

SYLLABUS

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

Economy, Rerecognition of Accrediting License, and Comprehensive Standards Review Head List of Section Activities

By Randy Hertz, Section Chair, and Hulett H. Askew, ABA Consultant on Legal Education



Randy Hertz



Hulett H. Askew

So much has happened since our last *Syllabus* column that it is difficult to know where to begin. The big events on the national scene—the change of presidential administrations and the downturn in the economy—inevitably affect the legal education community and the Section.

Effects of the economic downturn
The question to ask is not “Will the economic downturn affect legal education?” Since it is readily

apparent that there will be a host of substantial effects (and we are already seeing some of these), the right question is: “In what ways will the downturn affect the academy, law students, and the graduates of our law schools?”

At the Council’s December meeting, the Council had an impromptu discussion with representatives of some of our affiliated organizations—the Association of American Law Schools (AALS), the Law School Admission Council (LSAC), the National Association for Legal Career Professionals (NALP), and Access Group—about the effects the economic downturn is likely to have on legal education. The discussion yielded so many valuable insights and ideas that the Council decided to continue that conversation in a more formal manner at its June meeting in

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Accreditation Update: U.S. Department of Education Rerecognition Process

Hulett H. Askew, ABA Consultant on Legal Education

Every five years, accrediting agencies such as the Section’s Council that are recognized as official accrediting agencies by the United States Department of Education (DOE) must apply for rerecognition by the department. The Council was most recently granted recognition by the DOE in January 2001, and the Council was scheduled to undergo the rerecognition process during 2005. The following is an outline of that process to date.

December 2005: The Council filed its petition for rerecognition

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Section Council Begins Comprehensive Review of the ABA Standards for the Approval of Law Schools

Charlotte (Becky) Stretch, Assistant Consultant

In September 2008, the Council of the Section of Legal Education and Admissions to the Bar began a comprehensive review of the *ABA Standards for the Approval of Law Schools* and the associated *Rules of Procedure for the Approval*



Charlotte (Becky) Stretch

of Law Schools. The Council will rely on the work of its Standards Review Committee to complete this project, which is expected to take at least the next two academic years.

The Council monitors and regularly amends the Standards and Rules. However, it is appropriate to step back periodically from the day-to-day issues that arise to think comprehensively about whether the Standards are appropriate and accomplishing their objective of ensuring a sound program of legal education that will prepare law school graduates to become

effective members of the legal profession. If the Standards are to maintain legitimacy in the eyes of courts, the legal profession, bar admissions authorities, and the higher education community, then they must reflect the best current judgment about the minimum program of legal education that should be required for the J.D. degree.

The last comprehensive review commenced in September 2003 and was completed in 2006. Since that time, the Council has received reports from the Accreditation Policy Task Force, the Special Committees on Outcome Measures, Transparency, and Security of Position, and adopted a Strategic Plan. Each of those reports or plans suggested changes to the Standards, ranging from very specific language changes to new conceptual approaches. Thus, this round of comprehensive review comes at a very appropriate time given the ideas and momentum that have already been generated.

At the outset of this review, we welcome and encourage your comments, observations or suggestions about the efficacy and appropriateness of any of the Standards or Rules, or your suggestions for new Standards or Rules. We hope that you will follow our progress and provide your reactions and comments regarding proposals that the Council will publish for notice and comment over the next two years, or until the comprehensive review is completed. To that end, the Standards Review Committee, through the Consultant's Office, has created a Web site featuring reports and drafts of Standards and Interpretations and providing an opportunity for interested parties to comment on and react to the work of the Committee: www.abanet.org/legaled/committees/comstandards.html.

Comments and suggestions should be sent to Charlotte Stretch, Assistant Consultant, stretchc@staff.abanet.org. ☰

VOLUNTEER OPPORTUNITIES

Site visits required by the *ABA Standards for Approval of Law Schools* and the *Rules of Procedure for the Approval of Law Schools* are organized by the Office of the Consultant on Legal Education. These visits may be regular site visits for fully approved law schools, which take place every seventh year; visits to provisionally approved schools, which take place each year; visits to schools seeking provisional approval; and any special site visits that may be ordered by the Accreditation Committee or the Council in accordance with the Standards and Rules of Procedure. If you are interested in serving on a site evaluation team, please contact one of the following persons for more information:

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First Bar Exam Passage Conference Draws 200 Participants



Bar Exam Passage Conference Committee
Back row: Athornia Steele, Richard Matasar; front row: Peter Goplerud, Kent Lollis, Camille deJorna, Raymond Pierce, Bucky Askew

On October 16-18, 2008, the Section of Legal Education and Admissions to the Bar and the Law School Admission Council cosponsored a Bar Exam Passage Conference at the Renaissance Chicago O'Hare Suites Hotel. Some 200 deans, associate deans, and academic support faculty gathered to discuss outcome measurements, programs that work, diversity, curriculum innovation, and proposed changes to the bar exam. In addition to two days of plenary and breakout sessions, the conference featured a resource area where law schools could share information about their bar prep programs. These materials and many of the speakers' handouts are posted on the Section's Web site at www.abanet.org/legaled/baradmissions/bar.html.

