From the Chair: The Council Plans its Work for the Year
Maureen A. O’Rourke
Dean, Boston University School of Law

FEATURED ARTICLES
From the Managing Director: Legal Education and the Bar Exam as Requirements for Licensure
Barry Currier
Managing Director for Accreditation and Legal Education

Section Updates and Announcements
Erin Ruehrwein
Section Director

Annual Meeting Recap

NEWS AND ANNOUNCEMENTS
Staff News
Comments Invited for Upcoming Site Visits
From the Chair: The Council Plans its Work for the Year

Maureen A. O’Rourke
Dean, Boston University School of Law
2017-2018 Council Chair

As law schools around the country begin another academic year, it seems an appropriate time to review the Council of the Section of Legal Education & Admissions to the Bar’s (Council) plans for the year, particularly with respect to accreditation Standards. Additionally, besides working on the Standards, the Council is launching an ambitious restructuring project with the goal of speeding up the process of addressing accreditation issues. As always, your input on the Council’s work is invaluable, and I hope that you will participate in commenting on proposed Standards as well as the restructuring.

The Council has asked the Standards Review Committee (SRC) to review particularly the following items (For a comprehensive record of SRC’s work, see the Committee’s page on the Section’s website.):

- Standards 205-06 – Should “gender identity” be added to the list of characteristics on which a school both must not discriminate and take “concrete action” to include in its student body, faculty, and staff?
- Standard 306 – Is the current Standard permitting distance education after the first one-third of instruction and for up to 15 credits towards the degree appropriate?
- Standard 403 – The Committee will review the comments it received on a proposal to revise Standard 403 to remove the requirement that full-time faculty teach more than one-half of all credit hours or two-thirds of student contact hours.
- Standard 503 – Standard 503 requires that applicants “take a valid and reliable admission test” without specifying what that test is. For many years, schools have required the LSAT. For a variety of reasons, some schools are now permitting applicants to submit GRE scores instead. A proposed new Standard would require that the provider of any test other than the LSAT prove its national validity and reliability before a school may accept it for use in its admissions decisions.

Additionally, the Council has asked the SRC to consider whether there are ways it might enhance transparency. In particular, the Council is concerned that because enforcement actions take some time
to conclude and currently remain entirely confidential, prospective students may lack relevant information that would influence their decisions on whether and where to attend law school.

Another area the Council has asked the SRC to review is the collection and reporting of employment outcomes. Currently, the Council collects quite detailed data, and collates and presents it in a comprehensive form. The Council is concerned that the sheer volume of data collected and the manner in which the standard form presents it may be confusing. In short, providing large amounts of data across many categories may make it more difficult for the relevant audience – prospective law students – to find and assess the information most relevant to it. The Council has asked the SRC to explore whether transparency with respect to employment outcomes could actually be better achieved with less fine-grained data and a simpler form.

The Council will be reconsidering Standard 316 on bar passage. The ABA’s House of Delegates voted at its February 2016 meeting against concuring in a change to the Standard that would have required an ultimate bar pass rate of 75% for each graduating class by two years following graduation. The Council will be considering additional bar pass information obtained from schools since the Mid-Year Meeting and its implications for a revised Standard 316.

A subcommittee of the Council is considering whether the accreditation process would be more effective and efficient if the SRC and Accreditation Committee were merged into the Council itself. The goals of such a restructuring include: (i) more timely administration of the system; (ii) deeper engagement of the Council in accreditation and overall policy; (iii) freeing up the Managing Director and his staff to take on additional work by eliminating the need to plan and staff multiple meetings; and (iv) saving money. In the meantime, the SRC continues to work with the Managing Director’s Office and the Accreditation Committee to streamline particularly the law school inspection process.

While the preceding is a robust and active agenda, it is likely equally, if not more interesting, to discuss some issues that, while they receive much press coverage, are not among those the Council will be addressing: (i) two-year law schools; and (ii) student debt.

Standard 311 requires successful completion of at least 83 credit hours as a condition of awarding the JD degree. It also provides that the “course of study . . . be completed no earlier than 24 months . . . “ Law schools, then, are currently able to offer a two-year JD. Indeed, some do. That the majority do not is likely a function of lack of substantial demand and an economic model built around three years of tuition. In any event, contrary to popular belief, the Council’s Standards do not prohibit a law school from offering a JD program that students can complete in less than three years.

Finally, commentators have rightly raised concerns about students who graduate from law school with debt equivalent to a mortgage and a quite limited ability to repay it. Because of the antitrust laws, the Council will not take up the issue of what law schools – i.e., horizontal competitors – charge in tuition.

