

SYLLABUS

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

Two Views: Distance Education

As technology continues to advance, it is almost certain that higher education institutions, including law schools, will increasingly use technology and will embrace new methods of electronic or distance education techniques. With current proposals on the table to amend the accreditation standards regarding distance education guidelines at ABA-approved law schools, we asked two experienced legal educators to briefly comment on possibilities and problems they foresee in expanding distance learning in law school curricula.



*Professor Alexander J. Bolla, Jr.
Cumberland School of Law,
Samford University
Birmingham, AL*

It is often disquieting to experience the rapid pace of change around us. The age of the digital-mobile lawyer has dawned and it seems unlikely that the 21st Century lawyer can long withstand adapting to technology use and the accompanying disquiet. It's bitter and sweet with love and hate while each positive can arguably be diminished by a neg-

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*Dean Arthur R. Gaudio
Western New England College
School of Law
Springfield, MA*

Legal education is an interactive learning process. It seeks to develop the student as a legal professional and not merely to deliver technical information. Distance education should be evaluated and implemented in such a way as to promote that interactive, developmental process.

In keeping with this objective, distance education can offer

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Approval of Law School



Barry University School of Law

The House of Delegates of the American Bar Association, at its February 4-5, 2002, meeting, concurred with the February 2, 2002, action of the Council of the Section of Legal Education and Admissions to the Bar in granting provisional ABA approval to Barry University School of Law, located in Orlando, Florida.

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From the CHAIRPERSON

By Jerry VandeWalle

In the last issue of the *Syllabus*, I noted the Deans and Chief Justices would be meeting in Tucson at the end of January. The day and a half the deans and the chief justices spent together provided an opportunity to discuss issues of mutual concern at the national level.

Dennis Archer, in his keynote speech to the deans and the chief justices, reminded us of the significance of access to justice and the need for diversity in the law schools and the courts in achieving equal access to justice.

Deans Barry Vickrey, Joseph Tomain, Toni Massaro, and Jeffrey Lewis planned panels involving the participants in discussions of issues such as the bar admissions process as the “gatekeeping” function, character and fitness issues and continuing education.

Chief Justice Tom Zlaket of Arizona and Dean Gene Nichol of North Carolina challenged the participants with their summarizing presentations of the state of the profession and the academy. The program and the social activities were opportunities for interplay between the chief justices and the deans. This meeting is only the beginning of what I hope is a continuing discourse between the courts and the academy on the matters of importance in legal education, the

preparation of lawyers to practice law and admission to the bar. I urge those of you who are interested in pursuing the dialogue to seek further contact between the courts and the law schools.

In preparing for the program, I realized that the National Action Plan on Lawyer Conduct and Professionalism, adopted by the Conference of Chief Justices January 21, 1999, is not well known in the law schools. The plan discusses Institutional and Individual Roles, including the institutional role of law schools and the institutional role of law school faculties in the legal system. Another section of the National Action Plan contains recommendations on Law School Education and Bar Admissions. Yet another Section of the Plan contains the briefing papers on the roles and recommendations, including a briefing paper on the Survey of Law School Deans and a briefing paper on Survey of Bar Admissions. The printed supplies of the National Action Plan are exhausted but you can view the document on the National Center for State Courts’ Web site, www.ncsconline.org. Once you reach the Web site it lists “Associations.” Click on CCJ and the Plan is listed under that organization.

Student loans have been a focus point of the Council and the ABA these past months. The Council’s Government Relations and Student Financial Aid Committee, chaired by Peter Winograd, was active in supporting two Resolutions adopted by the ABA

House of Delegates in February. One resolution urges Congress to enact legislation, or the Secretary of Education to amend existing regulations, to permit forgiveness of loans sooner than 25 years after a borrower begins repaying loans under the William D. Ford Federal Direct Loan Program and to reduce the marriage penalty under the program.

The other resolution approved by the House recommends that the amount a law student may borrow annually in unsubsidized loans under the Stafford Loan Program be increased to at least \$30,000 and reviewed periodically in order to adjust for inflation and rising higher education costs. The Consultant’s Office and the Government Relations Committee will be working with the ABA and the AALS to attempt to achieve enactment of this legislation during Congress’s consolidation of the Reauthorization of the Higher Education Act.

Speaking of rising higher education costs, it is clear that in state-supported law schools at least, the percentage of costs of education borne by the students is escalating and in some instances escalating in a significant amount. Most states are having serious budget problems and many states are shifting the cost of higher education to the students to relieve that pressure. A recent report listed only four states that are meeting their budgets. North Dakota, my state, is one of those four, but yet here the tuition costs rise even as the cost of education outstrips increased legislative appropriations for higher education. Action on these two resolutions thus becomes even more urgent.

Under the leadership of the Multijurisdictional Practice Committee, chaired by Justice Elizabeth Lacy, the Council formulated a response to the Interim



Report of the ABA Commission on Multijurisdictional Practice. Our response was sent to the Commission in February and is reprinted elsewhere in this issue of *Syllabus*. The Interim Report reveals the considerable amount of time and thought the Commission spent listening to the many voices on these issues. There is, not surprisingly, no unanimity on many of the issues. We agree with a number of the recommendations, there were a few with which we disagreed, and a few which we suggested might be modified. The position we took on the report was “guided by positions previously adopted by the Council, specifically that the requirement of graduation from an ABA approved law school as a prerequisite to admission to the bar be retained and that the states retain the authority to license and regulate attorneys and the practice of law.”

The Section committees continue to carry on the business of the Section. Although some committees such as Accreditation and Standards Review draw more attention, I am amazed at the work product of many of the other committees that serve equally important purposes. It is dangerous to single out committees because there are so many doing such good work. Nevertheless, I do note the work of the Bar Admissions Committee in helping the Council formulate its own position on the Multijurisdictional Practice issues, the Model Rule on Admissions on Motion and the Foreign Legal Consultant model rule. Now—those who know me will understand my taking this license—I was privileged to be a member of the Bar Admissions Committee from 1986 to 1999 and to co-chair the Committee for several years with Erica Moeser and Peg Corneille. Many of those years bar admissions was not on the

front burner and hardly one of the acknowledged purposes of the Section. The realization that bar admissions is something more than passing a test and a formal admission ceremony brought recognition to this part of the Section’s role. Issues of character and fitness, professionalism and preparation for the practice of law are the responsibilities of the courts, the academy and the bar, individually and collectively. The relatively recent rise of issues of multidisciplinary and multijurisdictional practices have brought greater recognition that the

Section’s purpose is legal education and admission to the bar and that the two cannot and should not be mutually independent.

