February 1, 1978

MEMORANDUM 7778-27

TO: Deans of ABA Approved Law Schools

FROM: James P. White, Consultant on Legal Education to the American Bar Association

SUBJECT: Interpretations of the American Bar Association Standards and Rules of Procedure for Approval of Law Schools

[Note: Superseded Memorandum 7677-47 dated June 20, 1977.]

Many requests seeking information pertaining to interpretations of the American Bar Association Standards have been received by this, and other offices of the Section of Legal Education. We have tried to reply to these requests in a timely fashion. In this regard, this office has instigated the practice of compiling all interpretations so that they may be readily available to anyone who should desire this information. The following is a summary of the interpretations, and their author, which have been rendered regarding certain Standards. All interpretations contained in this memorandum have been reviewed by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association.

Standards 102 and 103:

102 The American Bar Association believes that every candidate for admission to the bar should have graduated from a law school approved by the American Bar Association, that graduation from a law school should not alone confer the right of admission to the bar, and that every candidate for admission should be examined by public authority to determine his fitness for admission.
103 In order to obtain or retain approval by the American Bar Association, a law school must demonstrate that its program is consistent with sound educational policies. It shall do so by establishing that it is being operated in accordance with the Standards.

Interpretation 1: Support from the State Bar Association is not necessary in order for a school to be approved by the ABA, and a school which meets the Standards may be approved even though the local bar is opposed. However, actions and judgments by the bar or by individual members of the bar are not irrelevant. Charles D. Kelso, Chairman, July 3, 1974.

Interpretation 2: It is the responsibility of a law school approved by the American Bar Association or seeking ABA approval to demonstrate compliance with the Standards. The Council cannot determine if a school is being operated in accordance with the Standards if the school refuses to submit information requested by the Council. Refusal to supply information could be determined a violation of the Standards. Council, August 1977.

Interpretation 3: It is the intent of the Standards that each approved law school or law school seeking provisional approval provide appropriate information to the Council and Accreditation Committee including the completion of appropriate questionnaires and self-studies. Accreditation Committee, July 1977 and Council, August 1977.

Standard 104 (a):

104 (a) A law school will be granted provisional approval when it establishes that it substantially complies with the Standards and gives assurance that it will be in full compliance with the Standards within three years after receiving provisional approval.

Interpretation 1: (a) A law school seeking provisional approval by the American Bar Association must furnish separate financial operating statements for the last three fiscal years. If the applicant institution is a private institution, the statements shall be certified. Council, August 1977.

Interpretation 2: (a) A law school seeking provisional approval by the ABA shall provide appropriate supporting documents detailing the actual cost of all facilities used solely for support of the law school.

If the applicant institution is a private institution, the institution shall state the MAI appraised fair market value of facilities used solely for support of the law school. Council, August 1977.
103 In order to obtain or retain approval by the American Bar Association, a law school must demonstrate that its program is consistent with sound educational policies. It shall do so by establishing that it is being operated in accordance with the Standards.

Interpretation 1: Support from the State Bar Association is not necessary in order for a school to be approved by the ABA, and a school which meets the Standards may be approved even though the local bar is opposed. However, actions and judgments by the bar or by individual members of the bar are not irrelevant. Charles D. Kelso, Chairman, July 3, 1974.

Interpretation 2: It is the responsibility of a law school approved by the American Bar Association or seeking ABA approval to demonstrate compliance with the Standards. The Council cannot determine if a school is being operated in accordance with the Standards if the school refuses to submit information requested by the Council. Refusal to supply information could be determined a violation of the Standards. Council, August 1977.

Interpretation 3: It is the intent of the Standards that each approved law school or law school seeking provisional approval provide appropriate information to the Council and Accreditation Committee including the completion of appropriate questionnaires and self-studies. Accreditation Committee, July 1977 and Council, August 1977.

Standard 104 (a):

104 (a) A law school will be granted provisional approval when it establishes that it substantially complies with the Standards and gives assurance that it will be in full compliance with the Standards within three years after receiving provisional approval.

Interpretation 1: (a) A Law school seeking provisional approval by the American Bar Association must furnish separate financial operating statements for the last three fiscal years. If the applicant institution is a private institution, the statements shall be certified. Council, August 1977.

Interpretation 2: (a) A law school seeking provisional approval by the ABA shall provide appropriate supporting documents detailing the actual cost of all facilities used solely for support of the law school.

If the applicant institution is a private institution, the institution shall state the MAI appraised fair market value of facilities used solely for support of the law school.
Standard 105:

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

Interpretation: A law school whose academic program does not meet its own stated goals and objectives does not comply with the Standards for Approval of Law Schools by the American Bar Association. Council, August 1977.

Standards 201 and 209:

201 The law school shall have the resources necessary to provide a sound legal education and accomplish the objectives of its educational program, and shall be so organized and administered as to utilize fully those resources for those purposes.

209 The present and anticipated financial resources of the law school shall be adequate to sustain a sound educational program.

(a) If tuition is a substantial source of the law school's income, the school is faced with a potential conflict of interest whenever the exercise of sound judgment in the application of admission policies or academic standards and retention policies might reduce enrollment below the level necessary to support its program. The law school shall not permit financial considerations detrimentally to affect those policies and their administration.

(b) The law school may not base the compensation paid any person for service to the law school (other than compensation paid a student or associate for reading and correcting papers or similar activity) on the number of persons enrolled in the law school or in any class or on the number of persons applying for admission to or registering in the law school.

