as there would be during White's time, Ruud worked with the Law Student Division of the ABA and remembered that it put forth many suggestions and demands about legal education. Occasionally, Ruud recalled, those recommendations would get on the agenda of the ABA Board of Governors and the House of Delegates before the student group fully ascertained the facts. "I would try very hard, working through the Chicago staff director of the Section, to try to have some input before it got too far along in the pipeline. Of course, 1968 to 1973 [Ruud's time as consultant] was a period of considerable uproar."

The creation of the Accreditation Committee in 1970 was an important development of
the Ruud years. Previously, the Council had based its accreditation action on general discussion of the inspection reports, which varied greatly in quality. The new Accreditation Committee met twice a year, shortly before the semi-annual meetings of the Council. It developed and submitted proposed action to the Council. Site evaluation reports contained significantly more information, and memoranda for inspectors and schools being inspected were developed.

Another important development during the Ruud years was the establishment of joint ABA/AALS reaccreditation visits of approved-member schools. Ruud, having held his consultant's job less than a year, realized that cooperative inspections made sense. "But I guess I am enough of a Texas politician to realize I couldn't propose that," he said. "Yet I could propose an experiment." The two associations jointly selected eight schools to be visited. The consultant would administer the reinspection of four schools, the chair of the AALS would administer the reinspection of the other four. Those first joint visits were made in 1970. They ceased being an experiment almost immediately. The involvement of judges and practitioners met with enthusiasm, and the joint ABA/AALS inspection process became standard. Now one AALS representative, the only member of the team not chosen by the consultant, serves on each team of visitors.

Millard Ruud takes pride in the part he took in creating the Deans Workshop. In response to comments by Dean Malachy Mahon of Hofstra University and Dean Gordon Schaber of McGeorge Law School, who was to serve later as Council chairman, Ruud came up with the idea of a workshop for deans of law schools that wanted to get provisional approval. This evolved into a workshop for all deans. The ABA Midyear Meeting was selected as the time, and it has remained so. Dean Harold Gill Reuschlein of Villanova, Section chairman, chaired the first workshop, which had specific topics but no formal program. The early workshops were largely discussion. Deans were encouraged to share concerns, off the record, with other deans. Suggestions on how to deal with problems were solicited. A dean might, for example, describe an unproductive faculty member whose teaching was poor and whose research was diminishing. The Midyear Deans Workshop, with special programs for deans of unapproved schools and new deans, remains an important feature of the winter Midyear Meeting of the ABA.

The issue of collective bargaining surfaced during the Ruud years. In the early 1970s, the National Labor Relations Board said that the faculty of schools that were not state-supported were entitled to organize to bargain collectively. The Section and the AALS both felt that university-wide collective bargaining was not a good thing for legal education. To them it suggested two adversarial "we" and "thee" bodies instead of one body working together. Today there are very few schools in which the law faculty is part of the university-wide bargaining unit. If it organizes at all, the law faculty organizes separately. "We saw a threat to the autonomy of the law school if law faculty were part of a university-wide unit," Ruud said. "We tended at that time to move people to tenure a lot faster than in other parts of the university, and we thought it would be bad for that situation to change."

A great explosion in the demand for legal education occurred in the late 1960s. Ruud was troubled about potential effects of a great increase in the number of lawyers over the next four or five years. He worried about a negative impact on the profession, particularly since he felt many of the bar's disciplinary problems were lawyers who were marginal economically.
Ruud brought his concern to the attention of Robert W. Meserve, president-elect of the ABA. Meserve gave a speech, "We Are Flooded: Where Are the Life Preservers?" at about this time. Pointing to the great increase in applicants for law school admission and the resulting increase in future bar admissions, he stressed that the solution was not to restrict entry of new qualified members into the profession. At Meserve's suggestion, the Board of Governors appointed the Task Force on Professional Utilization to study the impact of these rapidly increasing numbers on the public and the legal profession. Wm. Reece Smith, a Tampa lawyer who later became president of the ABA, chaired the task force composed of professors and practitioners.

The ABA Task Force took the position that the world had plenty of problems deserving the attention of lawyers. The challenge to the profession was to put the problems and the graduates together. "A very professional attitude and approach," Ruud said. The Task Force report concluded by setting the task for the profession: to find places for the bright young men and women whose credentials proved they came to law school better prepared than any class before them.

Ruud sent a monthly report of his years as consultant to members of the Council and others. These reflect the service he provided to groups attempting to open a new law school. Princeton University was one of these; it also had explored the possibility of establishing a joint J.D./Master of Public Administration degree program with a law school in the region. Ruud conferred for three hours with Professor Walter Murphy of Princeton's Department of Politics and gave him the law school data analysis, the Task Force report, and other relevant material. Later Ruud and Maximilian W. Kempner, former Section chair and New York lawyer who is now dean of the Vermont Law School, conferred with Professors Murphy and Henry Shilling of the Wilson School of Public Affairs about the proposed joint degree program. Princeton's final decision, which was made in the mid-1970s after James P. White became consultant, was against establishing either a law school or a joint degree program. Sheldon Hackney, later president of the University of Pennsylvania and then provost at Princeton, did a substantial feasibility study, which concluded that a new law school would cost the school $25 million, would impact too adversely on the college, and probably would need to be located in Washington, D.C.

14 New Standards Approved


"Nobody was out to shut down the dual-division law schools."

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The overriding accomplishment of the Ruud years was the drafting of the Standards for the Approval of Law Schools, which were adopted in 1973 and which are the basis of today's Standards.

An earlier but unsuccessful effort to revise the Standards of 1921 occurred in the late 1960s. The 1921 Standards in themselves formed a pamphlet of less than two pages, but they
had been enlarged considerably over the years by the enumeration of "Factors" to be taken into account when conforming to the Standards. Robert M cD. Smith of Birmingham, Section chairman in 1968, named himself, Dean Reuschlein of Villanova, and George Neff Stevens, who had appointments teaching law at both the University of Washington and Texas Tech, to a drafting committee to consolidate the 1921 ABA Standards, existing bylaws, and executive committee recommendations with the standards of the AALS. The Section membership declined to approve the Proposed Standards presented by the drafting committee. The vote was against them at the Philadelphia Annual Meeting in 1968 and again in Dallas in 1969.

John Hervey, the Section's former advisor, also spoke against the Proposed Standards in Dallas in 1969, urging retention of the existing Standards. He contended that the Proposed Standards represented an effort on the part of the AALS to take over, in Trojan horse fashion, the accreditation of law schools and to bring about the dissolution of the ABA Section of Legal Education and Admissions to the Bar. Ruud was aware of no evidence to support this charge.

Ten lawyers from across the country produced a "Memorandum in Opposition to the Proposed Standards for Legal Education and for the Approval of Law Schools." The attorneys feared the Council would possess power to pass "upon the qualifications of their competitors." They questioned whether Council members would "disqualify themselves as...even judges would be expected to do. [If so,] then who shall decide?"

Wex Smathers Malone, Louisiana State University law professor, commended the work behind the Proposed Standards from his rather unusual vantage point. He had served on the executive committee of the AALS in 1962 when it attempted revisions of its Articles of the Association. He also sat with the Council of the Section for two years and watched the efforts that had gone into the preparation of these proposed new Standards.

He referred to the "arduous labors, conscientious consideration, sweat, blood and tears of your Council in its efforts to do something that is new, constructive, and innovative." He drew applause with his final words:

I have watched this Council come before the Section like dogs with their tails between their legs, apologizing for some sort of accusation that they have assumed arrogant power that didn't belong to them. I think that it's time that, whether you gentlemen agree with everything that is in these proposed new Standards or not, we give a rising vote of thanks to this conscientious body of intelligent people who are trying to produce a truly innovative document.

The Proposed Standards also caused confusion by referring to "Standards" and "Factors," which was the language used by the 1921 document. This created doubt in the minds of Section members, especially those representing smaller law schools with no university affiliation, about whether both the Standards and the Factors were required or whether the Factors were only recommendations.

The 1921 Standards, as described earlier, reposed in a pamphlet of roughly one and one-half pages. The rest of the booklet listed Factors to be taken into account. "Some were
categorical prescriptions and had not gone through any formal approval by the House of Delegates," Sharp Whitmore, the Section's delegate to the House, explained.

But Ruud remembers the Factors as very specific rules. "One required that a law school seeking provisional approval or full approval had to have a median salary equal to or exceeding national median salaries. I remember talking to the president or vice president of Boise Cascade and having to explain that salaries had to be better than those of half of the law schools. I tried to make up some sort of rationale: This just shows that your school has a real financial commitment to doing a first-rate job." Ruud admitted that he was not fully convinced of his own argument.

Following its defeat, the drafting committee then appointed an advisory committee chaired by Dean Howard L. Oleck of Cleveland-Marshall School of Law, which later became part of Cleveland State University. Committee members included Dean William Zacharias of Chicago-Kent College of Law, then an independent school but now part of the Illinois Institute of Technology. "They met in Washington, D.C., in 1969 and issued a report, but it was not productive of much," Ruud recalled. Zacharias and a committee also prepared the Zacharias Amendments, which made some suggestions for change.

Dean Noble W. Lee of the John Marshall Law School of Chicago, who had succeeded his father as dean of that school, had fought the earlier Proposed Standards before they were defeated in 1968 in Philadelphia and again in 1969 in Dallas. It was in Dallas that Ruud recalls being introduced to the politics of the Section. Ruud believed that Noble Lee chartered an airplane "full of folks from Chicago" and flew them to Dallas. Although it was not clear how many were Section members or even lawyers, they all voted. "Noble Lee was much exercised, and his concern was, I think, more psychological than practical," Ruud said. "The reference to the importance, not a requirement, of a university affiliation for a law school seemed to say something bad about independent schools like John Marshall. Other things, however, did represent a threat. In order for John Marshall to comply with the Proposed Standards in draft form, it would have had to hire 13 full-time faculty members."

Proponents of the Standards claimed its recommendation that there be a full-time member of the faculty for each 20 to 30 students was not intended to be compulsory, as Dean Lee and others interpreted it. The tenor of the report also indicated an opposition to the retention of part-time teachers on law school faculties, which would have seriously and adversely jeopardized the continuation of many night schools. Many part-time evening programs relied heavily on adjuncts.

At the time, the Section had a very loose procedure on who could vote and by whom motions and nominations could be made, Ruud remembered. No lead time was required for membership with the result that people joined the Section by tendering dues at the Annual Meeting. Ruud later took action by obtaining through John M. Donohue, the Section's Chicago staff director, a print-out of names of Section members. In order to vote, one had to go behind the desk, where Ruud's secretary kept the list, and obtain a blue card indicating membership.

Judge George N. Leighton of Chicago, then an adjunct member of the John Marshall Law
School faculty, also spoke against the Proposed Standards defeated in Dallas in 1969. He remembered that Noble Lee had introduced him to views that were "intense and anti-ABA." Describing Dean Lee as "a free spirit," Leighton felt that Dean Lee detected in him "a useful ally."

Judge Leighton recalled the following year's meeting in St. Louis, where he found an urgent message from Noble Lee. "He said that he had recognized in me a possible supporter for what he was trying to do: save the night law schools of America from the elitists of the American Bar Association and the Association of American Law Schools, who were trying to destroy the opportunities in the legal profession for the man who was willing to work all day and study all night. What Noble Lee told me had a natural appeal for my inner being, because my background was all of the kind that Lee was talking about." Leighton, a Harvard Law School graduate, had become a lawyer in 1946, when the policy on admission to the ABA of black lawyers was not encouraged. He did not join the ABA until the policy changed in the 1960s. The matter of affirmative action and the ABA will be discussed further in chapter 19.

"Dean Lee asked me if I would join him in this last ditch-struggle. So when Noble Lee proposed to nominate me to the Council, this was a revolutionary idea. In the first place, I don't believe there were many black members of the Section at that time. Well, I thought that the suggestion of going on the Council was a rather far-fetched idea, but Noble Lee assured me he had the support of a large number of deans of dual-division law schools from all over the country who would support me. So I said OK. What was there to lose? I became a candidate with Noble Lee managing my campaign. I ran, and I won, defeating Sam Thurman of Utah. I remained on the Council the whole 10 years thereafter."

Thurman said later that his only consolation was that all his friends from the regularly recognized law schools had voted for him. "But there were a lot of new faces there that voted against me," he recalls. "And there were more new faces than there were old faces."

Dean Lee, however, had not found an ally in George Leighton. "I'll tell you what I discovered," Leighton reminisced. "I found out from inside the Council that Noble Lee, for all his tirades against the ABA and the AALS, was just simply wrong. I came to this conclusion after talking to people like Millard Ruud, Jim White, Fred Franklin, Sam Thurman, and law deans from all over the country.

"After I was inside the 'enemy camp,' I found out that Noble Lee was mistaken in the notion that there was a conspiracy to destroy his law school. Nobody was out to shut down the dual-division schools. At the height of his inveighing against the ABA, Noble Lee used to say that what the elite law schools wanted was to make every law school in the United States a university affiliate. Free-standing law schools in their judgment, according to Noble Lee, had no place in American legal education. When I found out that my friend Noble was just wrong, the great task I had was to convince him of his errors, which I never did.

"But to his credit, John Marshall Law School obtained its ABA approval during his deanship. Until that time, John Marshall graduates took the bar by special leave of supreme courts of the different states. This was a waiver of the requirement that a law school graduate
have a degree in law from an ABA-approved law school. I think that Noble Lee was one of the most interesting men that I have ever met," Judge Leighton concluded. After the Proposed Standards were defeated, Dean Harold Gill Reuschlein, Section chairman, realized that comprehensive standards still were needed. He appointed a committee chaired by Richardson W. Nahstoll, a practitioner from Portland, Oregon. Nahstoll subsequently was chair of the Section and a long-time member of the Accreditation Committee.

The committee served through the Section chairmanship of Maximilian W. Kempner, Edward W. Kuhn, a former president of the ABA, and Thomas H. Adams, a Detroit practitioner. It held its first meeting in April 1970 in Chicago followed by two- or three-day meetings in June and November 1970 and April, June and November 1971. Committee members included Robert Finke of the Chicago law firm of Mayer, Brown & Platt; John Gorfinkel, dean of Golden Gate University School of Law and also consultant on legal education to the California State Bar; Paul Haskell of Case Western; David Maxwell, a former ABA president from Philadelphia; Jerome M. Prince, dean of Brooklyn Law School; John Ritchie, Northwestern law school dean; Preble Stoltz of the University of California at Berkeley law faculty; Roy Wilkinson, later chief judge of the Superior Appellate Court of Pennsylvania; and Murray L. Schwartz, dean of the UCLA School of Law. Nahstoll recalled that Ruud brought institutional memory to the project and that Gorfinkel contributed major drafting skill.

The original committee met two or three times to discuss the theory and policy of the anticipated standards, but it was too large to function efficiently as a drafting group. "We solved this by forming a subcommittee on style, with the drafting for consideration by the full committee and the Council," Nahstoll said. The group did not try to make much use of the Proposed Standards defeated in 1969. "Those products had been discredited by prior rejection, and we thought it best that our submission should not start with the burden of that history," Nahstoll explained.

He recalled that one of the basic committee policies, about which there was little controversy, was that, unlike the medical profession and medical education, it did not want to limit arbitrarily the number of law schools or law students. "We thought it proper to make legal education available to as many qualified students as might wish to enter the competition," Nahstoll said.

Another basic policy was to address the goal of having the respective schools funded adequately to implement their adopted programs. This goal and its funding requirements were correlated with the aspiration of reducing both the student/faculty ratio and the size of classes, which historically had been large and often followed a lecture pattern.

To achieve these purposes, it was necessary to discourage the tendency of universities with affiliated law schools to regard their newly popular and expanded law schools as profit centers generating income for university use. It was recognized that such allocation might be appropriate in some situations but never when it left the law school with inadequate funds to finance its adopted program. Also, the newly recognized responsibility to reduce class size and add professional skills training to the curriculum increased the amount of funding needed.
The committee solicited and received suggestions, some in the form of demands, and prepared a final draft for the Council in anticipation of the 1971 Section meeting in Milwaukee. Three general public meetings, at which the Standards were discussed, followed in Chicago, San Francisco, and New York.

