ABA Approval of Law Schools: Standards, Procedures, and the Future of Legal Education

Michigan Law Review

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Legal Education Commons, and the Legal Profession Commons

Recommended Citation
Available at: https://repository.law.umich.edu/mlr/vol72/iss5/6

This Note is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
ABA Approval of Law Schools: Standards, Procedures, and the Future of Legal Education

Graduation from an accredited law school is a requirement for admission to the bar in most states. Although rule-making power with regard to bar admission lies in the state supreme courts, the

1. See generally Section of Legal Education and Admissions to the Bar, American Bar Association, Law Schools & Bar Admission Requirements: A Review of Legal Education in the United States—Fall 1972, at 47-52 (1973) [hereinafter Bar Admission Requirements].

Some states express their requirement in terms of years of study in law school rather than, or in addition to, graduation or degree received. For example, the Michigan rules state:

Every applicant for examination will be obliged to satisfy the Board that he is a graduate from a reputable and qualified law school . . . . which law school, as a minimum, requires as a condition precedent to graduation the satisfactory completion of a course of study of legal subjects of 3 years duration of at least 30 weeks each, if its students are required to devote substantially all of their working time to their studies, or a course of 4 years duration of not less than 36 weeks each, if its students are not required to devote substantially all of their working time to their studies.


2. As a general rule, the power to admit attorneys and set admissions standards is vested in the judiciary. See, e.g., Spevak v. Klein, 385 U.S. 511, 524-25 (1966) (Harlan, J., dissenting); Ex parte Garland, 71 U.S. (4 Wall.) 333, 379 (1866); Sams v. Olah, 225
courts give great deference to the American Bar Association (ABA) as an accreditor of law schools. Admission requirements frequently prescribe unconditionally that an applicant must be a graduate of a law school that has been approved by the ABA. Other states require either graduation from an ABA-approved law school or some specified alternative. The few remaining states require unconditionally or as an alternative that an applicant for the bar be a graduate of an "accredited" or "approved" law school, without designating the ABA as the accrediting body. Some of these states specify an accreditor,

---


Bar admission standards appear in many forms. They may be court rules, see, e.g., Ill. S. Ct. R. 701-09, or rules of a board of bar examiners whose power is delegated by the state court. See, e.g., Florida Board of Bar Examiners, Rules and Regulations (Oct. 15, 1970). If the admissions standards appear in the form of state statutes, they are generally formulated only as an aid to the state court, and the final decision as to the acceptability of the standards remains with the court. See, e.g., In re Park, 484 P.2d 690, 691 (Alas. 1971). Although operationally delegated to another body, the formulation of admissions standards is a judicial function, the authority and final responsibility for which rests with the court. See Dowling, The Inherent Power of the Judiciary, 21 A.B.A.J. 635, 638 (1935).

3. See Bar Admission Requirements, supra note 1, at 47-52. Although not generally relied on by state bars, the Association of American Law Schools (AALS) provides a form of accreditation through its election of schools to membership on the basis of compliance with predetermined requirements. See AALS Bylaws art. 2, § 2-2, in AALS Association Information (March 1973). At the end of 1972 there were 125 member schools in the AALS. AALS, Members of the Association, in Association Information (March 1973). There were 151 law schools on the 1972 ABA-approved list. Bar Admission Requirements, supra, at 6-34. All AALS members are approved by the ABA.

The initial accreditation procedures of the two groups are independent; however, re-evaluations may be conducted by visiting teams of legal educators and practitioners acting on behalf of both organizations. Memorandum from Millard H. Rund, Consultant on Legal Education to the ABA, to Members of a Reinspection Team, Sept. 1973, at 2 [hereinafter Reinspection Team Memorandum]. (A copy of the memorandum is on file with the Michigan Law Review.) The functions of the two appraisals differ in that bar examiners more frequently rely on the ABA practitioners' evaluation, while educational institutions may look to the AALS evaluation to determine the qualifications of a degree holder for the purpose of making decisions concerning his advancement in the academic setting. See Cardozo, Accreditation of Law Schools in the United States, 18 J. Legal Ed. 420, 420-21 (1960).

4. See Bar Admission Requirements, supra note 1, at 47-52. See, e.g., Nev. S. Ct. R. 51:

An applicant for examination for a license to practice as an attorney and counselor at law in this state shall:

- Have received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association.

5. See Bar Admission Requirements, supra note 1, at 47-52. See, e.g., Ky. Ct. App. R. 2070: "(a) Before an applicant shall be admitted to the bar examination he must have been graduated, with an LL.B. or equivalent professional degree, from a law school approved by the ABA or by the AALS."

6. See Bar Admission Requirements, supra note 1, at 47-52. E.g., Washington State
such as the bar examining committee; others do not. Nevertheless, they often maintain a policy or a rule that deems a law school to be accredited in the state if it is approved by the ABA.

The ABA's accreditation role is relatively new; it was initiated in 1921. However, it is solidly entrenched today. When the ABA adopts accreditation standards and procedures, it has a significant impact on the accessibility of membership in the bar. Because of its effects on those who aspire to enter the legal profession, on law schools, and on the public interest in an adequate bar, the ABA accreditation system deserves careful examination and evaluation.

Bar Association, Rules for Admission to the Practice of Law, Rule 2 [hereinafter Washington Bar Rules]:

A. . . . An "approved law school" means a law school approved by the board of governors. B. . . . A general applicant, in order to be permitted to take the bar examination, must

(1) present satisfactory proof of either (a) graduation from an approved law school, or (b) satisfactory completion of the course of study prescribed for a registered law clerk by these Rules . . . . .

7. See, e.g., Conn. Super. Ct. R. Regulating Admission to the Bar § 8: "Sixth. That he has obtained a bachelor of laws or equivalent degree from a law school accredited by the committee . . . ." See generally Bar Admission Requirements, supra note 1, at 47-52.

