The Section Lives, and a Few Words on Bar Admissions and Examiners
Greg Murphy
Section Chair

FEATURED ARTICLES

The $40M Challenge and the $5M Solution
Barry Currier
Managing Director of Accreditation and Legal Education

Section Spotlight: Programming Update
Erin Ruehrwein
Section Director

Join Us at the Annual Meeting in New York

NEWS AND ANNOUNCEMENTS

ABA News
Section Staff News
New Dean Appointments
Comments Invited for Upcoming Site Visits
From the Chair: The Section Lives, and a Few Words on Bar Admissions and Examiners

Greg Murphy
Billings, Montana
Council Chair

I write to report on developments relating to the existence of our Section of Legal Education and Admissions to the Bar. Elements of a January, 2017 proposal to the ABA Board of Governors for the creation of a new ABA Commission on the Future of Legal Education included changing the name of the Section of Legal Education and Admissions to the Bar to the “Section on Accreditation” and transferring the “non-accreditation” functions (workshops, publications, and the like) of our Section to the new commission. The “Section on Accreditation” would be focused solely on accreditation, although the current non-accreditation activities of our Section have long informed the accreditation project. It was proposed that the new commission be made permanent, that its members be appointed by the ABA President to three-year staggered terms, and that the commission be funded, at least in part, by the faculty group membership dues. The faculty members would remain in the Section of Accreditation and would also be “friends” of the commission. The faculty group membership program, which provides nearly 10,000 of our approximately 14,000 members, is an important funding source for our Section.

At the February 2017 ABA Board of Governors meeting, the Membership Services Committee of the Board of Governors recommended creation of a Commission on the Future of Legal Education, but not the particulars of the proposal as summarized above. The Board of Governors approved the next day. The new commission will officially become effective at the end of the August 2017 ABA Annual meeting.

Changing the name of a section requires a two-thirds vote of the ABA House of Delegates. Under the ABA Bylaws, commissions are not permanent, but rather subject to annual review by the House of Delegates, and commissioners serve only one-year terms. In contrast to ABA commissions and other committees, the sections are the enduring elements of the ABA and are named in the ABA Constitution. They perform the tasks assigned to them under their section bylaws. Sections also provide services to section members under various section programs.
To accomplish the proposed changes in our Section described above, amendments to the ABA Bylaws would have been required. However, the deadline for the submissions of proposals for changes to the ABA Bylaws in advance of the August 2017 annual meeting was March 10, 2017. I am informed that no proposals for amendments relating to our Section were submitted. Therefore, the first section of the ABA, the Section of Legal Education and Admissions to the Bar, lives on.

Speaking of bar admissions, and since “Admissions to the Bar” is in our Section’s name, many of the readers of *Syllabus* are already aware that the House of Delegates adopted a resolution urging the bar admitting jurisdictions to adopt expeditiously the Uniform Bar Examination (the “UBE”). The resolution enjoyed the enthusiastic support of the ABA’s Young Lawyers Division and Law Student Division, and passed the House overwhelmingly. Support of the UBE is now official ABA policy.

The UBE is composed of the Multistate Bar Examination (MBE), the Multistate Essay Examination (MEE), and the Multistate Performance Test (MPE). Jurisdictions that adopt the UBE accept UBE scores earned in other UBE jurisdictions. The UBE grew out of the recognition that a great many jurisdictions were already employing the MBE, MPT, and MEE. If graduates were taking essentially the same test, the question was asked, why should they be required to take the test again in order to be admitted in another jurisdiction, and await the results, sometimes for several months?

The first UBE jurisdiction was Missouri, followed by North Dakota, and then a number of other states, primarily in the West. However, New York joined, and other states in the Northeast soon followed. As of this writing, 28 jurisdictions have officially adopted the UBE. The UBE is under consideration in other jurisdictions. Elsewhere in this edition of *Syllabus* our managing director, Barry Currier, addresses why national standards for legal education are important. While under the UBE, jurisdictions continue to establish their own minimum passing scores, their own character and fitness standards, etc., a healthy trend toward a uniform bar examination is clearly underway.

It bears noting that an urban legend seems to persist that recent disappointing bar passage results in some jurisdictions are somehow tied to jurisdictions adopting the UBE. That is both a legend, and a myth. New York, for example, did not experience a decline. The question of why bar examination performances have declined is complex. Many factors are in play. Some jurisdictions raised their minimum passing scores when they adopted the UBE. Minimum passing scores do indeed vary across the country, from a high of 145 on a 200-point scale to a low of 129. The difference is substantial. Where cohorts fall on the bell curve of score distribution varies from jurisdiction to jurisdiction. Cohorts of examination takers vary from jurisdiction to jurisdiction. Some cohorts are more gifted with more native talent and went to schools that did a better job of preparing them than in others. It is also true that some schools have gone deeper into their applicant pools and taken greater risks than they have in the past in order to fill out their classes. It is not terribly surprising that we see some correlation in bar examination performances three years later.

