

**REPORT OF THE
COMMISSION TO REVIEW THE
SUBSTANCE AND PROCESS OF THE
AMERICAN BAR ASSOCIATION'S
ACCREDITATION OF AMERICAN LAW SCHOOLS**

**August 3, 1995
(as revised October 31, 1995)**

**COMMISSION TO REVIEW THE SUBSTANCE AND PROCESS OF
THE AMERICAN BAR ASSOCIATION'S
ACCREDITATION OF AMERICAN LAW SCHOOLS**

Chairperson

Honorable Rosalie E. Wahl
St. Paul, MN

Commission Members

Honorable Rosemary Barkett
Miami, FL

Dean Ronald A. Cass
Boston, MA

President Talbot D'Alemberte
Tallahassee, FL

John C. Deacon, Esq.
Jonesboro, AR

Dean John D. Feerick
New York, NY

Dean Joseph D. Harbaugh
Fort Lauderdale, FL

Dean Herma Hill Kay
Berkeley, CA

Tom Leahy, Esq.
Chicago, IL

Nancy Neuman, Public Member
Lewisburg, PA

William G. Paul, Esq.
Bartlesville, OK

Dean Henry Ramsey, Jr.
Washington, D.C.

Pauline A. Schneider, Esq.

Washington, D.C.

Dean E. Thomas Sullivan
Minneapolis, MN

Diane C. Yu, Esq.
San Francisco, CA

*ABA Presidential
Representative*

Jack L. Brown, Esq.
Tulsa, OK

Liaison to ABA

Board of Governors

James T. Halverson, Esq.
New York, NY

*ABA Consultant on
Legal Education*

Dean James P. White
Indianapolis, IN

Reporters

Professor Randy Hertz
New York, NY

Dean Frank T. Read
Houston, TX

Staff

Claudia Fisher
Indianapolis, IN

This report is submitted to the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar in accordance with the charge of the Council on June 2-3 1994, when it created the Commission to Review the Substance and Process of the American Bar Association's Accreditation of American Law Schools.

Pursuant to the action of the Board of Governors of the American Bar Association on June 3, 1995, a copy of this report will be provided to each member of the Board of Governors.

Contents

	Page:
Introduction: Process and Procedures of the Commission	1
I. The General Contours of the Current Accreditation Process	7
A. History of the ABA's Role in Accreditation	7
B. Summary of Current ABA Accreditation Standards	10
C. Procedures for Adopting or Modifying Standards or Interpretations	12
(1) Standards.....	12
(2) Interpretations	12
D. The Site Evaluation Process	13
II. Evaluation of the Current Accreditation Process.....	16
A. The ABA's Role in Accreditation	16
B. Content of the Current Accreditation Standards.....	18
(1) Statement of Purpose	18
(2) Lawyering Skills (Standards 301 and 302).....	20
(3) Definition of "Full-time Faculty Member"; "Core Faculty" Requirements; Student/Faculty Ratios (Standards 402, 403; Interpretations of Standard 201).....	23
(4) Maximum Teaching-Hour Limits (Standard 404).....	26
(5) Compensated Leaves of Absence for Faculty and Staff	27
(6) Law School Physical Facilities (Standards 701-705).....	27

(7)	Allocation of Resources Between the Law School and Its Parent University (Standards 201, 209, 210)	28
C.	Procedures for Adopting or Modifying Standards or Interpretations	29
D.	The Site Evaluation Process	32
(1)	Timing of Site Evaluation Visits	32
(a)	Regular Site Evaluations.....	32
(b)	Foreign Programs.....	33
(2)	Law Schools' Preparation for Site Evaluation Visits.....	35
(a)	Annual and Sabbatical Questionnaires	35
(b)	Self-Study	36
(3)	Size and Composition of Site Evaluation Teams.....	37
(4)	Scope of Review: Aspirational Goals.....	40
(5)	Action Letters	41
E.	Costs and Financing of the Accreditation Process	43
(1)	Costs of the Process	43
(a)	Deans' Surveys.....	44
(b)	Site Evaluation Team Members' Surveys	46
(c)	Accreditation Committee Members' Surveys.....	47
(d)	Deputy Consultant's Report	48
(2)	Financing of the Process	48

III.	Recommendations of the Commission	51
A.	General Recommendation.....	51
B.	Recommendations Relating to the Content of the Accreditation Standards.....	51
C.	Recommendations Relating to the Site Evaluation Process	54