Interpretation: A law school does not meet the requirements of Standard 201 and of Standard 209 when:

(1) A law school is almost entirely dependent upon tuition income.

(2) Operational and building conversion costs have exceeded income and have necessitated the borrowing of considerable sums of money.
(3) Acquisition of a permanent law school plant is dependent upon loan commitments which are themselves contingent upon the School's obtaining provisional accreditation by the American Bar Association.

(4) Budget projections designed to cover debt service and operational expenses over the years 1975-81 contemplate and are dependent on substantial increases in the size of the student body together with substantial increases in student tuition.

Council, June 1977.

Standard 202:

202 The law school shall be organized as a non-profit educational institution and may not be operated for private profit.

Interpretation:

WHEREAS, the Council of the Section of Legal Education and Admissions to the Bar adopted the following resolutions on February 12, 1977:

(1) "That at this time no change or material modification of Standard 202 of the Standards for Approval of Law Schools by the American Bar Association be recommended to the House of Delegates."

(2) That the Council declare its willingness for a period of two years following the adoption of this resolution to grant a Standard 802 variance of Standard 202 and the last clause of Standard 203 and the interpretations placed upon it, in connection with an application for provisional approval from any proprietary law school which believes it can show that it is in substantial compliance with all of the other Standards for Approval of Law Schools by the American Bar Association except Standard 202 and the last clause of Standard 203."

NOW, THEREFORE, BE IT RESOLVED, that the Council of the Section of Legal Education and Admissions to the Bar, in modification and clarification of the above resolutions, hereby determines that until the date of June 30, 1979 it will accept an application for provisional approval from any proprietary law school
which can show that it substantially complies with all of the Standards for Approval of Law Schools by the American Bar Association except Standard 202 and the last clause of Standard 203 and gives assurance that it will be in full compliance with all of the Standards for Approval of Law Schools by the American Bar Association except Standard 202 and the last clause of Standard 203 within three years after receiving provisional approval;

BE IT FURTHER RESOLVED, that if the Council of the Section of Legal Education and Admissions to the Bar recommends to the House of Delegates of the American Bar Association that any proprietary law school be granted provisional approval, at that time, the Council will also recommend to the House of Delegates of the American Bar Association the repeal of Standard 202 and the last clause of Standard 203 from the Standards for Approval of Law Schools by the American Bar Association.

Council, June 1977

Standard 203:

203 The law school shall be governed by a Board whose members are dedicated to the maintenance of a sound educational institution, possess the capability of participating in the formulation and development of such an institution, and have no financial interest in the operation of the law school.

Interpretation: For some time, both members of the Accreditation Committee and representatives of law schools have expressed concern with regard to deans of free-standing law schools serving as a trustee of the law school. While the Standards do not prohibit the dean of a free-standing law school from serving as a trustee, I believe that substantial possibility of conflict of interest exists. The dean, as the chief executive officer of the institution, would, as a matter of course, always attend and participate in trustees' meetings. James P. White, Consultant, July 29, 1976.

Standards 204 and 205:

204 The Governing Board may establish general policies for the law school, provided they are consistent with a sound educational program and the Standards.
Within those general policies, the dean and faculty of the law school shall have the responsibility for formulating and administering the program of the school, including such matters as faculty selection, retention, promotion and tenure; curriculum; methods of instruction; admission policies; and academic standards for retention, advancement, and graduation of students.

Interpretation: The intent of Standards 204 and 205 is that the Governing Board of an educational institution establish policies and procedures for the institution but implementation of these policies and procedures is a matter for action by the dean and faculty of the law school. Thus, the Governing Board of the University additionally might and should develop a requirement for documentation as to the quality of teaching, scholarship, research and public service of a faculty member who is under consideration for promotion or the granting of tenure. The general university committee might undertake to examine the submission of the law school committee to determine that the submission was in a manner that insures that the law school has fully considered the matter, has complied with the Rules of Procedure and has fully documented its recommendation.

It is not appropriate for the general university committee to exercise an independent judgment with regard to the quality of scholarship, teaching or service of a particular faculty member upon which the law faculty makes a determination and recommendation as to a particular faculty member's status relating to promotion or the granting of tenure.

As I have observed, these Standards and their interpretations are long-standing and I believe carefully formulated. We would not presume to have a committee of law faculty pass on the merit or demerit of persons applying for promotion and the granting of tenure by a college of arts and sciences. Thus, it is not appropriate that such a committee pass on the merit or demerit of a recommendation of a law faculty member for promotion or the granting of tenure.

It is my opinion and the long-standing opinion of the Council and the Accreditation Committee of the Section of Legal Education and Admissions to the Bar that if a university committee exercises independent judgment as to the substantive performance of a law faculty member, then the action of that committee and the action of the university is in clear violation of Standard 205. Such action might, of course, place accreditation of the law school in some jeopardy. James P. White, Consultant, April 1, 1977.
Standard 205:

Standard 205 is previously cited above.

Interpretation 1: A law faculty as a professional faculty should not be required to be part of a general university bargaining unit. Council, July 1975.

Interpretation 2: The intent of Standard 205 is that there be full communication between the dean and faculty that the dean and faculty together join in the establishment of general educational policies and the development of the School's educational goals and objectives. Accreditation Committee, July 1977.

Standards 205 and 206:

Standard 205 is previously cited above.