8. See, e.g., Kan. S. Ct. R. 211: "(A) . . . Each applicant shall satisfy the Board that he has completed a full course of study in . . . an accredited law school and that he has been granted and holds . . . L.L.B. or J.D. or their equivalent or higher degrees . . . ." See generally Bar Admission Requirements, supra note 1, at 47-52.

9. See, e.g., In re Schatz, 80 Wash. 2d 604, 606, 497 P.2d 153, 154 (1972). The board of governors of the state bar association maintains a policy that an approved Law school is a law school approved by the ABA. The relevant portion of the Washington rule is set out in note 6 supra.

10. See Michigan Bar Rules, supra note 1, Rule 4: "A law school shall be deemed prima facie reputable and qualified within the meaning of these Rules if it is a law school approved by the American Bar Association." The ABA list of accredited schools is known as the "approved list." Bar Admission Requirements, supra note 1, at 5. Bar admission requirements and accreditation literature appear to use "accredited" and "approved" interchangeably.

11. Early bar admission rules in this country did not require law school attendance, and law office apprenticeships were the common alternative. See Stolz, Training for the Public Profession of the Law (1921): A Contemporary Review, in American Association of Law Schools, Proceedings, pt. 1, § 2, app. 2, at 142, 142-43 (1971) [hereinafter AALS Proceedings]. See also Reed, Training for the Public Profession of the Law, abridged in AALS Proceedings, supra, app. 1, at 74, 74. See generally Stevens, Two Cheers for 1870: The American Law School, in 5 Perspectives in American History 403 (D. Fleming & B. Bialyn eds. 1971); Auerbach, Enmity and Amity: Law Teachers and Practitioners, 1900-1922, in id. at 549.

In a few states it is still possible to qualify for the bar on the basis of law study that has taken place wholly or partly in a law office rather than in a law school. See, e.g., Washington Bar Rules, supra note 6, Rule 2(b)(1)(b). See generally Bar Admission Requirements, supra note 1, at 47-52.

12. In 1921, the ABA endorsed a resolution stating that formal, prescribed law school education meeting certain predetermined standards should be required for all candidates for admission to the bar. Included was a resolution that the ABA Council on Legal Education and Admissions to the Bar publish periodically a list of law schools meeting its standards. Stolz, supra note 11, at 155-56. Nevertheless, states were slow to change bar admission requirements regarding education. See Stolz, supra, at 157-58.

13. See notes 4-10 supra and accompanying text.
The stated objective of the ABA in promulgating its accreditation standards is to pursue ways and means of "bringing about the improvement of the legal profession." The standards deal with the organization and administration of the law school, the educational program, the faculty, admissions policies, the library, and the physical plant. The present standards, as well as the rules of procedure for the approval of law schools, were adopted by the ABA House of Delegates after extensive consideration. Procedures to amend the standards are similarly elaborate.


15. Id. Standards 201-705.

16. ABA, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE vi-vii (1973). The House of Delegates is composed of attorneys selected to represent the states, state and local bar associations, and various other components of the ABA. Also included are the Attorney General, Deputy Attorney General, and Solicitor General of the United States, as well as the Director of the Administrative Office of the United States Courts. ABA Const. § 6.2. The methods of electing or choosing delegates vary among the groups represented. See ABA Const. §§ 6.3-6.11.

The Council of the Section of Legal Education and Admissions to the Bar is composed of eighteen attorneys. See [1973-1974] ABA DIRECTORY pg 87A. It is the body through which the Section acts in recommending standards to the House of Delegates as well as in recommending schools for approval. See ABA, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE (1973), quoting By-laws of the Section of Legal Education and Admissions to the Bar, art. 1, § 4.

17. The consideration of the standards and rules took the following form: A first draft was distributed for comment on December 8, 1971, to the chief appellate judge of each state, the bar examiners of all jurisdictions, the deans of all ABA approved law schools, and the members of the Section. In addition, the deans of over 100 law schools discussed the draft at a meeting with the Section Council and the drafting committee held February 4, 1972. A second draft was prepared and circulated on April 10, 1972. Hearings were held in San Francisco on May 6, and in Chicago on May 13, 1972. Nearly 100 practitioners, judges, teachers and deans participated in the hearings. Thereafter, a final draft was prepared and adopted by the Section at its annual meeting on August 15, 1972. The House of Delegates approved and adopted the Standards and Rules of Procedure on February 12, 1973.

ABA, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE vi-vii (1973). According to Millard H. Ruud, who was Consultant on Legal Education to the ABA during this period, the wide distribution of the drafts and the hearings held on them were undertaken in an effort "to provide legislative due process in the adoption and amendment of Standards." Letter from Millard H. Ruud to the Michigan Law Review, February 27, 1974, at 2. Mr. Ruud is currently executive director of the AALS.

18. ABA Standards, supra note 14, Standard 902(b): A member of the Section of Legal Education and Admissions to the Bar may propose an amendment and a statement of its purposes to the Secretary of the Section, who shall transmit the proposed amendment and the statement of purposes to the members of the Council. The Council shall consider such a proposed amendment at the next Council meeting held 30 or more days thereafter and may consider any other proposed amendment. By majority vote the Council shall submit to the Section at the annual meeting such proposed amendments of the Standards as it deems appropriate. If an amendment proposed by a member as described above is not submitted favorably by the Council to the Section, the amendment shall be submitted to the Section at the next following annual meeting if a
Deviations from the standards are allowed under certain circumstances.\textsuperscript{19} First, for two years after the effective date of new standards, a provisionally or fully approved school is not required to conform to those new standards if it continues to be in compliance with the former standards.\textsuperscript{20} Second, a law school may apply to the Council of the Section of Legal Education and Admissions to the Bar for a variance if it wishes to offer a program that is not in “substantial compliance” with the present standards so long as “the Council finds that the proposal is consistent with the general purposes of the Standards.”\textsuperscript{21} The Council may also impose conditions that it deems appropriate on a variance.\textsuperscript{22}

