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Greg Murphy
Billings, Montana
2016-2017 Council Chair

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From the Chair: Separate and Independent

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Our Section members know that the Council and the Section’s Accreditation Committee are recognized by the U.S. Department of Education (DOE) as the national accrediting agencies for American law schools and programs offering the first degree in law, the J.D. They also generally understand that when the Council and the Accreditation Committee act as accreditors they are “separate and independent” of the American Bar Association. Less generally well known is what “separate and independent” means under the DOE’s regulations and the impact the separate and independent requirement has on the operations of the Section and its budget.

As those who have found themselves practicing law affected by federal regulations know, the drafters of those regulations strive to state the law precisely. Therefore, it can be hazardous to summarize regulations because one might omit an important element or add a gloss not intended. (For those particularly interested you may find the definition of “separate and independent” at 34 C.F.R. 602.14(b).) Nevertheless, here is a succinct summary of the “separate and independent” requirement as it relates to our Section and the larger ABA:

1. The Council and the Accreditation Committee may not be elected or selected by the ABA President, Board of Governors, or House of Delegates;

2. One-seventh of the Council and of the Accreditation Committee must be representatives of the public; (This has been interpreted to mean non-lawyers.)

3. The Council must establish and implement guidelines for the members of the Council and Accreditation Committee to avoid conflicts-of-interest in making accreditation decisions (e.g., Council and Accreditation members do not participate in deliberations relating to individual schools with which they may be affiliated);

4. The fees or dues for accreditation paid by law schools must be paid separately from any dues paid to the ABA; and,
5. The Accreditation Project’s budget must be developed and determined by the Council without “review by or consultation with” the ABA.

While the DOE “recognizes” the Council and the Accreditation Committee, they do not enjoy a charter from the DOE. The Council and the Accreditation Committee are bodies under the bylaws of our Section. The Section was created by the ABA under the provisions of the ABA bylaws. The ABA’s House of Delegates has the authority to create, modify, and abolish sections.

Before addressing what this means for the operations and budgets of the Section, let me describe generally the current make-up of our membership. As of this writing, the Section has 13,684 members. 3,136 of these are law students who do not pay Section dues; 115 are associate members of the Section; 514 members are individual lawyers like me. The largest category of members of the Section are the 9,919 members who belong by virtue of their law schools’ participation in the faculty group membership program, which grants ABA membership to faculty and professional staff at ABA-approved law schools at a reduced group rate. This group membership program includes membership in our Section for the individuals at each member school. Participation in the faculty group membership is not connected to the accreditation process and is a matter of discretion on the part of law deans and their faculty.

The stated dues for membership in the Section are $50. Of that, $35 actually comes to the Section. The other $15 is taken by the ABA for its general fund and operations along with whatever ABA membership fee is paid.

No matter what the category of membership, membership in the Section and membership in the ABA are completely voluntary, except that under our Section Bylaws members of the Council, excluding public members, must be members in good standing of the ABA and of the Section. A law school is not required to participate in the group faculty membership program in order to obtain or maintain accreditation approval.

The Section membership dues allocated to the Section have historically gone to fund Section activities such as publications, workshops, and the like. These are things one ordinarily expects from a membership in an ABA section. A portion of the funds is allocated to a reasonable share of the Council’s work not directly relating to accreditation.

As a general proposition, the Council has striven to operate the activities of the Section not directly relating to accreditation on a break-even basis. Over the years, and thanks to prudent management, a reserve has accumulated though the amount in the reserve fluctuates during the year as money flows in and out. The reserve has been accumulated for the purposes for which reserve funds are usually accumulated—protection against a rainy day, capital for equipment and other purchases, etc. Note that I refer to activities “not directly relating to accreditation.” The Section reserve is a book keeping entry in the financial records of the ABA. Budgeting and spending of Section monies not directly relating to accrediting are subject to ABA budgeting policies and procedures as are the reserves of all the other sections of the association.

At least some of what we colloquially call the “Section-side” activities help inform the accreditation process. For example, a few years ago the Section conducted and published a study of
curricula in law schools. Among other things, it demonstrated how law schools have been and are adapting to changing demands, which in turn provided context for the Standards Review Committee and the Council in reviewing the Standards.