After the conference, the Section and the ABA's Membership and Marketing Division collaborated to compile law school bar prep programs into a downloadable directory. Sixty-one law

schools submitted information, including whether or not the programs are required for graduation, number of credits offered, and contact information. Law schools that are members of the ABA's Group Faculty Program and institutions that attended the conference were given free access to the directory. All others can download the directory from the ABA Web Store for \$75. The product code is 2820001PDF.

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Deans Address Economy and Court-Law School Collaborations at 2009 Workshop



Retired Supreme Court Justice Sandra Day O'Connor was the featured speaker at the workshop's Monday luncheon. Justice O'Connor appears here with three of her former clerks, workshop cochairs Kent Syverud, dean of Washington University School of Law, and Gail Agrawal, dean of the University of Kansas School of Law, as well as the Honorable Ruth V. McGregor, chief justice of the Arizona Supreme Court and immediate past chair of the Section.



Among the deans and chief justices enjoying the opportunity to discuss issues of mutual interest were (left) Linda L. Ammons, dean of Widener University School of Law, and the Honorable Margaret H. Marshall, chief justice of the Supreme Judicial Court of Massachusetts and president of the Conference of Chief Justices.

One hundred and thirty deans from ABA-approved law schools gathered in Scottsdale in January for the 38th Deans' Workshop. A unique feature of this year's event was a half-day joint meeting and evening reception with the Conference of Chief Justices. Programs and resource materials also highlighted cooperative efforts between law schools and courts. A presentation by Mark Dows, executive director of the Pennsylvania Board of Law Examiners, about his

state's Professor Liaison Program sparked much interest. See page 5 for an article by Mr. Dows on the program.

The state of the economy and its effect on the law school community was also a predominant topic, particularly after a program on The Dean as Financial Manager. In response, the Section is exploring the possibility of a second deans' workshop later this year to focus on current economic challenges.

Workshop cochairs were Gail B. Agrawal, dean of the

University of Kansas School of Law, and Kent D. Syverud, dean of Washington University School of Law. The welcome reception was cohosted by the Section, Arizona State University Sandra Day O'Connor College of Law, and the Conference of Chief Justices. Meal functions were hosted by the Section's affiliated organizations: Association of American Law Schools, the Law School Admission Council, the National Association for Law Placement, and Access Group, Inc. 📌

For the latest Section news, events, publications and more,
visit the Section's Web site at: www.abanet.org/legaled

Pennsylvania's Professor Liaison Program Helps to Build Transparent Bar Admission Process

By Mark Dows, Executive Director, Pennsylvania Board of Law Examiners

Since 1972, Pennsylvania bar examiners have benefited from receiving valuable feedback from local law schools regarding the bar exam essay questions through what has become known as the Professor Liaison Program. The program continues to develop and is now an intricate element in both composing essay questions and in developing final grading guidelines for the essay answers. Currently, each of the eight Pennsylvania law schools, and recently added Rutgers Law School, appoint a liaison professor to facilitate relationships with the Board of Law Examiners through the executive director. The program ensures timely and effective communications between the law schools and the board.

One of the most important responsibilities of the liaison professors is to attend the board's semiannual calibration meeting. The purpose of the meeting is to receive substantive comments from the law schools concerning the legal principles and reasoning set forth in the examiners' analyses to ensure that the analyses are accurate, complete, and include all reasonable arguments that could be raised in response to the questions so that appropriate final grading guidelines can be adopted by the examiner. The meeting is not intended to provide feedback to the law schools concerning the process, techniques or specific point allocations that will be used in grading the bar examination.

This process actually begins the day (Wednesday) after the essay¹ portion of the Pennsylvania bar examination, when the essay questions, analyses and tentative grading guidelines are sent to the liaison professor for distribution. For the past six years, this information has been transmitted via e-mail that expedites distribution and has eliminated postage expenses, as well as a substantial photocopying task. Attached to the e-mail is a memorandum detailing the legal subject areas tested in each essay question, which allows the liaison professor to distribute the essay questions to the appropriate professor with expertise in that area. The reviewing professors are asked to submit written comments, via e-mail, to both the liaison professor and the executive director. All of the comments received during the two-week period after the bar exam are then forwarded to the appropriate examiner. This provides the examiner with the opportunity to research any legal issues, arguments or cases discussed in the professors' comments.