The Council is, however, quite concerned about student debt. Currently, Standard 507 requires schools to take steps to minimize student loan defaults and to provide debt counseling at the beginning and end of the student’s law school education. In the future, the Council might consider requiring significantly more counseling. A number of sophisticated financial tools now exist that would allow a prospective student to calculate the cost of attendance, the monthly payments the student would owe, and the probability of the student’s being able to make those payments in light of the income level associated with the employment the student hopes to obtain.
There are significant issues associated with any Standard that takes essentially a “disclosure approach” – whether to LSAT, GPA, bar pass rate, employment outcomes, or (hypothetically) financial situation. Students (like everyone else) have cognitive biases that lead them to believe that despite all evidence to the contrary, they will outperform what the objective numbers would suggest. This is not without reason – some will. But not all, or perhaps even most. It would be better for many students facing the prospect of large amounts of debt without a realistic possibility of repaying it to re-think seeking a JD either prior to enrolling or after completion of the first year if it does not go well.

I hope I have given you a flavor of the many issues with which the Council wrestles even though I have simplified them dramatically! It will be a busy year and I look forward to hearing from many of our Section members as we tackle some difficult issues.
From the Managing Director: Legal Education and the Bar Exam as Requirements for Licensure

Barry Currier
Managing Director

It is time to review our decades’ long commitment to the proposition that, as a general matter, the foundation for admission to the bar should be the completion of a formal legal education program at an ABA-approved law school and passage of a general bar examination. Ongoing discussions and critiques of both the accreditation standards and the bar examination, while seldom directly attacking that proposition, are nibbling around its edges.

Common critiques of the accreditation standards and, more generally, legal education, do not often challenge the idea that a legal education is a fundamental requirement of licensure, but rather argue that law school requires “too much” (e.g., the 3L year) and/or “not enough” (e.g., too little practical and skills training).

The common critique of the bar examination is not that there should not be one, but rather whether current bar examinations are designed and administered to assure that those who are admitted to the bar have the basic knowledge and competence that the public and the profession should expect of a new lawyer.

Together, a legal education and the bar examination, some suggest, drive up the cost of becoming a lawyer (tuition, bar license fees, bar exam prep program fees, opportunity costs), contributing to our access-to-justice problem, hampering efforts to diversify the profession, and inhibiting many of the “best and the brightest” from seeking careers in the law.

The Preface to the ABA Standards for Approval of Law Schools says:

“The Council and the ABA believe ... that every candidate for admission should have graduated from a law school approved by the ABA and that every candidate for admission should be examined by public authority to determine fitness for admission.”

That statement has been in the preface “since the memory of man runneth not to the contrary,” as the old saying goes. While the critiques of legal education and the bar exam often do not question that both are necessary to a good licensing system, I do hear:
“What’s the point of requiring an ABA-approved J.D. degree if a person can pass the bar exam?” and

“If the bar exam is not testing for competence in what it is that lawyers really do, why should it be required? Maybe we should reinstitute a diploma privilege.”

Critiques of whether the Standards are the right Standards and whether the bar exam is the right bar exam are, to a certain extent, questions about whether the twin requirements that have been the foundation of the licensing system in our country should continue to be the approach.

We need both. Law school is about acquiring the knowledge and skills needed to begin a life as a legal professional, but it is much more. A bar examination, by its very nature, cannot test everything that the profession and the public want a new lawyer to know, and it cannot meaningfully assess whether the new lawyer has the overall skills and perspectives that we would hope new lawyers would bring with them into the profession to develop and hone over a career.

Before we dive further into the weeds about the particulars of an acceptable legal education and bar examination, perhaps we should pause for a moment to return to this important first principle.

This re-examination should involve legal educators, judges (particularly state court judges who largely control the rules related to admission to practice), bar examiners, and members of the public. If we agree on this first principle, then our conversations about the legal education programs and bar examination – what each should seek to be and how they relate to each other – should be sharper, more productive, and more harmonious.
Section Updates and Announcements

Erin Ruehrwein
Section Director

2017 Annual Meeting Recap
The ABA’s 2017 Annual Meeting took place last month in New York City. Section Annual Meeting events included a council meeting, a business meeting, a student debt program, and the Kutak Award Reception.

In collaboration with the ABA Law Student Division, the Section presented a complimentary program entitled “Road To Zero: A Strategic Approach to Student Loan Repayment.” More than 50 students attended the program that focused on student loan options, debt repayment strategies, debt resources, and refinancing.

The Section also presented Edward Tucker with the Robert J. Kutak Award, which is given annually to an individual who has contributed significantly toward increased cooperation among legal education, the practicing bar, and the judiciary. Mr. Tucker spent 40 years as a senior director, officer, and stockholder at Ellin & Tucker, Chartered, before becoming a consultant to the Maryland-based accounting and consulting firm in 2009. He served as a public member on the Section’s Council from 2008 to 2017, including terms as secretary and chair of the Finance Committee. Mr. Tucker also previously served as a public member on the Accreditation Committee from 2001 to 2007.