Our next Council meeting is in Bismarck and Medora, North Dakota. The open session will be held in Medora (population 100), a historic cow town in the North Dakota Badlands at the entrance to Theodore Roosevelt National Park. It is one of the places on this earth I love the most. I am excited to show North Dakota, or at least a part of North Dakota, to the Council, staff and other participants. 🏠

SYLLABUS

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From the CONSULTANT

By John A. Sebert, Consultant on Legal Education

The Tragic Events at Appalachian School of Law

We were all shocked and saddened by the tragic events that occurred at Appalachian School of Law in January, where three people were fatally shot and others wounded, allegedly by a failing student. The deceased were Dean Tony Sutin, Professor Thomas Blackwell, and a student, Angela Dales. Senseless violence has become too much a part of the world in which we live, and it is particularly tragic to see such violence end the lives of three such promising people and affect so profoundly a law school in its early years of development.



I did not have the privilege of knowing Professor Blackwell or Ms. Dales, but I did know Dean Sutin. Tony did an outstanding job of leading Appalachian

School of Law through the process of attaining provisional ABA approval, and he was continuing to provide excellent direction for the school. He was also rapidly becoming a valued colleague for other law school deans, and I was greatly looking forward to involving him in the work of the Section. He will be greatly missed.

President Lu Ellsworth and Interim Dean Paul Lund have worked quickly and effectively to help the school, and the Appalachian community, survive these terrible events. At its

February meeting, the Council of the Section adopted a resolution of condolence and support, which is reprinted elsewhere in this issue of *Syllabus*. The Council and my staff and I will do all we can to assist the school during these difficult times, and I know that many deans and others in legal education have also offered their help.

Council Actions in February

The Council had a very productive meeting in February. One significant result was the adoption of a Statement Concerning LL.M. and Other Post-J.D. Degrees and Qualification for Admission to Practice, which is reprinted elsewhere in this issue of *Syllabus*. In light of the rapid expansion of post-J.D. programs over the past decade, the Council thought it important to state clearly the very limited role the Council plays when it acquiesces in a school's establishment of a post-J.D. program, and to reiterate the Council's view that a post-J.D. degree should not be considered the equivalent of the J.D. for bar admission purposes. I hope you will consider carefully the Council's statement.

As Chief Justice VandeWalle indicates in his column, the Council in February also adopted substantial comments on the Interim Report of the ABA Commission on Multijurisdictional Practice, which comments also appear in this issue. The MJP Commission is an extremely important initiative, and it is very important that the voice

of the Section of Legal Education and Admissions to the Bar be heard in these deliberations. The Commission's final report is due this summer, and debate upon its recommendations will begin at the House of Delegates meeting this August. The Council will continue to follow these important issues closely and will be an active participant in the process.

Joint Conference of Deans and Chief Justices

I add only two brief comments to Jerry VandeWalle's description of this important meeting. First, I should note that this first-ever joint meeting of the deans and chief justices would not have occurred without Jerry's leadership. As Chair of our Section and immediate past president of the Conference of Chief Justices, Jerry was the ideal person to take the lead in scheduling this meeting, and he also contributed in many ways to the planning and success of the program.

My second footnote is to report that the most commonly heard theme during the conference, from both chief justices and deans, is that this should be the beginning of a much more extensive dialogue between the law schools and state supreme courts. Many chief justices expressed an interest in establishing regular meetings in their jurisdictions among the leadership of the courts, the law schools, the bar examiners and the bar. We had similar meetings in Maryland when I was Dean of the University of Baltimore School of Law, and they were extremely valuable. I also hope that the conference will have provided some impetus for a national dialogue concerning some issues related to the bar admissions process.

Other News

This is the second year that we

have collaborated with the Law School Admission Council to publish the *ABA/LSAC Official Guide to ABA-Approved Law Schools*. The 2003 Edition has just been received from the printer as I am writing this. This book is the best and most comprehensive source of information concerning ABA-approved law schools, and it is an invaluable resource for those considering applying to law school. Copies may be ordered from the ABA Service Center at 1-800-285-2221 (product code 529008503ED).

The Section's Nominating Committee, chaired by Dean Robert Walsh of Wake Forest University School of Law, met early in April to develop its nominations for open positions on the Council of the Section. The Committee's nominations, which will go before the Section Annual Business Meeting on Saturday, August 10, at the ABA Annual Meeting in Washington, D.C., are reprinted on the back page of *Syllabus*.

The Departure of a Valued Staff Colleague

Rick Morgan has done an outstanding job over eight years as Data Specialist for the Consultant's Office. In that role, he has led us in the computerization of the questionnaires and in significant improvements in many of our data and support systems. He has also provided superb assistance and support to staff at law schools who are responsible for completing various ABA questionnaires.

Since the Consultant's Office moved to Chicago in September of 2000, Rick has been commuting from Indianapolis. He and his wife Terrie have understandably decided that this type of commuting is not sensible in the long term, and thus Rick recently informed us that he will be leav-

ing the staff at the end of June to take a position as Data Specialist in the Office of Affirmative Action at Indiana University/Purdue University in Indianapolis.

This is a good professional opportunity for Rick, and it is good for his family. He leaves with our heartfelt thanks for his outstanding work for the Section, and I particularly have appreciat-

ed the fine work that Rick has done in the time since I became Consultant. We will miss him greatly, and we wish Rick and Terrie the best.

The search is already underway for Rick's successor. We hope to have that individual on board for much of the month of June, so that there can be a significant opportunity for training. 🏠

A Fond Farewell

This week has been quite emotional for me. On Tuesday, April 2, I posted an e-mail to the Questionnaire@lists.washlaw.edu listserve announcing my resignation as Data Specialist for the ABA's Section of Legal Education effective June 28. Since then I have received scores of e-mails, several phone calls, and even a law school sweatshirt from friends from the law schools that I've had the pleasure of working with. I am very humbled, and flattered by the expressions of appreciation. I will very much miss the work of the Section of Legal Education and, most importantly, the people whom I've bonded with over the past eight years.

I am going back to Indiana University/Purdue University of Indianapolis (IUPUI) to serve in their central administration as Data Specialist. I look forward to rejoining my family, full-time, in Indianapolis and will always cherish the years I worked as Data Specialist for the ABA Section of Legal Education and Admissions to the Bar. I want to say thanks again to all the law school staff and faculty who work so hard every year completing the ABA annual questionnaire. Because of your effort, we are able to collect and analyze data regarding legal education in the United States. Keep up the good work . . . I know you will.