One essential constant has been the Multistate Bar Examination, which since its birth in 1972 has become the anchor for bar examinations across the country. Of the 50 states, only Louisiana with its Napoleonic Code tradition does not employ the MBE in its test battery. The MBE is also given in the District of Columbia and several U.S. territories.

Psychometricians, those studying the science of the measurement of human performance, emphasize the importance of “validity” and “reliability” in high-stakes examinations. When one asks whether an examination is valid, one is asking whether it tests what it ought to test. When one asks about the
reliability, one is asking about the repeatability of the score earned. It should not matter what edition of a test one takes. The reliability coefficient of the MBE regularly exceeds an impressive .90. Psychometricians consider .80 to be the “gold standard” for high-stakes testing. One could have a reliable test that is not valid, but one could not have a valid test if it is not reliable. Eliminate the MBE from the bar examination and one would interject a serious element of arbitrariness to the pass/fail decision because a limited number of essay scores, by their nature, are unreliable.

Drafting committees, each of which has a majority of legal academics and a minority of practitioners and judges writing the test items, create the NCBE tests. The urban legend that bar examiners are flinty-eyed practitioners bent on keeping newly graduated lawyers out of the profession is also a myth. The committees strive to test what newly licenses lawyers ought to know. No test is perfect, but the UBE is a vast improvement on bar examinations from the “good old days.” Perhaps with the growth of the use of artificial intelligence avenues for even more sophisticated bar examining and admissions protocols may emerge.

I mentioned earlier recent declines in bar examination performance. I am pleased to say that in my work on the Council, I have seen evidence that many schools are renewing their commitments to achieving the goal of preparing their students to be admitted to the bar upon graduation. This is all to the good, and in the tradition of the finest legal education system in the world.
The question of whether the American Bar Association should be in the law school accreditation business becomes a topic of conversation from time to time. In a recent piece in Above the Law on the Trump Administration’s, in my view, mistaken understanding and misguided view about the ABA Standing Committee on the Federal Judiciary’s role in the federal judicial nomination and confirmation process, David Lat detoured to comment on the ABA law school accreditation process:

The ABA does many worthy things as an organization, but it is not infallible. And when imperfect institutions are given special or exclusive authority over important processes, the results can be, well, suboptimal. Just look at the ABA’s domination of law school accreditation (yes, there’s a little competition in this field, but not much). There’s a good case to be made that the ABA’s near-monopoly over accreditation has not been beneficial and that it’s time for a change.

(Lat, “Trump Administration to American Bar Association: ‘You’re Fired,’” ABOVE THE LAW, April 3, 2017.)

It is a fair question. What is not debatable, at least for me, is the basic question of whether there should be a set of national standards that accredited law schools, as a general matter, must meet to qualify their graduates to sit for the bar exam wherever they wish, and, increasingly, wherever they can find meaningful and appropriately remunerative work. If the ABA law school accreditation process did not exist, someone would invent it. This is the matter I address here.

Fifty-five jurisdictions license lawyers in our system. There are currently 204 ABA-approved law schools. In a world devoid of the ABA accreditation process or something like it, every law school would need to track the education requirements of states where its graduates might seek admission, and every jurisdiction would have to adopt education requirements for bar admission and operate a system to assure that schools from which its bar applicants have graduated are complying with the jurisdiction’s legal education standards.
Some schools send graduates to only a few states on a regular basis, but many schools send graduates to many states. If schools and graduates are not now operating in a national market, we are certainly heading in that direction.

In such a decentralized world, students would have to anticipate where they might want to be licensed early enough in their law school careers to make sure that they have completed the required credits and specific courses and met the educational requirements of each jurisdiction where they might need to become licensed.

A very small number of jurisdictions have pathways to licensure that do not run through a requirement of graduation from an ABA-approved law school, but the overwhelming majority of bar examination takers each year qualify to sit by presenting a J.D. degree from an ABA-approved law school. The ABA process is a de facto set of education requirements for bar admission.

The ABA accreditation process currently costs about $5 million annually to operate. Schools and bar admissions offices expend funds to demonstrate compliance with the Standards and review bar applicant certifications, respectively. The system depends on the kindness of hundreds of volunteers, as well. This process is a cost-effective solution for the very important work of ensuring that those who are admitted to practice have had a legal education that lays a proper foundation, along with the passage of a bar examination, for granting a license to practice to beginning lawyers.