In contrast to Section dues, the accreditation fees paid by law schools to obtain the approval of the Council and to remain on the list of approved schools are paid, as the DOE requires, separate from Section membership dues. These fees are held by the ABA on behalf of the Council and the Accreditation Committee. They directly fund the Accreditation Project’s activities. The ABA plays no role in creating the budget for these activities or in setting the fees. Every year, the Council requests a contribution from the ABA for the accreditation project as part of the ABA’s commitment to legal education. How much the ABA donates varies and depends on a number of factors, not the least of which is the general condition of the ABA budget. Since 1996, the amount donated has varied from a high of $1,320,893 in 2009 to a low of $156,079 in 2014. In fiscal year 2017, the amount was $375,000.

Reasonable allocations are made between the “Section-side” of the budget and the Accreditation Project for staff salaries and benefits, the costs of office space, and the like.

Obviously, I have not included all the details involved in this process. My purpose is to advise the members of the Section in a general way of how the Section and the accreditation project are funded and operated.
A Different Take on the Top Ten Legal Education Stories of 2016

What were the top ten legal education stories of 2016?

Karen Sloan, the excellent reporter who covers legal education for the National Law Journal, offers this list, and it got me thinking. Her list certainly includes the stories that got a lot of media attention, but they were overwhelmingly critical, negative in tone, or bad news.

While it would be naïve to ignore the challenges that legal education faces, there is, as Paul Harvey would say, a “rest of the story.” That story is not only not all bad, there is quite a lot of good news to report.

So, how about a different list – a top ten list of good news or positive stories about what happened in legal education last year. Such a list makes clear that it is not too Pollyana-ish to see the legal education glass as more than half-full and less than half-empty.

Here is a list that can sit beside Karen’s list, in no particular order, of good news that also marks what happened in legal education in 2016:

1. The substantial amount of pro bono work that law students, faculty, and staff provided on an amazingly wide array of legal problems and topics.

2. New and ongoing Innovative programs that increase student engagement and contribute to student success in and after law school.

3. Law schools’ work with the Innocence Project.

4. The continuing philanthropic support for legal education.

5. Law schools’ development and investment in incubator programs to support young lawyer career development.
6. Law school satellite programs and locations that better serve students, educationally and in the search for good jobs.

7. **New, interesting, and worthwhile non-J.D. degree and certificate programs being offered at law schools across the country.**

8. Research about what young lawyers and the profession need from legal education will inform curricular innovation going forward.

9. Comparative and international programming and research continues to expand.

10. Increased attention on teaching and learning in law schools, fueled at least in part by new ABA Standards on learning outcomes and assessment programs.

Readers may have different, better ideas of what should be on this list. It is not hard these days to flesh out specific stories to illustrate the items on this list. A good place to start is the AALS website, which does an excellent job of aggregating much of the good news and is fed by contributions from law schools.

Wouldn’t it be a pleasant and helpful change to see positive stories beside the negative and critical ones? We should redouble our efforts to get these stories out there and our efforts to have our friends and colleagues in the media and blogosphere report them.
With the start of a new year, I’d like to take a moment to mention two important projects the Section is currently working on: the 2017 Associate Deans Conference and a new Best Practices Clearinghouse webpage on the Section website.

2017 Associate Deans Conference - Mark Your Calendars
The Section will once again present its Associate Deans Conference in 2017. The conference is scheduled for July 11-13 at the InterContinental hotel in Chicago. Programming will begin on the afternoon of Tuesday, July 11 and will conclude mid-morning on Thursday, July 13.

The Associate Deans Conference Committee, led by co-chairs Viva Moffat and Sondra Tennessee, is working to finalize the conference schedule and topics. Online registration is scheduled to open by end of January. The conference will focus on the fundamental responsibilities of an associate dean with a focus on topics including leadership, administration, management, team building, and budgeting, to name a few. The conference will also feature the always popular Day in the Life sessions and various opportunities to network with fellow associate deans.

