



# SYLLABUS

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

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The Honorable Rebecca White Berch  
Justice, Arizona Supreme Court  
2015-2016 Council Chair

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## Immediate Sanctions for Law Schools That Have Lowered Admissions Criteria? Not So Fast.



**The Honorable Rebecca White Berch**  
**Arizona Supreme Court**  
**Council Chair**

Driven by the difficult job market for new law school grads in the last several years, the number and quality of applications to law schools have fallen – dramatically, for some schools. The allegation has been made that, to fill classes, a few of these schools have admitted applicants who lack the ability to complete a law school education. As proof, critics point to the decline in applicants’ LSATs and GPAs during this period as well as to the decline in schools’ bar-pass percentages. The call has gone out for “the ABA” to halt this practice and sanction the schools.

This article addresses what is being done about the situation.

But first, an explanation of why the Council, and not the ABA, is the appropriate entity to respond to the criticism. Most law schools in the United States are approved by the ABA; the schools proudly tout this credential by referring to themselves as “ABA approved” or “ABA accredited.” Since 1952, the U.S. Department of Education has recognized the ABA as the accrediting body for the “first professional degree” in law (the LL.B. and J.D.). Because accrediting agencies that operate within a professional association such as the ABA must perform accrediting functions independently of the trade association of which they are a part, the Council of the Section of Legal Education and Admissions to the Bar has performed the accreditation function on behalf of the ABA, “separately and independently” from the ABA, making the Council and its Accreditation Committee (AC) – and not the ABA itself – the accreditor. So it is the Council that must address the questions raised about law school admissions.

The Council’s response is governed by the Standards and Rules relating to accreditation. Admission to approved law schools is regulated by Standard 501, which requires, among other things, that schools shall not admit those “who do[] not appear capable of satisfactorily completing” law school and who are not likely to be admitted to the bar. [Standard 501(b).] In admitting students, law schools of course

look at respected indicators, such as an applicant's LSAT score and undergraduate grade point average. But schools also rely on other factors that may show leadership, drive, grit, or other factors that provide reason to believe the applicant may perform well in law school. Schools may require a writing sample and proof of accomplishment, such as professional position, or participation in volunteer work or student government, or other factors that demonstrate to the school's satisfaction that the student has characteristics that indicate a reasonable chance to succeed. In enforcing Standard 501, the AC and Council also consider other school-specific factors, including the school's academic attrition rate, bar passage rate, and academic support program. [Interpretation 501-1.]

Citing declining LSAT scores of admittees, some have suggested that the Council should move quickly to sanction or remove the accreditation of law schools that admit students whose LSAT scores are "too low" to indicate a chance of success in law school. But the Council cannot act precipitously, for several reasons.

First, of course, is that an LSAT score does not purport to tell the whole story of a person. (See Barry Currier's column in this *Syllabus*.) Many whose LSAT scores were not distinguished later achieved great things, in law school and in the profession. Thus an applicant with a low LSAT score might appear to a school quite "capable of satisfactorily completing its program of legal education and being admitted to the bar" if other indicators are present. It is for that reason, among others, that the Council and its AC look at additional considerations, such as the school's academic attrition and bar passage rates. Those factors are themselves governed by Standards.

Second, schools are entitled to due process. The accreditation rules – and fairness – provide that they must be given an opportunity to justify the admissions choices they have made before sanctions may be imposed.

Third, the accreditation process is volunteer-driven. That is, the Council and the AC are made up of volunteers who meet only several times a year. These volunteers generously give thousands of hours of their time each year, and more should not be asked of them – although we can examine our processes to ensure that we make the best use of the time we are given and move the cases along. Appropriate process takes time.

Nonetheless, readers should not assume that the Council is standing idly by. Much is happening behind the scenes. Each year, approved law schools must respond to an annual questionnaire (AQ). Council staff and the AC review the responses and require schools whose answers raise questions to elaborate. So, for example, if the entering LSAT scores of a school with an already low bar pass rate should fall precipitously, the school may be asked to explain how it expects admittees with very low scores to succeed in law school and pass the bar, given that entering students with higher scores have not been successful. The school may reveal increased tutoring or academic support, more intensive focus on admissions indicators other than the LSAT, or other reasons to think that the entering students will be successful. (An acceptable answer will *not* include that the school needs the student's tuition dollars.) But, according to the rules, the schools must be afforded notice and a chance to defend their choices. It may help readers understand the scope of this review to know that more than half of approved schools are reporting back to the AC and Council as a result of questions raised by responses to AQs.