At the meeting, the liaison professor from each law school is given the opportunity to verbally present the comments that have been received from their colleagues with respect to the essay questions and analyses. When appropriate, the examiners use the professors' feedback to revise their analyses and grading guidelines in order to grade the applicants' essay answers in the

most equitable and fair manner possible. In addition to the nine liaison professors and invited deans, attendees also include the 7 members of the board, the supervising examiner, 7 examiners, 14 graders, executive director, and key board staff.

To clarify responsibilities, unlike most states, Pennsylvania board

**Since 1972,
Pennsylvania bar
examiners have
benefitted from
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what has become
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Liaison Program.**

members do not write or grade the essay questions; however, they are responsible for the review and approval of the essay questions prior to the bar exam. The seven examiners are experienced, practicing Pennsylvania attorneys who are compensated to write and grade the essay exams twice a year. Each examiner has two assistant graders

to help grade essay answers. The board engages the services of the examiners and graders who report to the executive director and the supervising examiner. Each grader

While fervent discussions occur, the participation of the law schools in this process continues to serve a valid and important purpose that enhances the overall quality of the bar examination process.

scores approximately 700 answers for the July exam and 200 answers for the February exam. The graders are also responsible for reading additional papers during the reread process, which follows the initial grading.²

An unexpected result of the calibration meeting is that it also serves as a quality control mechanism for the essay questions. The examiners have often stated that while they are composing and drafting their essay questions, they consider the possible issues that could be raised by the comments and feedback from the law school professors. The examiners are keenly aware that they will face nine professors during the meeting who will be reviewing and commenting on their essay question and analysis.

The semiannual meetings are conducted at different hotels throughout the state, and the liaison professors are responsible for their own transportation expenses. The meeting begins with a buffet lunch at noon on Friday,

followed by the meeting. An examiner will begin by discussing his or her particular essay question, analyses and tentative grading guidelines and the nature of responses observed from reading a number of papers for familiarization. After the examiner is finished, each professor has the opportunity to ask questions and discuss the comments provided by their colleagues. Then the next examiner will discuss his or her particular essay question, analyses and tentative grading guidelines, and so forth. This process usually lasts three to four hours and is managed by the supervising examiner. As you can imagine, with 40 highly trained legal minds all sitting in a hollow square configuration, differences of opinion are inevitable. At times, even the liaison professors do not agree with one another. While fervent discussions occur, the participation of the law schools in this process continues to serve a valid and important purpose that enhances the overall quality of the bar examination process.

That evening, a dinner is held for all of the meeting attendees, as well as supreme court justices, and special invited guests. This social interaction has become instrumental in fostering the relationships between law schools and those responsible for bar admissions in Pennsylvania. We are fortunate in Pennsylvania to have such collegial relationships with all of the local law schools. The transparency of Pennsylvania's bar admission process ensures that all bar applicants, regardless of where they went to law school, receive the benefit of what we consider to be the most comprehensive and fair system in the nation. 🏠

Mark Dows is the executive director of the Pennsylvania Board of Law Examiners and has held this

position since 1999, after serving as the character and fitness director for one year. He is the past chair, 2006-2007, of the Council of Bar Admission Administrators and continues to serve on several of its committees.

Notes

1. In addition to the six essay questions, Pennsylvania also administers its own Performance Test (PT), written by a seventh examiner. In 2001, Pennsylvania used the Multi-state Performance Test (MPT), which was purchased from the National Conference of Bar Examiners. However, in 2002, Pennsylvania began writing and grading its own PT question. In fact, several law schools have asked and received permission to use the Pennsylvania drafted PT as part of their law school curriculum. Posted on the board's Web site (www.pabarexam.org) are the essay questions, examiners' analyses, grading guidelines and applicant sample answers for the preceding three years. This review material is provided free for students to use in their preparation for the bar examination.

The PT is designed to test an applicant's ability to use fundamental lawyering skills in a realistic situation and to complete a task that a beginning lawyer should be able to accomplish. The PT is not a test of substantive knowledge. Rather, the PT requires applicants to: (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case and administrative materials for principles of law; (3) apply the law to the relevant facts in a manner likely to resolve a client's problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; and (6) complete a lawyering task within time constraints. The skills necessary to complete the above-referenced tasks include problem solving, legal analysis and reasoning, factual analysis, communication, organization and management

of a legal task and recognizing and resolving ethical dilemmas.

The materials provided to each applicant for the PT question include a file and a library (research material) that provides all of the substantive information necessary to answer the question. The file consists of source documents containing all of the facts of the case and a memorandum from a supervising attorney outlining instructions for the specific assignment to be completed by the applicant. The file might also include transcripts of interviews, depositions, hearings or trials, pleadings, correspondence, client documents, contracts, newspaper articles, medical records, police reports and lawyer's notes. The library consists of

cases, statutes, regulations and rules from which the legal principles necessary to analyze the problem and perform the assigned tasks can be extracted. The library materials provide sufficient substantive information to complete the assigned task.