206 The dean and faculty of the law school shall have the opportunity to present their recommendations on budgetary matters before the budget for the law school is submitted to the Governing Board.

Interpretation: Action of the Board of Trustees of a university authorizing the president of a university to determine a fixed percentage of an entering class without the approval of the dean and faculty of the law school violates Standards 205 and 206 of the Standards and places a law school in a posture of violation of the Standards, which would result in the withdrawing of ABA accreditation. Council, December 13-14, 1975.

Standard 209(a):

Standard 209(a) is previously cited above.

Interpretation: Where a law school has a present student body which is only marginally qualified for the study of law and where this student body is considered with the School's reported plans to increase the size of its student body, at a time when the number of applications for admission to law school is declining, provoke a serious concern with regard to Standard 209(a). Accreditation Committee, May, 1977; Council, June 1977.

Standard 210(c):

210 (c) If the University's general policies relating to rank, advancement, tenure, and compensation do not provide adequately for the recruitment and retention of a qualified law faculty, separate policies should be established for the law school.
February 1, 1978

Interpretation: University tenure and promotion policies which are dependent upon the fiscal stability of the parent university may inadequately provide for the recruitment and retention of qualified law faculty as required by Standard 210(c). Accreditation Committee, November, 1977.

Standard 211:

211 The law school shall maintain equality of opportunity in legal education without discrimination or segregation on the ground of race, color, religion, national origin, or sex.

(a) The denial by a law school of admission to a qualified applicant will be treated as made upon the ground of race, color, religion, national origin, or sex if the ground of denial relied upon is

   (i) a state constitutional provision or statute that purports to forbid the admission of applicants to a school on the ground of race, color, religion, national origin, or sex; or

   (ii) an admissions qualification of the school that is intended to prevent the admission of applicants on the ground of race, color, religion, national origin, or sex though not purporting to do so.

(b) The denial by a law school of employment to a qualified individual will be treated as made upon the ground of race, color, religion, national origin, or sex if the ground of denial relied upon is an employment policy of the school which is intended to prevent the employment of individuals on the ground of race, color, religion, national origin, or sex though not purporting to do so.

(c) Equality of opportunity in legal education includes equal opportunity to obtain employment. Each school should communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement functions the school's firm expectation that the employer will observe the principle of equal opportunity and will avoid objectionalbe practices such as

   (i) refusing to hire or promote members of the groups protected by this policy because of the prejudices of clients or of professional or official associates;
(ii) applying standards in the hiring and promoting of such individuals that are higher than those applied otherwise;

(iii) maintaining a starting or promotional salary scale as to such individuals that is lower than is applied otherwise; and

(iv) disregarding personal capabilities by assigning, in a predetermined or mechanical manner, such individuals to certain kinds of work or departments.

Interpretation: The Council has directed the Consultant on Legal Education to the American Bar Association to advise each approved law school that it is the opinion of the Council that, in those cases where a law firm (or lawyer professional corporation) holds out to prospective lawyer employees, expressly or by implication, the possibility or probability of eventual advancement in partnership (or equivalent status in a lawyer professional corporation) after a period of salaried employment, it is an improper practice for such law firm (or corporation) to discriminate in advancement of its employees to partnership (or such equivalent status) on grounds of race, color, religion, national origin, or sex. Council, June 1976.

Standard 211(c):

Standard 211(c) is cited above.

Interpretation: Placement requirements are not included in the assessment of a quality legal education and are not a requirement for accreditation but the Council does affirm that it encourages the establishment and effective operation of placement programs in all approved law schools. Council, August 1977.

Standard 301(a):

301 (a) The law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar.

Interpretation: Courses conducted specifically for improving student performance on bar examinations may be offered at law schools approved by the American Bar Association, but credit may not be given for courses conducted for this purpose. Council, August 1977.
Standard 302:

302 (a) The law school shall offer:

(i) instruction in those subjects generally regarded as the core of the law school curriculum,

(ii) training in professional skills, such as, counselling, the drafting of legal documents and materials, and trial and appellate advocacy,

(iii) and shall provide and require for all student candidates for a professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar in such instruction.

(b) The law school may not offer to its students, for academic credit or as a condition to graduation, instruction that is designed as a bar examination review course.

Interpretation 1 of 302(a)(ii): There is no ABA ruling that a student requesting enrollment in an advocacy course must be admitted to that course. The Standard in question states merely that the law school shall offer training in the professional skills. Frederick R. Franklin, Staff Director, June 14, 1974.

Interpretation 2 of 302(a)(ii): This section requires training in professional skills. To which of the many professional skills the curriculum will give special attention is left to the individual schools. Therefore, it is incorrect to say that this Standard requires an approved school to offer a course in Trial Practice. The only subject matter in which approved law schools must provide instruction is in professional responsibility. Council, August 1975.

Interpretation of 302(a)(iii): This Standard becomes effective at the start of the 1975-76 academic year. See Section 901(b). The ABA Standards even after adoption of the Arizona Compromise which called for a course in professional responsibility, require "instruction," but not a "course" (in professional responsibility). Frederick R. Franklin, Staff Director, October 21, 1974.
Standard 304:

304  (a) The law school shall maintain and adhere to sound standards of legal scholarship, including clearly defined standards for good standing, advancement, and graduation.

(b) The scholastic achievement of students shall be evaluated from the inception of their studies. As part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, except clinical work, courses involving extensive written work such as moot court, practice court, legal writing and drafting, and seminars and individual research projects.