The new Standards were to be followed by Interpretations, adopted as necessary or advisable, by the Council of the Section and without action by the House of Delegates except for the enabling authority found in Standard 801(i), which gave the Council the authority to interpret the Standards. Interpretations accompany the Standards.

"The overriding principle guiding our hopes was to avoid both arbitrary limitation on the availability of legal education and restriction on the capacity of the law school to experiment and innovate," Nahstoll said. "We did not want the ABA to design, require, or encourage law schools to be homogeneous."

Although some minimum figures appeared, the Nahstoll committee avoided objective standards, such as those based on square feet. "We didn't want the law schools to ask, Tell us what you want us to do," Nahstoll said.

Before submitting the Standards to the House of Delegates, Charles L. Decker of Chicago, a former Section chairman, presented them to the Councils of the various Sections of the ABA. Sharp Whitmore, the Section's delegate to the House of Delegates, recalls accompanying Decker to those meetings and learning a lot in the process. Section Chairman Edward W. Kuhn, a former ABA president, and Thomas H. Adams, a Detroit practitioner, also played active roles in obtaining the House of Delegates approval. The House adopted the Standards in 1973.

The public hearings exposed sharp differences of opinion, notably those of Dean Noble W. Lee. In March 1972, Lee suggested an amendment that would "allow persons of maturity employed in business and the arts to be welcome in legal education," Ruud recalled. Generally, Lee felt that the minimum course load was too large, the requirements with respect to full-time instructors onerous, and the desirability of a university affiliation objectionable. Ruud pointed out that Lee's concerns were both fiscal and philosophical. At the same time that he supported hiring adjuncts because they would give a useful education to his student constituency, Lee also feared the financial burden of being forced to pay full-time salaries. Yet Lee, probably influenced by the urging of Judge Leighton, accepted the Standards in the end.

Millard Ruud had suggested there be a "grace period" for law schools. Standard 901(b) provided that for two years after the Standards became effective, a law school that was provisionally or fully approved at the time the Standards became effective would have two years to comply with the Standards.

15 James P. White Becomes Consultant

Millard Ruud leaves, and James P. White becomes consultant in 1974—Frederick R. Franklin begins a tenure of nearly 20 years as staff director in the Chicago office—
"It's funny how history repeats itself."

* * *

Millard H. Ruud served as ABA consultant until January 1, 1974, when he left to become executive director of the AALS. The Council's search committee, chaired by Dean Samuel Thurman of the University of Utah School of Law, chose Professor James P. White of the Indiana University School of Law-Indianapolis. White was notified of his appointment after an interview with Justice James Groves of Colorado, who then chaired the Administrative Committee of the Board of Governors.

In the spring of 1974, the ABA formed an agreement with Indiana University under which the ABA would reimburse the university for one-half of Professor White's salary and fringe benefits on the understanding that White would be assigned on a half-time basis as the consultant on legal education to the ABA. He also was the university's dean for academic planning and development. White teaches a seminar on the legal profession at the law school, and the consultant's office is located on the Indiana University-Indianapolis campus.

In the nearly 20 years White has been consultant, law schools have become increasingly complex. In 1974, the 157 law schools then approved by the ABA had a total enrollment of 110,713 J.D. students. By 1991, the figure had increased to 129,580 J.D. students enrolled in the 176 law schools approved by the ABA. Sixteen percent of the total 1973 enrollment were women, and 7.5 percent were minorities. By 1991, women students represented 42 percent of the enrollment, and minority students 15 percent. Full-time equivalent students to full-time faculty ratios ranged from 10:1 to 87:1 in 1974 to a present student/faculty ratio ranging from 8:1 to 30:1.

During White's tenure, nearly 100 percent of the law schools approved by the ABA have acquired new or substantially renovated physical facilities. Law placement offices are required by the Standards, and most law schools have a full-time development director.

The number and types of site evaluations have increased over the past 20 years. Each year between 25 and 30 law schools participate in an every-seventh-year sabbatical review process. Each year there are between one and five schools that are provisionally approved and undergo a yearly site evaluation. In recent years there has usually been at least one school initially applying for provisional approval, which necessitates a site visit.

Also, there are each year site visits of semester-abroad programs conducted by ABA-approved law schools, site visits of schools seeking acquiescence in establishing post-J.D. programs, site visits conducted every five years of ABA-approved law schools' summer foreign programs and site visits of Cooperative Programs for Foreign Study. All of these aggregate between 12 and 24 visits each year. There are also between one and five special site evaluations and visits of fact finders yearly.
In the past 20 years there have been a number of significant Section task force reports, including the Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools, chaired by Roger Cramton; the Report of the Task Force on Long Range Planning for Legal Education in the United States, chaired by Robert B. McKay; the Report of the Special Committee to Study the Law School Approval Process, chaired by Henry Ramsey, Jr., and the Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, chaired by Robert B. MacCrate.

Additionally, the Section has sponsored major conferences each year, many of which result in published papers and reports, including the 1981 Conference on Legal Education in the 1980s, the 1984 Dialogue About Legal Education As It Approaches the 21st Century; the 1987 Report of the National Conference on Professional Skills and Legal Education; the 1988 Papers on Canadian Legal Education; the 1990 ABA National Conference on Part-time Legal Education; and the 1990 Conference on Women in Legal Education.

The complexity of law schools has grown to the point that the questionnaires now gather statistics on 86 different subjects, such as annual giving, placement services, and affirmative action programs. This dwarfs the original handful of 1940 take-offs, each of which supplied figures on such basic matters as tuition and enrollment. It even overshadows the more sophisticated take-offs of Ruud's time, which expanded to include information on library holdings and other matters.

The Standards adopted in 1973 have been amended and interpreted by the House of Delegates a number of times. Standard 302(a), which is the only Standard having to do with law school curriculum, was amended to read that the law school offer to all students at least one rigorous writing experience, offer instruction in professional skills, and require instruction in professional responsibility. Standard 902(a) was amended to read that the power to approve an amendment of the Standards is vested in the House of Delegates, but the House will not act on any amendment until the Council, the Section, and the Board of Governors have been given a reasonable opportunity to consider the proposed amendment and report on it to the House of Delegates.

Two years before White became consultant in Indianapolis, Frederick R. Franklin began a tenure of nearly 20 years as staff director of the Section in the Chicago headquarters of the ABA. He had been preceded by John M. Donohue, the first person to serve the Section as staff director and the first to serve it in Chicago. Donohue began work for the Section, as well as one or two other ABA Sections, after graduating from the University of Illinois law school in 1967. He remained with the Section for approximately two years before going on to other duties in the ABA.

John Hervey was still operating as Section advisor from his office in Oklahoma City when Donohue became staff director. "It was immediately apparent that a staff director at ABA headquarters who had other responsibilities was not the sort of legal education expert who gave weight from the groves of academe. Deans didn't respect me the same way they did John Hervey and Millard Ruud. There was no reason they should," Donohue said. "Hervey gave sterling service to the ABA and to legal education in particular."
Donohue considered Ruud, who became the Section's first consultant in 1968, as "probably the perfect transition person. He was highly respected and widely liked, yet he was firm."

The Section was Donohue's favorite ABA assignment. "The blend of educators and the practicing lawyers who were active in the Section demonstrated true public service. They were fun to be with," he said. He also remembered the pleasure of serving on a site evaluation team. "It was one of the most satisfying professional things I ever did," he said. "But it was hard work. You spent a lot of time on the visit, and then you wrote the report."

Donohue was succeeded in 1970 by Louis A. Potter, who also worked at the same time for other sections of the ABA. He stayed in the job over two years and then was promoted to the ABA president's office.

Frederick R. Franklin can look back and note that some things have gone full circle during the period of 1972–91 that he spent with the Section. "It's funny how history repeats itself," he commented, noting that certain subjects have arisen periodically in legal education. Among them are these:

(1) Continuing debate between advocates of practical law and substantive law. "Some feel that the pendulum has swung too far, and that law schools put too much time and too many of their resources into clinical programs," Franklin said.

(2) Desire by other ABA sections to make their subjects mandatory law courses. "Every two or three years, this happens," he said. "The Law Practice Management Section wanted law schools to require a practice management course, and the Criminal Justice Section wanted them to require criminal procedure."

(3) Quality of classroom teaching and how to evaluate it. Franklin heard the subject discussed as soon as he joined the Section, but added, "In the end, no one knows how to measure the quality of teaching." He also mentioned the ongoing debate on the importance of teaching versus publishing.

(4) Prelaw education. "Various people insist that students should take courses in all sorts of things before they enter law school. One wants basic accounting, another stresses writing."

(5) Required courses. "When law schools first began to be accredited by the ABA, there was a core curriculum," Franklin said. "Then schools started to drop these courses. Some schools have no required courses at all. Some say that students will take what they need and, further, that the bar exam will test them on the knowledge that most lawyers need. Others advocate a basic curriculum."

(6) Bar examination. "There is a periodic debate on this. Some wonder whether the bar examination is needed at all. Some say it needs to be tougher and be more comprehensive than it is."
(7) Duration and length of the law school program. "Some say that the third year is unnecessary and should be used for some sort of apprenticeship. Yet others think there should be a fourth year."

Franklin also has seen a move from simple procedures like the one used by Charles D. Kelso, who chaired the first Accreditation Committee meeting Franklin attended. It was 1972, and Kelso brought his portable typewriter to the meeting to write down all the minutes and "action letters" on the spot. Kelso then was professor of law at Indiana University in Indianapolis but has been on the faculty of the McGeorge School of Law since 1980. After the committee voted on a school's reaccreditation, Professor Kelso would type up the committee's report. Franklin observed that Cathy Schrage, administrative assistant for accreditation on the consultant's staff, now uses a desktop computer during the meetings so she can have the minutes and action letters available at meeting's end.

The Section's Chicago office and its staff director also produced a number of publications. When Franklin joined the Section, the Section sent out a four-page newsletter that was typed in the office and then run off at a print shop. Initially, the newsletter was a quarterly, but it later appeared on an as-needed basis. Therefore, quite a revolutionary change took place when Charles Kelso and Franklin were instrumental in starting Learning and the Law in the fall of 1974. It continued to appear through the fall of 1977. Inspired, designed, and directed by Jack J. Podell of the ABA staff, it was a handsome magazine that used color illustrations, photographs, graphs, and cartoons. In 1977, however, the Council authorized no further funding for Learning and the Law. In 1981, the Council decided to use the money remaining in the budget to publish a modest quarterly tabloid called Syllabus. Syllabus continues to appear, but its tabloid shape has been reduced to the more traditional 8<sup>1/2</sup> by 11 inches in deference to readers who found the shape awkward for filing purposes.

In 1984, Franklin also started the Comprehensive Guide to Bar Admissions. Prior to that, bar admission information appeared in the form of minimum requirements for the bar and covered two or three pages in the back of the Review of Legal Education. People wanted more information than that, Franklin recalled, and the Bar Admissions Committee recommended that there be a separate issue with information on bar examinations, attorney admissions, continuing legal education, and other matters. The 55-page book appears annually, and about 50,000 copies are distributed.

The staff director's office in Chicago has changed its role over the years. Originally, it produced many of the reports to the House of Delegates. The office put together a booklet called The ABA's Role in the Accreditation Process. Into the 1980s, it staffed all the committees except the Accreditation Committee, which worked with the consultant's office. It drafted the by-laws and the policy statements. Matters having to do with accreditation generally went to the consultant's office, and matters concerned with bar admission, legal writing, or independent law schools went to the staff director's office, now headed by Rachel Patrick.

16 Section's Status as Accrediting Agency Threatened
Section's status as national accrediting body for law schools is threatened—survives challenge and makes some changes in response to hearing before advisory committee of HEW.

"It had nothing to do with a state, and it wasn't a university."

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The ABA, through the office of its consultant on legal education, officially became the accreditor of law schools in 1928. This role was challenged in the mid-1970s when Section representatives appeared before the United States Commissioner of Education's Advisory Committee on Institutional Eligibility, the federal agency which approves accrediting agencies.

The issue was proprietary schools. A number of unaccredited law schools existed throughout the United States, but they were outnumbered by the more than 40 in California. One of these California schools was the Western State University School of Law (WSU). "It had nothing to do with a state, and it wasn't a university," recalled Millard H. Ruud, ABA consultant on legal education at the time. It did not have ABA approval. Ruud mentioned an advertisement that created the impression, however, that because students at Western State University belonged to the Law School Division, WSU was approved by the ABA.

The ABA opposed accreditation of WSU on the grounds that the profit-making school was not devoting its resources to meeting the Standards. Western State then sought and received approval from a regional college accrediting agency, the Western Association of Schools and Colleges (WASC).

Dean Gordon Schaber of the McGeorge School of Law reported at the August 1975 Council meeting in Atlanta that WASC was accrediting schools without considering objections expressed by the ABA. He suggested that the Council adopt a resolution expressing dismay that the WASC would approve free-standing law schools in states within its jurisdiction. Dean Schaber also recommended that the Council reaffirm its position of non-accreditation of proprietary law schools. It was decided that consultant James P. White should meet with representatives of WASC before taking action.

WSU filed a complaint against the ABA with the Office of Education. Representatives of the Council were then scheduled to appear before the U.S. Commissioner of Education's Advisory Committee on Institutional Eligibility. Among the topics to be discussed were proprietary law schools. The Department of Health, Education and Welfare (HEW) was the agency which granted the Section of Legal Education its status as a nationally recognized accrediting agency.

Section Chairman Joseph R. Julin, Chairman-Elect Samuel Thurman, and Consultant White appeared before the HEW Advisory Committee in 1978. Erwin N. Griswold, former dean of Harvard Law School and former solicitor general, represented the ABA as its counsel at the meeting.
Issues of concern raised by the Advisory Committee included: (1) whether the ABA accreditation process was attempting to limit the number of lawyers; (2) the autonomy of the Council; (3) the right of appeal; (4) whether the Council acted in good faith with regard to the proprietary law school issue; and (5) the appointment of public members to the Accreditation Committee.

The Advisory Committee raised these questions in light of the ABA's petition for renewal of its status as the nationally recognized accreditation agency for professional schools of law. The Advisory Committee's consideration of the ABA's petition included appearances and presentations on behalf of Western State University.

A discussion ensued at the 1978 Council meeting in New Orleans about whether the ABA should continue its relationship with HEW. The Council then decided to draft a response in reply to the HEW staff analysis of the ABA petition. Former Chairman George N. Leighton proposed that the Council express objection to the Advisory Committee's report by noting those matters with which the Council disagreed. He suggested, however, since there were other matters with which the Council agreed, that appropriate changes be made in order to comply with HEW's views in those areas. Robert McKay supported the suggestion, and the Council adopted those recommendations that would improve the accreditation process. One example was the recommendation to add public members to the Accreditation Committee.

The Council voted in 1977 to accept profit-making schools for provisional approval. Although the exception was renewed on an annual basis, no proprietary school has ever been accredited.

17 Accreditation Committee Expands

Size and function of Accreditation Committee has expanded—Site evaluation teams also have grown in size and variety of members—The self-study is seen as the centerpiece of a school's reaccreditation process.

"It is a problem getting people to serve on teams, because it is not a vacation."

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Today accredited schools are revisited every seven years. Plans for the visit are coordinated through the consultant's office. Ideally, teams of six members are set at least six weeks before the site visit. Complex institutions have eight people on the team, because there is much to look at in their post-J.D. graduate programs, continuing legal education, and other programs. The chairs of the teams write their fellow members to let them know what they would like each member to do before the visit. Teams always include a dean, one or two faculty members, a librarian, a judge or practitioner, and usually a clinician faculty member. If the school is a member of the AALS, the team also includes an AALS representative. Often a team has alternate members in case of illness or emergency.