Some of the tasks an applicant might be required to complete in responding to a PT question include preparing or writing a memorandum to a supervising attorney; a letter to a client; a persuasive memorandum or brief; a statement of facts; a contract provision; a will; a counseling plan; a proposal for settlement; an agreement; a discovery plan; a witness examination plan or a closing argument.

2. There are three graders for the PT and each essay question, each

of whom grades one-third of the answers for that specific question. Once all grades have been submitted, any applicant receiving a combined scaled score of 263-271, inclusive, will automatically have their PT and six essay answers reread and regraded by a different grader. The reread graders are not aware of the scores originally given. The revised scores, if applicable, are then recalculated with the MBE score for a final combined scaled score. Once results are released, the scores are final and are not subject to judicial review pursuant to Pa.B.A.R. 221.

UPCOMING CONFERENCES

Jackson Hole X Law School Development Conference

May 26-29, 2009 • Jackson Hole, Wyoming



Raising Funds in Challenging Times: Staying on Offense While Using Good Defense

As we all recognize, philanthropy has moved to a new level since the last conference in 2007. At the 2009 conference, you will learn about the substantive changes in the philanthropic landscape and new development approaches to respond to the current economic challenges. The conference will continue to offer nuts and bolts sessions on specific topics including campaigns, communications, planned giving, annual fund, alumni relations, and the highly touted Development 101 program.

Register online at www.abanet/legaled

Law Schools Active in Historic Presidential Campaign and Inauguration

By Mary McNulty, Editor



This group of Cardozo students worked in polling places around Cleveland on Election Day.

According to The Center for Information and Research on Civil Learning and Engagement at Tufts University, 23 million Americans under the age of 30 voted in the 2008 presidential election. Young people were also actively involved in the campaign and in the election process. Here are a few reports from law schools around the country.

Benjamin N. Cardozo School of Law

A group of 36 Cardozo law students traveled by bus to Cleveland to work as outside poll monitors at 36 polling precincts throughout the Cleveland metropolitan area on election day. Their trip was supported financially by the university's Floersheimer Center for Constitutional Democracy and local volunteers opened up their homes for the students. After receiving training in Ohio election

law, the students were able to ensure that every voter who visited those precincts on Election Day were able to cast a ballot.

University of Oregon School of Law

Two 2005 University of Oregon School of Law graduates garnered media attention for their service as delegates in the Democratic and Republican national conventions. Melyssa Swartz-Baxter was interviewed by *The Oregonian* about her participation in the Republican National Convention and her support of Arizona Sen. John McCain. An emotional photograph of Moe Spencer appeared on MSNBC.com moments after the nomination of Barack Obama as the Democratic nominee. View the photos at www.law.uoregon.edu/news/article/645.

The School's Public Interest

Public Service Program also hosted a public forum discussion in the fall on Oregon ballot measures.

University of South Dakota School of Law

Three members of the USD's Black Law Students Association (BSLA) represented the chapter at the 2009 Inauguration Day festivities in Washington, D.C. Contributions from faculty, friends and the University's president and law school alumnus James Abbott made it possible for first-year students Laura Alvarez, Martine Jeanty, and Allisia Canady to make the trip to the nation's capital.

After the students returned to South Dakota, Laura, with input from Martine and Allisia, wrote an essay about the impact the trip had on them. "Seeing the excitement in every person's face and to experience the ambience of the crowds was beyond any description of hope that I can offer."

Laura also recounted her mother's reaction to their opportunity: "My little four-foot-five mother asked the babysitter, the neighbors, and her company for any donations to make this possible. I come from a town in west Texas called El Paso that has a high population of Hispanic people. I was baffled by their excitement and willingness to donate in spite of the current economic conditions."

The complete essay, "A Catalyst to a Profession That Has Not (Yet) Reached Fair Representation," can be

found on the University of South Dakota School of Law Web site at www.usd.edu/law/09BLSAatInauguration.pdf.

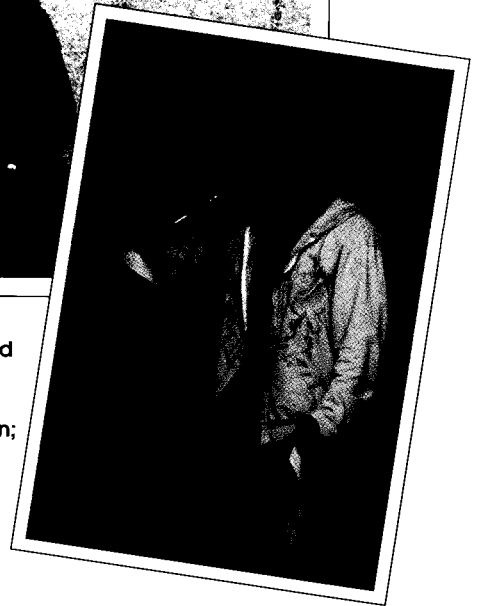
Southwestern Law School

On Inauguration Day, the Salle Moderne in the Bullocks Wilshire Building of Southwestern Law School's campus was packed with members of the law school community to view live coverage of President Barack Obama's swearing-in ceremony in the morning, as well as at the video playback later that day. Students attending the inauguration in D.C. sent comments such as "It's fun to chant 'O-BA-MA!'" capturing real time moments via Twitter and Flickr.