Bibliography

Separate Statement of Ronald A. Cass

Introduction

Process and Procedures of the Commission

The Commission to Review the Substance and Process of the American Bar Association's Accreditation of American Law Schools (also referred to as "the Wahl Commission," after its chairperson, the Honorable Rosalie E. Wahl), was created in June 1994 by the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar. The Commission's members were appointed by Dean Robert A. Stein, who was at the time the Chairperson of the Section of Legal Education and Admissions to the Bar, and by Judge Joseph W. Bellacosa of the New York Court of Appeals, who was at the time the Chairperson-Elect of the Section. The essential purpose of the Commission was to provide a thorough, independent report examining all facets of law school accreditation.

The following representatives of the judiciary, academy, practicing bar, and public were appointed as members of the Commission:

- X Justice Rosalie E. Wahl, Supreme Court of Minnesota, who was appointed the Chairperson of the Commission;
- X Judge Rosemary Barkett, United States Court of Appeals for the Eleventh Circuit;
- X Dean Ronald A. Cass, Boston University Law School;
- X President Talbot D'Alemberte, Florida State University, Past President of the American Bar Association;
- X John C. Deacon, Esq., member of the Arkansas Bar and a member of the ABA House of Delegates;
- X Dean John D. Feerick, Fordham University Law School, former President of the Association of the Bar of the City of New York;
- X Dean Joseph D. Harbaugh, Nova Southeastern University Shepard Broad Law Center (Dean of the University of Richmond School of Law at the time of his appointment to the Commission);
- X Dean Herma Hill Kay, University of California at Berkeley School of Law;
- X Tom Leahy, Esq., Past President of the Illinois State Bar;
- X Nancy Neuman, former National President of the League of Women Voters, who

was appointed as the Public Member of the Commission;

- X William G. Paul, Esq., member of the Oklahoma Bar and a member of the ABA House of Delegates;
- X Dean Henry Ramsey, Jr., Howard University School of Law, former Judge of the Superior Court of the County of Alameda, State of California;
- X Pauline A. Schneider, Esq., President of the District of Columbia Bar, Chairperson of the ABA Accreditation Committee, and a member of the ABA House of Delegates;
- X Dean E. Thomas Sullivan, University of Minnesota Law School (Dean of the University of Arizona School of Law at the time of his appointment to the Commission);
- X Diane C. Yu, Esq., General Counsel of the State Bar of California and a member of the ABA House of Delegates.

Jack L. Brown, Esq., member of the Oklahoma Bar and a member of the ABA Board of Governors, was designated the ABA Presidential Representative. James T. Halverson, Esq., member of the New York Bar, was designated as the Liaison to the ABA's Board of Governors.

The Reporters for the Commission were: Professor Randy Hertz, New York University School of Law; and Dean Frank T. Read, South Texas College of Law, who was at the time the ABA Deputy Consultant on Legal Education. Claudia S. Fisher of the Office of the ABA Consultant on Legal Education served as a staffperson for the Commission.

The Commission was able to draw upon the able assistance of several other people as well. William B. Powers and Cathy A. Schrage of the Office of the ABA Consultant on Legal Education provided information, materials, and other support. Dean Feerick was assisted by Professor Daniel Richman of Fordham Law School and by two recent graduates of the law school, Anne Cunningham and Michael O'Leary. In conducting an empirical study for the Commission, Dean Kay was assisted by her research assistant, Catherine Albiston.

The Council of the Section of Legal Education and Admissions to the Bar charged the Commission with the task of reviewing the substance and process of accreditation of law schools and submitting a report on or before the date of the 1995 Annual Meeting of the American Bar Association. The Council identified the following specific areas for review:

- ! The designation, by the U.S. Department of Education and the fifty highest state courts, of the Council of the ABA's Section of Legal Education and Admissions to the Bar as the entity to administer the accreditation process;
- ! Content of the Standards for the Approval of Law Schools, the body of governing

principles adopted by the House of Delegates and reviewed and revised on an ongoing basis by the Section's Standards Review Committee;

- ! Structure and processes by which law school accreditation is administered;
- ! Costs and financing of the accreditation process;
- ! Implications of the recently adopted Department of Education regulations relating to accreditation agencies, particularly those relating to agency independence, financing, and consumer notification and protection.