Rick Morgan, Data Specialist

COMMITTEE NEWS

Communication Skills

The Communications Skills Committee plans to revise the *ABA Sourcebook on Legal Writing Programs*. The first edition of the *Sourcebook* was published in 1997 and has been used by a number of schools when evaluating or redesigning their writing programs or deciding in other ways how writing can best be taught. The target publication date for the second edition is 2005. The second edition will describe new developments in the Legal Writing field and include new statistical and other data. It will reflect the virtually exponential growth of scholarship in the field and cover the rapid changes in computer technology that is being incorporated into Legal Writing courses. The second edition will improve on the information needed by deans, faculties, and Legal Writing directors to evaluate their Legal Writing programs. And it will add guidance for new full-time teachers of legal writing, address the needs of doctrinal faculty who teach writing, and offer guidance to foreign law schools that are interested in the models of Legal Writing instruction used in the United States.

Law School Facilities

The Law School Facilities Committee is currently planning the next "Bricks and Bytes" conference for 2003. The conference committee is planning an outstanding conference demonstrating the collaboration of the newest technology in legal education with current state-of-the-art thinking in

design and construction of buildings. The conference is scheduled for March 19-21, 2003, at Suffolk University Law School in Boston at its new facility. The Committee is also in the midst of constructing a comprehensive, interactive Web site. The new site, to be "launched" in May, will contain a wealth of information including past conference agendas and handouts, links to law school construction and renovation projects, a sourcebook of architects, builders, suppliers, etc., law school facility statistics, and perhaps most exciting, a fully searchable database of facility information. Watch the Section's Web site www.abanet.org/legaled for more information.

Government Relations and Student Financial Aid

The Section's Government Relations and Student Financial Aid Committee held a joint meeting with the Government Relations Committee of the Association of American Law Schools on January 3, during the AALS Annual Meeting in New Orleans. The committees reviewed several options related to initiatives seeking regulatory or legislative action designed to relieve the debt burdens of law students, particularly those entering public interest or public service careers. These included raising the borrowing cap on federally guaranteed student loans, lowering the forgiveness threshold on the income contingent repayment option for federally guaranteed student loans, implementing existing legislation authorizing federal executive

agencies to offer loan repayment assistance, expanding the tax deduction of interest on student loans, and enacting a general federally funded loan repayment assistance program. It was the consensus of the joint meeting to focus on improvements to the income contingent repayment option and raising the federally guaranteed student loan borrowing cap as legislative goals in the Reauthorization of the Higher Education Act scheduled for 2003. It was also agreed that specific positions on these initiatives, a strategy for working together with other legal education groups and higher education lobbying organizations, and a lobbying strategy should be developed as soon as possible in preparation for the Reauthorization discussions that will begin with the new Congress in January 2003.

Virtually identical resolutions were adopted by the two committees, recommending that their respective associations support reforming the income contingent loan repayment option and raising the annual unsubsidized Stafford loan limit. These recommendations were later endorsed within the ABA by the Section's Council, the Commission on Loan Repayment and Forgiveness, and the House of Delegates. Work will begin this spring on a concerted effort to achieve the committee's goals, which, if enacted, will make considerably more flexible the financial obligations and career options of future law school graduates with high educational debt. 🏠

On January 16, 2002, the newly provisional-approved Appalachian School of Law community was rocked by a tragic event. On that sad day, Dean Tony Sutin, Associate Professor Tom Blackwell, and first-year law student Angela Dales were fatally shot allegedly by a former ASL student. The Council of the Section adopted the following resolution of condolence and support:

Resolution

American Bar Association
Section of Legal Education and Admissions to the Bar
APPALACHIAN SCHOOL OF LAW

The Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association mourns the tragedy that took the lives of Dean L. Anthony Sutin, Professor Thomas Blackwell, and law student Angela Dales on January 16, 2002, at Appalachian School of Law.

The Appalachian School of Law was organized in 1994. Its stated purpose is "to provide opportunity for people from Appalachia and beyond to realize their dreams of practicing law and bettering their communities." In February 2000 the school earned provisional approval from this Council. This approval recognized the substantial progress that the school had made towards achieving its goals. Subsequently, the school continues to move forward in building an institution that delivers a sound program of legal education to its students and serves its mission.

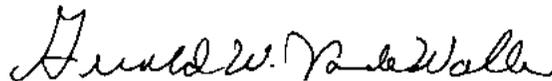
Dean Sutin and Professor Blackwell were valued and beloved members of the Appalachian Law School community. Their contributions to the success of the school were significant and recognized throughout the legal education community. First-year student Angela Dales worked in the admissions office at the school prior to beginning her law studies. She exemplified the kind of student the school endeavors to attract and to prepare for a career in the legal profession.

Dean Sutin became known to the Council through his appearances in connection with the school's application for provisional approval. He was an effective, prepared, and impressive representative for the school.

There can be no more fitting response to the tragedy of January 16th than continued efforts at Appalachian School of Law to build a program of legal education that promotes the rule of law, opportunity and justice. President Lucius Ellsworth, Interim Dean Paul Lund, and the Appalachian School of Law community are working together to fulfill that goal, and the Council wishes them well.

The Council extends condolences and sympathy to the families of Dean Sutin, Professor Blackwell, and Angela Dales.

This Resolution is adopted by unanimous vote of the Council at its meeting of February 2, 2002.



Honorable Gerald W. Vandewalle, Chair

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

Council Statement: LL.M. and Other Graduate Degrees and Qualification for Admission to Practice

The Section of Legal Education and Admissions to the Bar is charged with the responsibility of accrediting institutions that offer the J.D. degree. The significance and importance of the accreditation function is that it provides the public and the profession the assurance that lawyers have completed a course of study designed to provide them with a sound education, enabling them to practice competently and effectively. It also provides students with the assurance that their particular school satisfies the educational requirements for entry into the profession.

It is very important, however, that all of those with responsibility for the bar admission process fully understand that ABA accreditation, and the educational quality assurances that accompany that accreditation, applies only to J.D. programs. The following statement of the Council, issued in February 2002,

emphasizes that the ABA exercises no oversight of the quality of LL.M. or other post-J.D. programs, and the ABA does not attempt to ascertain whether any LL.M. or other post-J.D. program provides an adequate educational foundation, alone or in combination with other training, for admission to practice. It is the long-standing position of the Council that no graduate degree is or should be a substitute for the J.D., and that a graduate degree should not be considered the equivalent of the J.D. for bar admission purposes.

The Council wished to reemphasize this issue due to the increase in the number of post-J.D. degree programs offered by ABA accredited law schools, and because a post-J.D. degree from an ABA accredited law school can in some jurisdictions qualify an applicant to sit for the bar examinations.