The event was cosponsored by Southwestern's Student Affairs and Diversity Affairs Offices, with the Student Bar Association (SBA), Black Law Students Association (BLSA), and *The Commentator*, Southwestern's student-run newsmagazine. 🏠



(above) USD School of Law students Martine Jeanty, Laura Alvarez, and Alissia Canady stopped for a photo in front of the Reagan Building and International Trade Center during their visit to Washington, D.C. for Barack Obama's inauguration; (right) At Southwestern, Charles Chineduh, a second-year student and copresident of the BLSA, addressed the audience, saying "As the son of a Nigerian immigrant, I am especially proud. America sets a standard for the rest of the world."



Ice-Age Mammoth Found at Thomas Jefferson School of Law Construction Site



The skull, two tusks measuring more than 10 feet long, foot and leg bones of a 500,000 Columbia Mammoth have been unearthed from the new building site of the Thomas Jefferson School of Law in downtown San Diego. Dating to the Ice Age, the adult mammoth would have been 15 to 17 feet tall. Paleontologists from the San Diego Natural History Museum were on the site to recover the remains and transported them to the museum.

Coincidentally, the school's namesake was an avid fossil collector. The Thomas Jefferson Fossil Collection is now housed at the Academy of Natural Science in Philadelphia. 🏠

SECTION ACTIVITIES

Continued from page 1

Indianapolis. The Council will devote half a day of its June meeting to a "retreat" on this subject and will invite representatives of our affiliated organizations to join us at that retreat to try to get a grasp on current and upcoming problems and how the Council can best deal with them.

At the annual Deans' Workshop, which is sponsored by the Section and which took place at the end of January, a lively panel session on "The Dean as Financial Manager" led, as one might expect, to a discussion of the economic challenges that law schools are facing. In response, the Section is working to arrange a Deans' Workshop on this subject for a day and a half this summer.

In what ways will the downturn affect the academy, law students, and the graduates of our law schools?

An economy-related issue that is already looming and of immediate concern relates to the availability of student loans for bar exam preparation. Under U.S. Department of Education rules, federally guaranteed loans cannot include "costs associated with preparing the student for the test . . . required for licensure." In the past, students were able to work around this restriction by obtaining nonfederally guaranteed student loans to cover bar-exam-related expenses. However, the downturn in the economy has led several lenders to suspend their private loan offerings, including bar exam loans, or to set stricter credit criteria and substantially higher interest rates. To ensure that students have access to the funding they need, the Alliance for Legal Education has been created and has proposed that either (i) the Department of Education amend its rules to "permit the inclusion of bar-exam-related expenses in the calculation of cost of attendance"; or (ii) Congress amend the Higher Education Act of 1965 to permit such inclusion. As the Alliance points out, "funding must be available no later than April 2008" in order to be of use to this year's graduating law students. Access Group is leading this effort.

Status of the Council's rerecognition by the Department of Education

In our last column, we gave you an update on the Council's application to the U.S. Department of Education for rerecognition as the national accrediting

agency for programs leading to the J.D. degree. As mentioned then, it appears that the Council will appear before the DOE's National Advisory Committee on Institutional Quality and Integrity (NACIQI) in June 2009.

One of the process-related issues that arose before the change of presidential administrations related to the confidentiality of documents that the Council submitted as part of its petition for rerecognition. In accordance with DOE's request, the Council provided the department with "any and all site evaluations" from January 2006 through December 2007. The Council submitted these documents with a letter explaining that the documents are considered confidential under the Council's rules and, therefore, under DOE's rules, should continue to be treated as confidential and should not be released in response to a Freedom of Information (FOIA) request. Upon learning that the department had received two FOIA requests covering these documents from the *Wall Street Journal* and the *New York Times*, the ABA's General Counsel wrote to the DOE's General Counsel and reiterated that the materials are confidential and should not be released pursuant to FOIA. The Council informed the deans of all of the affected law schools of the FOIA requests so that these schools could take whatever action they deemed appropriate. On October 31, 2008, DOE's General Counsel informed the ABA's General Counsel that the DOE had rejected all of the ABA's arguments regarding confidentiality and that the documents would be released to the two requesters on November 20, 2008. The department stated that it would redact the documents to remove all financial, competitively sensitive and school-identifying information.

For more details on the rerecognition process and the exchanges with DOE regarding the confidentiality of the site visit documents, please turn to page 1 of this issue of *Syllabus*, which contains a more detailed account of these events.