2018 Law School Development Conference: Save the Date!
The Section’s 2018 Law School Development Conference is scheduled for Tuesday, May 29 – Friday, June 1, at the Loews Chicago Hotel. The conference, last held in San Diego in 2016, brings together law school deans and development professionals to learn, collaborate, and discuss the changing philanthropic landscape, new development approaches, and best practices. More information will be posted on the section website and sent via email in the coming months.

If you have specific questions or suggestions regarding the conference, please email Erin.Ruehrwein@americanbar.org.

ABA Full School Enrollment Program for Students
Did you know that the American Bar Association offers free membership to students who attend ABA-approved law schools? To facilitate access, the Full School Enrollment Program was created. This registers all students in a single process so no student misses out on the valuable benefits of ABA
membership. Currently, 100 schools are participating in the program, including public and private universities. There is no cost to the school or the student, and it’s easy to set up. To learn more, please contact Alyssa Hall at lawschoolinfo@americanbar.org.

Committees
The Section’s Conferences and Programming and Publications Committees are here to serve you and the profession by developing relevant and valuable content. If you have suggestions for Section programming or publishing, we would love to hear from you. Please contact me at Erin.Ruehrwein@americanbar.org.
Annual Meeting Recap

The Section met for business meetings and social events at the ABA Annual Meeting in New York in August. A summary of the Council actions can be found here.

At the Chair’s Dinner, held at the Hunt & Fish Club, outgoing Council members Jane Aiken, Christine Durham, Paul Mahoney, and Ed Tucker were recognized for their service to the Section. Greg Murphy, the Section’s 2016-2017 chair, also received accolades for his work.

Managing Director Barry Currier presented Greg Murphy with a copy of the 1969 letter written by Notre Dame President Theodore Hesburgh in response to student protests on campus.
On Friday evening, Edward Tucker received the 2017 Kutak Award at a reception held in his honor.

Seven past Kutak Award recipients joined the celebration. (Left to right: Robert Walsh, Talbot (Sandy) D’Alemberte, Jeffrey Lewis, Ed Tucker, Nina Appel, Erica Moeser, James White, Gerald VandeWalle)

Also on hand were members of Ed’s family: brother Michael Tucker, sister-in-law Jill Eikenberry, wife Barbara, and son Matt.
**Staff News**

**Camille deJorna**, who served as the Section’s Associate Deputy Managing Director since 2001, joined the Law School Admission Council in August. In her new position as Senior Director for Strategic Initiatives and Global Services, Camille will be working with LSAC’s leadership team to design and execute strategy to advance LSAC’s products and services domestically and globally. Managing Director Barry Currier noted that Camille had been a valued colleague and friend in her years working with the Section. “This is a good opportunity for her,” he added, “and I am happy for her that she has it.”

**Cathy Schrage**’s retirement and 43 years of service were celebrated at a party in August. Among the festivities was a musical tribute to the tune of the theme from the “Mary Tyler Moore Show,” (complete with a hat to toss) courtesy of Ed Butterfoss, Accreditation Project Director and professor at Mitchell Hamline School of Law.

♫♪
"Love is all around, no need to waste it
You can never tell, why don’t you take it
You earned your time off after all
You earned your time off after all” ♫♪
Kirsten Winek joined the Section in July in the new position of Manager, Law School Analytics and Reporting. Kirsten’s primary role is the auditing of law school employment data files. She will also be working on educational webinars to assist schools in their reporting.

Before coming to the ABA, Kirsten was the Director of Communications, Special Programs, and Financial Aid at the University of Toledo College of Law. Prior to that, she was the Assistant Director of Career Services for the law school. Kirsten holds a BA from Hope College and a JD from Michigan State University College of Law. She is currently working on a PhD in Higher Education Administration at the University of Toledo.
Third Party Comments Invited for Law Schools Undergoing Accreditation Site Visits in Spring 2018

The law schools listed below are scheduled for sabbatical, provisional, or full approval site evaluation visits in Spring 2018. 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 Spring 2018 visits should be sent by January 15, 2018. Please click on this link to submit third party comments.

Law schools undergoing accreditation site visits in Spring 2018 are:

- University of Cincinnati (Sabbatical)
- University of Connecticut (Sabbatical)
- Cornell University (Sabbatical)
- Georgetown University (Sabbatical)
- University of Illinois (Sabbatical)
- University of Maryland (Sabbatical)
- University of Nebraska (Sabbatical)
- Northwestern University (Sabbatical)
- University of Pittsburgh (Sabbatical)
- Suffolk University (Sabbatical)
- Texas Tech University (Sabbatical)
- Thomas Jefferson Law School (Sabbatical)
- Villanova University (Sabbatical)
- University of Virginia (Sabbatical)
- University of Washington (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.