Statement of the Council of the American Bar Association Section of Legal Education and Admissions to the Bar Concerning LL.M. and Other Post-J.D. Degrees and Qualification for Admission to Practice

The American Bar Association's approval of a law school extends only to the first professional degree in law (J.D.) offered by a law school. ABA approval of a school's J.D. program provides bar admission authorities, students and the public assurance that the law school's J.D. program meets the Standards established by the ABA and that graduates of the school have completed an educational program that prepares them for admission to the bar and to participate effectively and responsibly in the legal profession.

ABA approval does not extend to any program supporting any other degree granted by the law school. Rather, the content and requirements of those degrees, such as an LL.M., are created by the law school itself and do not reflect any judgment by the ABA regarding the quality of the program. Moreover, admission requirements for such programs vary from school to school, and are not evaluated through the ABA accreditation process. The ABA accreditation process does not evaluate in any way whether a school's post-J.D. degree program ensures that students in the program gain the basic

knowledge and skills necessary to prepare the students adequately for the practice of law. It is the long-standing position of the Council of the Section of Legal Education and Admissions to the Bar that no graduate degree is or should be a substitute for the J.D., and that a graduate degree should not be considered the equivalent of the J.D. for bar admission purposes.

The *Standards for Approval of Law Schools* prohibit an approved law school from establishing a post-J.D. program without first obtaining the acquiescence of the Council of the Section of Legal Education and Admissions to the Bar. However, the ABA reviews post-J.D. degree programs only to determine whether the offering of such post-J.D. program would have an adverse impact on the law school's ability to comply with the Standards that the ABA establishes for J.D. programs. If no adverse impact is indicated, the ABA acquiesces in the law school's decision to offer the non-J.D. program and degree. Acquiescence in a post-J.D. program does not constitute ABA approval or endorsement of such a program. (*Adopted by the Council, February 2002*) 

Law School Study Abroad Programs, Post 9/11

By Camille deJorna, Associate Consultant on Legal Education

Despite the potential concern about a drop-off in interest in study abroad programs following the events of September 11th, the impact so far is minimal. Bert Lazerow, director of the Institute on International and Comparative Law at the University of San Diego, which has seven programs in Europe, reports summer study abroad applications at his school are up significantly. For some programs, applications have doubled, paralleling an upward trend in applications to law school.

The sluggish economy, in an inverse correlation, may actually be fostering an increase in applications for summer study abroad programs as well as to law school. The hiring slowdown in the legal profession suggests the summer job market for first-year law students may be tighter, forcing them to consider a wider range of options for their summer legal experiences.

Cheaper airfares may also be a factor in the increased applications. Two years ago Lazerow reported that he paid \$1,350 for a roundtrip ticket from San Diego to Paris; this year it's \$900. Plus, tuition has remained stable over the last few years making books, airfare, lodging and tuition for a summer abroad opportunity actually less expensive than summer school in San Diego.

Meanwhile, the number of ABA-approved study abroad programs continues to increase. Consultant Emeritus James White recalls 20 years ago there were only 14 summer abroad programs. Today, the Section of Legal Education and Admissions to the Bar lists 141 operating foreign summer programs.

Programs in Europe and Asia have experienced the greatest growth according to White, while programs in Africa and South America have been slower to develop. Deputy Consultant Barry Currier also notes the growth and expansion in the types of programs. "Students today are visiting criminal tribunals, legislatures, law offices, and other legal institutions and are interacting with judges and lawyers from other countries," which he remarks, "is exactly what we hope our students will gain when they travel to other countries."

Subject matter interest has also evolved over the last few years. Interest in European Union law has declined over the last two years compared to an initial strong interest in the mid-1980s and '90s. The greatest interest now among students is in international intellectual property, followed closely by international environmental law.

Faculty interest this year has also remained steady. While, according to Lazerow, working spouses and partners can make it harder to get qualified people for the five-week commitment, most of the faculty for these programs were recruited far in advance and haven't altered their plans due to the events of 9/11.

George Alexander, director of the Institute of International and Comparative Law and the LL.M program at Santa Clara, a school with a 25-year history of combining classroom work with internships, has also seen a substantial increase in applications. He was most surprised to discover that the anticipated parental veto on summer foreign travel for students has

thus far failed to materialize.

Cathy Schrage, executive assistant for accreditation at the Section of Legal Education and Admissions to the Bar, also observed few withdrawals at a cooperative program held in London in late September 2001. "Student interest in the . . . program is substantial," Schrage remarked in a program report. "At the outset, it should be noted that, notwithstanding the events of September 11, 2001, only three of the 58 students that were registered for the Fall 2001 . . . program withdrew following the events of that horrific day. Although a few students arrived in London prior to September 11, many traveled immediately thereafter; some were even scheduled to travel on September 11. Their determination to revise travel plans and their attitude regarding their enrollment in this program is noteworthy."

It may still be too early to predict if the events of 9/11 have had only a small effect on summer abroad programs. Following his inspection of a new 2002 semester abroad program in London, James White noted only 16 of 37 students accepted to the program had enrolled. Of course, any conflict, disaster, or other adverse condition can alter foreign programs conceived years before. The current strife in the Middle East is a vivid example; several programs scheduled to be held in the region have recently been suspended.

Another London-based program, the London Law Consortium, comprises seven U.S. law schools including the University of Iowa, Utah, Kansas, Missouri-Columbia, Georgia,

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ABA Annual Meeting



Section Schedule At-a-Glance

The 125th ABA Annual Meeting will take place August 8-13, 2002, in Washington, D.C. The Annual Meeting brings together more than 20,000 lawyers and their families. With more than 2,500 meetings, CLE programs and special events taking place throughout the week, the Annual Meeting is certainly a one-of-a-kind event. In addition, there are several Section-specific programs you won't want to miss (see below).