The review process is rigorous and steps are being taken. Are there questions about law school admissions processes? Of course. But the questions are not best answered by summarily placing on

probation or revoking the accreditation of schools whose entering LSAT indices have fallen. Such a response would deny appropriate process, violate the rules under which we operate in accordance with U.S. Department of Education regulations, and deny otherwise qualified candidates the opportunity for a law school education. And it would harm other students at the schools, who rely on the schools' continued good standing.

Finally, of course, the Council is working on revising the Standards to make them clearer and more easily enforceable. But that is an article for another day.

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## It's (Appropriately) Complicated: Be Cautious in Using LSAT Scores to Evaluate Law Schools



Barry Currier  
Managing Director

Now is a good time to review the role that an applicant's LSAT score should play in the law school admissions process, as well as the significance that a law school's LSAT score profile should have in the accreditation process. Nothing new, just a review of the fundamentals. Unfortunately, in the midst of a challenging environment for recent law school graduates (jobs, debt, and declining bar pass rates in many states) and for law schools (sharply lower and changing applicant pool, budget issues), some of these basics are being minimized, skewed, or disregarded.

Admissions is not a precise science. We should not want it to be. An applicant's LSAT score is significant in the law school admissions process, but it is just one factor. The guidelines of the Law School Admission Council (LSAC), which develops the LSAT test, specifically caution against the use of an LSAT score as the sole criterion for admission and suggest that it not be given undue weight in the admissions process simply because it is a simple, clear, and seemingly objective number to use. Certainly it should not be used as a shorthand way to refer to overall potential of a student or a group of students for law study and bar passage. Regrettably, this convenient number plays a role in the *U.S. News*' law school rankings far out of proportion to its true significance.

It is intuitive and not surprising that, in general, those with higher LSAT scores will outperform those with lower scores in law school and on the bar exam given that the LSAT is a high-stakes, standardized test; the bar examination is similar in many ways. The bigger the difference in the scores, the more confident one can be that the person with the higher score will likely outperform the person with the lower score in law school and have a better chance of passing the bar examination (particularly on the first attempt). The closer together the scores are, the less meaningful the difference, as the [LSAC website](#)'s discussion of the meaning of a score and score bands explains.

The fact that one can chart the relationship between LSAT scores and first-time bar exam outcomes does not mean that that correlation should become the default way to predict the success of an individual student or group of students. It's easy to use LSAT scores as a point of

reference, but there are other easy reference points as well. With respect to the bar examination, a student's and students' performances in law school is much superior. Granted, we cannot know what that will be prior to the applicant's study. But also clear are the facts that a law school's curriculum and academic support program, together with the student's effort have a significant impact on bar examination outcomes.

Prior to a student's starting law school, law schools can and do know much more than the applicant's LSAT score. As convenient a measure of an applicant's capacity for law study as the LSAT is, it is the combination of LSAT scores and undergraduate grades used as an index tailored to a school's applicant pool and program of study that is a central piece of most law schools' admissions processes. Beyond that, a holistic review of an applicant's file is even better.

We know that substantial numbers of students outperform what their LSAT scores predict; others underperform. We know that the LSAT does not measure grit, determination, and the motivation for studying law – characteristics important for success in law school, admission to the bar, and career success. We know, as the LSAC counsels, that a host of other factors bear on the applicant's chances of succeeding in law school and on the bar examination, including the applicant's undergraduate experience (not just the UGPA but also the institution attended, major, and courses taken), graduate study, work experience, extracurricular activities, obstacles overcome, letters of recommendation/interviews, and other accomplishments and leadership positions held.

Much of this I know from having had the privilege of serving on the admissions committee at one law school where I was a faculty member, and having had some involvement in the admissions process at another school that I served as dean. My experience and perspective, which I am confident my colleagues around legal education share, is that schools (and many applicants) benefit significantly from a thorough review of application files.

No one that I am aware of disputes the notion that it is acceptable, indeed desirable, for law schools to offer opportunities to applicants whose overall profile suggests that they are good candidates for law study and might well become outstanding and contributing members of the legal profession, even if their LSAT score varies from the bulk of the students admitted to the school.

How much risk should a school take, or be allowed to take, by the law school accreditation process? How much risk should an applicant be allowed to take? These are difficult questions that merit serious discussion. That discussion is much less likely to happen if it is reduced to and focused on the simple data point of an LSAT score or school score profile. It is disappointing to read news articles and blog postings that pick an LSAT score and call it the dividing line between success and failure. It is just not that easy, and to try to reduce this difficult calculus to one number would disadvantage many otherwise qualified law school applicants.