The accreditation procedure itself has two stages—provisional approval and full approval.\textsuperscript{23} Approval is granted by the ABA House of Delegates upon recommendation of the Council.\textsuperscript{24} Prior to seeking approval, an institution may obtain information, advice, or the services of a consultant from the ABA without fee.\textsuperscript{25} A letter to the Association, the Council, or the consultant is sufficient as an initial application for approval.\textsuperscript{26} In addition, “[a]n inspection visit to the school will be made on request . . . .”\textsuperscript{27}

A school that wishes to be approved returns the completed questionnaire with a cover letter in which the chief executive officer of the educational institution and the dean of the law school give assurances that, having read, considered, and answered the questions, they believe that each requirement has been met.\textsuperscript{28} If the school’s officials cannot give these assurances or are uncertain, they can request a petition signed by 100 or more Section members requesting its submission is filed with the Secretary at least 30 days prior to the annual meeting at which the amendment is to be submitted to the Section.

\textsuperscript{19} Broad authority is given to the Council of the Section of Legal Education and Admissions to the Bar with regard to interpreting standards and adopting and amending rules regarding the implementation of the standards and the accreditation procedure itself. See id. Standard 801.

\textsuperscript{20} Id. Standards 901(b)-(c). It is not clear whether the same two-year grace period applies following amendment of the standards. See id. Standards 901(b)-(c), 902(b).

\textsuperscript{21} Id. Standard 802.

\textsuperscript{22} Id.

\textsuperscript{23} Rules of Procedure for the Approval of Law Schools, Rule I(1), in ABA, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE (1973) [hereinafter ABA Rules].

\textsuperscript{24} Id. Rules I(1), I(5).

\textsuperscript{25} Id. Rule I(2).

\textsuperscript{26} Id. Rule I(5). Thereafter, “[t]he requesting school will be sent a copy of the Standards, Council Interpretations, Rules of Procedure, other pertinent data, and a copy of a questionnaire devised to permit the school and the Council to evaluate the status of the school in the light of the Standards as interpreted by the Council.” Id.

\textsuperscript{27} Id. Rule I(4). For this inspection visit the school will be charged a fee plus the travel and living expenses of the inspector. Id.

\textsuperscript{28} Id. Rule I(5).
sultation, advice, and a visit by a consultant. The consultant helps
the school prepare for approval and, with the aid of Council, ren­
ders other assistance to the school. If the officials feel that their
school does meet the standards, a visit by an inspector agreeable to
the school will be arranged at a mutually satisfactory time.

After an exhaustive inspection, a written report is submitted to
the chief executive officer and the dean for confirmation of its ac­
curacy and is thereafter sent to each member of the Council. At this
time the application is placed on the agenda of the next Council
meeting.

The Council may then recommend the school for provisional
approval and send the recommendation to the House of Delegates for
action. The standards provide that the House of Delegates will
grant a law school provisional approval “when [the school] estab­
lishes that it substantially complies with the Standards and gives as­
surance that it will be in full compliance with the Standards within
three years after receiving provisional approval.” If the application
is not acted upon favorably, the school is informed of the respects in
which it fails to meet the standards. In either case the chief execu­
tive officer of the institution and the dean of the law school are sent
a report on the school’s strengths and weaknesses, with recommenda­
tions or offers of assistance.

The rules provide that “[s]tudents and graduates of provisionally
approved schools are entitled to the same recognition as is accorded
the students and graduates of fully approved law schools.” Within
five years from the time of provisional approval, a school must secure

29. Id.
30. Id. Rules I(5)-(6).
31. See id. Rule I(6): “An initial inspection usually requires three days, as classes
are visited, records and transcripts inspected, the library canvassed, information set
forth in the questionnaire checked, and consultations held with the chief executive
officer of the institution, the dean of the law school, members of the law school faculty,
and the law students.”
32. Id. Rule I(6). Council meetings are held immediately before the annual and
the midyear meetings of the ABA. Id. Rule I(7).
33. Id.
34. ABA Standards, supra note 14, Standard 104(a). Note that the formulation of the
relevant rule of procedure is somewhat different in its statement that “[p]rovisional
approval will be granted if the applicant school meets the Standards established by the
American Bar Association as interpreted by the Council.” ABA Rules, supra note 23,
Rule I(l). Millard H. Ruud explains this inconsistency as follows: “Standard 104(a)
controls the question of eligibility for approval. The statement in the Rules of Proce­
dure simply is an effort to summarize the provisions in the Standards . . . . Again, with
respect to the granting of full approval it is the provision of the Standards and not of
the Rules that governs.” Letter from Millard H. Ruud to the Michigan Law Review,
February 27, 1974, at 2.
35. ABA Rules, supra note 23, Rule I(8).
36. Id. Rules I(7)-(8).
37. Id. Rule I(9). See ABA Standards, supra note 14, Standards 104(c)-(f).
full approval or be removed from the provisional approval list, "unless the period of time of provisional approval is extended by the Council for a good cause shown by the school . . . ." 38 In addition, provisional approval may be withdrawn if the school does not continue to comply substantially with the standards. 39 Yearly re-inspections are made at the expense of the school during the provisional approval period. 40 When the Council finds that the school demonstrates "continued compliance with the letter and the spirit of the Standards" and an "emphasis on a steady improvement in the quality of the educational program," the House of Delegates will consider the school for full approval. 41 "A law school will be granted full approval when it establishes that it is in full compliance with the Standards and it has been provisionally approved for at least two years." 42

Each fully approved school is expected both to maintain its compliance with the ABA standards "and to demonstrate a genuine and continuous effort to improve the quality of its educational efforts." 43 Approval can be withdrawn if a school's substantial compliance ceases, unless the school "gives assurance that the deficiencies will be corrected within a reasonable time, as fixed by the Council . . . ." 44 Further, the schools are subject to periodic re-inspections at seven-year intervals at the school's expense, and the Council may order additional re-inspections when "special circumstances warrant." 45