(c) A law school shall not, either by initial admission or subsequent retention, enroll or continue a person whose inability to do satisfactory work is sufficiently manifest that his continuation in school would inculcate false hopes, constitute economic exploitation, or deleteriously affect the education of other students.

Interpretation of 304(b): The examination should be by either written examination or term paper. The examination should not be an oral examination, nor should it be a progress report graded by fellow students. The intent of the Standard is to have a meaningful faculty assessment of the student's work product. James P. White, February 12, 1975.

Standard 305:

305 (a) Subject to the qualifications and exceptions contained in this Chapter, the law school shall require, as a condition for graduation, the completion of a course of study in residence of not less than 1200 class hours, extending over a period of not less than ninety weeks for full-time students, or not less than one hundred and twenty weeks for part-time students.

   (i) "In residence" means attendance at classes in the law school.

   (ii) "Class hours" means time spent in regularly scheduled class sessions in the law school, including time allotted for final examinations, not exceeding ten percent of the total number of class session hours.
(iii) "Full-time student" means a student who devotes substantially all of his working hours to the study of law.

(b) To receive residence credit for an academic period, a full-time student must be enrolled in a schedule requiring a minimum of ten class hours a week and must receive credit for at least nine class hours and a part-time student must be enrolled in a schedule requiring a minimum of eight class hours a week and must receive credit for at least eight class hours. If a student is not enrolled in or fails to receive credit for the minimum number of hours specified in this subsection, he may receive residence credit only in the ratio that the hours enrolled in or in which credit was received, as the case may be, bear to the minimum specified.

(c) Regular and punctual class attendance is necessary to satisfy residence and class hours requirements.

Interpretation 1 of 305(a): In computing the weeks of residence study, the time devoted to class instruction and examination is counted. The period devoted to vacation and registration is not counted. If a school has fifteen weeks in each semester, then it meets the ABA requirement of at least 90 weeks for a three-year, full-time program. Millard H. Ruud, Consultant, November 6, 1973.

Interpretation 2 of 305(a): Time spent in regularly scheduled class sessions does not include the time allotted to reading periods. The Council resolution was that "reading periods"—a period of time usually designated prior to examinations during which no classes are scheduled and the student has "free time"—cannot be included within the required 1200 class hours as defined in Standard 305. Council, June 1976.

Interpretation 3 of 305(a): Classes for full-time students should extend over not less than 90 weeks and classes for part-time students should extend over not less than 120 weeks; that a week as defined in 305(a) means a week in which classes are regularly scheduled to meet at least Monday through Friday; and that the 90 and 120 week requirements does not include time allotted for reading periods. Council August 1976.

Interpretation 1 of 305(a)(ii): "Class hours" means time spent in regularly scheduled class sessions in the law school, including time allotted for final examinations, not exceeding 10 percent of the total number of class session hours and not including time allotted for reading periods and not exceeding one week of examinations.
Interpretation 2 of 305(a)(ii): "Class hours" means time spent in regularly scheduled class sessions in the law school, including time allotted for final examinations, not exceeding 10 percent of the total number of class sessions and not including time allotted for reading periods. Council, June 1976.

Interpretation of 305(a)(iii): A student may not work in excess of 15 hours per week while attending a school on a full-time basis. These restrictions also apply during the summer just as they do during the normal year if the student is enrolled for summer session. James P. White, October 28, 1974, December 12, 1974. Council, February, 1975.

Interpretation of 305(a), (b), and (c): These Standards should be interpreted by the school in which a student is enrolled and not by the ABA when the Standard relates to a school's individual program. The reason for this is that it would not be proper for the ABA to intervene in the school's operation of its individual curriculum by making rulings directly to its students. James P. White, in responding on May 13, 1975, to a letter from a student at Catholic University Law School.

Interpretation of 305(b): The ABA has long-standing interpretations of the Standards that transfer credit may be given for work taken only at another ABA approved school. There is a pending proposal which would add a new section, 308, to the Standards, which would allow the transfer of credit from a prior foreign law school where the "admitting" school is satisfied that the quality of the educational program of the prior foreign law school is at least equal to that required for an approved school. James P. White, Consultant, November 5, 1975.

Interpretation of 305(a) and (b):

(1) It is the interpretation of the Council of the Section of Legal Education and Admissions to the Bar that a "class hour" as stated in Section 305 of the Standards for Approval of Law Schools is to be defined as a unit of class room instruction of 50 to 60 minutes in duration. An additional fraction of a class hour may only be computed in increments of 10 minutes or more. Examples of acceptable units of instruction are 50, 60, 70, 80, and 90 minutes in duration.

(2) "The Council at its August 6, 1977 meeting also approved a 75 minute teaching unit (one and one-half 50 minute units) as an acceptable teaching unit for compliance with this aspect of 305. In all other instances a 5 minute increment would be counted to the lower ten, e.g., 55 minutes would be counted as 50 minutes, etc."
MEÑORANUDM 7778-27
February 1, 1978

(3) In addition, Section 305 mandates 750 minutes of classroom instruction per semester credit or at least 500 minutes of classroom instruction per quarter credit.

(4) However, even if a school meets or exceeds the minimum number of classroom minutes required by 305 the school still must meet the minimum week standard imposed by 305.

(5) Thus, a school on the semester system must offer at least 750 minutes of classroom instruction over a 15 week period per semester credit to meet 305. A school on the quarter system must offer at least 500 minutes of classroom instruction over a 10 week period per quarter credit to meet 305.