To the suggestion by some that law schools are admitting and retaining students without making reasonable determinations about their capacity for law study in order to get their

(borrowed) money, I note that the school's need for tuition revenue is not on the list of factors that law schools should use in evaluating application files. If the evidence shows that a law school's admissions process is being driven by the need to fill seats and generate revenue without taking appropriate steps to determine that students who enroll have a reasonable chance to succeed in school and on the bar examination, as ABA Standard 501(b) requires, then that school should be, and I am confident will be, held accountable.

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## Section Spotlight: The Section Welcomes a New Committee and Announces the Return of the Law School Development and Associate Deans Conferences



Erin Ruehrwein  
Section Director

The Section is excited to announce the appointment of a Conferences and Programming Committee, as well as the return of the Law School Development and Associate Deans Conferences in 2016. We look forward to developing new and innovative programming and content, while providing you with new and valuable opportunities to learn and network.

The [Conferences and Programming Committee](#), chaired by Leslie Cooney, professor at Nova Southeastern University Shepard Broad College of Law, is charged with identifying topics for new Section conferences and other educational programs and webinars in order to meet the changing needs and interests of the Section's membership and legal education professionals. The committee will also identify opportunities to repurpose program content and review co-sponsorship opportunities with other ABA and non-ABA entities.



### [Law School Development Conference](#)

The 2016 Law School Development Conference is scheduled for May 31 – June 3 at the Marriott Marquis San Diego Marina Hotel. The theme of the conference is *Fostering Engagement and Investment in a Time of Change* and will bring together law school deans and development professionals to learn, collaborate and discuss the changing philanthropic landscape, new development approaches and best practices.





### [Associate Deans Conference](#)

The 2016 Associate Deans Conference will be held June 16-19 at the Loews Minneapolis Hotel in Minneapolis. With a theme of *Adapting to a Changing Landscape*, the conference will focus on current issues that associate deans are dealing with including how law schools are responding to the new accreditation requirements, innovation in curricular design with decreasing resources, educating a changing student population, and managing the shifting demands of academic programs, student services, and faculty research.

The Section is currently soliciting sponsors for these conferences and registration will open in mid-January.

### **We Want to Hear From You**

We welcome your comments and suggestions. If you would like to submit a suggestion regarding upcoming and prospective programs and conferences, or any matter related to our programming, please contact me at [Erin.Ruehrwein@americanbar.org](mailto:Erin.Ruehrwein@americanbar.org).

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## Council Actions Taken in December 2015

At its December 4-5, 2015 meeting in Atlanta, Georgia, the Council rendered the following decisions regarding the approval of law schools and proposed revisions to the *ABA Standards and Rules for Approval of Law Schools*.

### Approval of Law Schools

Acquiesced in the application of Hamline University School of Law and William Mitchell College of Law to combine the two schools into [Mitchell | Hamline School of Law](#).

Acquiesced in the application of the [University of New Hampshire School of Law](#) to establish a part-time Patent Track Program.

Acquiesced in the application of [Western State College at Argosy University](#) for a change in its campus from Fullerton, California, to Irvine, California.

### Proposed Standards Revisions for Notice and Comment

The Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment the following proposed revisions to the *ABA Standards and Rules of Procedure for Approval of Law Schools*:

- Standard 205
- Standard 206
- Standards 304 and 305

The proposed revisions and accompanying explanations are published on the Section's website: [http://www.americanbar.org/groups/legal\\_education/resources/notice\\_and\\_comment.html](http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html).

We solicit and encourage written comments on the proposed changes by letter or e-mail. Written comments should be submitted no later than Friday, January 22, 2016.

A hearing on these proposed changes is scheduled for January 29, 2016, at 10 a.m. The hearing will be held at American Bar Association (321 N. Clark St.) in the Margaret Brent Conference Room on the 18<sup>th</sup> floor.

Please address written comments on the proposals and requests to speak at the hearing to JR Clark, [jr.clark@americanbar.org](mailto:jr.clark@americanbar.org), by Friday, January 22, 2016.

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## Nominating Committee Solicits Names for 2016-2017 Council Slate

The Section's Nominating Committee invites suggestions for nominations to the 2016-2017 [Council of the Section of Legal Education and Admissions to the Bar](#). There are three at-large positions to be filled, one of which is held by a member who is completing one three-year term and is eligible to be nominated for a second term. One of the vacant at-large positions is to be filled by a public member. Additionally, there are three leadership positions to be filled, chair-elect, vice chair, and secretary, for one-year terms. The current secretary is eligible for re-election. Nominees are sought in the categories of judges, academics, practitioners, and public members. The slate of Section officers and Council members will be presented for election at the Section's business meeting during the ABA Annual Meeting in San Francisco in August.