The inspection teams are generally composed of three lawyers, one of whom is not a full-time legal educator. 46 It is Council policy

38. ABA Rules, supra note 23, Rule II(l). See ABA Standards, supra note 14, Standard 104(c).
39. Id.
40. ABA Rules, supra note 23, Rule II(2).
41. Id. Rule II(3).
42. ABA Standards, supra note 14, Standard 104(b).
43. ABA Rules, supra note 23, Rule III(3).
44. ABA Standards, supra note 14, Standard 104(d). See ABA Rules, supra note 23, Rule IV. See also Id. Rules VI (Appeal), VII (Reinstatement). Approved schools are expected to provide information as requested by the Council. Id. Rule III(1). Furthermore, an approved law school must make a timely report prior to any major change in structure or operation, including relocation, change in affiliation status, or the offering of certain new programs. The school must obtain the Council's acquiescence before instituting a new day, evening, or graduate division, or before merging with another law school. The Council's acquiescence to a merger is subject to re-inspection and evaluation after two years. Id. Rule V. These measures are required because "a major change in structure or operation may raise questions as to a law school's continued compliance with the Standards." Id.
45. Id. Rule III(2). The dean and faculty of a school to be inspected are requested to complete the inspection questionnaire and prepare a self-study describing the goals of the school as well as its strengths and weaknesses. Memorandum from Millard H. Ruud, Consultant on Legal Education to the ABA, to the Dean of an Approved Law School Scheduled to Be Reinspected, Sept. 1973, at 2 [hereinafter Memorandum to Dean].
46. Id. at 3.
that reinspection reports not be distributed or quoted publicly.\textsuperscript{47} Nevertheless, an additional purpose of the reinspection program is to report on developments at the law school in areas, such as curriculum, teaching, research, and public service, that would be of interest to legal educators and Council members.\textsuperscript{48}

The ABA procedures, both for adopting standards and for approving law schools, appear to be thorough, careful, and, in most instances, procedurally fair to the schools. Nonetheless, the accreditation system is deficient in that it is a closed system controlled by the members of a single profession and in that information about its operation is unavailable to interested parties.

The accreditation process might be characterized as composed of judges, who are lawyers, relying on lawyers to accredit lawyers' institutions for the education of more lawyers. The lawyers and the lawyer-judges of the bar examining committees and the state supreme courts rely on their trade organization, the ABA, to prescribe the standards and procedures to be utilized in determining which schools will satisfy the legal education requirement.\textsuperscript{49} In formulating the standards and procedures the ABA Council and the Section of Legal Education and Admissions to the Bar rely on the opinions of practitioners, judges, law school deans, and faculty members,\textsuperscript{50} all lawyers. Even law professors and deans, who represent educators, generally have no training in education and are, in essence, legal scholars. Those who do have training in other disciplines have also undergone the rigorous socialization of a legal education. Moreover, the subject matter with which all of these professionals are dealing is the availability of legal education to their future competitors.

If judicial review of the law school accreditation system is sought, it will be conducted by persons who are themselves members of the legal profession.\textsuperscript{51} The courts have exhibited great deference to both the ABA and the state bar admissions processes. In upholding an admission requirement of graduation from an ABA-accredited law school, the Connecticut supreme court commented, "It is a matter of common knowledge that the American Bar Association is a representative body . . . an organization national in scope, whose purpose is to uphold and maintain the highest traditions of the legal profession."\textsuperscript{52} Upholding a similar Arizona bar admission requirement, the

\textsuperscript{47} Id. at 5.
\textsuperscript{48} Id. at 1; Reinspection Team Memorandum, \textit{supra} note 3, at 2.
\textsuperscript{49} See notes 1-10 \textit{supra} and accompanying text.
\textsuperscript{50} See note 17 \textit{supra} and accompanying text; text accompanying note 46 \textit{supra}.
\textsuperscript{51} Note that this is unlike judicial review of action by other professional associations, where the judges are not members of the profession. \textit{Compare} Doelker \textit{v. Accountancy Bd.}, 12 Ohio St. 2d 76, 232 N.E.2d 407 (1967) \textit{with} Cleveland Bar Assn. \textit{v. Bilinski}, 177 Ohio St. 43, 201 N.E.2d 878 (1964).
\textsuperscript{52} Rosenthal \textit{v. State Bar Examining Comm.}, 116 Conn. 409, 417, 165 A. 211, 214 (1933).
Michigan Law Review

Ninth Circuit cited approvingly an expression by Justice Frankfurter of deference to state admission processes:

"To a wide and deep extent, the law depends upon the disciplined standards of the profession and belief in the integrity of the courts [in prescribing rules of admission]. We cannot fail to accord such confidence to the state process, and we must attribute to its courts the exercise of a fair and not a biased judgment in passing upon the applications of those seeking entry into the profession." 53

Judges, as lawyers, may be more hesitant to oppose the action of the other lawyers instrumental in the ABA law school accreditation system than they would be to oppose the actions of a less esteemed or less related group. 54 At every level the accreditation system might be described as a closed system, which lacks input from those outside the legal profession.