You can take advantage of a substantial discount and increase your chances of getting your first choice of accommodations by registering for the meeting by May 31, 2002. Go to www.abanet.org/legaled and click on the Annual Meeting link for a registration form and further information. Or, if you have any questions, you can call the Section's meetings and events manager, Melissa Wilhelm, at 312.988-6749. *All Section events will take place at the Ritz-Carlton Hotel, located at 1150 22nd Street, N.W., unless otherwise noted. Room locations are subject to change.*

Thursday, August 8

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|-----------------------|--|
| 7:00 a.m. – 5:00 p.m. | Section Office , <i>The Washington, Lobby Level</i> |
| 8:30 a.m. – 5:00 p.m. | Section Council Meeting—Executive Session
<i>The Ritz-Carlton Ballroom Salon IIIA, Lobby Level</i> |

Friday, August 9

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|-----------------------|--|
| 7:00 a.m. – 5:00 p.m. | Section Office , <i>The Washington, Lobby Level</i> |
| 8:30 a.m. – 5:00 p.m. | Section Council Meeting—Open Session
<i>The Ritz-Carlton Ballroom Salon IIIA, Lobby Level</i> |
| 5:30 p.m. – 7:00 p.m. | Kutak Award Presentation and Reception (<i>Invitation Only</i>)
<i>The Ritz-Carlton Ballroom Salon IIIB, Lobby Level</i> |

Saturday, August 10

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|-------------------------|---|
| 7:00 a.m. – 5:00 p.m. | Section Office , <i>The Washington, Lobby Level</i> |
| 7:30 a.m. – 10:00 a.m. | ABA/AALS/LSAC Deans' Breakfast
<i>The Ritz-Carlton Ballroom Salon IIIB, Lobby Level</i> |
| 10:30 a.m. – 11:30 a.m. | Workshop for Unapproved Law Schools
<i>Plaza Ballroom II, Lobby Level</i> |

Washington, D.C. • August 8-13

10:30 a.m. – 12:00 p.m. **Section Program: How Can Law Schools Better Prepare Students for the Practice of Law?** *Plaza Ballroom I, Lobby Level*
Ten years ago the “MacCrate Report” recommended improvements in the processes by which new members of the profession are prepared for the practice of law, focusing on shortcomings in teaching the skills and values that entry-level lawyers need in order to represent clients. Many law schools made changes, but gaps remain. In this program, lawyers from a variety of practice settings will discuss their perceptions of these gaps and solicit additional insights from the audience. They will also consider strategies for inducing law schools to be more responsive to the needs of the profession and to better prepare students for the practice of law.

Speakers: **Professor Peter Joy,**
Washington University School of Law
Professor Roy Stuckey,
University of South Carolina School of Law

12:00 p.m. – 1:30 p.m. **CEELI Luncheon (*Ticketed Event*)**
Marriott Wardman Park Hotel, Marriott Ballroom, Lobby Level

2:00 p.m. – 5:00 p.m. **Section Program: Professionalism Committee**
Plaza Ballroom I, Lobby Level
This program will be comprised of two panels. One panel will concentrate on what the expectations of the students are upon entering the profession. The second panel will look at the same issue from the perspective of employers.

Panel I: Law Students’ Expectations
Speakers: **Angela Karras,** *ABA Young Lawyers Division*
Mayhugh “Skip” Horne,
Director, Law Career Services,
Santa Clara University School of Law
Cynthia Calvert, *Project for Attorney Retention*

Panel II: Employers’ Expectations
Speakers: **Gail A. Flesher, Esq.,** *Partner, Davis, Polk & Wardwell*
Barbara Howard, Esq., *Howard & Bodnar*
Professor Joyce Sterling,
University of Denver College of Law

5:15 p.m. – 5:45 p.m. **Annual Section Business Meeting,** *Plaza Ballroom I, Lobby Level*

Sunday, August 11

8:30 a.m. – 12:00 p.m. **Section Office,** *The Washington, Lobby Level*

9:00 a.m. – 10:30 a.m. **Incoming Chairperson’s Breakfast**
The Roosevelt, Lobby Level

12:00 p.m. – 1:30 p.m. **Margaret Brent Women Lawyers of Achievement Awards Luncheon (*Ticketed Event*)**
Marriott Wardman Park Hotel, Marriott Ballroom, Lobby Level



Comments of the Council of the Section of Legal Education and Admissions to the Bar on the Interim Report of the ABA Commission on Multijurisdictional Practice

February 2002

The Council of the Section on Legal Education and Admissions to the Bar has considered the interim report issued by the Commission on Multijurisdictional Practice. The Council commends and supports the Commission in the approach taken regarding accommodation of the views advanced by various segments of the legal profession. In reviewing the interim recommendations of the Commission, the Council was guided by positions previously adopted by the Council, specifically that the requirement of graduation from an ABA approved law school as a prerequisite to admission to the bar be retained and that the states retain the authority to license and regulate attorneys and the practice of law.

Concern for improving the competence of those entering the profession was one of the primary reasons for the creation of the American Bar Association in 1878. The ABA and the Council remain vitally and actively interested in improving the profession through legal education. Law schools are the gateway to the legal profession and the accreditation standards promulgated by the Council on Legal Education and Admissions to the Bar are minimum requirements designed, developed, and implemented for the purpose of advancing the goal of providing a sound program of legal education. They encompass a basic education curriculum, an understanding of an attorney's ethical responsibilities, and an understanding of the law as a public profession calling for performance of pro bono legal services. Accommodations for the multijurisdictional practice of law must recognize and preserve these basic principles and goals.

Keeping these principles in mind, the Council submits the following comments for the Commission's consideration.

Recommendation No. 1: The ABA should affirm its support for the principle of state judicial licensing and regulation of lawyers.

The Council supports this recommendation.

Recommendation No. 2: The ABA should amend Rule 5:5(b) of ABA Model Rules of Professional Conduct (Unauthorized Practice of Law) to provide that, as a general rule, it is not the unauthorized practice of law for a lawyer admitted in another jurisdiction to render legal services on a temporary basis in a jurisdiction in which the lawyer is not admitted if the lawyer's services do not create an unreasonable risk to the interests of a lawyer's client, the public or the courts.

The Council opposes this recommendation for a number of reasons. The provision does not require that the multijurisdictional work be performed for an existing client, allows a lawyer to advertise for clients in the unlicensed jurisdiction, does not require graduation from an ABA approved law school, and undermines a state's ability to regulate the practice of law within its jurisdiction.

As the comments to the proposed amended rule acknowledge, there is no single test or other definition of "services on a temporary basis" and no formula for determining whether a category of conduct would give rise to an "unreasonable risk" to the interests of the public, courts, or clients. The recommendation also suggests that an attorney could appear in court without court or state permission. Without definition of these terms, the recommended rule is virtually unenforceable. Because it is so subjective and vague, consistency in its application would be difficult at best and any disciplinary action would be subject to claims of arbitrary and capricious application, denial of equal protection, and a host of others. Under these circumstances, the proposed rule will have the effect of allowing the wholesale practice of law by a lawyer not licensed in the jurisdiction.

The Commission's discussion of this recommendation seems to suggest that the recommendation is merely a statement of a "general principle" underlying the specific "safe harbors" identified in the following subsection of the proposed Rule. However, as written, the "general principle" is itself a standard of allowed practice which, if adopted, negates the need for the more specific safe harbors. The Commission's statements in its discussion of the

“safe harbors” in Recommendation 3 acknowledges that these “safe harbors” are meant to eliminate “substantial uncertainty” under the general principle but that they will not “eliminate all uncertainty.” In fact the Commission states that it “is not possible by artful drafting to eliminate all uncertainty.” Under these circumstances, the adopting of specific “safe harbors” that provide certainty may be justifiable, but adoption of the general principle as a rule of practice is not.