To study this broad range of issues in the most effective and timely manner, the Commission created two subcommittees. The Standards Subcommittee, chaired by Dean John D. Feerick, focused on the accreditation standards, including the content of existing Standards and the processes by which the Standards and their Interpretations are adopted. The Process Subcommittee, chaired by Diane C. Yu, focused on the accreditation process, including the purpose and frequency of site visitations; the direct and indirect costs of law school accreditation incurred by the ABA, volunteers and the law schools; the size and composition of site evaluation teams; the consultation and enforcement functions of the accreditation process; and the ABA's communication of and monitoring of "concerns" and non-compliance issues found in the site evaluation process. In gathering information about accreditation standards and processes, the subcommittees examined not only the field of legal education but also other areas of professional education.

The Commission conducted its work over a period of ten months. The Commission met in plenary sessions on October 6, 1994; November 10, 1994; January 6, 1995; February 10, 1995; March 13, 1995; and June 12-13, 1995. The subcommittees held additional meetings to discuss their work and to prepare reports and proposals.

Shortly after its formation, the Commission devoted substantial effort to reaching out to all sectors of the legal profession and other interested parties to solicit information about the nature and quality of current accreditation standards and procedures. The Commission sent a letter to approximately 1500 legal educators, practitioners, and judges, requesting "comments and views" concerning any or all of the following subjects:

- ! "[T]he validity and justification for law school accreditation as designated in the Council of the Section by the United States Department of Education and as delegated by the fifty highest state courts, including the relationship of the Council to the House of Delegates, and to the state courts as the ultimate legal profession regulators."
- ! "[T]he Standards for Approval of Law Schools, the body of governing principles adopted by the House of Delegates, including the ongoing activities of the Standards Review Committee of the Section currently conducting a complete review and proposed revision of the Standards."

- ! "[T]he structure and processes by which law school accreditation is administered."
- ! "[T]he work and findings of the joint commission currently examining the issue of the financing of legal education, including an appraisal of the cost of the accreditation process."
- ! "[T]he effects of the recently adopted Department of Education regulations relating to accreditation agencies, especially its regulations relating to agency independence, financing, consumer notification, and protection."

In addition to seeking written submissions, the Commission held public hearings, at which it received testimony from interested parties. Hearings were held on three occasions: January 6, 1995; February 10, 1995; and February 12, 1995.

The Commission received testimony or written statements from 129 individuals. These included 50 deans or assistant deans of law schools; 24 law professors; 36 practicing lawyers (including the presidents of 7 bar associations); 8 university officials (including 7 presidents); 2 law student representatives; and 1 bar examiner. The written testimony and supporting materials submitted by those individuals who testified are reproduced in Appendix A of this report; the other written comments received by the Commission are reproduced in Appendix B.

The Commission also conducted an empirical survey of the costs of the accreditation process, focused on the academic years 1991-92, 1992-93, and 1993-94. The Commission gathered data from deans of law schools that were the subject of site evaluations during the survey period; individuals who served on site evaluation teams during the same period; members of the ABA Accreditation Committee who served during the survey period; and the Office of the ABA Consultant on Legal Education.

In reviewing the content of accreditation standards, the Commission confronted a logistical dilemma. As the Commission was in the process of reviewing the existing Standards, the Section's Standards Review Committee was engaged in substantially revising these very Standards. It became apparent that the work of the Standards Review Committee would not be completed until after the end of the Commission's tenure. Since even those proposed standards developed by the Standards Review Committee during the Commission's existence might undergo substantial revision after the Commission had completed its work, the Commission could not, as a practical matter, base its review of accreditation upon any new standards proposed by the Standards Review Committee. Accordingly, although the Commission kept itself informed of the progress and product of the Standards Review Committee, the Commission conducted its independent review and analysis on the basis of the existing Standards and Interpretations.

Furthermore, on June 3, 1995, shortly before the end of the Commission's tenure, the ABA's Board of Governors adopted a number of resolutions relating to the law school accreditation process, some of which may affect the recommendations of the Commission. The precise impact of the Board's resolutions could not be assessed prior to the ending date of the Commission's tenure.