A second significant characteristic of the ABA law school accreditation process is the unavailability to interested persons and to the public of information regarding the bases upon which accreditation was granted or denied to a particular law school. Scholars examining the law school accreditation system would have an interest in the information. More importantly, the quality of education of future members of the bar, the number of individuals allowed access to the bar, and the financial accountability of state-supported law schools are matters of legitimate public concern. Nevertheless, because the ABA keeps the inspection reports and the Council recommendation regarding a particular school confidential, 55 there is apparently no way for a researcher or a concerned citizen to learn how closely an accredited or unaccredited law school conforms to the ABA standards or to learn how evenhandedly or strictly the standards are in fact

53. Hackin v. Lockwood, 361 F.2d 499, 502-03 (9th Cir.), cert. denied, 385 U.S. 960 (1966), quoting Schware v. Board of Bar Examiners, 353 U.S. 232, 249 (1957) (Frankfurter, J., concurring). Similarly, in a case involving an attack on the system for screening applicants for admission to the New York Bar, the court noted that "[c]onsiderations of comity to respected fellow-judges suggest they should be afforded a reasonable opportunity to reflect on our conclusions and perhaps take action that may obviate any occasion for an injunction." Law Students Civil Rights Research Council, Inc. v. Wadmond, 299 F. Supp. 117, 133 (S.D.N.Y. 1969), affd., 401 U.S. 154 (1971). In affirming the decision upholding the state process, the Supreme Court noted, "We have before us a State whose agents have evidently been scrupulous in the use of the powers that the appellants attack, and who have shown every willingness to keep their investigations within constitutionally permissible limits." 401 U.S. at 167.


applied. For example, if one law school is accredited although it does not comply completely with one or more standards, it cannot be determined whether the same degree of leniency was exercised in another case—where accreditation was perhaps denied.

The confidentiality problem affects even those who now receive some of the reports. Although schools that are evaluated receive reports on their status, they may consider it against their best interests to complain about the lack of information regarding the stringency with which the standards were applied in the accreditation of other schools. A law school, especially one that desires to be accredited, may not want to risk establishing an unfavorable relationship with the ABA and, thus, may hesitate to demand information.

The closed system of law school approval, coupled with the lack of available information, presents the danger of stagnation in legal education. The danger is aggravated by the absence of standards that would themselves foster innovation within the law schools. An area in which innovation may be appropriate is suggested by the observation that "[t]he teaching method and first-year curriculum used by most law schools today antedate the present century." The general goals embodied in the ABA standards include the following:

(a) The law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar.
(b) A law school may offer an education program designed to emphasize some aspects of the law or the legal profession and give less attention to others.
(c) The educational program of the school shall be designed to prepare the students to deal with recognized problems of the present and anticipated problems of the future.

The standards dealing specifically with the content of the curriculum require that "[t]he law school shall offer: (i) instruction in those subjects generally regarded as the core of the law school curriculum . . . ." These standards do not embody the goal of actively seeking more effective methods of educating lawyers. While there is the exhortation to prepare students to deal with anticipated problems of the future, the exhortation is in tension with the standard that encourages a traditional basis for the development of law school curricula. Certainly, the rule and goals do not assume a progressive

56. "A law school will be granted provisional approval when it establishes that it substantially complies with the Standards . . . ." ABA Standards, supra note 14, Standard 104(a) (emphasis added). See text accompanying notes 21-22 supra.
57. See text accompanying notes 55-56 supra.
59. ABA Standards, supra note 14, Standard 301.
60. Id. Standard 302(a).
posture that would emphasize innovation. While the curriculum requirement should be construed to prescribe only the minimum offering, its effect may well be retardant. New law schools, with limited resources and limited access to information about the approval of unusual curricula, may perceive establishment of an educational program based on the traditional view of the training of lawyers to be a guaranteed corridor to accreditation.

Not only do the standards not encourage innovation, but they may actually inhibit innovation within the law schools and thereby compound the danger of stagnation in legal education. For example, Standards 305 and 306 might place restrictions on innovative law schools; these standards deal with the number of hours in attendance at classes in the law school that a school must require as a con-

61. It is difficult for any closed group to re-examine its ethical standards without help from unbiased or disinterested individuals. Stagnation resulting from the closed system may be reflected in the ethical training that law students receive. The relevant ABA accreditation standard provides: "The law school shall offer . . . (iii) and provide and require for all student candidates for a professional degree, instruction in the duties and responsibilities of the legal profession." Id. Standard 302(a). This provision was the subject of much discussion before the ABA House of Delegates and was adopted in February 1973. See House Disapproves UMVARA, Supports the Exclusionary Rule, and Adopts New Law School Standards, 59 A.B.A.J. 384, 388-90 (1973). Yet there remains considerable dissatisfaction with the ethical training of lawyers. See, e.g., Thieles, The Influence of the Law School Experience on the Professional Ethics of Law Students, 21 J. LEGAL ED. 587 (1969). Some psychoanalytic and sociological research is presently being performed on the role of law schools in the students' development in the area of professional responsibility. Boyer & Cramton, supra note 58, at 267-68. It seems likely that input from nonlawyers who have worked in the area of legal ethics would suggest improvements for effective ethical training and perhaps give rise to a more innovative accreditation standard, which would provide increased guidance to law schools in their development of effective instruction in the duties and responsibilities of the legal profession.

It also appears that the closed system manifests itself in areas other than accreditation. The formulation of the content of the Code of Professional Responsibility may reflect only the viewpoint of lawyers—the ABA members who adopted it. One commentator has noted that "[i]t seems clear that rules of legal ethics, no matter how sincerely they are framed, can express the public interest only as that interest appears to lawyers, so long as they are framed by lawyers." Currie, Reflections on the Course in the Legal Profession, 22 J. LEGAL ED. 48, 50 (1969).

62. ABA Standards, supra note 14, Standard 305(a): "The law school shall require as a condition for graduation, the completion of a course of study in residence, of not less than 1200 class hours, extending over a period of not less than ninety weeks for full-time students, or not less than one-hundred and twenty weeks for part-time students."

Id. Standard 306:

If the law school has a program that permits or requires student participation in studies or activities away from the law school or in a format that does not involve attendance at regularly scheduled class sessions, the time spent in such studies, or activities may be included as satisfying the residence and class hours requirements, provided the conditions of this section are satisfied.