Recommendation No. 3: The ABA should adopt proposed Model Rule 5.5(c)-(e) to identify “safe harbors” that embody specific applications of the general principle stated in Recommendation 2; to identify other “safe harbors”; and to make clear that, except where authorized by law or rule, a lawyer may not establish an office, maintain a continuous presence, or hold himself or herself out as authorized to practice law in a jurisdiction where the lawyer is not licensed to practice law.

Recommendation No. 3.1 – Amended Model Rule 5.5(c)(1) – allow work as co-counsel with a lawyer admitted to practice in the jurisdiction.

The Commission qualifies this proposal by indicating that the local counsel may not be merely a conduit for the out-of-state lawyer. The Council concurs with this proposal as modified.

Recommendation No. 3.2 – Amended Model Rule 5.5(c)(2) – allow lawyers to perform professional services that any non-lawyer is legally permitted to render.

The Council has no objection to this recommendation.

Recommendation No. 3.3 – Amended Model Rule 5.5(c)(3) – allow lawyers to perform services that “are in or reasonably related to a pending or potential proceeding before a tribunal or administrative agency held or to be held in this or another jurisdiction, if the lawyer is authorized by law or court or agency order to appear in such proceeding or reasonably expects to be so authorized.

The Commission in its commentary indicated that this proposed amendment would also allow the provision of legal services in the host jurisdiction by all “subordinate lawyers” who were not licensed in the host jurisdiction and did not anticipate being admitted *pro hac vice* but were under the direction of the

lead attorney. The Council observes, however, that the proposed rule itself does not cover this situation.

The Council recommends that the proposal be amended to delete the language allowing legal services in matters that are “reasonably related” to the pending or potential litigation and substitute the phrase “arising from.” The Council believes this change allows greater definition to its application without unduly limiting the intent of the proposal. With this change, the Council supports this proposal.

Recommendation No. 3.4 – Amended Rule 5.5(c)(4) – allow the provision of legal services that are in or reasonably related to pending or potential arbitration, mediation or other alternative dispute resolution setting held in the host jurisdiction or another jurisdiction.

The Commission in its commentary explained that choosing the site of an arbitration is often not related to the law of that site and often is picked precisely because neither party has any connection with the site. The commentary also stated that this provision would not apply to court-annexed arbitration, mediation or other alternative dispute resolution. The Council notes, however, that this exception is not embodied in the rule.

The Council has grave reservations about this proposal. First, the Council again suggests that the “reasonably related to” language be replaced with “arising from” to better define the application of the proposal. Next, the Council observes that whether any of the alternative dispute resolution mechanisms will be used is often unknown to the litigants and the attorneys at a time when legal services are being provided. Thus virtually every dispute could fall into this category. Additionally, the site of the alternative dispute resolution proceeding is not limited to the host state or the state in which the attorney is licensed. The Council recommends that the suggested rule be amended to apply to alternative dispute resolution matters that are pending or “impending” rather than “potential.”

The Council would support the proposal if the above amendments are adopted.

Recommendation No. 3.5 – Model Rule 5.5(c)(5) – allow the provision of transactional representation if the client has an office or resides in the jurisdiction in which the lawyer is licensed to practice or if the services arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the lawyer is licensed to practice.

The Council suggests that the phrase “reasonably related to “ be deleted for the reasons stated in the previous sections. With this change, the Council supports the proposal.

Recommendation No. 3.6 – Model Rule 5.5(c)(6) – allow the provision of legal services when the matters are primarily covered by federal law, international law, the law of a foreign nation, or the law of the jurisdiction in which the lawyer is licensed to practice law.

The Commission explained in its commentary that these “specialty” law areas transcend geography and “specialist” lawyers should be able to practice their “specialty” with the benefit of a “safe harbor.” Nevertheless, the Council concludes that the proposal as written is too broad. Allowing representation for “federal law” and host state law covers a wide range of jurisprudence and is not in the nature of a “specialty practice.” The Council recommends that this proposal be limited to lawyers providing services relating to international law and law of a foreign nation.

Recommendation No. 3.7 – Model Rule 5.5(d)(1) – allow an attorney who is an employee of the client or its affiliates to provide legal services to that client unless *pro hac vice* admission is required.

The Council is concerned that the ability of an attorney to become an “employee” of the client can be too easily abused. The proposed rule or commentary should clearly define the nature of the employment relationship. If the rule is so revised, the Council supports the proposal.

Recommendation No. 3.8 – Model Rule 5.5(d)(2) – allow the provision of services in the host jurisdiction when granted authority to do so by federal law or the law or rule of the host state.

The Council endorses this proposal.

Recommendation No. 3.9 – Model Rule 5.5(e) – statement that a lawyer not admitted in the host jurisdiction may not establish an office or a permanent presence or represent or hold him- or herself out to the public that the lawyer is admitted to practice law in the host jurisdiction.

The Council supports the proposal.

Recommendation No. 4 - The ABA should endorse a model “admission on motion” rule consistent with that proposed by the Council.

The Council has endorsed an amendment to its

proposed model rule that eliminates the requirement that the applicant have been admitted “by bar examination,” rather than, for example, by diploma privilege. A revised draft of the proposed model rule is attached. As amended, the Council endorses this proposal.

Recommendation No. 5 – The ABA should encourage states to adopt rules governing foreign legal consultants.

The ABA and the Council have previously endorsed the model foreign legal consultants rule.

Recommendation No. 5.1 – adopt provisions allowing for the provision of temporary legal services by the foreign legal consultant consistent with the Commission’s recommended changes to Model Rule 5.5.

The Council has grave reservations about this provision because the temporary legal services are not limited to those involving foreign law or foreign proceedings.

Recommendation No. 6 – endorse a model rule for *pro hac vice* admission.

The Council endorses this proposal.

Recommendation No. 6.1 – renew efforts to implement the position of the ABA taken in 1995 that membership in state bar be eliminated as a requirement for practice before the United States district courts.

The Council takes no position on this recommendation.

Recommendation No. 7 – amend Rule 8.5 of the Model Rules of Professional Conduct relating to disciplinary and choice of law and adopt measures to enhance regulation and disciplinary enforcement for lawyers engaging in multijurisdictional practice.

The Council supports the general principle embodied in this recommendation, but implementation of multijurisdictional practice will require substantial further development of the disciplinary rules as well as the financial implications of reciprocal discipline.