Council, August 1977

Interpretation of 305(c): This Standard is very specific, which is indicative of the fact that the ABA considers the matter of class attendance to be of importance. "It is the interpretation of the American Bar Association that regular and punctual class attendance is an important part of the learning process." "This Standard is a very direct statement in regard to attendance." "The implementation of the rule is left to the good judgment of the various faculty and the administration of each law school." James P. White, Consultant, August 14, 1974, and October 30, 1975.

Standards 305 and 306:

Standard 305 is previously cited above.

306 If the law school has a program that permits or requires student participation in studies or activities away from the law school or in a format that does not involve attendance at regularly scheduled class sessions, the time spent in such studies or activities may be included as satisfying the residence and class hours requirements, provided the conditions of this section are satisfied.

(a) The residence and class hours credit allowed must be commensurate with the time and effort expended by and the educational benefits to the participating student.

(b) The studies or activities must be approved in advance, in accordance with the school's established procedures for curriculum approval and determination.
(c) Each such study or activity, and the participation of each student therein, must be conducted or periodically reviewed by a member of the faculty to insure that in its actual operation it is achieving its educational objectives and that the credit allowed therefore is, in fact, commensurate with the time and effort expended by, and the educational benefits to, the participating student.

(d) At least 900 hours of the total time credited towards satisfying the "in residence" and "class hours" requirements of this Chapter shall be in actual attendance in regularly scheduled class sessions in the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which the credit was earned.

Interpretation 1: In any joint degree program between the law school and another school or college, (i) at least 900 hours out of the minimum of 1200 hours of study required for the law degree must be in courses in residence in the law school; (ii) all, or any part, of the remaining 300 hours required to make up the minimum of 1200 hours of study, may be in studies or courses outside the law school and may be used to satisfy requirements for each of the degrees in the joint degree program provided that all of such hours applied in satisfaction of the requirements for the law degree must be in studies or courses that satisfy the requirements of Section 305 or 306 and have been specifically approved by the law school as appropriate for the law school. Interpretation of Committee on Standards, February 1, 1974.

Interpretation 2: This Standard "requires that at least 900 hours (60 semester hours) must be in actual attendance in regularly scheduled class sections in the law school. The remaining hours may be in studies or activities away from the law school provided such study or activity is conducted or periodically reviewed by a member of the faculty of the law school." Frederick R. Franklin, Staff Director, November 1, 1974.

Interpretation of 306(c): Lack of substantial supervision given by a law school faculty to law students working with practicing lawyers throughout a state does not conform with Standard 306(c). Accreditation Committee, November 1977.

Standard 307:

307 Upon request, the Council may authorize a fully approved law school to establish a course of study leading to a degree other than the first professional law degree. Programs in addition to the first professional law degree may not detract
from the law school's ability to maintain a sound educational program leading to that degree. A law school shall not undertake a program in addition to the first professional law degree unless the quality of its program leading to the first professional law degree exceeds the requirements of the Standards.

Interpretation: The Accreditation Committee and Council in denying previous applications with regard to the proposed establishment of an LL.M. program gave as reasons for the denial:

(1) Inadequate full-time faculty sufficient to conduct the J.D. program of the School of Law.

(2) Lack of sufficient full-time faculty to direct and conduct a full-time LL.M. program.

(3) Lack of a fully adequate physical plant.

(4) Lack of an adequate law library to support both a J.D. and LL.M. program.

(5) A J.D. curriculum lacking sufficient diversity and richness in course offerings.

Accreditation Committee, August 1977, Council, August 1977

Standard 308:

308 The law school may admit with advanced standing and allow credit for studies at a law school outside the United States if the studies

(i) either were "in residence" as provided in Section 305, or qualify for credit under Section 306, and

(ii) the content of the studies was such that credit therefor would have been allowed towards satisfaction of degree requirements at the admitting school, and

(iii) the admitting school is satisfied that the quality of the educational program at the prior school was at least equal to that required for an approved school.

The maximum advanced standing and credit allowed may not exceed one-third of the total required by these Standards for the first professional degree.
Interpretation: Section 308 states the only circumstances under which an approved school may admit with advanced standing and allow credit for studies at a law school that is not on the list of law schools approved by the American Bar Association. Credit may not be allowed for studies at a law school in the United States that is not on the list of law schools approved by the American Bar Association. Credit may be allowed for studies at a law school in the United States that is on the list of law schools approved by the American Bar Association in the discretion of the admitting School. Credit may be allowed for studies at a law school outside the United States only to the extent authorized by Section 308. Standards Committee, December 1976, Council, February 1977.

**Standard 402:**

402 (a) The law school shall have not fewer than six full-time faculty members, in addition to a full-time dean and a law librarian. It shall have such additional members as are necessary to fulfill the requirements of this Chapter and the needs for its educational program, with due consideration for

(i) the size of the student body and the opportunity for students to meet with and consult faculty members on an individual basis,

(ii) the nature and scope of the educational program, and

(iii) adequate opportunity for effective participation by the faculty in the governance of the law school.

(b) A full-time faculty member is one who during the academic year devotes substantially all his working time to teaching and legal scholarship, has no outside office or business activities and whose outside professional activities, if any, are limited to those which relate to his major academic interests or enrich his capacity as scholar and teacher, or are of service to the public generally, and do not unduly interfere with his responsibilities as a faculty member.