(d) At least 900 hours of the total time credited towards satisfying the "in residence" and "class hours" requirements of this Chapter shall be in actual attendance in regularly scheduled class sessions in the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which the credit was earned.
dition for graduation. An innovative law school that wished to encourage a greater amount of out-of-classroom clinical work and research would fail to meet the standard, as would a school that followed the Carrington Report Model Curriculum, under which a student could "attain a professional J.D. degree with two years of law study." Even if a given standard is not rigidly enforced, the body of standards may function as an imposing prototype of legal education and thus may hinder nonconforming experimentation by legal education planners, administrators, and professors. Exploration into nonconforming modes of legal education may be seen as attracting possible disapproval by the ABA. Moreover, the present standards may jeopardize a deviating school's accreditation because a less progressive legal institution or individual may pressure the ABA to enforce the existing standards evenly and rigidly. Adverse comment on a law school's innovation may "chill the enthusiasm for similar innovation" in other schools at which "even a hint of disaccreditation can cause apprehension and turmoil." 

The method of teaching affects not only the efficiency and quality of legal education but also the development of law. To the extent that law schools are encouraged to use traditional teaching methods and are not encouraged to experiment, they impart to the students a rigorous but restricted approach to societal problems. For example, the case method may develop the abilities to analogize and distinguish, but, at the same time, it may discourage students from reassessing basic premises. This conservatismin may or may not be warranted, but those who are to present problems and solutions to courts and legislatures should be trained to reassess and to present their reassessments of first principles. Present and past legal resistance to change may be in part due to rigorous, traditionally structured legal education.

In addition, a system of law school accreditation that is controlled


Also potentially restrictive is Standard 304(b): "The scholastic achievement of students shall be evaluated from the inception of their studies. As part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, except clinical work, courses involving extensive written work such as moot court, practice court, legal writing and drafting, and seminars and individual research projects." A difficulty in justifying the use of a written examination lies in the necessity of formulating just what the law school is attempting to transmit to the student. Unless what is being tested is clear, it is difficult to say that one type of test is more effective than another. On the failure to identify the goals of legal education, see AALS Curriculum Study Project Comm., supra, at 36. If stated goals include the imparting of knowledge and skills that are not adequately measured by a half-day written analysis of hypotheticals, the value of such an exercise as a testing device might be doubted. For a discussion of goals of legal education, see id. at 7-9, 36-37.

64. Cardozo, supra note 3, at 12.
entirely by lawyers presents a danger of a self-serving limitation on access to the legal profession. In the present period, when the demand for law school seats is high, state requirements of graduation from an ABA-approved school limit the number of attorneys to the number accommodated in the approved law schools. Overly restrictive standards that do not in fact bear a reasonable relationship to the goal of ensuring a competent bar could be employed to limit the number of entrants into the legal profession. For example, one standard mandates that a law school "may not be operated for private profit." The standard could prevent ABA approval of a successful proprietary law school that might otherwise qualify and would thus inhibit the growth of a system of schools that would service those students now unable to get into law schools. Any specific objections to a proprietary school could be met with directly relevant educational standards, rather than by the present, seemingly unreasonable, ban. Another standard requires that students receive substantially all of their first-year instruction of a full-time curriculum or the first two years of a part-time curriculum from full-time faculty members. This standard might restrict a law school that wishes to emphasize practical aspects of the law or that is unable to afford a full-time faculty. In either case, the issue should be the quality of instruction, not the need or desire to utilize part-time faculty.

Unreasonable accreditation standards may deprive certain groups of the opportunity to practice law. For example, such standards could fall unevenly so as to exclude certain socioeconomic and ethnic groups that are unable to attend the more expensive schools that might more easily meet any accreditation standard that is set. Perhaps the inability of the members of such groups to attend more costly law schools is demonstrated by their presence at law schools, and particularly evening law schools, that are not approved by the ABA. His-

66. ABA Standards, supra note 14, Standard 202. See Marjorie Webster Junior College, Inc. v. Middle States Ass'n of Colleges and Secondary Schools, Inc., 432 F.2d 659 (D.C. Cir.), cert. denied, 400 U.S. 965 (1970), in which a similar nonprofit requirement was upheld for a regional college and secondary school accrediting body. The ABA joined with the AALS in filing an amicus curiae brief with the court of appeals on behalf of the accreditor. See Section of Legal Education and Admissions to the Bar, American Bar Association, 2 Legal Education Newsletter, Feb., 1971, at 2. Note that, unlike this case, the ABA law school accreditation procedure bears directly on a licensing function, as graduation from an ABA-accredited law school is a necessary requirement for admission to the bar in many states.

67. Telephone conversation with Dean Maxwell Boas and Executive Director Burton Reis of Western State University College of Law, March 22, 1974 [hereinafter Boas-Reis Interview].

68. ABA Standards, supra note 14, Standard 403(a).

69. Boas-Reis interview, supra note 67.
torically these schools have served immigrant students, who could subsequently provide legal services to the immigrant communities. Today they are available to those students who must work to fulfill family obligations, to those seeking second careers, and to those seeking legal training for advancement in their present careers. Care must be taken to ensure that any standards that place ABA-approved law schools beyond the grasp of these students are really necessary to provide the public with an adequate bar.

Undue restrictions on the number of bar admissions may prevent many sectors of the public from receiving adequate legal services. The restriction on the number of practicing lawyers would seem to be likely to promote higher fees for legal services, which may place such services beyond the reach of those who are unable to pay attorney’s fees and yet cannot qualify for free legal aid. Moreover, it is likely that individuals who are presently excluded from accredited law schools could serve useful functions in providing specialized legal services—for example, in areas such as divorce, probate, or real estate—or otherwise sharing the burden in areas of law where present needs are not being adequately served. A slight sacrifice in what the ABA regards as the necessary standards for law schools may be a small price to pay for the benefits that would flow from the greater accessibility of legal services.

The public interest in a qualified bar, as well as the public need for specific types of legal services, might be better promoted by sifting out the lower caliber attorneys through the market process than by limiting access to the profession through overly strict accreditation standards.

Although the potential for undesirable consequences is present in the current ABA law school accreditation system, such consequences may not occur in practice. The ABA does have a procedure

70. See Stevens, supra note 11, at 463-64; Auerbach, supra note 11, at 551, 588, 593. Although it does not seem to be true today, past concern about the increase in minority groups in the legal profession may have prompted the raising of legal education standards. See Stevens, supra, at 463-64; Auerbach, supra, at 584-86, 592-98.