Ongoing activities of the Section's Committees and the Consultant's Office

As always, the Section's Committees and the Office of the Consultant have been active, doing important work. Here are a few of the significant developments.

The Council has created a Special Committee on International Issues, which is being chaired by the Honorable Elizabeth B. Lacy, former chair of the Council. The Special Committee will meet over the course of academic year 2008-2009 and make

recommendations to the Council regarding what the Section should be doing in the international arena. The Council and the Section often need to address initiatives or proposals relating to international aspects of legal education, legal practice, and admission to practice. The creation of the Special Committee reflects the Council's conclusion that the time has come for the Section to conduct a systematic examination of the Section's activities in these areas and to develop guidelines for the future.

The Standards Review Committee in September 2008 commenced a comprehensive review of the *ABA Standards for the Approval of Law Schools* and the associated *Rules of Procedure for the Approval of Law Schools*. The review is likely to take at least the next two academic years. The Section periodically conducts such comprehensive reviews of the Standards and Rules in order to assess whether the Standards are appropriate and accomplishing their objectives. The chair of the Standards Review Committee, Dean Donald J. Polden, has invited input from a wide spectrum of those interested in legal education, including law school deans, university presidents, state supreme court chief justices, and bar examining authorities. The process has been structured to ensure that all those interested in legal education have an opportunity to make suggestions and to comment on current proposals, and the Section is actively seeking such input in order to make the review process as meaningful and effective as possible. More information is available on page 2 of this issue and on the Section's Web site at www.abanet.org/legaled.

The Section hosted a bar pass conference on October 16-18, 2008, which was organized by the Office of the Consultant, assisted by law school deans and the Law School Admissions Council (LSAC). The conference was highly successful, with over 200 attendees, representing over 100 schools. The conference, which grew out of what the Section learned as it worked on the new Interpretation on bar passage, is an example of a collaborative response to issues that became apparent through the accreditation process. A recap of the conference can be found on page 3.

As always, we are immensely grateful to the energetic, enthusiastic (and apparently indefatigable) Section staff and the many volunteers who serve on the Section's committees and participate in site visits. 🏠

2008-2009 Special Committee on International Issues

Chair: Honorable Elizabeth B. Lacy
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Richmond, Virginia

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Stephen Gillers, Professor
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New York, New York

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ACCREDITATION UPDATE

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in 2005. The petition was primarily prepared by then-Deputy Consultant Stephen Yandle, with review and significant contributions from then-Consultant John Sebert, John Przypyszny (outside counsel for Department of Education matters), Council member Randy Hertz, and then-Council Chair Elizabeth Lacy. A public hearing on the petition before the department's National Advisory Committee on Institutional Quality and Integrity (NACIQI) was initially scheduled for December 2005. Prior to the hearing, the DOE contacted the Section to express a need for more time to prepare the staff analysis of our application in light of a large volume of third-party comments that were filed with the department. Upon receiving assurances that postponing review would have no direct negative impact on our accrediting authority, we agreed to the postponement. The appearance before NACIQI was rescheduled for its next meeting in June 2006.

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**In this second postponement,
the department was responding
to a number of additional third-
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with diversity issues.**
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April-November 2006: We received a letter from the department again delaying the review and appearance before the Advisory Committee until its next meeting in December 2006. In this second postponement, the department was responding to a number of additional third-party commentators (after the first postponement, there was a second filing period for third-party comments) regarding proposed changes to Standard 211 (now Standard 212), which deals with diversity issues. Ultimately, the Section was provided all the third-party comments and provided the opportunity to respond to them. A series of meetings were held with department staff in the summer and fall of 2006 as we awaited the draft staff analysis. In mid-October, that analysis was provided by the department and we were given several weeks to respond. Besides the technical items of "none" or "partial" compliance, the two major items in the staff analysis of our petition were findings of noncompliance on the diversity

Standards and the issue of bar exam passage. A thorough point-by-point response was submitted within the deadline, the main points being that the Section would immediately proceed to correct the technical items and that we would adopt an Interpretation on bar passage. However, we stated strong disagreement with the findings on the diversity Standards. In a mid-November conference call, the DOE's Assistant General Counsel informed the leadership of the Section that the staff would recommend to NACIQI rerecognition for an 18-month period primarily because of its concerns regarding the diversity Standards.

December 2006-June 2007: On December 1, 2006, the Section received the final staff analysis. Our appearance before NACIQI took place on December 4, 2006. Then-Council Chair Bill Rakes, former Chair Steve Smith, and Consultant Bucky Askew appeared on behalf of the Section. The three Council witnesses appeared for approximately one and one-half hours and then the NACIQI heard from both opponents and supporters of rerecognition. The opponents were a combination of third-party groups opposed to the diversity Standards and two law schools that had been denied approval by the ABA. The supporters were approximately eight law school deans, some private practitioners, and a supreme court chief justice. At the conclusion, NACIQI voted to recommend a recognition period of 18 months, but it voted to remove the diversity findings from the staff analysis. That recommendation went to the secretary of the Department of Education for her action. On June 20, 2007 (six months later), the secretary issued her decision, approving the 18-month recognition period and requiring the Section to submit a compliance report by December 2007 demonstrating its compliance with all the recognition criteria including the diversity Standards.