In a decentralized world, each entity (schools and jurisdictions) would need resources for staff, space, and operating funds to accomplish this work. Assume that, on average, each entity would have two staff (one professional and one support), and provide the space and support they would need. Conservatively, the cost of such an operation, on average, would likely exceed $200,000 per entity. Multiply the total of the law schools (204) and the jurisdictions (55) by that figure, and you get an annual cost exceeding $40 million.

---

1 Five percent of admittees (9.5 percent of bar exam takers) received their basic legal education outside the United States, and a handful of additional passers and takers earned a J.D. at a U.S.-based law school not approved by the ABA. See BAR EXAMINER, March 2017, pp. 18-19. States allowing non-ABA U.S. law school J.D. graduates to sit for their bar exam include (a) California, which maintains a system of accreditation and approval for non-ABA approved law schools; (b) Tennessee, which admits graduates from the Nashville School of Law; (c) Massachusetts and several other states who have given permission for graduates of the Massachusetts School of Law to sit for their bar exam; and (d) Alabama, where the Alabama Supreme Court has given permission for graduates from two specific law schools to sit for its bar examination. Fewer than 50 individuals in a handful of states qualified to sit for the bar examination based on law office study in 2016. See BAR EXAMINER, March 2017, p. 19.

2 Some states, in the wake of adopting the Uniform Bar Examination, have added a requirement that applicants complete or pass a short course on local law. See, e.g., 2016 COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS, CHART 6. These post-bar exam requirements are not inconsistent with the general proposition that a uniform set of education requirements accepted by every jurisdiction serves the public interest.

3 This is particularly true for admitting jurisdictions, which pay nothing to support the ABA accreditation process. Law schools currently pay ~95% of the cost of this process. The ABA provides a modest, and diminishing, grant that covers ~5% of the expenses. The project gets additional ABA support for which it is not charged directly, such as HR and accounting.
While bar admission and the regulation of the practice of law are, and are likely to remain, state-based matters, the legal profession and legal education operate in a context that is largely and increasingly national (and international) in scope. In this context and at this time, the ABA law school accreditation process provides an important service at a very effective price point. It is a $5 million solution to decentralized processes that otherwise would require $40+ million in expenditures.

Further, of course, a decentralized system creates a host of uncertainties and traps for unwary students, many of whom do not know until toward the end of their law school careers where they are likely to seek admission to practice. Schools could (and would) invest additional resources to help students navigate the more chaotic and decentralized world. But the ABA accreditation process can save the schools that work and ease the minds of students already worried about getting started in their careers.

There are risks and downsides to a de facto national set of standards, including some stifling of innovation, control of a national process by a small and perhaps narrowly focused or biased group, and uniformity that may not serve optimally the needs of local jurisdictions. There is also the inherent risk that the Standards, regardless of who sets or enforces them, will not be not be appropriate for the work that they need to do to serve the profession well and protect the public interest. In my experience, there are ways to deal with and compensate for these concerns within a process like the ABA accreditation process. And, there are reasons why it makes sense to locate such a process within the ABA, the most obvious national organization that brings together legal academics, lawyers, and judges.

Circling back to the original idea of this piece, it is clear to me that someone would invent a national law school accreditation process, if it did not already exist in the ABA. We have a responsibility to make the Standards and the process as good as they can be, but there is no serious question that in today’s world a fragmented and decentralized set of education requirements for bar admission would be inefficient, expensive, and very problematic for those who are transitioning from students to new lawyers.
Section Spotlight: Programming Update

Erin Ruehrwein
Section Director

The Section is presenting a number of educational programs over the coming months that we don’t want you to miss, including a webinar on the Uniform Bar Exam, the Associate Deans Conference, and an Annual Meeting Student Debt Program.

Complimentary Webinar: The Uniform Bar Exam: Where Are We Now and Where Are We Headed?

Join us on Tuesday, May 16 at 1:00 p.m. EDT for a complimentary and convenient webinar, co-sponsored by the ABA Law Student Division. Our esteemed panel will provide an overview of the UBE and discuss how it affects the bar admissions process.

View the Flyer
Register Today

Associate Deans Conference

The Section is once again presenting a conference for associate deans, July 11-13, at the InterContinental Chicago Hotel. “A Day in the Life of an Associate Dean: Leadership, Management, Finances, Administration and Beyond,” will address the many hats associate deans wear and the many audiences they interact with. In a single day, an associate dean might advise the dean, evaluate a
colleague’s funding request, work to inspire a junior scholar, review budget projections, draft a new law school policy, and hear a student complaint—all before lunch. Notwithstanding the breadth of responsibilities and constituencies, the associate dean position comes with little or no training. This conference aims to narrow the gap and provide associate deans with an opportunity to learn from fellow associate deans and other experts about their many responsibilities and audiences.