71. Boas-Reis Interview, supra note 67.

72. For example, if the requirement that accredited law schools be nonprofit has no rational basis, graduates of a profit-making law school should not be denied the benefits accorded to graduates of ABA-approved schools on that ground alone. Some of the resources of the school may be absorbed as profit rather than expended to improve the quality of the educational program, but such schools nevertheless provide an opportunity for legal education that would otherwise be unavailable.


74. Cf. id. at 642: “To the extent that the bar’s control over the legal services delivery system results in higher prices than would occur without the imposition of such control, fewer people can afford such services.”

75. See generally id. at 650-53.
for granting variances in order to offer programs that are "contrary

"to the terms of the Standards" but "consistent with [their] general

purposes." Nevertheless, this formal procedure is not being utilized:

"There have been no grants of variances in these express terms ... .
The sense of the provision is that it is exceptional action. The pro-

vision is a necessary one, but it was anticipated when it was placed

in the rule that it would be rarely used." While no variances as

such have been given, there is evidence that the standards are

sometimes applied flexibly. Though not expressed as a variance,

"... it is arguable that the action taken by the Council in granting

provisional approval to a somewhat unconventional law school pro-

gram within the past several years was an instance of the granting of

a variance." In this regard, illustrations of the ABA's applications of the

standards would be useful to show the extent to which deviations

are tolerated. However, specific illustrations are scarce, due to the

ABA policy of keeping inspection reports and Council resolutions

confidential.

Some insight may be gained by examining a law school that was provisionally approved by the ABA despite its non-

traditional approach.

Antioch School of Law in Washington, D.C., admitted its charter

class in the fall of 1972. The initial Antioch Catalogue states,

The primary objectives of the School of Law are to produce a

"new breed" of lawyers and legal technicians committed to the use

of law as an instrument of justice; to generate a new body of legal

scholarship—empirically based, relevant and highly disciplined—
to deal with the problems of social injustices; and to act as a catalyst
to change the nature of legal education nationally.

Originally planned as a "clinical law school," Antioch might have

76. ABA Standards, supra note 14, Standard 802. See text accompanying notes 21-22

supra.

77. Letter from Millard H. Ruud to the Michigan Law Review, February 27, 1974,
at 1.

78. Id.

79. See text accompanying notes 55-57 supra.

80. Antioch School of Law was granted provisional approval by the ABA House of Delegates at its midyear meeting in 1973. Section of Legal Education and Admissions to the Bar, American Bar Association, 4 Legal Education Newsletter, June 1973, at 10.


82. Antioch Dean Jean Camper Cahn used this description of the school in an article in the first issue of the new publication of ABA Section of Legal Education and Admissions to the Bar. See Cahn, Antioch's Fight Against Neutrality in Legal Education, 1 LEARNING AND THE LAW, Spring 1974, at 40, 41.

83. According to Antioch's initial catalog, during a six-week period of the first year, students live with inner-city families, spend a night in jail, ride in police cars, file for welfare and food stamps, and learn to file housing complaints and to interview clients at a neighborhood law office. ANTIOCH SCHOOL OF LAW, supra note 81, at 11.
tested the flexibility of the standard requiring "instruction in those subjects generally regarded as the core of the law school curriculum" or the standards dealing with required hours of attendance at classes in the law school. Nevertheless, as the school catalogue relates, "Officials and representatives of the American Bar Association including John Climinskey, Chairman of the Board of Governors Special Committee on Professional Education, and Professor Millard Ruud, Consultant on Legal Education to the American Bar Association have devoted substantial amounts of time to the planning process to help insure that the innovative educational approach of the Law School meets minimal accreditation standards."

The provisional approval of Antioch would appear to indicate a measure of flexibility in the application of accreditation standards, as well as a willingness on the part of ABA officials to aid a law school.
in planning for accreditation. However, the factual setting in which Antioch developed is unique, and its success may not indicate that innovation will readily be achieved by other law schools. Because of the resources available and the involvement of public figures, as well as the extensive consultation with ABA officials, the Antioch experiment may have been successful to an extent not generally possible. Those interested in innovation in existing and potential law schools that lack such resources may draw little hope from the Antioch example. More encouragement is necessary to foster significant innovation in more typical situations. Moreover, innovation must be attainable with considerably less effort than that devoted to the Antioch program if it is to become common among American law schools.

In addition, if flexibility is to be a positive attribute of the ABA law school accreditation system, it must be exercised fairly and predictably. Yet, under the present confidential system no information is available to the public or to interested individuals for the purpose of seeing that evenhandedness is in fact accomplished. Moreover, if the system professes to apply predetermined standards, but in fact permits deviations in certain cases, without using the official variance procedure and without publicity to permit public scrutiny, the potential for abuse appears to be significant.

In view of the dangers of stagnation within the accreditation standards and within legal education, of undue limitation of access to the legal profession, and of uneven application of standards, certain modifications in the ABA procedures merit consideration. First, greater access to information regarding the bases of accreditation decisions is needed. Because the ABA accreditation system is heavily relied upon in the licensing of lawyers, it would seem that the public, individual candidates for the bar, and accredited and unaccredited law schools have a right to know exactly why one law school is granted the important ABA approval and another is not, and why a school is approved when it might seem to deviate from one or more of the standards. Of course, there may be valid reasons for maintaining confidence regarding certain details learned during the accreditation inspections. For example, comments concerning specific personalities should probably remain confidential. Yet, a straightforward report on the degree to which an evaluated school complies with or deviates from the established standards should be publicly

87. An example of a fully approved law school that may have tested the accreditation standards' flexibility is Northeastern University School of Law in Boston, Massachusetts. The law school operates on a cooperative plan in which the last two years of school are spent alternating between intervals of practical work experience and full-time education. Northeastern University School of Law, [1972-1974] CATALOG 18.
88. See text accompanying notes 55-57 supra.
89. See BAR ADMISSION REQUIREMENTS, supra note 1, at 47-52.
available. This would, by publicizing instances of permitted deviations, enhance the flexible application of standards and, at the same time, provide for outside scrutiny to assure evenhandedness. 90

However, additional information is not in itself enough to alleviate significantly the dangers of a closed system. In order to prevent the standards themselves from fostering stagnation in legal education and unduly limiting access to the legal profession, input from experts outside the legal profession should be secured. Nonlawyer experts from such disciplines as higher education, psychology, psychiatry, sociology, and economics could provide insight into developments in higher education methodology, testing analysis, content of courses, and guidance in the formulation of ABA standards. Experts whose work has specifically involved legal education would be extremely helpful in this regard, as would those whose research has involved medical and other graduate specialties, which might provide useful analogies.