Moreover, some of the measures adopted by the Board will require the creation of new mechanisms and procedures, which will not occur until after the Commission has submitted its final report. Accordingly, here again, the Commission concluded that it would be most appropriate to focus on existing Standards and procedures. To the extent possible, this report notes potential effects of the Board's resolutions upon specific recommendations of the Commission.

Among the resolutions adopted by the ABA's Board of Governors on June 3, 1995 was a resolution stating:

The Wahl Commission will include in its report a specific discussion of Standards and Interpretations that concern the following subjects: limits on teaching hours, student-faculty ratios; and allocations of funds between law schools and affiliated universities. It will also be asked to discuss Standards and Interpretations on facilities as well as the need for new Standards covering faculty leaves of absence.

On June 5, 1995, Dean James P. White, the ABA Consultant on Legal Education, wrote a letter to the members of the Commission, stating:

At its June 2-3, 1995 meeting, the Council of the Section [of Legal Education and Admissions to the Bar] asked the Wahl Commission to consider the following matters as part of its review of standards and procedures with respect to the approval of law schools, and particularly minimum standards, which should apply:

1. Uniform maximum teaching hour limits
2. The subject of compensated leaves of absence for faculty and staff
3. The calculation of student/faculty ratios and the relevance of actual class size and actual student/faculty contact
4. Law school physical facilities
5. The allocation of resources to the law school by its parent university

These actions of the Board of Governors and the Council of the Section of Legal Education and Admissions to the Bar were taken in response to an ongoing investigation undertaken by the Anti-Trust Division of the United States Department of Justice.

On June 27, 1995, the American Bar Association and the Department of Justice entered into a consent decree. Pursuant to that consent decree, the Council and the Board have asked the Commission to address each of the five issues identified in the preceding paragraph. Accordingly, the Commission will re-convene in the Fall of 1995 to determine whether this report's treatment of these five issues or any other matters should be supplemented or revised.

As the foregoing description of the Commission's process indicates, the Commission endeavored to employ procedures that would afford all organizations and individuals affected by the law school accreditation process a full opportunity to express their views and to share their perspectives with the Commission. Throughout the Commission's own plenary sessions and subcommittee meetings, there was a similar emphasis on the airing and full consideration of the opinions of all Commission members. Precisely because of the wide range of perspectives represented by the members of the Commission, discussion of issues continued until all members had had an opportunity to fully present their positions. This report is careful to identify those areas on which there were divergences of opinion within the Commission. Drafts of the report were circulated to Commission members for review to ensure that the report accurately reflects the points on which consensus was reached and to afford Commission members the opportunity to make revisions.

Part I of the report provides background information about the accreditation process. It begins with a history of the ABA's role in the accreditation process. Thereafter, it describes the content of current accreditation Standards, the processes by which accreditation Standards and their Interpretations are adopted or modified, and the "site evaluation process" for granting provisional approval to new law schools and monitoring compliance with the Standards and Interpretations by law schools on the list of ABA approved schools.

Part II presents the Commission's evaluation of the current accreditation process. Part II(A) discusses the merits of the ABA's performing the functions it historically has performed in the accreditation process. Parts II(B) and 8 examine, respectively, the content of the accreditation Standards and the processes by which those Standards and their Interpretations are adopted or modified. Part II(D) evaluates the current procedures for conducting site evaluations. Part II(E) discusses the costs and financing of the accreditation process.

Part III presents the recommendations of the Commission with respect to each of the issues analyzed in the foregoing sections of the Report.

I.

The General Contours of the Current Accreditation Process

A. History of the ABA's Role in Accreditation

As Dean Henry Ramsey, Jr. has observed, "[t]he origin of the ABA's accreditation process, in one sense, is rooted in the 1893 formation of the Section of Legal Education and Admissions to the Bar." Henry Ramsey, Jr., *The History, Organization, and Accomplishments of the American Bar Association Accreditation Process*, 30 WAKE FOREST L. REV. 267, 268 (1995).

The Section grew out of the Committee on Legal Education and Admissions to the Bar, one of the first standing committees created by the American Bar Association when it was formed in 1878. This committee early took the position that a law school diploma is an essential qualification for admission to the bar and that a law school curriculum should consist of a rigorous three-year course of study that includes not only American, but also Roman and English law. The committee's 1891 statement on "The Best Method for Teaching Law" admonished: "The habit of relying on digests and textbooks has led to the treatment of every reported case as an authority without reference to the principles upon which it was based, or even to the point actually decided." In 1893, the ABA converted the standing committee to a Section, entitled the "Section of Legal Education and Admissions to the Bar," with its own Council.