Recommendation No. 7.1 – amend Rule 8.5 to better address multijurisdictional practice.

Recommendation No. 7.2 – amend Rules 6 and 22 of the Model Rules of Disciplinary Enforcement

to promote disciplinary enforcement for lawyers who engage in multijurisdictional practice and renew efforts to get states to adopt Rule 22 providing for reciprocal discipline.

Recommendation No. 7.3 – the ABA should take steps to promote interdisciplinary enforcement mechanisms.

The Council endorses these proposals. The Council agrees that the local jurisdictions need all available tools to regulate lawyers in this type of practice and the National Data Bank may be necessary for this purpose. The Council endorses this proposal in principle but suggests that considerably

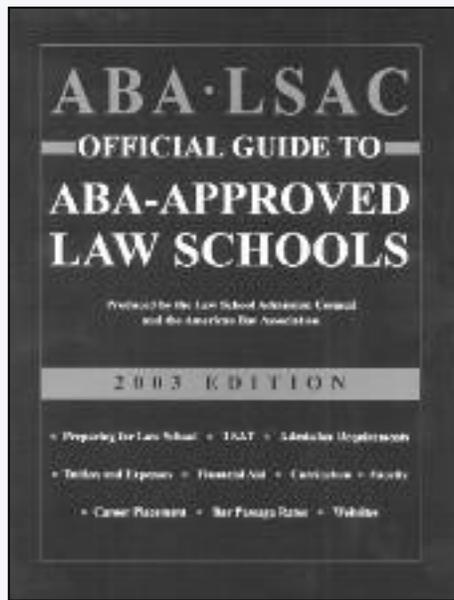
more study is needed regarding this aspect of multijurisdictional practice.

Recommendation No. 8 – establish a permanent coordinating committee on multijurisdictional practice to monitor changes in law practice and the impact of regulatory reform and identify additional needed reform.

The Council suggests that rather than a permanent committee, the issue be revisited in a given number of years. This would allow an independent perspective of the development. A permanent committee discourages experimentation among the states to find the most workable solution. 🏠

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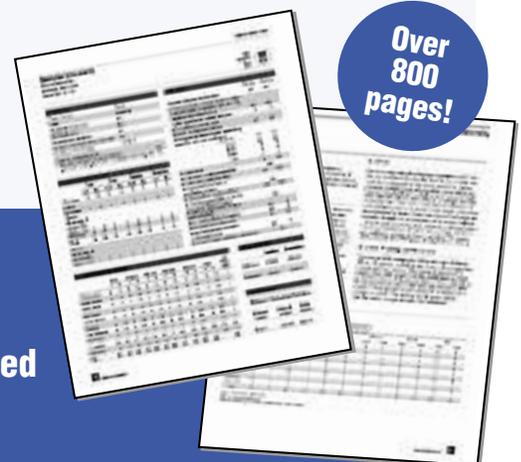


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Two Views: Distance Education

Professor Alexander J. Bolla, Jr., continued from page 1

ative—such as massive data retrieval bearing information anxiety! We in the academy are not known for rapid adoption of new curricula or pedagogy; Dean Langdell was not an instant success with the introduction of the, now ubiquitous, Socratic Method. I believe Alexander Pope (1688-1744) offers a sound middle position that legal education should heed: “Be not the first by whom the new is tried, nor yet the last to lay the old aside.” I take umbrage with the current labels of pedagogy that have too much negative accretion distorting the original and true meanings (or at least those I ascribe to them). Legal education delivered by technology is new, but “distance education” is not!

Anything learned (or knowledge gained) by anyone remote from the presence of the pedagogue can arguably be said to have experienced “distance education.” If learning has occurred in that format it should not be discounted as learning simply because of the delivery catalyst. Smoke signal, correspondence, or e-mail instruction is merely the form of the delivery and not the message. And we all know what we should not do to the messenger. I have been a longtime protagonist for bettering the processes of legal education [*Reflections from the TQM Casefile in Legal Education*, 43 EMORY L.J. 541 (1994)] and now in my 26th year in the professoriate I find a refreshing Renaissance in the ABA proposed standards regarding distance education. They offer a Renaissance of opportunity to an insistence on being last. I admit that I am a distance education consumer, instructional designer, subject matter expert, instructor, and programmer—I am not on a 12-step cyberspace recovery program and you would not pick me out of a crowd as a computer geek or wonk. Most of my technology skills are self-learned except for my Master’s Certificate in Designing Web Learning Environments from the University of Colorado at Denver. Here is my short and incomplete list of what change and challenge we face:

- * Adoption of good standards—like those proposed. Widespread acceptance of technology gives

rise to standards necessary for developing a common framework for continued progress.

- * In-source training for the professoriate (and support staff)—new technology requires new skills. But it costs time, money, and frustration.

- * Reorienting the pedagogue from being the “sage on the stage” or the “guide on the side” to effective instructional designer who uses technology as one of many tools. Too often we defer to the casebook author the role of instructional designer; each author is usually the first to disclaim that lofty perch in the preface. What! No teacher’s manual?

- * The increased use of web-enabled course materials requires IT personnel inside the law school.

- * The rise of online challengers to traditional F2F (face-to-face) legal education. At present I have found six newcomers to the field. We should adapt, adopt, or—well, you know the result.

- * A challenge to the underlying precept of the Carnegie Unit (credit hour measurement) whereby seat time equals learning.

- * Required laptop computer use by students for things other than e-mail.

- * PDA (personal digital assistant) use increases ten-fold—I already have several students “beaming one another.” (Where is Scotty when you need him to beam you up?)

- * A responsibility to act on new insights into how students really learn the law and how we can help them do so with technology (see *How People Learn—Brain, Mind, Experience, and School*, National Academy Press, Washington, D.C. 1999).

I do not yet hold that technology can help us do better in all instances of current F2F instruction. But I do advocate, as the proposed ABA rules recognize, that technology should be used when the learning environment will be enhanced. The theory of the Flat Earth, the belief that the Carnegie Unit ensures learning and the universality of the Socratic Method are anachronisms. It’s our time to innovate.