In September of the year preceding the year of the scheduled sabbatical site visit, the
consultant writes the deans to request three possible site visit dates. The deans also are asked to mention any need for particular types of people on the team. A dean, for example, might want someone to give in-depth attention to the curriculum or the school's admission process. The consultant's office then identifies someone knowledgeable in that particular area. The site evaluation committee is chaired by a dean or other person from a school comparable to the one being visited.

White says it is a "problem getting people to serve on teams, because it is not a vacation. if you count travel time, it is five days for which you are reimbursed only actual expenses. Then you have to produce the report. It is a wonderful learning experience and a wonderful public service by the individual, but it does take time."

Some site visitors repeat. One librarian, for example, has been on 20 site inspections. New members are chosen from suggestions by deans, and the biggest pool is made up of faculty from the law schools. During 1991–92, approximately 1,500 people were contacted before the 246 site visitors needed were chosen. White said the process is becoming easier since the office has a new computer system that sorts names by various criteria.

The inspection report covers finances, student financial aid, library, and many other issues. "One of the subjects we're concerned about is the teaching report. We used to have a program where you would go into classrooms for 15 minutes and leave, but that is really not adequate," White said. Now site evaluators visit with members of the faculty and find out what aspects of a course they are really interested in and if the professors have any pertinent research under way or related activities with the practicing bar.

The completed site report goes to the consultant, who reads it and transmits it to the school visited. The report does not contain any comment as to whether the school is in compliance with the Standards since that conclusion is the responsibility of the Accreditation Committee.

The school visited is asked to comment on factual errors or items it questions. The site team then reads the school's comments and will typically attach its response. Then the site report, along with all the data about the school and the dean's comments on the report, go to the Accreditation Committee.

The Accreditation Committee also receives a key fact sheet from the consultant that includes all the data from the annual questionnaire and a brief synopsis of the school's recent history, including its most recent reaccreditation. This, along with all the material from the site visit, goes to one Accreditation subcommittee member and an alternate, who are responsible for the particular school. The Accreditation Committee meets four times a year from Thursday afternoon through Sunday morning. In advance of the meeting, a designated committee member drafts a set of findings, sometimes with conclusions. The committee member may say there are issues in need of consideration before conclusions can be reached. Discussion within the full committee then follows. If the Accreditation Committee has reason to believe the school is not in compliance with certain Standards, the consultant writes an action letter to the school with findings and conclusions, requesting the school's response. If there are serious problems, he asks the school to report by a certain date what the school is doing to correct the problems. If the
response is unsatisfactory, the consultant could send out additional fact-finders. If they report there has been no progress, the Accreditation Committee will hold a hearing. The hearing can result in a recommendation to the Council that accreditation be withdrawn or that the school be placed on probation.

"Our approach is to use persuasion and to work with the school to improve its quality," White said. "We would hope that any school approved by the ABA would never lose accreditation."

The accreditation report and action letter are sent by the consultant's office to the law dean and university president. These are confidential documents. Only the university and law school can release information contained in the documents. Yet the Sunshine Laws of some states require that the accreditation report and action letter be deemed public documents.

The content of one site visit report was the subject of litigation. In 1973, Alfred A. vins, dean of the Delaware Law School (DLS), requested an ABA site visit in connection with the school's application for provisional approval. The visit was conducted in January 1974 by White, then the newly appointed consultant, and Millard H. Ruud, the outgoing consultant. The written report of the site visit was not favorable, and its summary contained the following statement: "The most important deficiency is an intangible one; there is an academic ennui that pervades the institution. The intellectual spark is missing in the faculty and the students."

A. vins charged that Consultant White, in the course of evaluating DLS, made defamatory statements that eventually resulted in A. vins losing his positions as dean and faculty member of the law school. The U.S. district court agreed and awarded A. vins $50,000 in compensatory damages. On appeal, however, the United States Court of Appeals for the Third Circuit reversed the decision, stating:

(1) two statements made by defendant in accreditation reports did not permit a fair implication of a defamatory reference to plaintiff and were not actionable;

(2) plaintiff had a cause of action for defamation based on a statement allegedly made by defendant at a lunch meeting at which the law school's assistant dean and a judge were present;

(3) though plaintiff was not a public figure for all purposes, he was a public figure in the context of the accreditation controversy surrounding the law school;

(4) plaintiff was required to prove by clear and convincing evidence that defendant's allegedly defamatory comment was made with knowledge of its falsity or with reckless disregard for the truth.

* * *

Cathy Schrage, administrative assistant for accreditation in the consultant's office, has been with Dean White for 18 years. She and Marilyn Shannon started work here within one
Schrage's main function is to staff the Accreditation Committee, and she also responds to queries from persons ranging from students to school presidents. She handles their questions about accreditation and how the Accreditation Committee assesses a school's application for provisional approval, application procedures, and ABA Standards.

Schrage spends much of her time as communication liaison between the schools and the committee. "I'm basically the little funnel that works from the committee to the schools and then from the schools back to the committee," she said.

Schools with problems take more than the average amount of time. Two of these schools have closed during Schrage's time. Also, there have been occasions when a school has applied for provisional approval and has fallen short of the requirements. Some schools, because they try repeatedly, are almost constantly on the accreditation agenda.

Various issues, such as externships, also are time-consuming. "Externships vary so much in different programs, depending on the school," Schrage said. "It has taken a good deal of time to get a focus and a handle on just what the schools are doing. This issue has caught a great deal of attention in the schools, as have the issues of reduced student/faculty ratios and clinicians' status within the faculty structure."

Schrage believes there were six or seven people on the Accreditation Committee when she joined the consultant's office in 1974. Today there are 19. During the years, the committee has added two public members, as mandated by the Department of Education. Its membership has become more varied. "We have a good mix of men and women, minorities, the practicing bar, academics, and judges as well," she said.

The committee meets four times a year. Usually the spring meeting is in Indianapolis, and the three other meetings tend to be at law schools around the country. "It's nice to meet in a law school, where the committee can be visible and see the faculty and deans," Schrage said. "It can spread a little bit of news and get a little understanding about its function and the role it plays."

Committee members' terms are set for two years. With the adoption in 1990 of the Report of the Special Committee to Study the Law School Approval Process, chaired by Henry Ramsey, Jr., the terms are renewable twice, so most terms last six years. "It really takes a person that long to get acclimated to the role of the committee and how it functions," Schrage said. "Committee members aren't going to know what's going on at their very first meeting. It takes time to bring themselves up to speed as to how to prepare the reports and to delve through the material that is provided to committee members."

Schrage said that attendance at the meetings is very good. "Everyone makes an extraordinary commitment to get to all of the meetings. We may have one or two people absent once or twice during the year," she said. "The meetings start on Thursday and go through Sunday, so members have to leave their normal jobs to participate. What we try to do is streamline things and make them more efficient."
When a report comes in, a committee member is assigned as monitor to a particular school. That person gets all the background material and will be the primary presenter of the draft resolution. If the committee has requested a response from the school, Schrage sends a copy of the response to the monitor. She also puts it in the committee book. The book goes out to committee members about two weeks before the meeting; therefore, they have an opportunity to read the response and what the committee monitor proposes about any action to be taken on the response. The committee may have five or six schools to discuss at a meeting. "We don't delegate all the responsibility to the monitor, since everybody fully reviews everything, but this method saves meeting time," Schrage said.

When Consultant White went to his first Accreditation Committee meeting, Schrage recalls, he noted that books were handed to members when they arrived, leaving them little time to digest the material and formulate any opinion on it.

Criticism directed to the consultant is not disregarded, Schrage said. "I think this office, with Dean White's leadership, will take any kind of criticism or objection and give it due attention, depending on what problems are raised." The committee also has responded to changes in the profession as, for example, in the case of clinicians' wanting more representation on site teams. "They thought it would be appropriate for people more familiar with clinical programs to help evaluate and develop programs," she said. "Now we probably have had a clinical person on 98 percent of the teams this year."

Schrage credits site evaluators' workshops for improving their qualifications. For the last few years, there has been a workshop for schools scheduled to be evaluated and another workshop for chairs of the teams. In 1992, the first workshop for members of the team other than the chair was offered. "These workshops have generated a lot of interest," she said. "We have had very good attendance and incredibly good speakers and materials. We seek to provide better understanding of what site evaluators should be doing when they visit a school, how best to use their time, how to prepare, how to write the report, what to do if certain problems arise, and how to deal with them and get a sort of evenness if they occur when you're on site."

One question that comes up concerns the comparable quality of reports, Schrage says. Since different teams go to different spots, it is possible that one might assess something worse than what another team saw but recorded differently. "We are trying to address that by calling in the chairs before they go out on their visits," she said.

The workshops address the time and scope of the visit. Experienced chairs urge their teams to arrive on Saturday night so they can be ready to start on Sunday morning, reserving more time at the end to gather and discuss what they have found. Schrage explained that more experienced people tend to be scheduled to visit schools applying for provisional approval for the first time.

"We have expanded the pool of available site evaluators," Schrage said. "We are not recycling people over and over, but we're bringing in a lot of fresh people and putting them on experienced teams to train and groom them for chairing teams in the future. The leadership of the Section often comes from this group."
The Special Committee to Study the Law School Approval Process debated public access to accreditation information. A main issue was whether the site evaluation report should be made public. It was decided not to change the historic position of confidentiality of reports. If, however, a school releases certain portions of the report and this portion is misleading, then the Accreditation Committee reserves the right to release the report to let the public know its entire contents.

The self-study emerged from Standard 201, which required law schools to "articulate the objectives of the school's educational program consistent with the Standards." In 1980, the Council requested the House of Delegates to adopt an amendment to Standard 201 that would require law schools to develop a self-study in which the school's objectives are articulated. It was decided, despite some disagreement, that the self-study should be the centerpiece of the accreditation process. Dean Albert M. Sacks of Harvard, president-elect of the AALS, reported that law schools felt the objectives stated in the self-study should not be a factor in accreditation. Chairman Lawrence Newman of the Section said evaluation should be determined by the level of compliance with the Standards and not with the school's stated objectives.

The self-study was seen by others as making the reaccreditation process worthwhile for all schools. Chairman Willard L. Boyd, president of the University of Iowa, observed that the following issues affected the granting of accreditation: (1) whether the school meets minimal standards for accreditation and (2) whether the law school actually carries out what it claims it does. The aspirations of the schools, although not required for accreditation, are commented upon.

"In the accreditation of Harvard Law School, for example, the report could say it meets the minimal standards but, given the school's objectives, it should do better," Boyd explained. "Accreditation should be a means of improving the schools. That's why the self-study is so important."

Dean Ramsey of Howard University finds the self-study "probably one of the most important devices in legal education, and probably also one of the most helpful." Justice Rosalie Wahl of the Minnesota Supreme Court agrees. "A school must think about what it can do well, what kind of faculty it wants to build, and in what areas it wants to become known and make an impact on society," the former Section chair said.

18 Consultant's Office Grows

Expansion of services by Consultant's Office—Overseas summer programs develop—Correspondence to deans has quadrupled because "everything is so much more detailed."

"At the last Accreditation Committee meeting, each member had 44 pounds of material."

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Kathleen S. Grove, a young Indianapolis lawyer, became the first assistant consultant on
legal education to the ABA in 1981. Between that time and 1992, when she left that post to return to graduate school, Grove's duties expanded in a number of areas. One was the supervision of the accreditation and site evaluation of foreign summer programs. When Grove was hired, the consultant's office was not approving foreign summer programs, but it did conduct a paper review. Grove worked with a subcommittee of the Accreditation Committee to establish criteria for approval of these programs and to initiate a system of five-year site visits. The ABA is now in its second cycle of foreign site evaluations and has reviewed and approved 80 such programs.

Today 43 law schools offer 72 programs in 29 countries, and approximately 2,000 law students study abroad each summer. In 1984, the Accreditation Committee and the Council embarked upon a comprehensive review of foreign summer programs. This developed at the time that the Council on Postsecondary Accreditation adopted a policy statement that urged the ABA, as official accrediting body for law schools, to evaluate "all components of an educational program, wherever located." The number of overseas programs had almost doubled since 1979, and the consultant's office was receiving student complaints. In order to give residency and academic credit for attendance, law schools needed assurance that such credit was deserved. Grove herself visited ten overseas programs.

During recent years, the Accreditation Committee has received requests from some foreign institutions for ABA approval of programs that they seek to offer to American law students for credit to be applied toward the J.D. requirement. The Council determined in June 1988 that it would approve only those foreign programs operated by ABA-approved law schools. "I really think the American Bar Association showed a lot of foresight in setting up criteria for these programs and starting to look at them," Grove said. "We were probably years ahead of other accrediting agencies, but now everybody says 'It's a global village' or 'It's a global economy.' We are beginning to import and export our education, and you can't do that without criteria."

Grove also has supervised ABA data gathering and statistical reporting, which began with hand tabulation and developed into a sophisticated computer system with disk-generated statistical input. Grove increased the number of statistical take-offs from 25 to 75 on subjects such as enrollment, faculty salaries and financial aid. Her office now compiles the 60-page spreadsheet of law library statistics previously done by the American Association of Law Libraries. It began as an informative service for law school deans and a library subscription service. It now prepares computerized law school key-fact sheets for the Accreditation Committee. It also generates the large statistical table for the Review of Legal Education in camera-ready form.

"Our data gathering has allowed law schools to sense where they are in the university community and whether they are getting their share of the pie," Grove said. "It also has allowed us to do some analysis of trends and whether they have changed during the past ten years. These have included enrollment trends, population trends, and trends in resources dedicated to the library."

One of the most significant trends Grove herself has witnessed is the increased emphasis
on skills training, its development within the academic curriculum, and its inclusion in the law school curriculum. Grove staffed the Skills Training Committee and in 1987, with Co-Chair Roy Stuckey, planned the National Conference on Professional Education in Albuquerque. “The conference is still quoted and talked about,” she said. “It’s amazing to me that it was a kind of seminal event culminating in the MacCrate Task Force on Law Schools and the Profession.” Yet she terms the progress toward greater status for law school clinicians as “inch by inch.”

During Grove’s decade as a resource person for the Accreditation Committee, she supplied the committee with data, prepared agenda books and memoranda, staffed subcommittees of the group, and organized site evaluator workshops that developed into annual workshops for site evaluation chairpersons. She also designed and ran the first workshop for site team members and another workshop to familiarize law school faculty and administrators with the accreditation process. She left the job with an abiding admiration for the quality of the people serving on the Accreditation Committee. “These are very high-powered people, but they have so much integrity and quality. They are volunteers who give so much free time when they could be billing [in their own offices]. This operation couldn’t do the level of work without them,” Grove said. “At the last Accreditation Committee meeting, each member had 44 pounds of material.”

Grove has seen law schools change from academic cloisters devoted principally to research to entities “run like businesses as never before and with a faculty more involved in the bar association and the community.”

* * *

Marilyn Shannon began in the consultant’s office in 1974 and has provided continuity for the many law deans, practitioners, judges and others who have held positions of leadership in the Section. Shannon began as a half-time secretary for the ABA, working the other half-time for Indiana University at Indianapolis, where White is a law faculty member and former university dean for academic planning and development. During this 19-year period, she has been struck by the increased detail of work done by the consultant’s office.

“We do more things, and we do them in more detail, like the statistics,” Shannon said. “The site evaluation is somewhat more streamlined. We have manuals now, and we put the agenda books together to send out before the Council meeting. Back in the 1970s, we’d hand out the books right at the meeting. Council members had these four three-inch-thick books, full of reports. They were supposed to read those and carry on a meeting at the same time.”

Shannon works with the consultant’s staff in planning upcoming meetings, organizing material for agenda meetings, preparing Council books, sending out various memos after the meetings to Council members, and sending letters to deans of all the law schools and anyone else who needs to know about a rule change or policy change.

“We probably send out four times as much [correspondence] in the form of memos to deans as we used to,” Shannon said. “This is because everything is so much more detailed, and people pay more attention to a lot of the Interpretations, which have developed over the years,
Continual correspondence also concerns site evaluation procedures, the summer programs abroad, and other programs that have changed over the years.