The deadline for nominations is April 11, 2016. All nominations must be submitted through the online [Council Nominations](#) process.

### 2015-2016 Nominating Committee

**Chair:** The Honorable Solomon Oliver Jr.  
Chief Judge, U.S. District Court for the Northern District of Ohio

The Honorable Rebecca White Berch  
Justice, Supreme Court of Arizona

The Honorable Christine M. Durham  
Justice, Supreme Court of Utah

Thomas C. Galligan Jr.  
President, Colby-Sawyer College

Jerome C. Hafter  
Senior Partner, Phelps Dunbar LLP

Joan S. Howland  
Associate Dean & Professor, University of Minnesota Law School

Gregory G. Murphy  
Billings, Montana

Raymond C. Pierce  
Partner, Nelsons Mullins, et al

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## Nominations Sought for 2016 Kutak Award



Nominations are sought for the 2016 Robert J. Kutak Award. Established in 1985 by the Section and the national Kutak Rock law firm, the award honors an individual who has made 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.

Nominations can be mailed to:

Kutak Award Committee  
Attention: Carl Brambrink  
Director of Operations  
American Bar Association  
Section of Legal Education and Admissions to the Bar  
321 N. Clark Street  
M.S. 21.2  
Chicago, IL 60654

or sent via email to [carl.brambrink@americanbar.org](mailto:carl.brambrink@americanbar.org)

**The deadline for submitting nominations is April 11, 2016**

The 2016 Kutak Award will be presented at a reception on Friday, August 5, at the Park Central Hotel during the ABA Annual Meeting in San Francisco. For more information about Robert J. Kutak and the list of past winners, visit the [Kutak Award page](#).

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## Membership News

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### ABA Legal Career Central

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Visit the newly launched ABA Legal Career Central - the ABA's go-to resource for legal career advice and job listings. Created to serve as the predominant reservoir of information and inspiration for pre-law, law students, lawyers, and legal professionals everywhere, this valuable resource dispenses advice through publications, postings and programming. Browse articles, sign-up for (free) career programs and browse job listings at [www.abalcc.org](http://www.abalcc.org).



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## Section Resources



Find important information on the review, collection, and maintenance of law graduate employment data in the Employment Data Resources section of the [Data Policy & Collection Committee page](#).



Visit the [Publications Archives page](#) for past issues of the Section's annual publications:

- *ABA Standards and Rules of Procedure for Approval of Law Schools*
- *Annual Report*
- *Comprehensive Guide to Bar Admission Requirements*

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## Third Party Comments Invited for Law Schools Undergoing Accreditation Site Visits in Spring 2016

The law schools listed below are scheduled for sabbatical, provisional, or full approval site evaluation visits in spring 2016. Any additional visits scheduled after this notice will be posted on the Section's [website](#).

Consistent with Internal Operating Procedure 3(a), written comments related to current compliance with the Standards for Approval of Law Schools may be submitted to the ABA Section of Legal Education and Admissions to the Bar with respect to law schools scheduled for site visits. Interested parties wishing to comment on current compliance with accreditation standards by law schools undergoing accreditation site visits during spring 2016 are encouraged to submit **signed, written comments** to the Section by January 15, 2016.

Law schools undergoing accreditation site visits in Spring 2016 are:

- University of Akron School of Law (Sabbatical)
- Appalachian School of Law (Sabbatical)
- University of Buffalo Law School-SUNY (Sabbatical)
- Catholic University of America School of Law (Sabbatical)
- University of the District of Columbia (Sabbatical)
- Fordham University School of Law (Sabbatical)
- George Washington University Law School (Sabbatical)
- The John Marshall Law School-Chicago (Sabbatical)
- University of Massachusetts School of Law-Dartmouth (Application for Full)
- University of Memphis School of Law (Sabbatical)
- University of North Texas-Dallas School of Law (Application for Provisional)
- Notre Dame Law School (Sabbatical)
- Southern Illinois University School of Law (Sabbatical)
- Stanford University Law School (Sabbatical)
- University of Utah College of Law (Sabbatical)
- Wayne State University Law School (Sabbatical)
- West Virginia University College of Law (Sabbatical)

Written comments should be sent to:

William Adams  
American Bar Association  
Section of Legal Education and Admissions to the Bar  
321 N. Clark Street  
Chicago, IL 60654-7598  
[william.adams@americanbar.org](mailto:william.adams@americanbar.org)



**Note:** Your comments must be signed. **Comments, with the signatures redacted, may be provided to the law school and to members of the site team reviewing the law school.** Only comments directly related to the [ABA Standards and Rules of Procedure for Approval of Law Schools](#) will be considered.

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