Please save the date and watch for more information regarding the conference in your email and on our website. We hope you will plan to join us in July – nothing beats summer in the Windy City!

Best Practices Clearinghouse – Call for Submissions
The Section’s Publications Committee, chaired by Anthony Niedwiecki, is developing a Best Practices Clearinghouse resource webpage for the website. The webpage is designed to allow law schools the opportunity to share programs and practices that they are employing to meet the ABA Standards for Approval of Law Schools. For example, a school may share how they are measuring learning outcomes.

If you would like to submit an example to be posted on the webpage, please send your submission to Mary McNulty at Mary.McNulty@americanbar.org.
Please note that examples of best practices should not include language about ABA Site Team Reports or Accreditation Committee/Council decision letters in regards to a law school’s particular program. Each law school is reviewed separately. There is no guarantee that a program is universally compliant with the ABA Standards and Rules of Procedure for Approval of Law Schools.

The Section looks forward to continuing to provide you with new programming and valuable resources in 2017!
Nominating Committee Seeks Names for 2017-2018 Council Slate

The Section's Nominating Committee invites suggestions for nominations to the 2017-2018 Council of the Section of Legal Education and Admissions to the Bar. There are five at-large positions to be filled. Of these, four are for a three-year term and one is for a one-year term. Four of the five seats (including the one-year term) are occupied by members eligible to be re-elected. Additionally, there are two leadership positions to be filled, chair-elect and vice chair, for one-year terms. 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 New York in August.

The deadline for nominations is April 10, 2017. All nominations must be submitted through the online Council Nominations process.

2016-2017 Nominating Committee

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

The Honorable Rebecca White
Berch Justice (retired)
Supreme Court of Arizona

The Honorable Christine M. Durham
Justice
Supreme Court of Utah

Thomas C. Galligan Jr.
Dean
Louisiana State University
Paul M. Hebert Law Center

Jeffrey Lewis
Dean Emeritus & Professor
Saint Louis University School of Law

Gregory G. Murphy
Billings, Montana

John F. O’Brien
Dean
New England Law | Boston
Nominations are sought for the 2017 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

The deadline for submitting nominations is April 10, 2017

The 2017 Kutak Award will be presented at a reception during the ABA Annual Meeting in New York. For more information about Robert J. Kutak and the list of past winners, visit the Kutak Award page.
New Dean Appointments

Arizona Summit Law School
Penny Willrich

Drexel University Thomas R. Kline School of Law
Daniel M. Filler

Hofstra University School of Law
Interim Dean Gail Prudenti

The John Marshall Law School (Chicago)
Darby Dickerson

Mississippi College School of Law
Interim Dean Patricia Bennett

University of Missouri-Kansas City, School of Law
Interim Dean Barbara Glesner Fines

Saint Louis University School of Law
William Johnson

Texas Tech University School of Law
Interim Dean Richard Rosen
Third Party Comments Invited for Law Schools Undergoing Accreditation Site Visits in Fall 2017

The law schools listed below are scheduled for sabbatical, provisional, or full approval site evaluation visits in Fall 2017. Any additional visits scheduled after the date of this memo will be posted on the Section’s website.

Consistent with Internal Operating Practice 3(a), written comments related to current compliance with the Standards for the Approval of Law Schools may be submitted to the ABA Section of Legal Education and Admissions to the Bar. Comments on law schools with Fall 2017 visits should be sent by August 15, 2017. Please click on this link to submit third party comments.

Law schools undergoing accreditation site visits in Fall 2017 are:

- University of Baltimore (Sabbatical)
- California-Davis, University of (Sabbatical)
- Columbia University (Sabbatical)
- Detroit Mercy, University of (Sabbatical)
- Indiana University-Bloomington (Sabbatical)
- University of Louisville (Sabbatical)
- New England Law | Boston (Sabbatical)
- Penn State University-Dickinson Law (Provisional, limited)
- Penn State University-Penn State Law (Provisional, limited)
- St. John’s University (Sabbatical)
- Syracuse University (Sabbatical)

Note: Your comments must be signed. Only comments directly related to the ABA Standards and Rules of Procedure for Approval of Law Schools will be considered.