Another staff member, Kimberly Massie, keeps the "big board," which contains the schedule for all the site evaluation visits for the academic year. It notes the type of visit (summer program, acquiescence visit, or routine sabbatical), names of team chairpersons, and team members. One color indicates if a letter has gone out, another if the report has come in.

"It is interesting to work with the various academicians vis-à-vis the practitioners," Shannon said. "You get such a blend of opinions. The academicians will stand in one area, while the practitioners will be in another, and they start kind of tugging. Pretty soon they come together."

It appears to Shannon that one can go back to the early Section minutes of the 1920s and 1930s and pick up the same topics being discussed today. She estimates that these matters have been discussed every 15 or 20 years.

"I suppose this has something to do with the people who are involved," she said. "A core group makes a decision or comes to an agreement as to how an issue should be dealt with. Then, after a period of years, you get a turnover and you get new people in, and they again will want to consider that issue, and they have their own opinions. And, of course, times change, and there can be changes in education and the world that require them to look at it differently."

The tremendous growth in the responsibilities carried out by the consultant's office has resulted in an increase in the size of the consultant's staff. Marilyn Shannon and Cathy Schrage were Consultant White's only two assistants when they began their service in 1974. Since then, funding has been approved for an additional three professional positions (assistant consultant, once occupied by Kathleen S. Grove but now vacant; research lawyer, occupied by William B. Powers; and data specialist, occupied by Julia D. Hanrahan) and four administrative positions (currently occupied by Mary Barron, Sandy Nogle, Brenda Davis and Kimberly Massie).

19 Bar Admissions

Bar Admissions Committee of Section is a leader in developing Model Rules for character and fitness—Council assists in content validity studies of bar examinations—Section has experienced close relationship with National Council of Bar Examiners (NCBE) since NCBE's founding.

"The bar examination I took 35 years ago is not the bar examination of today."

* * *

Bar admission, by definition, constitutes one-half of the mission of the Section. Moreover, a definite, positive correlation exists between the process of legal education and licensing of lawyers.

As bar examinations have become more structured, bar examiners have looked to the
ABA to approve and certify law schools. The ABA then provides data to bar examiners about law school facilities and academic requirements.

The Bar Admissions Committee of the Section has demonstrated leadership both in the educational community and among bar examiners in such matters as the development of the Model Rules for Character and Fitness, which are now generally accepted throughout the country. Initially, both the AALS and the National Conference of Bar Examiners (NCBE or Conference) had certain reservations about the Rules. The reservations, however, were alleviated when the Rules were fully explained.

The resource person for these comments regarding the relationship between the Section and the NCBE is Francis D. Morrissey, NCBE president and CEO of the Conference. Morrissey also is a partner in the Chicago office of the international law firm, Baker & McKenzie, and a former member of the Section’s Council. He assumed his position with the Conference in 1992, succeeding Joseph R. Julin, a former chair of the Section and professor of law and dean emeritus at the University of Florida.

The Council, active both in legal education and bar admissions, is equally committed to both aspects of its mission. Morrissey feels that the Council adds the critical factors of credibility and independence to content-validity studies of bar examinations. Content-validity studies are designed to determine whether the bar examinations are testing what is relevant to the law school curriculum and to the practice of law. The NCBE conducts a study to test the reliability of the Multistate Bar Examination (MBE) every ten years. To ensure impartiality, the Conference requests the chair of the Council to select distinguished academics and practitioners to review the MBE materials and make independent observations regarding content validity. The results of their study are reviewed by a psychometrician who has conducted extensive research in the relatively new science of testing as applied to bar admissions. Simply defined, a psychometrician interprets tests to provide test information to specific, entitled parties.

The NCBE has had a close relationship with the Section since the NCBE was founded in 1931, when the advisor to the Section, Will Shafroth, also served as the first secretary, or executive director, of the Conference. Shafroth reported to the Council both on the Conference’s program of promoting common standards for bar admission and on the ABA’s program of educational standards for law schools.

Morrissey believes that the maintenance of a close relationship between the Council and the Conference is critical to the mission of both groups. Indeed, for some time a leader of the Conference has served on the Council. In 1992 Beverly Tarpley of Abilene, Texas, served both on the Council and as chair of the Conference.

“A silent, most positive revolution has been occurring in the bar examining process,” Morrissey said. Historically, bar examinations were prepared solely by practitioners, and those examinations focused more on legal facts than on legal reasoning skills. Steven Klein, a psychometrician with the Rand Corporation and a researcher on bar exams, has found that the Multistate Bar Examination (MBE) tests legal reasoning skills to a significantly greater degree than it tests law facts. Both bar examinations and the admission process became more valid and
more reliable when the MBE was instituted in 1972.

The MBE is drafted by teams composed of distinguished academics and practitioners. In their joint effort, they build a bridge between "town and gown," believes Morrissey, who feels that this bridge between professors and practitioners exemplifies the role of the Council.

The Multistate Essay Examination (MEE) is the latest enhancement of the bar admission process. The MEE has three procedural components that make this essay test more psychometrically sound than the essay test of many jurisdictions.

These components are:

1. Pretesting. After expert practitioners and academics develop the questions, they are pretested by a group of recent law school graduates under carefully controlled conditions. Pretesting provides the test committee with a unique opportunity to assess questions for flaws, which can be eliminated before the actual candidates take the examination.

2. Multistate Review. Jurisdictions review the examination questions as they are being developed and return their comments to the MEE Committee. The test committee then refines the test further before it is administered.

3. Grading Workshops. The NCBE conducts a two-day, hands-on session for representatives from all jurisdictions who gave the MEE. Group leaders, academics, and practitioners analyze the questions and discuss various ways of interpreting different answers.

Another recent development of the bar examining process, the Multistate Professional Responsibility Examination (MPRE), also reflects the role of academics in the bar admission process. The MPRE is drafted like the MBE by teams comprised of distinguished academics and practitioners. The applicant must demonstrate an awareness of ethical principles and an ability to apply those principles in a given fact pattern. "Because the MPRE is an awareness test, the goal is to make the applicant acutely mindful that the profession considers ethics a matter of the highest priority in the practice of law," Morrissey explained. The MPRE is an independent test with its own score. This test is not integrated with the MBE because testing the awareness of ethical principles is different from testing to assess legal reasoning skills in certain substantive areas of the law.

The NCBE also actively screens the activities of the bar preparation coaching schools, which has been estimated as a $60 million enterprise. The Conference spends about $80,000 annually to monitor these schools.

The Accreditation Committee of the Section reviews bar passage rates of ABA-approved schools. The NCBE, however, makes no assessments of law schools based upon bar examination performance. Statistics demonstrate a positive correlation among the Law School Admission Test scores, the undergraduate and law school grade-point averages, and bar examination performance. "The national law schools, on the whole, do better," Morrissey said. "It's nonsense to say that certain law schools teach the law of the state and therefore do better
than graduates of national law schools."

The Conference has urged its member jurisdictions to participate in the Law School Admissions Council (LSAC) Bar Passage Study. Henry Ramsey, Jr., a former Council chairman and now dean of the Howard University law school, heads the LSAC study of graduates of 176 ABA-approved law schools. Its object is to obtain accurate and complete information about bar passage rates and to determine factors that influence performance in law school and success on the bar examination. The resulting data are expected to help fashion effective solutions to problems associated with law school attrition and success on the bar examination by both minority and non-minority law students.

In the February 1991 issue of The Bar Examiner, Dean Ramsey wrote, "As concerns minority students specifically, once the bar study results are known, if the information is positive, rumors can be put to rest. If it is negative, we will then have a far more accurate picture of the problems we face and be in a much better position to plan and construct solutions. Without accurate information, we can do neither."

Although considerable research has been conducted on bar passage rates, research in the past has been limited to a particular jurisdiction. The LSAC study is the first attempt to conduct that research on a national basis.

Morrissey concurs with Dean Ramsey that the purpose of the study is to eliminate myths and misconceptions about the bar examination process. Morrissey believes that emphasis upon the present problems and the solution of those problems in the future is the proper perspective. "The bar examination I took 35 years ago is not the bar examination of today. Yet, some bar leaders unfortunately discuss the problems of bar examining today in a historical context that is irrelevant to the present," he said.

Erwin N. Griswold also sees a change. He remarked that there are as many first-year students now as there were total law students when he was dean of Harvard from 1946 to 1967. The number has tripled. Dean Griswold regrets that this growth has led to "more true/false and so forth questions than I have any faith in" on bar exams, but he also recognizes the problem and does not know what else could be done to solve it. With 1,200 people taking bar examinations today, he said, it would place both a time burden and an emotional burden on the person grading an exam that does not employ true/false questions.

"You try hard to be objective and fair," Griswold said. Furthermore, he recalled, he used to read 500 blue books a year. "It drove me crazy," he admits today. He partially solved time constraints by having his wife read aloud from the blue books as they drove somewhere. Griswold then told her what grade to put down. "I never did what my great mentor, Professor Austin W. Scott, did," he said. "He claimed that he read them in the dentist's chair."

20 Affirmative Action

Section adopts an affirmative action standard in 1980—This action is preceded by discussion and failure to act—ABA opens membership to blacks in 1950s and begins
EFFORT TO ASSIST MINORITIES ENTER THE PROFESSION.

"[T]he settled practice of the Association has been to elect only white men as members."

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Most affirmative action programs around the country began with the death of Martin Luther King, Jr., in 1968. Seeking an effective approach to affirmative action, the Section's Accreditation Committee realized it had only one weak weapon, the prohibition against discrimination. Since this was a tenuous basis for requiring schools to act affirmatively, the Section created an Affirmative Action Committee in 1981, but no Council action was taken on the matter even though schools began to adopt their own affirmative action programs. Earlier, in 1976, the ABA Assembly asked the Council to investigate a suggestion that some law school admission policies favorable to its minority students might discriminate against other applicants. The issue arose in the context of the Bakke v. Board of Regents case, which challenged the affirmative action program of the medical school at the University of California at Davis. Alan P. Bakke, a white student twice rejected by that school, had sued to be admitted on the grounds that he was more qualified than some members of minorities for whom a certain number of places were reserved.

The ABA filed an amicus curiae brief in the Bakke case. The brief noted that only 2 percent of the bar at that time (1976) was black. It argued that encouraging minority enrollment served substantial educational interests because a diverse student body contributed to the vitality of the academic experience. In addition, minority enrollment helped minorities by creating role models. Efforts to equalize educational opportunities did not constitute invidious discrimination. Moreover, if the redress of past discrimination was only one criterion used in admissions (along with college grades and test scores), then there was no unconstitutional impropriety.

The ABA had not always been so supportive of the rights of minorities. From 1878 to 1911, there appeared to be no evidence that minority lawyers tried to join the Association. The first indication of such an attempt occurred in 1911 when the ABA executive committee apparently admitted three black lawyers to membership without realizing their color. It then passed a resolution rendering that admission void and stated that "the settled practice of the Association has been to elect only white men as members." A protest by other ABA leaders resulted in Association members allowing the three black lawyers to remain, but it required that future candidates identify themselves by race. Because black lawyers could not join the ABA, they founded the National Bar Association, which did not discriminate.

The racial bar to minority membership was lifted in 1943, but the ABA admitted a black lawyer only if that lawyer came from a state that admitted black lawyers to practice. This policy ended in 1950. Erwin N. Griswold, former Harvard Law School dean and U.S. solicitor general who served on the ABA Board of Governors at the time, recalled that ABA President E. Smythe Gambrell of Atlanta cast the deciding vote in the Board of Governors to admit blacks in 1955. Dean Griswold also was a leader in an AALS battle for the admission of black students in the fifties. He and John Frank of Phoenix led support for a bylaw that would require law schools to adopt procedures providing for the admission of black applicants within five years.
“That gave them a transition period,” Dean Griswold said. “I’ve always regarded that as one of the reasonably intelligent things I did.” Today some of the schools that once objected to affirmative action are leaders in that area.

During the early 1960s, black lawyers became more involved in the Association as a result of the efforts of a number of ABA presidents. It was at this time that Judge George N. Leighton remembers being called by ABA President John C. Satterfield of Yazoo City, Mississippi, and encouraged to join the ABA. Judge Leighton, a Howard undergraduate and a Harvard law graduate who was to spend 23 years on the United States District Court for the Northern District of Illinois, accepted Satterfield’s invitation. Until that time, Judge Leighton said, he did not feel welcome in the Association. Leighton became Section chairman in 1976.

It was not until 1979 that the ABA made a concerted effort to involve minority lawyers. Jane Barrett, who was then chair of the ABA Young Lawyers Division, created the Minorities in the Profession Committee to encourage increased participation by minority lawyers in the activities of the Association. Barrett, who practices law in Los Angeles, later served on the Council of the Section of Legal Education and Admissions to the Bar.

Barrett’s new committee was small and composed primarily of minority lawyers. Its task was to encourage increased minority participation in the Young Lawyers Division and the Association. It conducted informal surveys of minority lawyers’ attitudes and perceptions, which revealed that most minority lawyers did not feel welcome in the ABA and that the best way of involving them would be to promote and expand employment opportunities.

In 1980, ABA President Wm. Reece Smith responded to a proposal from the Young Lawyers Division and agreed to jointly sponsor a conference between leaders of the minority bar associations and leaders of the ABA. This led to the creation of the Task Force of Minorities in the Legal Profession in 1983. The ABA approved the creation of the Commission on Opportunities for Minorities in the Profession at its 1986 Annual Meeting.

Like the ABA, many law schools across the nation had been reluctant to accept minorities before the 1960s. In the 1940s, African-American students in the South sued to get a legal education in those states where white law schools did not admit them. The states reacted by creating black law schools in historically black colleges or universities. “None was a true university,” recalls Harry Groves, a member of the Section’s Council, who holds law degrees from the University of Chicago and Harvard. He began his teaching career in one such school, North Carolina Central.

“A n important element to keep the courts from moving against the state was that these schools be accredited. If accredited, that itself would be a significant element in a lawsuit,” Groves said. “They all got accreditation without approaching the level of existing state schools. It was a clear farce.”

When black students at North Carolina Central sued to enter the University of North Carolina, Groves was called as a witness. “I think I was called by the state because I was on the
North Carolina Central faculty," Groves recalled. "But I had met the night before with Thurgood 
Marshall, who was representing the students, and he knew I would give true testimony and that 
what I said would be helpful. I didn't care if I lost my job or not."

As Groves had predicted, his testimony on cross-examination helped the students 
considerably. Meanwhile, John Hervey, the advisor to the Section, testified that not only could 
students at North Carolina Central law school get an education as good as the one they could get 
at the University of North Carolina but they could actually get a superior education. The March 
1948 minutes of the Section quote Hervey as saying that the school had no problem that could 
not be cured by an adequate physical plant.

"He based that primarily on the student/teacher ratio, because we had only about 20-odd 
students, and we had the minimum of teachers required for the ABA. The library was not 
catalogued, and it was very small, of course. We were off-campus in what once had been a 
primary school. No faculty member had an office. There was one secretary, the dean's secretary, 
so the faculty members didn't have secretarial help. Obviously, it was pitiful."

"But John Hervey's position reflected the attitude of the ABA at the time," Groves 
explained. "It assumed that the bar examinations would keep out the totally unqualified. It 
really had no interest in the quality of education for blacks."

The trial court in North Carolina held that North Carolina Central's law school was equal 
to that of the University of North Carolina. On appeal, the U.S. Court of Appeals for the Fourth 
Circuit reversed the lower court in McKissick v. Carmichael (187 F.2d 949 (1951)), and black 
students were admitted to the University of North Carolina School of Law.

As an expert witness on legal education in the North Carolina case, Erwin N. Griswold 
testified that a separate legal education could not be equal to a non-segregated legal education. 
He later gave similar testimony in Oklahoma City in a case involving a segregated law school set 
up in the state capitol building with, as Griswold recalls, only two students.

The Texas Southern University School of Law was created when African-American 
students sued to get into the University of Texas and won that suit. When the court ordered 
African-American law students admitted to the University of Texas, the state retained the black 
law school. "This was because it was interested in keeping down the numbers. If they had to let 
in 1 or 2 students, that was better than letting in 20," Groves said.