Interpretation: The historic interpretation of Standard 402 by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and its Accreditation Committee has been that the count of full-time faculty, under the provisions of Standard 402, does not include the dean, librarian, associate or assistant deans or other administrators holding academic appointment. The interpretation of Standard 402 by the Council
MEMORANDUM 7778-27
February 1, 1978

and its Accreditation Committee continues to be that of not including the dean, librarian, associate or assistant deans or other administrators holding academic appointment, in any computation of full-time faculty, under the provisions of Standard 402. Council, August 1976.

Interpretation 1 of 402(a): The intent of Standard 402 (a) is that a single division law school in its first year of operation should have a minimum of six full-time faculty, in addition to a full-time dean and law librarian. A dual division law school or a law school offering instruction in more than one year must have additional full-time faculty in a satisfactory proportional ratio. Council and Accreditation Committee, August 1976.

Interpretation 2 of 402(a): A law school having a f.t.e. student to f.t.e. faculty ratio of 40:1, 39:1, or 38:1 is not in compliance with Standard 402(a) of the Standards for the Approval of Law Schools by The American Bar Association. Council, June and August 1977.

Interpretation 3 of 402(a): A law school needs experienced core faculty to fulfill the needs of its educational programs, to reduce teaching obligations and to provide reasonable opportunity for scholarly research and writing. Council, August 1977.

Interpretation 4 of 402(a): A high student faculty ratio and the consequent need for additional full-time faculty or the reduction of admissions are necessary to fulfill the requirements of the Standards and the needs of the law school's educational program. Accreditation Committee, November, 1977, Council, December 1977.

Interpretation of 402(a)(iii): While the Standards for Approval of Law Schools by the American Bar Association do not specifically deal with the process of the selection and appointment of a dean, a long-established practice in law schools approved by the American Bar Association requires that the faculty have a substantial role in the process of the selection and appointment of a dean. Further, the practices of the American Bar Association mandate that a dean not be appointed over the objections of a majority of the faculty. While the legal authority for appointment of the dean and faculty rests with a university board of trustees, which acts upon the recommendations of the president of the institution, we believe it is the spirit and the intent of the Standards that no dean be appointed over the objection of a majority of the faculty. James P. White, March 28, 1977.

Interpretation 1 of 402(b): A full-time faculty member of an ABA approved law school who is teaching an additional full-time load at another ABA approved law school cannot be considered as full-time faculty for either institution. Council, February 1977.
Interpretation 2 of 402(b): Faculty who are "of counsel" to a law firm may not be considered as full-time faculty within the definition of 402(b). Council, July 1977.

Standard 405:

405 The law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(a) The compensation paid faculty members should be sufficient to attract and retain persons of high ability and should be reasonably related to the prevailing compensation of comparably qualified private practitioners and government attorneys and of the judiciary. The compensation paid faculty members at a school seeking approval should be comparable with that paid faculty members at similar approved law schools in the same general geographical area.

(b) The law school shall afford faculty members reasonable opportunity for leaves of absence and for scholarly research.

(c) The law school shall afford faculty members reasonable secretarial and clerical assistance.

(d) The law school shall have an established and announced policy with respect to academic freedom and tenure of which Annex I herein is an example but is not obligatory.

Interpretation 1: Any fixed limit on the percent of a law faculty that may hold tenure under any circumstances is in violation of the Standards, especially Standard 405. Resolution of the Council of the Section of Legal Education at Cleveland, Ohio, meeting in 1973.

Interpretation 2: Subsection (a) of 405 must be read as one of the things to consider when determining whether the requirements of Section 405 "to establish and maintain conditions adequate to attract and retain a competent faculty" are met. The word "similar" does not exclude state supported schools, nor exclude national, as opposed to "regional" schools. James P. White

Interpretation 3: The Council adopted the position in 1971 and reaffirmed it in July of 1975 that "a law faculty as a professional faculty should not be required to be a part of the general university bargaining unit". The Council further expressed the view that the inclusion of a law faculty in the general university bargaining unit would be inconsistent with the American Bar Association
MEMORANDUM 7778-27
February 1, 1978


Interpretation 4: If law school merit salary raises are precluded and if "across-the-board" salary increases are limited to an amount substantially less than the annual increase in the cost of living a law school may not comply with Standard 405. Accreditation Committee; Council, August 1977.

Standard 502:

502 (a) The educational requirement for admission as a degree candidate is either a bachelor's degree from a qualified institution, or successful completion of three-fourths of the work acceptable for a bachelor's degree at a qualified institution. In the latter case, not more than ten percent of the credits necessary for admission may be in courses without substantial intellectual content, and the pre-legal average on all subjects undertaken and, in addition, on all courses with substantial intellectual content, whether passed or failed, must at least equal that required for graduation from the institution attended.

(b) A qualified institution is one that is accredited or is a member of North Central Association of Colleges and Secondary Schools, New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, Northwest Association of Secondary and Higher Schools, Western Association of Schools and Colleges, or the Department of Education of the State of New York.

(c) In exceptional cases, applicants not possessing the educational requirements of subsection (a) may be admitted as degree candidates upon a clear showing of ability and aptitude for law study. The admitting officer shall sign and place in the admittee's file a statement of the considerations that led to the decision to admit the applicant.