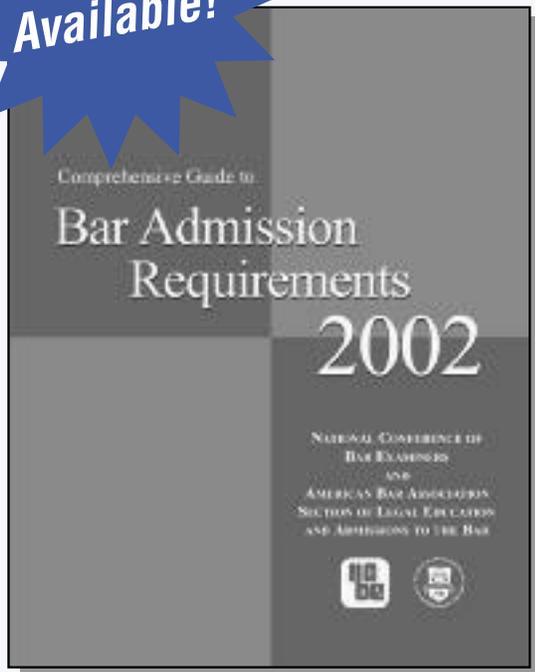
Reprise: “Be not the first by whom the new is tried, nor yet the last to lay the old aside.” 🏠

Dean Arthur R. Gaudio, continued from page 1

many enhancements to the law school curriculum. For example, it can allow a student to take a specialty, low-enrollment course at one law school while the professor is physically located at another school. In such a case, distance education expands the educational horizon for that student who, without this process, would not be able to take the course. It can also allow a professor to enhance his or her course by providing out-of-classroom content from a variety of sources—the courtroom, the boardroom, or the office of a scholar. Again this expands the educational possibilities for the student. It also offers students an alternative to the sameness of many classroom experiences, making the educational process more exciting and fulfilling. In these ways distance education promotes efficiency and cost savings for law schools and ultimately for law students while at the same time enhancing legal education.

However, distance education can have a negative effect if it is not used and supervised cautiously. Total or even substantial dependence on distance education can have a serious negative effect on law students by limiting the socialization and developmental process. It can substitute isolation for interaction. It can emphasize the ministerial aspects of law rather than its interpersonal and advocacy qualities.

My vision of distance education as applied to legal education is one that provides general freedom for professors to develop courses employing this technology. However, its administration must also ensure that students are brought together for the greater portion of their educational experience. Only in this way can the interactive and developmental aspects of legal education be continued while at the same time taking advantage of new technologies. 🏠



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solutions. Held in conjunction with the New Deans Workshop, the conference also provides a unique opportunity to interact and discuss management issues with deans at a joint session and dinner. For more information, visit the Section's Web site at www.abanet.org/legaled, or call the Section's meetings and events manager, Melissa Wilhelm, at 312/988-6749.

Calendar

MAY 2002

- | | | |
|----|--|----------------|
| 15 | ABA/AALS/LSAC Deans' Breakfast | Washington, DC |
| 15 | ABA Standards Review Committee Meeting | Washington, DC |

JUNE 2002

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|-------|--------------------------------------|-------------------|
| 12-16 | ABA Seminar for New Law School Deans | Winston-Salem, NC |
| 13-16 | ABA Conference for Associate Deans | Winston-Salem, NC |
| 28-30 | ABA Accreditation Committee Meeting | Seattle, WA |

AUGUST 2002

- | | | |
|------|---------------------|----------------|
| 8-13 | ABA Annual Meeting | Washington, DC |
| 8-9 | ABA Council Meeting | Washington, DC |

APPROVAL OF LAW SCHOOL

Continued from page 1

The law school began in 1995 as part of the University of Orlando with part-time students; the first full-time class enrolled in the fall of 1996. In 1998 Barry University acquired the school.

In the fall of 2001, the school had a total enrollment of 208 of which 177 were part-time; there were

22 full-time faculty. The school's curriculum is a traditional one, and it includes two in-house clinics, four externship programs, and several other skill-oriented courses.

For more information, visit the school's Web site at www.barry.edu/law/lawsch/main.htm. 

ABROAD PROGRAMS, POST 9/11

Continued from page 9

Indiana-Bloomington and Chicago-Kent. They hold a study abroad program in London during the spring semester of each year.

"Most students had already submitted their applications through their various schools before 9/11 although the final registration list had not been compiled," says Pat Acton, a member of the Iowa faculty and the program administrator. "Over the next few weeks, we had slightly more students drop out of the program than usual." But she was surprised that more students did not drop out in the

aftermath of the tragedy. In the end, because of the high number of applications, their final enrollment was similar to those in previous years. "Naturally," she says, "we monitored the situation to ensure that it was safe to continue our study abroad plans," but she was pleased to see the students' "determination to forge ahead."

"We are now in the final weeks of our program," writes Acton. "This tragedy has caused us all to appreciate more deeply our study abroad experience." 



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Council Nominations

In April 2002, the Nominating Committee, consisting of Chairperson Dean Robert K. Walsh, Honorable Martha Craig Daughtrey, Professor Jane Hammond, Gregory Kellum Scott, Esq., Dean Mary Kay Kane, Dean Thomas M. Mengler, Dorothy S. Ridings, Honorable Randall T. Shepard, Beverly Tarpley, Esq., and Diane C. Yu, Esq., met and selected the following list of individuals as nominees for Section officers and members

of the Council of the Section.

All of the listed individuals have indicated their willingness to have their names placed in nomination. The election of officers and members of the Council will occur at the Section's Annual Business Meeting during the ABA Annual Meeting on Saturday, August 10, 2002, from 5:15 to 5:45 p.m. in Plaza Ballroom I on the Lobby Level of the Ritz-Carlton Hotel in Washington, D.C.

OFFICERS

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School of Law
Minneapolis, Minnesota

Chairperson-Elect Nominee

Pauline A. Schneider, Esq.
Hunton & Williams
Washington, D.C.

Vice-Chairperson Nominee

Honorable Elizabeth B. Lacy
Justice, Supreme Court of Virginia
Richmond, Virginia

Immediate Past Chairperson

(automatic under the Bylaws)
Honorable Gerald W. VandeWalle
Chief Justice, North Dakota Supreme Court
Bismarck, North Dakota

AT-LARGE COUNCIL MEMBER NOMINEES

Re-election to Three-Year Term
Professor Michael A. Olivas
University of Houston Law Center
Houston, Texas

Re-election to One-Year Term

Honorable Solomon Oliver, Jr.
Judge, United States District Court
Cleveland, Ohio

Election to New Three-Year Term

Professor Dan J. Freehling
Boston University School of Law
Boston, Massachusetts

Election to New One-Year Term

Honorable Sidney S. Eagles, Jr.
Chief Judge, North Carolina
Court of Appeals
Raleigh, North Carolina

LAW STUDENT DIVISION MEMBER NOMINEE

(One-year term)

Irving Freeman
Duquesne University School of Law
Pittsburgh, Pennsylvania

DELEGATE TO ABA HOUSE OF DELEGATES NOMINEE

(Three-year, non-voting, term)

Jose R. Garcia-Pedrosa, Esq.
National Parkinson Foundation
Miami, Florida

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