December 2007: Accordingly, on December 18, 2007, the Council filed its petition with the department to have its authority to accredit law schools in the United States rerecognized. As part of the rerecognition process, the Council also was required to file a compliance report addressing several areas identified in a prior review of the Council's petition. The department required that the Council provide the following documents with its compliance report for the period January 2006 through December: (a) any and all site evaluation reports of any school; (b) any and all studies, determinations, conclusions, transcripts, memoranda, and/or recommendations as to whether a school complies, or does not comply,

with the Council's Standards; and (c) minutes, agendas, and transcripts of any and all meetings of the Accreditation Committee, Council, and Executive Committee of the Council. The Council provided the department with copies of all documents that fell within one of these categories, which resulted in the transmission to DOE of over 40,000 pages of documents involving 145 schools.

January-June 2008: In February 2008, the Council informed deans of all law schools whose materials were part of the DOE submission that information pertaining to their law schools was provided to the department. The letter to the deans explained that accompanying the submission to the DOE was a letter from the Consultant explaining that the documents were considered confidential under the Council's rules, and therefore, under the department's rules, should continue to be treated as confidential. The Council requested that none of the school-specific documents provided to the department be released pursuant to a Freedom of Information Act (FOIA) request. Having not received a response from the department, the Consultant believed that it was appropriate to notify the deans about the submission of the materials. In fact, the department received two FOIA requests: from the *New York Times* and the *Wall Street Journal*. The ABA's General Counsel wrote the DOE's General Counsel several times between January and October 2008 reiterating that the materials are confidential and should not be released pursuant to FOIA.

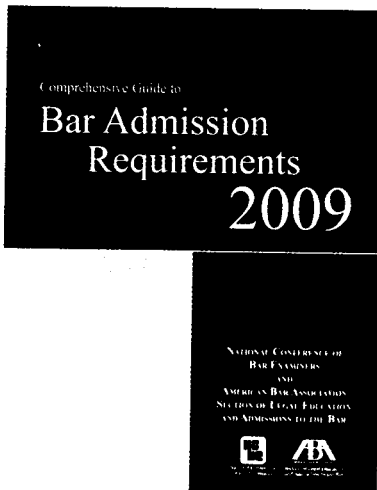
The Council was informed in early May 2008 that the Section's appearance would be postponed from June to December 2008. One of the reasons given was "the great volume of documents submitted by the Council in accordance with the Secretary's final agency decision dated June 20, 2007...." The DOE requested that the Section submit responses to

third-party comments (from Thomas M. Cooley Law School and from Wallace Reilly, a former president of the ABA) by June 4, 2008, which it did.

**As this is all pending,
the Council and the Accreditation
Committee continue as the
DOE-recognized accrediting
authority for the award of the J.D.
degree in the United States.**

October-December 2008: On October 31, 2008, the DOE's General Counsel informed the ABA's General Counsel that all of the arguments made by the ABA as to the confidentiality of the documents were rejected by the department. Thus, the documents would be released to the two requesters on November 20, 2008. However, the department stated that it would redact the documents to remove all financial, competitively sensitive, and school-identifying information.

The December 2008 meeting of NACIQI has been cancelled as required by provisions of the newly enacted Higher Education Act. The department has not, as of this date, provided the Standards draft staff analysis of the Section's application and has not informed the Section as to the next steps in the process. However, as this is all pending, the Council and the Accreditation Committee continue as the DOE-recognized accrediting authority for the award of the J.D. degree in the United States. ■



Comprehensive Guide to Bar Admission Requirements 2009

The *Comprehensive Guide to Bar Admission Requirements* is published each year in conjunction with the National Conference of Bar Examiners. It sets out the rules and practices of all U.S. jurisdictions for admission to the bar by examination and on motion. The Guide also includes a directory of bar admissions agencies.

Product Code: 529008709ED Price: \$15
To order visit www.ababooks.org or call 800.285.2221

Kutak Award Committee Seeks Suggestions for 2009 Award

Nominations are sought for the 2009 Robert J. Kutak Award. Established in 1984 by the Section and the national Kutak Rock law firm, the award honors significant contributions to the collaboration of the academy, the bench, and the bar. The award is in memory of Mr. Kutak, a distinguished Omaha lawyer, champion of legal reform, and advocate for legal education.

The 2009 Kutak Award will be presented at a special reception in August at the ABA Annual Meeting in Chicago.