Interpretation: The issue is whether a photocopied transcript which accompanies the Law School Data Assembly Service Report is sufficient, or must the applicant also obtain an original official transcript. An official transcript means a transcript certified by the issuing school to the admitting school or delivered to the admitting school in a sealed envelope with seal intact. Copies, supplied by LSDAS are not official transcripts and while adequate for preliminary determination as to eligibility for admission do not constitute official transcripts.
MEMORANDUM 7778-27
February 1, 1978

An official transcript should be on file at the time a student registers in the law school or within a reasonable time thereafter. Council, February 24, 1974.

Standard 505:

505 Admission or re-admission may be granted a law student who has been previously disqualified for academic reasons, upon an affirmative showing that he possesses the requisite ability and that his prior disqualification does not indicate a lack of capacity to complete his studies at the admitting school. In the case of an admission to another law school, this showing shall normally be made by letters from the dean or faculty of the school previously attended. A previously disqualified student may also be admitted when two or more years have elapsed since his disqualification and the nature of his work, activity, or studies during the interim indicate a stronger potential for law study. In each case the admitting officer shall sign and place in the admittee's file a statement of the considerations that led to the decision to admit or re-admit the applicant.

Interpretation: The two year period would begin on the date of determination that the student was disqualified for academic reasons. Any review, appeals or requests for reconsideration of that decision are in the nature of post-decision remedies.

Standard 601:

601 The law school shall maintain and administer a library adequate for its program.

(a) In order to inform applicants for accreditation of procedures and important facets of law library operations relating to adequacy, the Consultant may prepare appropriate memoranda.

(b) The Dean and the Law Librarian shall maintain a current written plan for implementation of law library support for the law school program as developed in its self-study.

Interpretation: Scantiness of a library collection, the nature of its arrangement, deficiencies in shelf and seating space, the relative physical isolation from students and faculty, the hours of operation, the low salary levels of current library staff, the minimal size of the staff and a totally inadequate library budget violates Standard 601. Accreditation Committee, November 1977; Council, December 1977
Standard 604:

604 The law school library must be a responsive and active force within the educational life of the law school. Its effective support of the school's teaching and research programs requires a direct, continuing and informed relationship with the faculty and administration of the law school. The law school library shall have sufficient administrative autonomy to direct its growth, development and utilization to afford the best possible service to the law school.

(a) The dean, law library, and faculty of the law school shall be responsible for determining library policy, including the selection and retention of personnel, the selection of acquisitions, arrangement of materials and provision of reader services.

(b) The budget for the law library shall be determined as part of, and administered in the same manner as, the law school budget.

(c) The selection and retention of the law librarian shall be by the dean and faculty of the law school.

Interpretation: The intent of this Standard is to recognize that substantial operating autonomy rests with the dean and faculty of a school of law with regard to the operation of the law school library. The accreditation standards do not preclude administration of the law library as part of the university library system. Rather, the Standards require that decisions with regard to the law library be enlightened by the interests and demands of the law school educational program and not simply made on the basis of rules governing uniform administration of the university library. While the preferred structure for administration of a law school library is one of law school administration, a law school library may be administered as part of a general university library system if the dean, law librarian and faculty are responsible for the determination of basic law library policies.

Standard 701

701 The law school shall have a physical plant that is adequate both for its current program and for such growth in enrollment or program as should be anticipated in the immediate future.

Interpretation 1: Full approval will not be considered by the Council or its Accreditation Committee until a law school is conducting its operations in permanent and ade-
quate facilities. The Accreditation Committee will not act on plans presented for building construction or if construction or remodeling is in process. This Standard does not contemplate leased or rented facilities for permanent facilities owned by the law school or its parent educational institution. This Standard requires that the adequate physical facilities must be completed and occupied before a law school can be granted full approval. Accreditation Committee, May 15, 1977, July 1977; Council, August 1977.

Interpretation 2: If satisfactory steps are not taken by an approved law school to correct the inadequacies of an existing physical plant, then the law school is not in compliance with Standard 701 and a proceeding for removal of approval should be begun. Council, August 1977.

Standard 703:

703 Each full-time member of the faculty shall have a private office. In addition, suitable office space shall be provided for the use of part-time faculty members.

Interpretation: An approved law school must provide appropriate office space for use of its part-time faculty. Council, August 1976.

Standard 801:

801 Consistent with the Standards, the Council shall have authority to:

(i) interpret the Standards,

(ii) adopt rules implementing the Standards,

(iii) adopt procedural rules for the initial application by and approval of law schools and for the review and reinspection of approved schools, provided that until procedural rules are so adopted, the procedural rules in effect on the adoption of the Standards apply, and

(iv) amend any rules from time to time.

All interpretations and rules shall be published and shall be available to all interested persons.

Interpretation 801(iii): Routine reinspection of fully approved law schools shall be held in the academic year in which they were scheduled. The Consultant may, in his discretion, postpone a routine reinspection of a fully approved law school until the next academic year if the law school will occupy new physical facilities during the coming academic year. Accreditation Committee, July 1977; Council,
Standard 901:

(a) These Standards become effective upon their adoption by the House of Delegates. The Standards for Legal Education and the Factors Bearing on the Approval of Law Schools by the American Bar Association, heretofore in effect, are repealed.

(b) For a period of two years after these Standards become effective a law school that was provisionally or fully approved at the time these Standards became effective will not have its approval withdrawn if it either continues to be in compliance with the Standards heretofore in effect or complies with these Standards.

(c) Two years after these Standards become effective, all approved law schools must comply with them.

(d) After these Standards become effective, an unapproved law school will not be granted provisionally approval and a provisionally approved law school will not be granted full approval unless it complies with these Standards.