"As of the time I went to Texas Southern as dean, I think that the accreditation interest of 
the ABA was getting a little more realistic. They had put the law school at Texas Southern under 
a show-cause order as to why it should not lose its accreditation. While I was there, John Hervey 
also came and inspected that law school. It had no separate building. The faculty did have 
offices. When I went there, the library was not catalogued, but I was able to get that done. I got 
reasonable resources from the school. As a result of Hervey's visit, the show-cause order was 
lifted, but we still had no faculty secretary, and financial support was really very, very minimal. 
It was another illustration of the fact that if anything was happening that seemed to be good or 
minimally acceptable, it resulted in accreditation."
Judge Leighton was Section chairman at the time of the Bakke case, and he recalls receiving many letters on the matter. All but one stated that the ABA should not interfere with the independence of the law schools to administer affirmative action programs. The Council recommended no modification of existing ABA policy prohibiting discrimination and passed a resolution in support of "lawful programs of affirmative action."

The Supreme Court ruled in 1978 that Bakke must be admitted to medical school, but it also affirmed the constitutionality of college admission programs favoring minorities to help remedy past discrimination against them. It found educational value in a diverse student body.

In 1979, the Council considered a proposal for an affirmative action standard. The proposed Standard 212 would place an obligation on law schools to take concrete steps to increase the number of minority groups in the profession.

"That 'in the profession' language was specifically included, because the Standards themselves talk about getting people into the profession," Dean Henry Ramsey, Jr., of Howard University remembered. Law schools were to go beyond simply admitting minorities. They were to offer special support programs to facilitate minorities' success in law school and admission to the bar.

Dean Ramsey was a member of the Accreditation Committee at the time. He named Lawrence Newman, previously Section chairman, Howard Glickstein, now dean at Touro Law School, and Judge Leighton as major players in formulating and developing Standard 212. Ramsey recalled that Newman put in a yeoman's job getting the proposed Standard through the House of Delegates and the Council, while Sharp Whitmore, the Section delegate to the House of Delegates, gave wise advice on how to get things through the House and the Board of Governors.

The Council approved the proposal for the new Standard in 1979 following public meetings in New York, San Francisco, and Chicago. The Board of Governors recommended that the phrase "the law schools shall" be changed to "the law schools are urged to" demonstrate a commitment to affirmative action. The Board further recommended that the statement not be adopted as a Standard but instead as a policy of the ABA.

The Council disagreed with the Board of Governors' recommended changes, and the proposal became Standard 212 in 1980 at the Honolulu meeting. The text follows:

Consistent with sound educational policy and the Standards, the law school shall demonstrate, or have carried out and maintained, by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups (notably racial and ethnic minorities) which have been victims of discrimination in various forms. This commitment would typically include a special concern for determining the potential of such applicants through the admission process, special recruitment efforts, and a program which assists in meeting the unusual financial needs of many such students, provided that no school is obligated to apply standards for the award of
financial assistance different from those applied to other students. (Emphasis added.)

The Standard included "qualified," which Dean Ramsey disagreed with, because "it is just a code word that says that anytime you're trying to have an affirmative action program, you're trying to push in unqualified people and therefore it's necessary for us to say that they've got to be qualified. We didn't write 'qualified' into any of the other Standards. It's inherent, implicit. But at some point, you have to decide whether or not you're going to win the battle and lose the war. We brought it to a vote, and the 'qualified' language went in."

21 Schools with Religious Affiliation

The Council addresses two cases involving religiously affiliated law schools—Standard 211 is amended after the federal district court ruling in Oral Roberts University v. American Bar Association.

"[Does] the right of freedom of religion conflict with the need for diverse opinions in the student body and on the faculty?"

* * *

In 1974 when the ABA, responding to the civil rights movement, prohibited racial and sexual discrimination in its approved law schools, it also included the word "religion" in its Standard 211. Thomas L. Shaffer, writing in the November 1981 Syllabus, said the use of that word "probably was the product of too much egalitarian spirit and too little consideration of the fact that a third of the nation's law schools were at church-related universities."

A professor of law at Washington and Lee University and former dean of law at Notre Dame, Shaffer then was a member of the Accreditation Committee and had completed a term as chairman of the Standards Review Committee in 1980.

"A church has a right to have a law school," Shaffer wrote, but he pointed out that "there is no purpose in ... [this] unless the church's tradition has influence in the school." He said this could include enforcement of certain rules of conduct, among them required worship, as well as a preference for church members in faculty hiring and promotion, admission of students, and even in tuition rates and scholarship awards.

The issues Shaffer mentioned did not become bothersome until new law schools, associated with religious groups with strongly held tenets, began to apply to the ABA for provisional approval. This raised questions of academic freedom and discrimination based on religious preference. The past history of religious discrimination, sanctioned by the ABA, caused some to wonder whether hard-won access to legal education and thus to the profession would be maintained.

Brigham Young University J. Reuben Clark Law School was provisionally approved in February 1974. In its resolution recommending provisional approval, the Council expressed the
"hope that the school will, in the spirit of Standard 211, not restrict its faculty to those of the Mormon faith." The issue of academic freedom arose out of the following provision of the Brigham Young handbook:

Brigham Young University is concerned with the teachings of the fundamentals of spiritual and secular knowledge, and with bringing those teachings into harmony with the lives of men and women in order to prepare them for a balanced and full life of service to God and fellow man. Teachers are expected to teach different viewpoints about secular knowledge, but this should be done in the spirit of the Gospel, without advocacy of any principle or standard inconsistent with the teachings of the Church of Jesus Christ of Latter Day Saints. Any faculty member who is guilty of conduct offensive to the principles of the Church of Jesus Christ of Latter Day Saints may have his services terminated at any time. Faculty members who fail to maintain an acceptable standard of professional performance may have their services terminated at the end of the contract year. Faculty members who have obtained continuing faculty status can be terminated only by the Board of Trustees upon such procedures as they shall specify, and all others by the President.

The school's reply to the Council's concern was that the academic freedom of its faculty was not restricted by these provisions. Moreover, in response to concerns that African-Americans might be discriminated against, Brigham Young University (BYU) stated that it was making every effort to attract non-Mormon and minority faculty and students to its law school.

Judge George N. Leighton inquired at the 1974 Council meeting if the school required candidates for admission to conform to the tenets of the Mormon church. BYU Dean Carl S. Hawkins stated that it did not.

The ABA also expressed concern that Mormons at BYU were charged less tuition than other law students. BYU replied that the basis for the distinction was that the school was a department of the church to which Mormons contribute by tithing. The differential in tuition, therefore, was seen as recognition that Mormons already had paid tuition. The school received full approval in 1974.

Oral Roberts University Law School (ORU) was inspected by the ABA in 1980. The team found four areas of concern:

(1) ORU required all entering students to sign a pledge regarding their commitment to Christian religious beliefs. The Accreditation Committee concluded that these regulations were imposed to deny students admission to ORU based on religious beliefs, which was a violation of the Standards;

(2) ORU required all prospective employees to complete an application for employment articulating their specific religious beliefs. This also was considered a violation of the Standards, because the Accreditation Committee found that it was intended to deny employment on the basis of religion;
(3) ORU salary structure for faculty did not compare favorably with similar schools;

(4) Demand for admission at ORU had dropped considerably, and the school had not demonstrated to the committee that there was sufficient demand in the application pool to maintain a student body of acceptable qualifications.

Because of these findings, the ABA denied provisional approval, and ORU appealed to the Council.

The Council then proposed that Standard 211 be amended to allow schools to adopt policies relating to the school's religious tradition if such policies "are adopted in good faith with earliest possible written notice to applicants, students, faculty, and employees and do not constitute invidious discrimination among applicants for admission or employment [and] do not infringe on academic freedom or the free exercise of religion."

The Accreditation Committee found that ORU's admission and employment policies related to the school's religious tradition, and therefore the school appeared to comply with the proposed amendment to Standard 211.

However, ORU's criteria for evaluating faculty members, which included specific tests of the faculty member's religious beliefs, was found to infringe upon the free exercise of religion and therefore did not comply with the proposed amendment to Standard 211. The Committee also found that ORU did not comply with points 3 and 4 mentioned above, and it therefore recommended denial of provisional approval.

In response, ORU filed suit in the U.S. District Court for the Northern District of Illinois. During a hearing on the matter, ORU said in part that it was inconsistent for the ABA to deny provisional approval pursuant to Standard 211 when religiously affiliated schools, such as Brigham Young University, had already been granted accreditation. It also maintained that Standard 211, as applied, violated the First and Fourteenth Amendments.

The federal judge ordered that the ABA be "enjoined from denying provisional accreditation to ORU's law school in whole or in part on the basis of ABA Standard 211's prohibition against religious restriction."

As for the faculty issue, ORU notified the ABA that the faculty contract had been revised on a nine-month basis and that salaries were raised.

In August 1981, the Accreditation Committee held a special meeting to consider the effect of the judicial order on ORU's application as well as new information received from the institution. The committee concluded that if no appeal were taken from the district court order, provisional approval would be recommended.

Norman Redlich, then dean of New York University School of Law and a constitutional law professor, told members of the Council that while the law was uncertain, ORU's claim of religious discrimination should be taken very seriously. He knew of no cases dealing with
religiously oriented universities, much less a law school that had a clearly defined religious mission. It was clear, however, that a Catholic elementary school surely could discriminate in favor of Catholics and that a state could not prevent qualified graduates of such a school from attending a public high school simply because they had attended a pervasively religious school that had discriminated in favor of its own religious adherents. A legitimate question, therefore, could be raised whether, through the accreditation process, a state could prevent a graduate of a pervasively religious law school from taking the bar examination simply because that school discriminated on grounds of religion. The situation was made particularly complicated by the uncertainty as to whether the Council, a private accrediting body, was acting on behalf of the state.

The Council thereafter adopted a revised version of Standard 211, known as 211(a), which stated that religious discrimination will not be tolerated, although a law school may have a "religious affiliation and purpose and [adopt] policies of admission and employment that directly relate to such affiliation and purpose so long as notice of such policies has been provided."

The House of Delegates adopted the revised Standard in 1981. Henry Ramsey, Jr., chairman of the Accreditation Committee, said he opposed the Standard as presented because he felt it could be used by schools to discriminate against non-believers. It was suggested, but not incorporated, that the proposal should include a phrase prohibiting "invidious discrimination." Council members modified the proposal further by inserting a new paragraph stating that law schools "should not use admission policies that preclude a diverse student body in terms of race, color, religion, national origin, and sex." The Council felt this was an important addition considering the Supreme Court's opinion in Bakke that diversity of a student body has important educational value.

Although the ABA did not appeal the federal district court's ruling, many throughout the Association, and the Section in particular, were uncomfortable.

Justice Rosalie Wahl, who served on the Accreditation Committee at the time of the Oral Roberts case, was among them. She later wondered at what point would "the right of freedom of religion conflict with the need for diverse opinions in the student body and on the faculty."

"Every law school ought to be accessible to members of the public who want to become lawyers," she said. "The school is training lawyers who are going to be officers of the court, and the courts are part of the state. You can't learn things from just one point of view. So there have to be compromises."

Oral Roberts, however, won provisional approval but never did get full approval. The law school closed in the late 1980s. It was taken over by what is now Regent University, part of the Christian Broadcasting Network, and Regent was provisionally approved in 1989.

22 ABA’s Governmental Affairs Office Joins Fight to Save CLEO

The Department of Education (DOE) attempts to derail Council on Legal Education Opportunity (CLEO) by several means, including omission of minority status as a
CONSIDERATION FOR GRANT APPLICANTS' ELIGIBILITY — ABA MOUNTS LEGISLATIVE EFFORT TO AMEND THE HIGHER EDUCATION ACT SPECIFYING CLEO AS ITS ANNUAL GRANTEE.

"No one thought a year ago we would be able ... to provide the firm foundation in the law for CLEO that we have now achieved." (1992)

* * *

The Governmental Affairs Office of the ABA in Washington, D.C., has been instrumental in the creation and rescue of the Council on Legal Education Opportunity (CLEO).

In 1968, the ABA joined with other concerned organizations representing legal education to create CLEO as a means of addressing the problem of the underrepresentation of minorities in the legal profession. In 1970, federal appropriations supporting the program began. The program was incorporated into Title IX of the Higher Education Act in 1972 under the formal title of the Assistance for Training in the Legal Profession (ATLP). Since its inception, the program has sought to identify candidates and encourage them to apply to law school; to provide special pre-law-school training to assist their entry into law school and their performance once enrolled; and to aid them financially during law school.

When the program began in 1968, only 1 percent of the nation's lawyers were members of minority groups, said E. Bruce Nicholson of the ABA's Governmental Affairs Office. That figure has grown to 7.44 percent, based on the 1990 census, and it continues to rise as the number of minorities entering law school increases annually. Minorities accounted for 16.6 percent of all students at the nation's ABA-approved law schools in 1992–93, a 6.7 percent increase over the previous year. First-year minority law school enrollment reached 20.3 percent in 1992–93, an increase of 9.6 percent over last year's figures.

ATLP, through CLEO, has provided the opportunity for more than 5,000 students to attend law school. In addition to aiding students directly, it has encouraged law schools to increase their own efforts to ensure that all segments of society are represented adequately in their student bodies and, ultimately, in the legal profession.

During the early 1980s, CLEO's principal challenge was to survive repeated attempts to "defund" it. Despite budget recommendations by the Reagan administration of no funding year after year, CLEO survived. "Then in the past several years, our office working with CLEO was able to double the yearly appropriation which CLEO had been awarded for many years," Nicholson said. The figure rose from approximately $1.5 million to $3 million, where it stands today.

CLEO was threatened with derailment, however, when the Department of Education (DOE) informed CLEO at the end of 1990 that the DOE might put the program's grant funds up for competitive grant proposals in the spring of 1991. Representatives of CLEO, the ABA, AALS, and LSAC tried to persuade DOE representatives that, in the time allotted, CLEO was the only organization that could complete the necessary activities: recruiting CLEO fellows, reviewing applications, and planning summer institutes run regionally by law schools.
The ABA, AALS, and LSAC further urged the DOE, if a grant competition was desired, to wait until September and then begin a competition for the next academic year. ABA President Jack Curtin wrote to support this resolution, and his successor, Talbot D'Alemberete, was to be equally supportive later. The DOE proceeded, however, to publish a call for proposals in the Federal Register in March 1991.

"CLEO, the other legal education groups, and our office all concluded that DOE wished to derail the program altogether," Nicholson said. "But with the direct intercession of Jack Curtin with Senator Edward Kennedy, who sits as chairman of the Senate committee that has jurisdiction over CLEO and all higher education programs, we were able to force the DOE to withdraw its request for proposal with a formal notice in the Federal Register on April 11, 1992, doing so."

The obvious solution, Nicholson said, was to amend the Higher Education Act, up for reauthorization in 1991, to name CLEO as the recipient of the ATLP program and formalize the unbroken practice of 20-plus years of CLEO as the administrator of the program. Senator Kennedy's staff, however, was unwilling to take a position opposing competition for federal grant funds.

Nicholson said that the DOE then made further attacks on the CLEO program. It claimed that CLEO failed to provide correct record-keeping for its expenses for a number of years and, therefore, the DOE had to step in and manage each budget category of CLEO. The DOE then began to cut salaries, disallow expenses related to the CLEO Board of Advisors and expenses related to recruiting and to publication of brochures and other materials relating to the program.

"The DOE also informed CLEO that its practices of 20-plus years in evaluating 'admissions' to the CLEO program were misguided or in fact illegal," Nicholson said. "The Department insisted that the ATLP program should reward solely academic excellence and that minority status could not legally be considered at all in reaching a determination of who is 'educationally disadvantaged' and eligible under the program. The ABA steadfastly maintained its objection to the changes sought by the DOE and our continuing support for CLEO."