Recent recipients have included Rennard Strickland, Distinguished Professor Emeritus at the University of Oregon School of Law (2008); Cruz Reynoso, Professor of Law Emeritus at the University of California-Davis School of Law (2007); Honorable Sandra Day O'Connor, retired United States Supreme Court Justice (2006); Trustee Professor Geoffrey C. Hazard, Jr., University of Pennsylvania Law School (2005); Honorable Harry T. Edwards, Circuit Judge on the United States Court of Appeals for the District of Columbia Circuit (2004); Professor and Dean Emerita Nina Appel, Loyola University-Chicago School of Law (2003); and Professor Anthony G. Amsterdam, New York University School of Law (2002).

The Committee expects to receive suggestions about a number of highly qualified individuals, but can recommend only one name for recognition by the Council.



Robert J. Kutak held leadership roles in a variety of professional projects of the American Bar Association, including membership on the Council of the ABA Section of Legal Education and Admissions to the Bar, and chair of the ABA Section on Individual Rights. At the time of his death in 1983, he had just concluded five years as chair of the ABA Commission on Evaluation of Professional Standards, the body that produced the monumental new set of rules for the professional conduct of members of the American bar.

Recommendations received for the 2009 Award will be carried forward for consideration in future years.

Nominations should be sent to: Kutak Nominating Committee
Attention: Carl Brambrink,
Director of Operations
ABA Section of Legal Education
and Admissions to the Bar
321 N. Clark Street

Chicago, IL 60654
or via e-mail at cbrambrink@staff.abanet.org

The deadline for submitting nominations is March 31, 2009.

The 2009 Kutak Nominating Committee

Chair: Peter A. Winograd
Professor Emeritus
University of New Mexico
School of Law
Albuquerque, New Mexico

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Farm Stores Corporation/
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Robert MacCrate, Esq.
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University of Minnesota
Minneapolis, Minnesota

Robert K. Walsh, Professor
Wake Forest University
School of Law
Winston-Salem, North Carolina

Nomination Suggestions Invited for Section Council

The Section's Nominating Committee invites suggestions for nominations to the Council of the Section of Legal Education and Admissions to the Bar. The Nominating Committee will present the slate of Section officers and Council members for election at the Section's August meeting in Chicago. Nominations for a public member-at-large are especially encouraged. Public members are those not involved in legal education.

Beginning this year, names MUST be submitted through the online application form posted on the Section's Web site: www.abanet.org/legaled.

The deadline for nominations is March 31, 2009. 🏠

2008-2009 Nominations Committee

Chair: William R. Rakes, Esq.
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School of Law

Leo Martinez, Professor
University of California
Hastings College of Law

Ruth V. McGregor
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Arizona Supreme Court

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

Steven R. Smith, Dean
California Western School of Law

Edward N. Tucker, CPA/ABV
Ellin & Tucker, Chartered
Baltimore, Maryland

Nominations Sought for Section Committees

Much of the Section's wide range of services to legal education and the profession emanates from the work of the committees of the Section. Nominees are sought from the three components of Section membership: legal educators, practicing lawyers, and judges. Committee appointments are to begin in 2009-2010 with terms of two to three years. **The deadline for submitting nominations is May 1, 2009.**

Beginning this year, names MUST be submitted through the online application form

posted on the Section's Web site: www.abanet.org/legaled.

Candidates can self-nominate or they can be nominated by another Section member.

The following is a list of the Section's committees. Links to committee descriptions can be found with the nomination form on the Section's Web site.

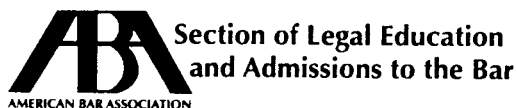
- Accreditation
- Adjunct Faculty
- Bar Admissions
- Clinical Skills Education
- Communications Skills
- Curriculum
- Deans' Workshop
- Diversity

- Governmental Relations and Student Financial Aid
- Grievance
- Kutak
- Law Libraries
- Law School Administration
- Law School Development
- Law School Facilities
- Prelaw
- Professionalism
- Questionnaire
- Standards Review
- Technology and Education

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CALENDAR

MARCH 2009

26-28 Standards Review Committee
St. Louis, Missouri

APRIL 2009

16-18 Accreditation Committee Meeting
New Orleans, Louisiana

MAY 2009

24-25 New Deans Seminar
Jackson Hole, Wyoming

26-29 Law School Development Conference
Jackson Hole, Wyoming

JUNE 2009

5-6 Council Meeting • Indianapolis, Indiana

25-26 Accreditation Committee Meeting
Montreal, Quebec, Canada

JULY 2009

30-Aug. 4 ABA Annual Meeting • Chicago, Illinois

30 Chairperson's Dinner

30-31 Council Meeting

31 Kutak Award Reception

AUGUST 2009

1 Deans' Breakfast
Annual Business Meeting
Section Programs