Interpretation: In an action by the Committee on Standards, which was adopted by the Council of the Section of Legal Education and Admissions to the Bar on August 13, 1974, the following interpretation was proposed:

"Schools that were approved at the time the Standards were adopted are allowed until the start of the academic year commencing after February 1, 1975, to comply with the new Standards."

Therefore, Standard 901(b) and, by implication, Standard 901(c) are interpreted to provide that the two year period should not run from February, 1973 to February, 1975, but that schools should be required to be in compliance commencing with the start of the first academic year commencing after February 1, 1975, in other words, after the 1975-76 academic year. Committee on Standards.

Standard 902:

902 (a) The power to approve an amendment of the Standards is vested in the House of Delegates, but the House of Delegates will not act on any amendment until the Council, the Section, and the Board of Governors has been given a reasonable opportunity to consider the proposed amendment and report thereon to the House of Delegates.
(b) A member of the Section of Legal Education and Admissions to the Bar may propose an amendment of these Standards by submitting the proposed amendment and a statement of its purposes to the Secretary of the Section, who shall transmit the proposed amendment and the statement of purposes to the members of the Council. The Council shall consider such a proposed amendment at the next Council meeting held 30 or more days thereafter and may consider any other proposed amendment. By majority vote the Council shall submit to the Section at the annual meeting such proposed amendments of the Standards as it deems appropriate. If an amendment proposed by a member as described above is not submitted favorably by the Council to the Section, the amendment shall be submitted to the Section at the next following annual meeting if a petition signed by 100 or more Section members requesting its submission is filed with the Secretary at least 30 days prior to the annual meeting at which the amendment is to be submitted to the Section. The Section may consider only those amendments of the Standards that are submitted to it by the procedures described above. If a majority of the members of the Section present at an annual meeting and voting approve, the amendment is adopted. The amendment becomes effective when it is approved by the House of Delegates after a report by the Board of Governors.

Interpretation: Standard 902(a) now provides that the House will not consider an amendment to the Standards until the Council of the Section of Legal Education and Admissions to the Bar, the Section of Legal Education and Admissions to the Bar and the Board of Governors have been given a reasonable opportunity to consider any proposed amendment. In compliance with this change, the Consultant will notify deans of ABA approved law schools and other appropriate parties of any proposed changes in the ABA Standards in order to permit comment on any proposed change. The Council will then make a recommendation, based upon such comments, to the Board of Governors of the American Bar Association.

April 26, 1978

MEMORANDUM 7778-36

TO:       Deans of ABA Approved Law Schools

FROM:     James P. White, Consultant on Legal Education
to the American Bar Association

SUBJECT: Correction to Interpretation of the Standards Memorandum 7778-27, Standard 402, Interpretation 2 of 402(a)

A printing error was made on Interpretation 2 of 402(a). Interpretation 2 of 402(a) should read:

A law school having a f.t.e. student to full-time faculty ratio of 40:1, 39:1, or 38:1 is not in compliance with Standard 402(a) of the Standards for the Approval of Law Schools by the American Bar Association.

Council, June and August 1977.

JPW/am
MEMORANDUM 7778-38

TO: Deans of ABA Approved Law Schools

FROM: James P. White, Consultant

SUBJECT: Addendum to Memorandum 7778-27, Interpretation of the American Bar Association Standards and Rules of Procedure for Approval of Law Schools

Standard 308

308 The law school may admit with advanced standing and allow credit for studies at a law school outside the United States if the studies

(i) either were "in residence" as provided in Section 305, or qualify for credit under Section 306, and

(ii) the content of the studies was such that credit therefor would have been allowed towards satisfaction of degree requirements at the admitting school, and

(iii) the admitting school is satisfied that the quality of the educational program at the prior school was at least equal to that required for an approved school.

The maximum advanced standing and credit allowed may not exceed one-third of the total required by these Standards for the first professional degree.

Interpretation 2: A candidate school for provisional approval may accept student transfer credit from an approved law school, but may not accept student transfer credit from unapproved law schools. Accreditation Committee, November 1977; Council, December 1977.

JFW/am
MEMORANDUM 7778-33

TO: Deans of ABA Approved Law Schools

FROM: James P. White, Consultant

SUBJECT: Addendum to Memorandum 7778-27, Interpretations of the American Bar Association Standards and Rules of Procedure for Approval of Law Schools

Standard 505

505 Admission or re-admission may be granted a law student who has been previously disqualified for academic reasons, upon an affirmative showing that he possesses the requisite ability and that his prior disqualification does not indicate a lack of capacity to complete his studies at the admitting school. In the case of an admission to another law school this showing shall normally be made by letters from the dean or faculty of the school previously attended. A previously disqualified student may also be admitted when two or more years have elapsed since his disqualification and the nature of his work, activity, or studies during the interim indicate a stronger potential for law study. In each case the admitting officer shall sign and place in the admittee's file a statement of the consideration that led to the decision to admit or re-admit the applicant.

Interpretation: Law school credit for work taken in pre-admission is not in violation of the Standards for the Approval of Law Schools by the American Bar Association.

Students enrolled in special pre-admission programs may not be considered as matriculated law students since their prospective admission to law school is conditional, among other matters, upon their successful completion to the pre-admission program.
Students not selected to enroll in the next semester/quarter of the law school should not be considered as having suffered academic disqualification under Standard 505. Council, February, 1973.

JPW/am