The ABA's process for inspecting and accrediting law schools had its origins in the 1920s. At the beginning of the decade, Elihu Root, the former Secretary of State and newly elected chair of the Section of Legal Education and Admissions to the Bar, created and assumed leadership of a committee to undertake the task of promulgating minimum standards for law schools. The committee was charged by the Section with ascertaining how the ABA could "create conditions which will tend to strengthen the character and improve the efficiency of those admitted to the practice of law."

The Root committee report was blunt in its assessment of the problem. Although acknowledging that "[t]he present average of character and efficiency [within the legal profession] is reasonably high," the committee declared that "there are many cases [of] below average [practitioners]" and it emphasized that "the continuation of a class of incompetent practitioners" cannot be tolerated. To the committee, it was readily apparent that the core of the problem and its solution lay in the process by which new members of the profession are trained. Explaining that "we cannot favor the continuation of a system of training which fails to reach the highest practicable standard," the committee stated that every lawyer should "receive a training in accordance with certain prescribed and uniform standards." To this end, the committee recommended that law schools be obliged to limit admission to students who have attended at least two years of college; require law students to "pursue a course of three years duration" (which would be even longer for part-time students); establish an adequate library; and "have among its teachers a sufficient number

giving their entire time to the school to insure actual personal acquaintance with the whole student body."

In making these recommendations, the Root committee specifically rejected an approach urged in a study of legal education commissioned by the Section of Legal Education and Admissions to the Bar, which was entitled *Training for the Public Profession of the Law* and authored by Alfred Z. Reed, a staff member of the Carnegie Foundation. In that report, Reed had expressed support for the continuing existence of all three types of institutions then in existence: full-time schools with "[h]igh-entrance" requirements; full-time schools with less demanding requirements; and part-time schools. Reed concluded that part-time schools could play a part in the creation of a differentiated bar by producing lawyers competent to perform routine tasks.

Root's committee vehemently rejected "the suggestion that there must be different kinds of training to produce different kinds of lawyers." "In spite of the diversity of human relations with respect to which the work of lawyers is done," the Root committee observed, "the intellectual requisites are in all cases substantially the same."

Root's approach won the support of the ABA. Adopting the committee's report, the ABA developed a set of accreditation standards in 1921. Although very brief (barely filling a two-page pamphlet) and relatively undemanding, the standards established minimum criteria for educational programs, faculty, facilities, and students, and required that schools articulate educational goals. The ABA also created a new office of advisor to the Section to oversee investigations and accreditation decisions.

In the two decades following the publication of the ABA's new accreditation standards, one state supreme court after another came to the conclusion that the standards were an appropriate mechanism for regulating Bar admission in their states. By the end of the 1930's, 41 states had adopted rules requiring graduation from an ABA-accredited law school in order to be admitted to practice law within the state.

During this same period, the ABA refined both the standards and the procedures for accrediting law schools. In 1952, the Council of the Section of Legal Education and Admissions to the Bar appeared on the first list of nationally recognized accrediting agencies published by the United States Commissioner of Education. By 1956, the Section had begun a program that contemplated the reinspection of all approved schools at least once every five years. Under Millard H. Ruud, appointed as the ABA's consultant on legal education in 1968, inspection teams were expanded to include not just legal educators but judges and practitioners, and a practice was begun of coordinating inspections with those of the Association of American Law Schools (AALS).

In 1961, the ABA House of Delegates authorized the Council of the Section of Legal Education and Admissions to the Bar to undertake a comprehensive review of the Standards. That review led to roughly a decade of redrafting, commentary and revision, culminating in 1973 with the adoption of a new set of Standards. The new Standards were drafted by a committee chaired by Richard W. Nahstoll. Prior to their adoption by the ABA's House of Delegates in 1973, the draft

Standards were circulated for review to the chief appellate judges and bar examiners of each state, deans of all approved law schools, and members of the Section.