As hearings on reauthorization of the Act began in the House and Senate committees in 1991, the ABA Washington office worked closely with CLEO and the Section of Legal Education and Admissions to the Bar, particularly through its Committee on Government Affairs and Student Financial Aid, and other legal education groups to identify a legislative strategy. It asked Congress to amend the Higher Education Act to specify CLEO as the annual grantee or contractee and to name recruiting and publication related to it among authorized CLEO activities. It further urged Congress to provide explicit authorization under the Act for consideration of minority status, among other factors, as appropriate in determining educational disadvantage.

The ABA Washington office and the Section prepared written testimony for the chair of the Section, José Garcia-Pedrosa, on reauthorization issues, stressing CLEO as a priority of the ABA. The two offices also generated letter and telephone contacts from law school deans to key House and Senate committee members as well as to deans in key districts and states in support of
CLEO and these changes to the Act.

When the House passed its version of the Higher Education Act reauthorization, H.R. 3553, in March 1992, most of the CLEO amendments were adopted. The Senate bill passed in February 1992; S. 1150, however, did not make the recommended changes.

A Senate and House conference committee was formed in the spring of 1992, and the ABA Washington office wrote in detail to the conferees expressing its preference for the House provisions. It also wrote a "legislative alert" memorandum that went to law deans in the Section, urging them to contact the congressional conferees in support of the House provision. Many of the deans did so.

"On the day that the staffs of the House and Senate conferees met to decide the CLEO provision, we were asked by House allies to draft a statutory amendment to specify CLEO under the Act," Nicholson said. "This ABA amendment was accepted by the Conference."

Once the reauthorized Higher Education Act was signed into law by President George Bush on July 23, 1992, the result of the ABA effort was that CLEO now is explicitly recognized in the Act. Further, the very activities it conducts to carry out the program—those disputed by the DOE—are authorized in the Act.

"The issue of consideration of minority status among other factors in determining educational disadvantage is settled under the CLEO provisions," Nicholson said. "No one thought a year ago we would be able to amend the Act successfully to provide the firm foundation in the law for CLEO that we have now achieved. Through broad cooperation, dogged determination, the work of ABA staff, the Legal Education Section, and ABA presidents, we have achieved a real success for a program that is needed and worthwhile."

23 The Clinical Movement Begins

CRITICISM FROM BENCH LEADS TO GREATER ATTENTION TO ADVOCACY SKILLS OF LAW SCHOOL GRADUATES—SECTION'S TASK FORCE RELEASES CRAMTON REPORT ON LAWYER COMPETENCY—AALS/ABA GUIDELINES FOR CLINICAL LEGAL EDUCATION PUBLISHED.

"The law school shall ... offer training in professional skills."

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In 1973, Chief Justice Warren Burger argued that traditional law school education was not providing adequate advocacy skills to law graduates. In a speech at Fordham Law School, he suggested that a two-year program of basic legal education be followed by specialized training under the guidance of practitioners along with professional teachers.

In 1976, the state chief justices responded to a resolution of the Judicial Conference of the United States by appointing a committee to consider standards for admission to practice in the federal courts. This committee was named the Devitt Committee after its chairman, Edward
J. Devitt, then chief judge of the U.S. District Court for the District of Minnesota. The committee heard testimony concerning whether law schools should require a trial practice course. Its report is noted later in this chapter.

The creation of the Clare Committee in the Second Circuit was another result of Justice Burger's remarks. That committee was to develop minimum educational requirements for lawyers appearing before the courts of that circuit. The Clare Committee proposed the successful completion of courses in five subject-matter areas: evidence, criminal law and procedure, professional responsibility, trial advocacy, and civil procedure, including federal jurisdiction, practice, and procedure.

Both the Section and the AALS opposed the Clare proposals, which were not implemented. James P. White, ABA consultant for legal education, stated later that the requirements could have led to national law schools being forced to adopt regional curricula, thereby discouraging students from attending schools outside the geographical area where they might practice. No longer would contemporary American legal education have the "broad mixture of students and faculty from different geographical backgrounds."

The Council entertained a suggestion in 1976 in Atlanta that the ABA consider amending its accreditation Standards to require that all schools provide courses in trial advocacy. The Council noted, however, that Standard 302 already required that law schools offer "training in professional skills."

In 1979 a Task Force of the Section released its report and recommendations on "Lawyer Competency: The Role of the Law Schools." Dean Roger C. Cramton of Cornell Law School was chairman, and Professor Peter W. Martin of Cornell Law School was reporter. This study, known as the Cramton Report, made 28 recommendations addressed to law schools, the ABA, bar admissions authorities, governmental agencies, and lawyers regarding generally the improvement of lawyering skills through legal education.

The first recommendation, for example, urged law schools to go beyond the "relatively mechanical index" of the Law School Admission Test score and undergraduate grade point average in admitting students. The schools should consider "a full range of the qualities and skills important to professional competence." These included writing ability, ability in oral communication, work habits, interpersonal skills, dependability, and conscientiousness. Attention to these factors "should complement-not undercut" current affirmative action programs that "must be maintained and expanded if the legal profession is to be truly open to all racial and minority groups."

After the release of the Cramton Report, the Section reviewed Standard 302 and proposed a change that recognized the development of lawyering skills through legal education.

In further recognition of the importance of lawyering skills, the Section established a Special Committee on Clinical Legal Education. The committee was chaired by Robert B. McKay, who also chaired the joint AALS/ABA Committee on Guidelines for Clinical Legal Education, which released its report in 1980. A year later at the May 1981 meeting, the Council
voted to recommend that the Section undertake a project to identify and conduct a study of schools that have enhanced their curricula with skills courses, such as trial advocacy classes.

Dean Joseph R. Julin of the University of Florida was named chairman of the Council's Special Committee to Implement the Recommendations of the Task Force on Lawyer Competency.

Meanwhile, Judge Edward J. Devitt, chairman of the Committee of the Judicial Conference of the United States to Consider Standards for Admission to Practice in the Federal Courts (Devitt Committee), addressed the Salt Lake City meeting of the Council in 1980 concerning the issue of requiring trial advocacy training in law schools. Devitt stated that there was strong opinion among members of the bench that law schools were not doing a satisfactory job in teaching lawyering skills. He felt that increased emphasis should be placed on trial skills training. Following a three-year study, the Devitt Committee determined that there was a need to take positive steps to improve the quality of trial advocacy in the federal courts.

The Devitt Committee recommended that the ABA include trial advocacy training as a requirement for law school accreditation. Judge Devitt acknowledged that this would be an additional cost to law schools and noted that law schools might have to reexamine their priorities to remedy this identified deficiency in the education of lawyers.

Dean Julin of the Council's Special Committee on Lawyer Competency said that his committee did not support the proposal mandating litigation classes. The committee believed that the Council should work to implement the objective through persuasion, not through a requirement. There also was some concern that such a requirement would result in many schools offering non-quality courses. Chancellor A. Kenneth Pye of Duke suggested as a compromise that the Council adopt a measure requiring law schools to offer a course in trial advocacy, although not actually requiring every student to take the course. Julin's Special Committee was asked to review the matter with officers of the AALS and law school deans and report back to the Council.

The Council voted at the August 1980 meeting in Hawaii to request $3,600 to conduct a field study of applied skills courses and programs. It also discussed the issue of lawyer competency and the Devitt proposal. Dean Julin said that law schools should be required by the Standards to offer training in professional skills. This would allow schools to define professional skills themselves and thus allow some flexibility in determining individual curriculum.

The Council voted to interpret Standard 302 to read:

A law school's failure to offer adequate training in professional skills, whether through clinics or otherwise, violates Standard 302(a)(iii). Such instruction need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in skills related to the various responsibilities which lawyers are called upon to meet, utilizing the strengths and resources available in the law school. Thoughtful professional studies have urged that trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating and drafting be included in such programs.
24 The Clinical Movement Grows

Standard 405(e), granting more permanence to clinical faculty, is adopted after years of debate—some feel it does not go far enough—Section jointly publishes, with AALS, Guidelines for Clinical Legal Education—sponsors conference on professional skills and legal education.

"Traditional legal educators in this country have no motivation and no interest in change."

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Guidelines for Clinical Legal Education, the report of the AALS/ABA Committee on Guidelines for Clinical Legal Education, was published in 1980. It marked the first attempt to provide a comprehensive analysis of clinical legal training. The committee had been created to review the accumulated clinical experience in American law schools and to provide guidance to law school faculties wanting either to begin clinical training programs or to evaluate existing programs. The committee was not commissioned to endorse clinical training or to develop standards by which to measure performance.

Peter deL. Swords, associate dean of Columbia University School of Law, and Frank K. Walwe, dean of the University of Tulsa School of Law, co-authored a chapter, "Cost Aspects of Clinical Education." The authors assessed data derived from an ABA law school questionnaire and from additional detailed evaluations of courses at representative schools.

Comparative costs for clinical and traditional programs at 78 schools were explored. Nine additional schools served as in-depth case studies. Instructional expenses as distinguished from supporting services constituted by far the largest cost component of clinical learning. Instructional costs consisted of compensation paid to faculty members and others, such as supervising attorneys, for teaching and supervising students. Supporting-services costs included costs of the program's secretary, duplication, telephone, and travel costs incurred by a program in prosecuting its caseload.

The study examined three types of clinical programs: law school-supervised clinics, which involve faculty members teaching and supervising students in their clinical practice; field placement programs in which students typically are placed in non-law-school legal service agencies and are supervised by the agencies' attorneys, who are usually not paid by the law schools; and trial advocacy programs or trial moot court programs within the law school. Not surprisingly, the study found the law school-supervised clinic to be the most expensive, roughly \( 7 \times \text{times} \) more than a field placement program, \( 5 \times \text{times} \) more than a traditional law school seminar, and 14 times more than a traditional class. Trial advocacy programs were found to be about twice as expensive as the traditional seminar and nearly 5 times as expensive as the traditional class.

The report suggested, however, that incremental expenses could be minimized by reallocating existing instructional resources. Thus, a number of schools with sufficiently large faculties and a desire to provide a clinical experience to every student who wanted one could do so if about one-third of their faculty members each year would be willing to spend one-half of
their time in clinical teaching.

But reallocation of traditional faculty time would never happen in the opinion of those like Roy T. Stuckey, University of South Carolina law school clinical professor and a member of the Council of the Section. Stuckey believes it is more than a matter of money. "Traditional legal educators in this country have no motivation and no interest in change," he said. He feels they would rather spend their time on scholarship than changing their teaching orientation.

The Section has given considerable attention to clinical legal education in the past decade. In 1983 it began to consider a recommendation from the Accreditation Committee to give faculty status to clinical law teachers. The Standards Review Committee circulated a proposal to this effect. Public hearings revealed many concerns with the idea, and the AALS suggested that the matter be delayed for several years to allow schools to resolve the issue. The AALS was opposed on the grounds that it would quell diversity and imagination in developing clinical law school programs.

When Standard 405(e) was adopted after years of debate, it provided that the law school should afford a form of security for clinical faculty reasonably similar to tenure for other faculty whose primary responsibilities are in its professional skills program. A group of clinical teachers, through the Criminal Justice Section, unsuccessfully introduced an amendment to change the language back from should to shall afford security. The House of Delegates adopted 405(e) in August 1984.

Dean Ramsey of Howard University School of Law feels that Standard 405(e) helps law schools by protecting people of quality who would not join the faculty without the academic freedom the Standard offers.

Dean Robert K. Walsh of Wake Forest University law school and former dean of the University of Arkansas at Little Rock counts himself among those encouraged by the rising status of clinicians. "I prefer my clinicians to be tenure track and to have publication requirements, although it might be writing about practice skills and not about some substantive First Amendment issue." Walsh has chaired the Accreditation Committee.

In 1983, the Council took action to defend law schools against limiting the types of litigation undertaken in their clinics. This was in response to a report prepared by the AALS Section on Clinical Legal Education that cited examples of outside groups' attempting to restrict clinics. The Section adopted a resolution stating that any restriction of types of litigation undertaken by law school legal clinics had "an adverse impact on the quality of the educational mission ... and jeopardize[d] principles of law school self-governance." The resolution also stated that the Council would assist law schools in preserving their clinical programs.

The Section joined the University of New Mexico School of Law in co-sponsoring the ABA’s National Conference on Professional Skills and Legal Education in Albuquerque in October 1987. Roy T. Stuckey and Kathleen Grove, assistant consultant on legal education to the ABA, were co-chairs. The conference honored William Pincus, founder of the clinical education movement and former president of the Council on Legal Education for Professional
Responsibility (CLEPR), which began with a grant from the Ford Foundation in 1967.

The Section's chair, Justice Rosalie Wahl of the Supreme Court of Minnesota, had come from a background of legal education, having been one of two people assigned to establish the clinical legal education program at William Mitchell College of Law. The three-day conference attracted representatives of half the country's law schools. At least one-third of the participants were women.

Summarizing the conference, Robert B. McKay, chair of the AALS/ABA Committee on Guidelines for Clinical Education, noted that every law school had a skills training program. He praised the diversity of the programs described. "There is no single path to follow," McKay said. "Skills training is unlike legal education in general, which has sought to standardize everything that is done in terms of what we sometimes call the follow-the-leader syndrome. Skills training, on the other hand, has developed a variety of modes from which each of us can learn."

Commenting on the conference later, Justice Wahl said she detected a sense of despair among the clinical people, who see themselves considered part of "something less than legal education" by many other faculty.

"It's not less. It's a different approach to legal education," she said. "I personally feel that the real consequence of working with a live client has a quality and an ethical responsibility to that person that you cannot experience by just listening about it."

She also saw the clinical programs as one important avenue for women. "The old established law firms weren't open to women. We had a chance to get into the profession by working for the public defender, prosecutor's offices, the public offices of the attorney general, and law schools, beginning with the clinical program," Justice Wahl said. "There are still more women teaching in the clinical program because that's where you could get a foothold."

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The development of lawyering skills and values was supported by the Task Force on Law Schools and the Profession: Narrowing the Gap, which the Section established in 1989. Justice Wahl, then Section chair, appointed the initial members, who included practitioners, judges and law professors. Robert MacCrate, who served as ABA president in 1987–88, chaired the task force. During his presidency, he demonstrated his interest in legal education by participating in Section programs and even in writing a short history of the Section, "Background Notes Regarding the ABA's Consultant on Legal Education."

The MacCrate task force issued its report at the 1992 Annual Meeting of the ABA. It concluded that legal education should be an effort in which both the law schools and the practicing bar participate. It offered a Statement of Fundamental Lawyering Skills and Professional Values. Skills named in the report were problem solving, legal analysis, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognition and resolution of ethical dilemmas. Values identified were attaining and maintaining competence to
represent clients; promoting justice, fairness and morality; improving the profession through the preparation of new lawyers and attempts to remove bias based on such factors as race, religion, or ethnic origin; and taking advantage of opportunities for professional self-development. The task force recommended that the skills and values statement be used by law schools in curricular development and in self-study and by continuing legal education programs to enrich the quality of the profession.

In proposing a long-range approach to achieving excellence in the profession, the task force also made recommendations in five other areas: choosing a career in law and a law school; enhancing professional development during the law school years; placing the transition and licensing process in the educational continuum; striving for professional excellence after law school; and establishing an American Institute for the Practice of Law. The institute was proposed as a tax-exempt educational corporation to promote excellence in the practice of law and to address, on a continuing basis, the entire process by which lawyers acquire and refine lawyering skills. The institute would be a resource center for law schools and providers of continuing legal education. It would be created by combining resources of the ABA Division of Professional Education and of the American Law Institute/American Bar Association Committee on Continuing Professional Education. The Practicing Law Institute and the AALS would be invited to become joint sponsors.

25 Law School Libraries

Law libraries' major issues include autonomy — Section's statistics "extraordinarily helpful" to librarians — More librarians serve regularly on site evaluation teams — Law students fail to learn economics of on-line searching.

"The law library was not, contrary to what some were saying, 'that awful black hole.'"*

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The Section has dealt with two or three major issues concerning libraries. One of them is the question of the autonomy of the law library: whether the library reports directly to the law school or whether it reports to the university library system.