Whether you are a seasoned or new associate dean, plan to join your fellow associate deans in Chicago, July 11-13. Register today.

Annual Meeting Student Debt Program

Join us during the ABA Annual Meeting this August in New York for a complimentary program: A Strategic Approach to Student Loan Repayment. Held Thursday, August 10 at 2:00 p.m at the Grand Hyatt Hotel in New York City, this program is co-sponsored with the ABA’s Law Student Division and is one you will not want to miss! Please watch for more information regarding the program at www.americanbar.org/legaled.
Section Headquarters Hotel
Sheraton New York Times Square
811 Seventh Avenue

Preliminary Section Schedule

Thursday, August 10
A Strategic Approach to Student Loan Repayment
Co-sponsored by the Section of Legal Education and the Law Student Division
Grand Hyatt New York
2:00-3:30 p.m.

Council Meeting

Chair’s Dinner
6:00-9:30 p.m.
By Invitation

Friday, August 11
Council Meeting

Kutak Award Reception
6:30-8:00 p.m.

Saturday, August 12
Deans Breakfast
Annual Section Business Meeting

Details will be posted on the Section’s website as they become available.

Return to cover.
ABA News

Center for Innovation Solicits Proposals for Annual Meeting Spotlight Event

The ABA Center for Innovation is accepting proposals for its Spotlight events at the ABA Annual Meeting in New York on August 12, 2017. The center will select 10 speakers, who will each deliver a crisp, high-level 8-minute TED-style talk about a legal innovation. Applicants may submit any legal innovation, including those that are civil or criminal, technological or process-drive, individual or systematic, implemented or in the planning stages.

Proposals are due May 15. For more information, visit the Center for Innovation.

ABA Insurance

www.ABAinsurance.com

When was the last time you shopped for auto, home, or renters insurance? Whether it was last week or last year, ABA members now have access to exclusive savings from Travelers through the ABA Insurance program.

Contact ABA Insurance today for a quote.
ABA Launches the Diverse Speakers Directory

Welcome to the New Diverse Speakers Directory Page!

Open to both ABA and Non-ABA members.
The Directory is a great way to build your resume and expand your career!

- Expand your speaking experience both nationally and internationally.
- Show off your past speaking engagements.
- Create a customized Speakers Bio.
- Show off your technical skills.
- Market yourself to more than 3,500 ABA entities seeking speakers around the country and the world.

https://www.americanbar.org/diversity-portal/SpeakersDirectors.html

For more information or questions regarding the directory email: diversity@americanbar.org

Return to cover
Section Staff News

Camille deJorna Honored with Legacy in Law Award

Camille deJorna, the Section’s Associate Deputy Managing Director, received a Legacy in Law Award at the 2017 Black Women Lawyers of Greater Chicago Legacy Gala on March 31. Camille was recognized for outstanding service through consistent and tireless efforts related to diversity within the legal profession and similar efforts in support of underserved communities.

Congratulations to Camille on this stellar achievement.

Camille de Jorna and Valerie Jarrett, the former senior advisor to President Barack Obama who gave the keynote address at the gala.

Best Wishes to Harold Bradford

Harold Bradford, Section Program Associate, completed his last day at the ABA on Thursday, May 4 as he and his family are moving to Houston.

Harold has been with the ABA for over 13 years. He began in 2004 working in Mail Services. Since then he has served as a Service Center Representative with ABA Membership & Marketing and as an Administrative Assistant and Program Associate with the Section of Legal Education and Admissions to
the Bar. During his 7 years with the Section, he managed the Section’s listservs, various procurement processes, customer service, and assisted with publishing efforts, technology, and data analytics.

Harold has been an integral member of the Section staff and will be greatly missed. Please join us in thanking him for his work with the Section.

Best of luck on your next adventure, Harold!
New Dean Appointments

University of Arkansas-Little Rock, William Bowen School of Law
John DiPippa

University of Buffalo Law School
Aviva Abramovsky

Georgia State University College of Law
Interim Dean Wendy Hensel

University of Louisville, Louis D. Brandeis School of Law
Colin Crawford

Loyola University-Chicago, School of Law
Michael Kaufman

Loyola University-New Orleans, College of Law
Madeleine M. Landrieu

Mercer University, Walter F. George School of Law
Cathy Cox

University of Mississippi School of Law
Susan Duncan

University of Missouri School of Law
Lyrissa Barnett Lidsky

University of New Hampshire School of Law
Megan Carpenter

University of Oregon School of Law
Marcilynn Burke

Pepperdine University School of Law
Paul Caron

Penn State University-Penn State Law
Hari Osofsky
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)
- Lincoln Memorial University (Application for Full Approval)
- 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.