Such input could be incorporated into the present standard-making and amending procedures at various stages. First, the Council of the Section of Legal Education and Admissions to the Bar and its standard-drafting committee should include extra-legal experts. Second, in the initial stage of drafting standards or considering amendments, relevant empirical research and publications by extra-legal experts should be actively sought and considered. A procedure to secure such data, possibly under the direction of specific designees, would be necessary. Third, when initial drafts of standards have been completed or amendment drafts considered, the drafts should be examined and critically analyzed by a panel of extra-legal experts.

In addition, a standard that deals specifically with innovations in legal education is in order. The thrust of the standard should be to encourage pioneering in legal education on the part of individual law schools, to advocate the sharing of ideas regarding new developments, 91 and to facilitate communication of insights on new programs by legal educators, practitioners, and extra-legal experts affiliated with the Section. The standard should also provide a procedure whereby law schools would submit proposals for innovative programs to the Section of Legal Education and Admissions to the Bar, which would serve as a forum for the exchange and development of more effective means of legal education. 92

90. It does not seem likely that scrutiny of such reports would be objectionable to a school that falls short of winning approval, since the fact of its nonaccreditation would be public anyway, and access to other reports would allow the school to verify that the treatment it received was comparable to that given other schools.

91. Perhaps this sharing of ideas could be conducted in part through the Section's new publication, Learning and the Law.

92. Perhaps this could be incorporated into the present variance procedure in cases in which the new proposal is actually contrary to the terms of the standards. If the
should themselves secure the services of nonlawyer educational advisors regarding new programs. Where such consultation on a regular or even a periodic basis is not feasible, some guidance may be obtained through communication with ABA Section-affiliated experts under the auspices of an innovation development program.

Finally, there remains the remote possibility of exposing the ABA accreditation standards to judicial scrutiny. In the past, suits that have challenged unconditional and alternative state requirements that an applicant for the bar be a graduate of an ABA-accredited law school have been unsuccessful. For example, the Ninth Circuit found the requirement not to be "arbitrary, capricious and unreasonable" and thus not violative of the fourteenth amendment.93 State courts have also found the requirements to be constitutional94 and, under their power to set admission standards,95 have not been willing to overturn requirements formulated by bodies to which they have delegated that responsibility.96 The cases do not

93. Hackin v. Lockwood, 361 F.2d 499, 502, 504 (9th Cir. 1966), cert. denied, 385 U.S. 960 (1966), was an action to enjoin application of a bar admission requirement of graduation from an ABA-accredited school as violative of fourteenth amendment due process and equal protection. The court noted that some restriction is proper in view of the public interest in a qualified bar and that, if requirements are applicable to all citizens, deference is due to the state in establishing them.

94. See, e.g., Rosenthal v. State Bar Examining Comm., 116 Conn. 409, 165 A. 211 (1933). The court found that it was not arbitrary or unreasonable for the examining committee to approve the same schools that were accredited by the ABA in implementing the state admission requirement of graduation from a law school approved by the Committee. The court pointed out that the petitioner knew about the requirement at the time he entered an unaccredited law school, and, therefore, any hardship he suffered was voluntarily encountered. Henington v. State Board of Bar Examiners, 60 N.M. 393, 291 P.2d 1108 (1956), held that a requirement of graduation from an ABA-accredited school does not violate the due process or equal protection clauses of the state and federal constitutions, is neither arbitrary nor unreasonable, and applies to all persons regardless of religion, race, creed, or color.

95. See note 2 supra.

96. See State, ex rel. Ralston v. Turner, 141 Neb. 556, 4 N.W.2d 302 (1942); In re Schatz, 80 Wash. 604, 497 P.2d 153 (1972). One possible wedge was suggested in Rossiter v. Law Comm. of the State Board of Law Examiners, 42 U.S.L.W. 2017 (D. Colo. June 12, 1973). In that case an applicant for the bar requested the opportunity to demonstrate that, although his law school had not sought ABA accreditation, it satisfied all ABA standards and would have been approved if it had completed the procedure for accreditation. The court held that the requirement denied the applicant's right to due process of law unless it provided for a procedure whereby an applicant could demonstrate that his school complied with ABA standards. The court suggested that the applicant be given a hearing by the ABA or, if the ABA continued its policy of taking applications only from schools and not from students, that the applicant be given hearing by the state. Rossiter is likely to have only limited impact. ABA approval makes a school more attractive to students in that graduates will fulfill the legal education requirements for bar admission in all states. As a result, there are not likely to be many schools that in fact meet ABA standards but have not applied for accreditation.
analyze the reasonableness of the requirement of graduation from an ABA-approved school, of the distinctions between graduates of ABA-accredited law schools and graduates of unaccredited law schools, or of the specific accreditation standards utilized. Perhaps a suit that focused on these points would have a greater chance of success.

Nevertheless, in view of the courts' demonstrated reluctance to provide recourse and in light of their expressed deference to accreditors,97 it would appear that a modification of the ABA law school accreditation system in order to ameliorate its weaknesses and open the closed system is the only practical approach.

97. See text accompanying notes 52-53 supra.