Jane Hammond, Cornell Law School librarian and professor, takes the view that autonomy can be an advantage or a disadvantage, depending on the local situation and what support and understanding the law dean gives the law library as compared with how rigid the central library system is.

"My staff at Cornell feel that they get much more recognition for their contribution by being in the library system with their peers than they would from the law faculty, which has no understanding of what goes on in a technical service department, what cataloguing involves, and how difficult acquisitions can be," said Hammond, who has chaired the Accreditation Committee and served on the Council.

On the other hand, Hammond cited the experience of a colleague who had a bad
experience as part of the university's central library system. He could not purchase any material located elsewhere on the campus. He later became the first law librarian whose library had its own federal depository, and ultimately a special provision was made in the federal law that accredited law libraries can become depositories.

Regardless of that debate, the law library stands at the core of legal education and must be adequately funded. Hammond finds the Section's law school statistics "extraordinarily helpful." Hammond published a study on the comparative percentage of the law school's budget that goes to the library. It concluded that the percentage of funds spent on libraries over the years had remained the same. "The law library was not, contrary to what some were saying, 'that awful black hole,'" Hammond said. She could state her conclusion with assurance because she was able to supply material on the whole gamut of law school support over 20 years.

A librarian regularly serves on ABA site evaluation teams. Hammond feels this is partly in recognition of the fact by regular faculty members that they, the faculty, do not know enough to address a library problem in any detail. Hammond predicts that books will survive computers just as they survived the threat of being replaced by microfilm. Each is good for some things and not good for others. "There's no worse sentence than having to study a two hundred-page Supreme Court case screen by screen," she says. "And you can't research a theory on-line. The computer is much better for facts and specific narrow issues." Yet Hammond's library no longer buys hard copies of such things as the vast files of Internal Revenue Service opinion letters.

Hammond feels that law schools fail to teach the economics of on-line searching to the students. This has alarmed law firms, who see graduates run up a $200 bill with a client who is not going to pay it. One reason for this expense is that vendors' representatives come into the law schools to instruct and do not watch the cost, she said. "Somebody has suggested that we could crank out pseudobills to give the students an idea of what they're spending and whether their kind of client can pay."

26 The Profession Challenges Women

Joint ABA/AALS resolution in 1972 increases number of women law students—Numbers do not lead to professional success—Reevaluation of women's perspective—Partnership and the "mommy track."

"Those of us who entered teaching in the early 1970s had to invent a voice for ourselves in the classroom."

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In 1972, the ABA and the AALS passed a joint resolution that encouraged law schools to adopt a non-discriminatory policy in regard to women applicants. The policy also encouraged and promoted women's participation in the legal profession, including faculties of law. A wave of incoming women students responded to the ABA/AALS resolution, and numbers rose during the decade. In 1970, less than 8 percent of all first-year law students were women; the figure grew to 28.4 percent by 1976. Women numbered 42.6 percent of the 128,210 students in ABA -
approved law schools across the nation in the 1992–93 academic year.

"In 1983, there were dire predictions that the demographics of American legal education were terrible and that we were in for a major drop in enrollment," recalled Dean Nina S. Appel. "The future looked very bad. But what saved us at that time was the pent-up desire of 'older' women who had worked in other careers to enter legal education. Once law schools were more hospitable to women, they decided law would be a good career."

Dean Appel began teaching at Loyola in 1973 as a result of what she felt was recognition of the fact that the influx of women students under-scored the need for women faculty. "Those of us who entered teaching in the early 1970s had to invent a voice for ourselves in the classroom," she said. "We had few, if any, women faculty."

At Columbia, Appel attended a course in family law in which the professor did not call on women students except during what he called Ladies' Day. "Everyone looked forward to it unless you happened to be female. He brought all the hapless women in the class up to the front row and interrogated us about what constituted rape, how deep the penetration had to be, and distinctions between statutory rape and other rape." Marina Angel, a Temple law professor, has referred to her own similar experience at Columbia in a Temple Law Quarterly article called "Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women."

There were no women faculty at Columbia when Appel was a student there. The possibility of women joining the faculty had been dimmed two years earlier when Soia Mentschikoff, the first woman professor at Harvard, was visiting Columbia. In order to retain her husband, Karl Llewellyn, on the Columbia School of Law faculty, overtures were made to the dean to see if Mentschikoff could get a teaching position. The answer was no, and the couple went off to the University of Chicago. Interestingly, in 1974 Mentschikoff became the first woman president of the AALS and the first woman dean of the University of Miami School of Law.

When her husband moved to another university, which had a nationally recognized law school, Appel asked its dean during a dinner whether he would consider an application for teaching. His response was to say, "Now I've heard everything. A woman teaching law school classes!" With a imaginary rapier, he then fenced Appel into a corner near where they were standing after dinner and asked, "How could a woman possibly teach Socratic methods?" Appel recalled that she had the presence of mind to respond that aggressiveness was not limited to males and, furthermore, that her own favorite law professor did not use the rapier method to back the student into a corner, was open to discussion, and did not try to embarrass his students.

One of Appel's Columbia Law School classmates was Ruth Bader Ginsburg, judge of the Federal Court of Appeals for the District of Columbia, and, as of this writing, nominee for the U.S. Supreme Court. The two women met when Ginsburg transferred to Columbia and told Appel the following anecdote. When Ginsburg began her freshman year of law at Harvard, the dean invited the women in his class to his house for dinner. They were thrilled, Ginsburg recalled. It was a lovely dinner, and afterward they went into the living room and sat in a circle.
The dean went around the circle and asked why each of the women had come to Harvard and taken the place of a man. Each tried to answer as best she could, and on the way home, the only conversation was, "Oh, I forgot to say this." Not one person, including Ginsburg, thought there was anything unusual about being singled out to explain why she was in law school.

"It was a different period, and when I reflect on my experiences, I cannot imagine my female students today sitting passively and listening to such a remark," Appel said. "But we were so conditioned that we felt privileged to have been accepted in law school, and we were so anxious not to think 'like a woman,' however that was defined. And, of course, there was a different feeling about faculty members. There were no student evaluations, and we did not question the faculty member's judgment." In the 1950s, the worst pejorative in the classroom was that "you think like a woman," Appel recalled. When asked what that meant, the professor would respond, "Asking the question shows that you think like a woman."

The idea of the woman's perspective in law, as identified by Carol Gilligan in her book *In a Different Voice*, has contributed to a reevaluation of how lawyers should think and teach. "Women law students feel there are barriers to getting their point of view across," said Kathleen S. Grove, who served for 10 years as the assistant consultant on legal education to the ABA. She cited a recent article by Sandra J. Anoff in the *Minnesota Law Review*. Anoff, a clinical psychologist, followed Gilligan's thesis that there are two equally valid ways of approaching moral decisions, a female and a male model. Anoff studied an equal number of women and men entering the first-year law class at Temple, then again at the end of that year. Her study found that women initially were more likely to use care-oriented moral reasoning in which they saw people as interconnected. The men focused predominantly on justice, rights, and equality issues, in which they view people as separate entities. By the end of the year, Anoff found that more women were likely to use the rights-oriented approach to resolve moral dilemmas.

"The study showed that legal education is more aligned with the way men think than with the way women do and alters the way women think," Anoff concluded. "The voice of rights and the voice of care are two complementary themes, both embracing truths about the human condition. Continued suppression of the voice of care will block the harmony of a full human response."

Dean Appel agrees. "It may be that because of the socialization of females in society, we tend to be more oriented toward mediation, arbitration and consensus. Certainly, if that turns out to be true, it may have a beneficial impact on the overcrowding of the courts. So it may be that women lawyers and women judges will influence out-of-court settlements, mediation and negotiation." Appel already sees a reflection of "women's values" through reforms in such areas as juvenile justice and family law.

Yet Grove wonders whether women's increasing presence in the population of practicing lawyers will have a real impact on the profession. "I hope it does, but I feel that there are a lot of barriers in the way," she said. "Women might get discouraged and drop out like a lot of them have. They want to balance families and work. They want part-time work."

Dean Appel voiced concern about the "mommy track" in which women cannot aspire to
partnership. Law firms routinely require a certain number of billable hours; women's family commitments may prevent them from meeting these requirements and, as a result, many will work at a fixed hourly fee. "I personally am concerned that the profession may lose some of its status as more and more women enter it," Appel said. "There are cynics who have said that when a profession has a large number of women, as in teaching and nursing, the profession has less status and lower salaries. Since we are in a period of legal employment recession, there is reason indeed to be concerned about the 'mommy track.'"

Yet Appel's experience as a dean demonstrated to her that the fastest way to convert a male chauvinist into a feminist is to have his daughter or granddaughter graduate from law school. "There is no greater champion of equality for women than the proud male relative of a recent law school graduate," she said.

At the same time, Appel recalled her courtly professor, nearing retirement, who announced at the beginning of the law school year that he had never called on a woman during his career and never intended to do so. "Incredibly, we were not offended," Appel said. "We did not think there was anything unusual about it."

A comment by Mary Florence Lathrop, the first woman to appear by name in Section records examined for this book, is in a similar vein. At the time, Miss Lathrop had practiced probate law for 36 years and served as chair of the Committee on Legal Education of the Colorado Bar Association. During her first 10 years of practice, the members of her bar would refer to "that damn woman," she reminisced in 1932. "I would say 'Present.'" Lathrop added, "I didn't have any other name." Although progress is obvious, the final chapter is not yet concluded.

27 Criticism of the Section

Activities of Section sometimes run into criticism—A frequent charge is overregulation—University presidents have been among Section's fault-finders.

"It is very important ... that we don't dictate curriculum. The only thing the Standards require is that every law school must teach professional responsibility."

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Two major responses greet the proposal of a new Standard that imposes a broad obligation on the schools. One is the charge of overregulation. Many people in legal education feel that regulation should be as minimal as possible to permit autonomy and diversity. The second reaction is that the schools are already doing what is to be required by the Standard and, therefore, it is not necessary.

David H. Vernon, former president of the AALS and professor and former dean of the University of Iowa College of Law, feels that accreditation poses the danger of law school uniformity across the country. "Schools have not been as flexible as they might be in terms of experimentation," he said.
Others, like Dean Ramsey of Howard, disagree. He cites as an example clinical legal education, which originally ran against the main-stream. He also says Standards do not lead to uniformity and the ABA accredits schools experimenting with externships, unique schedules, and foreign programs.

"It is very important to the ABA and the whole accreditation process that we don't dictate curriculum," said Justice Rosalie Wahl. "Let the law schools be free to fashion their curricula in terms of what they think it should be, to be creative and to encourage clinical programs. The only thing the Standards require is that every law school must teach professional responsibility."

Vernon counters that reaccreditation is a burden with little or no benefit to stronger schools. But he finds principal fault with what he considers the inadequate inspection of classroom teaching. "I'm not sure you can measure the output very well, but the things site visitors look at seem to me not to go to the quality of the educational experience." He would like to see the team spend a full week of sitting in on classes, reading student papers and reading faculty pieces rather than bibliographies, but he agrees this would be hard to accomplish. Site evaluators probe research in discussions with faculty, says Consultant White, but he admits concern that classroom visits are too brief.

Sometimes the stronger schools, which see no need for reinspection, may have crowded physical plants without adequate room for each student or inadequate library facilities, said Justice Wahl. "The broader your mission is, the more scholastic heights you wish to climb, the more library resources you need."

Roger C. Cramton, another former president of the AALS and now professor at Cornell Law School of which he is a former dean, is concerned about regulation. He argued in a paper written while AALS president in 1985:

Accreditation authorities should clearly separate (a) matters that, because they are rationally related to educational outcomes, involve continued accreditation from (b) recommendations or advice as to how an institution can improve itself. Advice should be proffered as part of accreditation since it furthers self-examination and self-improvement. But the choice of what is done with it, including the choice to be wrong, should remain with the university.

Cramton also observed: "The semi-covert use of the mailed fist in law school accreditation, even for the good purpose of improving a law school, is the most important issue in the field of law school accreditation. It is almost never openly discussed and debated."

University presidents have criticized the accreditation process as intrusive. In the late 1970s and early 1980s, universities became greatly concerned about specialized accreditation by professional groups. Unlike regional accreditation of the entire university in which evaluation focuses on institutional objectives set forth in a self-study, specialized accreditation centers on external criteria set by the profession. This specialized approach limits institutional autonomy. The greater the external proscriptions, the more concerned universities become. The basic
problem is inherent in all specialized accreditation, but it boiled over in the case of the ABA.

As the American Council on Education (ACE) representative to the Council on Postsecondary Accreditation (COPA), Robert H. Strotz, then president of Northwestern University, in 1981 asked COPA and ACE to address "Interpretations of the ABA Standards which in some cases have strayed into areas of institutional autonomy."

The ABA, on the other hand, was seeking to promote greater law school autonomy within the university. The "autonomy" clash, according to Strotz, centered around site visitors' proposals to determine:

1. Faculty and administrative salaries
2. Promotion and tenure decisions
3. Faculty-student ratios
4. Faculty-clerical ratios
5. Library facilities (location and control)
6. Budgeting practices

The second concern of the universities was the failure of the ABA to distinguish in its reports between accreditation and advice so that a law school could know whether it was or was not accredited.

In response, the Accreditation Committee acted to make a distinction between the accreditation decision and suggestions for improvements. In his letter to President Strotz, Section Chairman Willard L. Boyd, then president of the University of Iowa, wrote:

I also firmly believe that no accrediting agency should attempt to determine organizational policies or structures for any university. Nevertheless, all accrediting agencies are engaged in assessing program quality. That assessment clearly involves adequacy of financial resources. Accordingly, there will be a review of salaries, of faculty/student ratios, of support staff needs, library adequacy, and other fiscal support.

On the other hand, legal educators like Hiram H. Lesar, former law dean at both Washington and Southern Illinois universities, felt that universities did not recognize the need for: (1) large law library investments, (2) higher law faculty salaries and faster promotions as a result of competition with law practice, and (3) excellent, self-contained law school facilities.

Between 1981 and 1984, a hostile environment existed between university presidents and the ABA. That overt hostility has passed, but the basic conflict between institutional autonomy and external professional requirements is ever present in ABA and other specialized
accreditation.

Robert O'Neil, former president of the University of Virginia and a former law professor who has served on the Council, remembered serving on the first joint liaison committee created by COPA and the ABA in the mid-1980s. He and three others conveyed the frequent concerns of university presidents.

First, there were questions about the qualification of the ABA visiting teams. These concerns were addressed by the ABA largely through more rigorous selection and preparation of the visiting teams.

Second, there were concerns about substantive regulations and the quantitative character of inspections, the "inevitable bean counting" in the review and approval process. Qualitative measures and flexible approaches are now emphasized by the ABA.

Third, schools even of national caliber were being told, "You may have met the minimal standards for continuing accreditation, but we think you can do better." There was confusion about whether the Accreditation Committee was directing how a school could do better. Comments became not only permissible but welcome so long as they were not confused with the application of the standards with which compliance or non-compliance determines the accredited status of a school.

Richardson W. Nahstoll, who chaired the committee that drafted the 1973 Standards, regrets that the inspection process continues to be perceived by many deans, administrators, and faculty as an adversarial process. "They'd rather have a 'good' report than a helpful one," Nahstoll said.

Dean Richard Huber of Boston College Law School, chairperson of the 1980 Deans Workshop, reported in 1980 that law school deans complained that law schools were not being consulted during the primary process of developing new Standards. In addition, the deans said they were not provided an opportunity to participate in the decision-making process when the proposals were in draft form. Moreover, interpretations were being established in areas that did not relate to quality education but pertained to matters that should be left to the individual schools. The deans felt, for example, that a graduate study proposal approved in principle by the Council in August 1979 did not effectively deal with the diversity of many fine graduate school programs and that many of those programs in existence could not comply with the proposals.

Justice Shirley Abrahamson of the Wisconsin Supreme Court, then chairperson of the Standards Committee, said that the following basic issues concerning the Standards should be studied: justification for accreditation by the ABA; whether consumer representation should be brought into the accreditation process; minimal Standards versus aspirational Standards and the involvement of the self-study done by the schools; whether the Accreditation Committee and the Standards Committee should serve the lobbying function between the law school and the university; whether the Standards should be specific or discretionary; and an overview of the need to preserve diversity among the law schools.
These issues are always matters of concern for the Section. For example, Chairperson Norman Redlich appointed a special committee to study the law school approval process. The committee, chaired by Henry Ramsey, Jr., issued a comprehensive report in 1990, and its various substantive, procedural, and institutional recommendations were adopted.

Summing up his experience, Victor Rosenblum, a former AALS president and former chair of its accreditation committee, said:

The ABA inspection teams with which I've been involved have focused consistently on the linkages between the school's self-perceptions about their achievements and aspirations, as embodied in their self-studies, and the empirically based observations and findings of team members through the site visits. The accreditation process emphasizes accountability for compliance with both generally applicable minimal standards and with specific, indigenous claims and goals of the particular school inspected. Diversity is encouraged and fostered through this dual accountability.

28 A Look Ahead

Financial pressures limit accessibility to law schools and legal services—Those most in need of financial aid may be the ones least likely to receive it.

"It is a bit hypocritical for deans to say to a student who may have a $60,000 debt and family dependents, 'I would like you to enter public interest work,'" said Nina S. Appel, 1992–93 Section chair. She questioned the belief that there is an oversupply of lawyers. The problem instead is the maldistribution in which neither the poor nor the middle class is being reached. The cost of extending legal services to those in need cannot be borne by heavily indebted law school graduates. The nation, even in straitened economic times, must begin seriously to expand public access to legal services.

Diversity and accessibility to the profession will be issues of the 1990s. Attention to these issues reflects their centrality to all of society. In the law, this means greater diversity in the law schools' student bodies and greater access to legal services by the public. Yet there are financial barriers to achieving these objectives. It is one thing for law schools to accept students from varied financial and ethnic backgrounds and quite another for these students to pay for their education.

"It is a bit hypocritical for deans to say to a student who may have a $60,000 debt and family dependents, 'I would like you to enter public interest work,'" said Nina S. Appel, 1992–93 Section chair. She questioned the belief that there is an oversupply of lawyers. The problem instead is the maldistribution in which neither the poor nor the middle class is being reached. The cost of extending legal services to those in need cannot be borne by heavily indebted law school graduates. The nation, even in straitened economic times, must begin seriously to expand public access to legal services.

Like the rest of society, the law schools and their universities are experiencing difficult economic circumstances. Recognizing the need to work together, Dean Appel wrote to the deans of all 177 ABA-approved law schools, asking them to list the problems they saw facing legal education and higher education in general in the 1990s and beyond. Based on these responses, the Section organized an invitational conference in March 1993, bringing together deans and
their university presidents and provosts to discuss the role of the law school within the university, how to maintain the quality of legal education in a recessionary period and, finally, to consider the problems that lie ahead in the twenty-first century for higher education as a whole. Strikingly, the same issues were listed again and again among the various deans. Budgeting constraints in the face of rising costs and the changing nature of the legal profession; the place of skills training in and beyond law school; the tension that may exist between the law school and its parent university; the need for maintaining diversity among students, faculty and staff; and the short tenure of law school deans (now averaging about three and one-half years) were some of the concerns repeatedly raised.

And so the Section of Legal Education and Admissions to the Bar begins its second century faced with challenges: some new and some old. The law, like the rest of the world, remains vulnerable to economic cycles. The commitment to quality in legal education must remain constant in the best and worst of economic times. There also must be an expanding commitment to equality of opportunity in legal education and greater public accessibility to the law. Democratization brings more opinions to the table and greater debate. Legal education itself will be affected by this diversity of opinion. There will be no single best curriculum, and the public and the bar will want a greater role in shaping legal education.

When the Section came into being, the approach to legal education was exclusionary. Today the approach, in our increasingly diverse society, must be inclusionary. The Section will be less prescriptive and more catholic in its evaluation of legal education in the years ahead. It will be open to diverse students, faculty, and curriculum. Debates about quality education will occur frequently and with spirit. In a second century marked by diversity and accessibility, there will be more dialogue and more experimentation. The Section faces the future with flexibility and enthusiasm, considering itself a forum for change rather than an agency to regulate the status quo.

Early Section Leaders

| TABLE |

1992–93 Council of the Section of Legal Education and Admissions to the Bar

| TABLE |

**Standing:** Professor Marilyn V. Yarbrough, University of North Carolina School of Law; Dennis W. Archer, Esq., Detroit, Michigan; Honorable Randall T. Shepard, Supreme Court of Indiana; Dean Rudolph C. Hasl, St. John’s University School of Law; Professor Roy T. Stuckey, University of South Carolina; Erica Moeser, Esq., Executive Director, Wisconsin Board of Bar Examiners; Professor Roger F. Jacobs, University of Notre Dame School of Law; Professor Harry E. Groves, University of North Carolina School of Law; Beverly Tarpley, Esq., Abilene, Texas. **Seated:** Norman Redlich, Esq., New York, New York, Section Delegate to the House of Delegates; Sharp Whitmore, Esq., Fallbrook, California, Section Delegate to the House of Delegates; Dean Henry Ramsey, Jr., Howard University School of Law, Last Retiring Chairperson; Dean Nina S. Appel, Loyola University Chicago School of Law, Chairperson; Honorable Joseph W. Bellacosa, New York Court of Appeals, Vice-Chairperson; Martha...
The Standing Committee on Legal Education came into existence in 1878. In 1893 the Section of Legal Education was created and in 1920 became the Section of Legal Education and Admissions to the Bar.
1897–1898    SIMEON E. BALDWIN
              New Haven, Connecticut
1898–1899    WILLIAM WIRT HOWE
              New Orleans, Louisiana
1899–1900    CHARLES NOBLE GREGORY
              Madison, Wisconsin
1900–1901    HARRY B. HUTCHINS
              Ann Arbor, Michigan
1901–1902    ERNEST W. HUFFCUT
              Ithaca, New York
1902–1903    GEORGE W. KIRCHWEY
              New York, New York
1903–1904    JAMES BARR AMES
              Cambridge, Massachusetts
1904–1905    LAWRENCE MAXWELL, JR.
              Cincinnati, Ohio
1905–1906    WILLIAM DRAPER LEWIS
              Philadelphia, Pennsylvania
1906–1907    ROSCOE POUND
              Lincoln, Nebraska
1907–1908    SAMUEL WILLISTON
              Belmont, Massachusetts
1908–1909    HARRY S. RICHARDS
Madison, Wisconsin
1909–1910  WILLIAM O. HART
New Orleans, Louisiana
1910–1911  GEORGE M. SHARP
Baltimore, Maryland
1911–1912  HOLLIS R. BAILEY
Boston, Massachusetts
1912–1913  WALTER GEORGE SMITH
Philadelphia, Pennsylvania
1913–1914  CHARLES A. BOSTON
New York, New York
1914–1915  CHARLES E. SHEPARD
Seattle, Washington
1915–1916  HENRY STOCKBRIDGE
Baltimore, Maryland
1916–1917  HAMPTON L. CARSON
Philadelphia, Pennsylvania
1917–1918  SELDON P. SPENCER
St. Louis, Missouri
1918–1919  WILLIAM A. BLOUNT
Pensacola, Florida
1919–1920  CHARLES M. HEPBURN
Bloomington, Indiana
1920–1922  ELIHU ROOT
    New York, New York
1922–1927  SILAS H. STRAWN
    Chicago, Illinois
1927–1929  WILLIAM DRAPER LEWIS
    Philadelphia, Pennsylvania
1929–1931  GEORGE H. SMITH
    Salt Lake City, Utah
1931–1934  JOHN KIRKLAND CLARK
    New York, New York
1934–1937  JAMES GRAFTON ROGERS
    Boulder, Colorado
1937–1939  R. G. STOREY
    Dallas, Texas
1939–1940  CHARLES E. DUNBAR, JR.
    New Orleans, Louisiana
1940–1941  W. E. STANLEY
    Wichita, Kansas
1941–1942  CHARLES W. RACINE
    Toledo, Ohio
1942–1945  ALBERT J. HARNO
    Urbana, Illinois
1945–1947  JOSEPH A. McCLAIN, JR.
Durham, North Carolina
1947–1949 HERBERT W. CLARK
San Francisco, California
1949–1951 RICHARD BENTLEY
Chicago, Illinois
1951–1953 THOMAS F. McDONALD
St. Louis, Missouri
1953–1955 JOHN M. ALLISON
Tampa, Florida
1955–1958 HERBERT W. CLARK
San Francisco, California
1958–1958 HOMER D. CROTTY
Los Angeles, California
1959–1961 PETER H. HOLME, JR.
Denver, Colorado
1961–1963 F.D.G. RIBBLE
Charlottesville, Virginia
1963–1964 CHARLES L. DECKER
Chicago, Illinois
1964–1966 OLIN E. WATTS
Jacksonville, Florida
1966–1968 G.W. PARKER, JR.
Fort Worth, Texas
1968–1969  ROBERT McD. SMITH
   Birmingham, Alabama
1969–1970  HAROLD G. REUSCHELIN
   Villanova, Pennsylvania
1970–1971  MAXIMILLIAN W. KEMPNER
   New York, New York
1971–1972  EDWARD W. KUHN
   Memphis, Tennessee
1972–1973  THOMAS H. ADAMS
   Detroit, Michigan
1973–1974  CHARLES D. KELSO
   Indianapolis, Indiana
   Portland, Oregon
1975–1976  E. CLINTON BAMBERGER
   Washington, D.C.
1976–1977  GEORGE N. LEIGHTON
   Chicago, Illinois
1977–1978  JOSEPH R. JULIN
   Gainesville, Florida
1978–1979  SAMUEL D. THURMAN
   Salt Lake City, Utah
1979–1980  LAWRENCE NEWMAN
New York, New York
1980–1981    WILLARD L. BOYD

Iowa City, Iowa
1981–1982    GORDON D. SCHABER

Sacramento, California
1982–1983    TALBOT D'ALEMBERTE

Miami, Florida
1983–1984    ROBERT B. MCKAY

New York, New York
1984–1985    SAMUEL J. ROBERTS

Erie, Pennsylvania
1985–1986    ALFRED T. GOODWIN

Pasadena, California
1986–1987    FRANK K. WALWER

Tulsa, Oklahoma
1987–1988    ROSALIE E. WAHL

St. Paul, Minnesota
1988–1989    PHILIP S. ANDERSON

Little Rock, Arkansas
1989–1990    NORMAN REDLICH

New York, New York
1990–1991    JOSÉ GARCIA-PEDROSA

Miami, Florida
Washington, D.C.

1992–1993  NINA S. APPEL
Chicago, Illinois

ADVISORS/CONSULTANTS TO THE SECTION

Advisors:

2

1927–1930  H. CLAUDE HORACK
1930–1934  WILL SHAFROTH
1934–1935  ROBERT L. STEARNS
1935–1940  WILLSHAFROTH
1940–1941  LAWRENCE DeMUTH
1941–1946  RUSSELL SULLIVAN (acting)
1946–1948  LAWRENCE DeMUTH
1948–1968  JOHN G. HERVEY

Consultants:

2

1968–1973  MILLARD H. RUUD
1974–  JAMES P. WHITE

ABA-APPROVED LAW SCHOOLS AND YEAR OF APPROVAL
1923

1. University of California-Berkeley
2. Case Western Reserve University
3. University of Chicago
4. University of Cincinnati
5. University of Colorado
6. Columbia University
7. Cornell University
8. Drake University
9. Emory University
10. George Washington University
11. Harvard University
12. University of Illinois
13. Indiana University-Bloomington
14. University of Iowa
15. University of Kansas
16. University of Michigan
17. University of Minnesota
18. University of Missouri-Columbia
19. University of Montana
20. University of Nebraska
21. University of North Carolina
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45. West Virginia University

1925

46. Boston University
47. Catholic University of America
48. DePaul University
49. University of Florida
50. University of Idaho
51. University of Kentucky
52. Loyola University-Chicago
53. Marquette University
54. Mercer University
55. University of Notre Dame
56. University of South Carolina
57. University of Tennessee
58. Tulane University
59. Vanderbilt University

1926

60. University of Alabama
61. University of Arkansas-Fayetteville
62. Louisiana State University

1927

63. Southern Methodist University
64. University of Utah
1928
65. University of Denver
66. University of Richmond

1929
67. Valparaiso University

1930
68. University of Arizona
69. University of Georgia
70. University of Maryland
71. University of Mississippi
72. New York University
73. Union University, Albany Law School
74. Stetson University

1931
75. Baylor University
76. Dickinson School of Law
77. Duke University
78. Howard University
79. University of Louisville
80. Loyola University-New Orleans

1932
81. Boston College
82. College of William and Mary
1933
83. University of Connecticut
84. University of Detroit
85. Temple University

1935
86. Loyola University-Los Angeles
87. University of San Francisco
88. Wake Forest University

1936
89. Chicago-Kent College of Law, Illinois Institute of Technology
90. Fordham University
91. Indiana University-Indianapolis
92. University of Missouri-Kansas City
93. State University of New York-Buffalo
94. Wayne State University

1937
95. Brooklyn Law School
96. St. John's University
97. Santa Clara University

1938
98. Willamette University
99. William Mitchell College of Law

1939
100. University of California-Hastings
101. University of Tulsa

1940
102. American University

1941
103. Detroit College of Law
104. University of Miami
105. Rutgers University-Newark

1945
106. University of Puerto Rico

1948
107. University of New Mexico
108. Ohio Northern University
109. St. Mary's University

1949
110. Samford University
111. Texas Southern University

1950
112. University of California-Los Angeles
113. Capital University
114. University of Houston
115. North Carolina Central University
116. University of Tulsa
1951
117. Gonzaga University
118. John Marshall Law School
119. Rutgers University-Camden
120. Seton Hall University

1953
121. Southern University
122. Suffolk University

1954
123. New York Law School
124. Northern Kentucky University
125. Villanova University

1956
126. Golden Gate University

1957
127. Cleveland State University

1959
128. South Texas College of Law

1960
129. Duquesne University
130. Oklahoma City University

1961
131. University of Akron
132. University of San Diego

1962

133. California Western School of Law
134. University of Maine

1965

135. Judge Advocate General's School
136. Memphis State University

1967

137. Catholic University of Puerto Rico

1968

138. University of California-Davis
139. Florida State University

1969

140. Arizona State University
141. University of Arkansas-Little Rock
142. Inter-American University of Puerto Rico
143. New England School of Law
144. Northeastern University
145. University of the Pacific
146. Texas Tech University

1970

147. Lewis and Clark College
148. Southwestern University
1971
149. Hofstra University

1972
150. University of Baltimore
151. Pepperdine University

1973
152. Antioch Law School
153. University of Puget Sound

1974
154. Brigham Young University
155. University of Hawaii
156. Southern Illinois University
157. Western New England College

1975
158. Thomas M. Cooley Law School
159. University of Dayton
160. Delaware Law School
161. Franklin Pierce Law Center
162. Hamline University
163. Nova University
164. Vermont Law School

1978

1 Removed from list of ABA-approved law schools in September 1988.
165. Northern Illinois University
166. Pace University
167. Whittier College
168. Yeshiva University

169. Campbell University
170. University of Bridgeport

1979

171. George Mason University
172. Mississippi College

1980

173. Oral Roberts University

1981

174. Touro College

1983

175. Georgia State University

1984

176. City University of New York at Queens College

1985

177. St. Thomas University

1988

178. St. Thomas University

1989

2 Removed from list of ABA-approved law schools in August 1992.
3 Removed from list of ABA-approved law schools in September 1988.
178. CBN University (now Regent University)

1991

179. District of Columbia School of Law

1992

180. Bridgeport School of Law at Quinnipiac College (formerly the University of Bridgeport School of Law)

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