The 1973 Standards and the Section Report recommending their adoption explain that the Standards were designed to accomplish the accreditation process's ultimate goal of "bringing about the improvement of the legal profession" (Standard 101) by assuring the existence of a system of "quality legal education" (Report of the Section of Legal Education and Admissions to the Bar). In "advancing the cause of quality legal education" (*id.*), the Standards emphatically eschewed a monolithic approach to legal education. As the Section explained in its Report, "the proposed Standards recognize the diversity in quality legal education." *Id.* Indeed, an attempt to mandate a course on "the subject of the legal profession" was defeated in 1973, after supporters of the Standards argued that schools should be free to make their own judgments on how best to teach professional responsibility.

In 1974, Professor Ruud was succeeded by Dean James P. White as the ABA's Consultant on Legal Education. During the two decades in which Dean White has overseen the accreditation process, both the Standards and the procedures for implementing them have continued to evolve. These developments have included, for example, the adoption in 1980 of Standard 212, which requires law schools to take concrete steps to demonstrate "a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups (notably racial and ethnic minorities) which have been victims of discrimination in various forms"; the revision in 1981 of Standard 211, so as to permit a law school to have a "religious affiliation and purpose"; increased attention to clinical legal education, stimulated in part by the Section's 1979 "Cramton Report" (the Report of the Task Force on Lawyer Competency: The Role of the Law Schools) and the 1992 "MacCrate Report" (the Report of the Task Force on Law Schools and the Profession: Narrowing the Gap), and reflected in the amendment of Standard 301(a) in 1993 to require that law schools prepare students "to participate effectively in the legal profession."

In 1990, in response to the Report of the Special Committee to Study the Law School Approval Process" (generally known as the "Ramsey Committee Report" after its chair, Dean Henry Ramsey, Jr.), the Section concluded that its Standards Review Committee should undertake a comprehensive review of the current Standards and their Interpretations "to assure their validity and reliability and to reflect current and future developments in American legal education." James P. White, *The American Bar Association Law School Approval Process: A Century Plus of Public Service*, 30 WAKE FOREST L. REV. 283, 289 (1995). The Section directed its Standards Review Committee to review and, where appropriate, propose modifications of the Standards and their Interpretations. The Standards Review Committee is scheduled to complete its work by the time of the 1995 Annual Meeting of the ABA. Thereafter, any proposed new Standards or revisions will be circulated for public comment.

B. Summary of Current ABA Accreditation Standards

The Standards are designed to set certain "minimum requirements" that law schools are expected to exceed. (Standard 105.) To spur schools to pursue ways to improve themselves, the

Standards ask that each school periodically prepare a written "self-study," articulating "the objectives of the school's educational program consistent with the Standards." (Standard 201.) The Standards require that law schools ensure that they have the resources necessary to accomplish the objectives they set for themselves. (Standard 201.)

While recognizing that a school's governing body or board may retain ultimate budgetary authority (Standard 206), the Standards require that the dean and faculty have responsibility for formulating and administering the program in such matters as promotion and tenure, curriculum, faculty selection, admissions, and graduation. (Standard 205.) The Standards note the benefits that flow from affiliation with a university, and they call upon unaffiliated law schools to seek such benefits through other means.

Although allowing considerable variation in governance matters, the Standards are clear on civil rights issues. A law school must "maintain equality of opportunity in legal education, including employment of faculty and staff, without discrimination or segregation on ground of race, color, religion, national origin, sex or sexual orientation." (Standard 211.) Discrimination against persons with disabilities is similarly prohibited. (Standard 213.) A school must take an active role in "providing full opportunities for the study of law and entry into the profession by qualified members of groups (notably racial and ethnic minorities) which have been victims of discrimination in various forms." (Standard 212.) The Standards also make clear that they do not "prevent a law school from having a religious affiliation or purpose" and adopting admissions and employment policies consistent with that end, so long as due notice is given and no Standards are violated. (Standard 211.)

The Standards address curricular concerns but only in the most general of terms. Overall, a law school must "maintain an educational program that is designed to qualify its graduates for admission to the bar and to prepare them to participate effectively in the legal profession." (Standard 301.) In amplifying this general principle, the Standards are framed in terms of course offerings. Schools must offer courses in "those subjects generally regarded as the core of the law school curriculum" and must offer students "at least one rigorous writing experience" as well as instruction in professional skills. (Standard 302(a).) The only type of instruction the Standards require is with respect to "the duties and responsibilities of the legal profession." (Standard 302(a)(iv).) To ensure that a sufficient level of intellectual rigor is maintained within the curriculum, the Standards establish minimum numbers of class hours and class days (Standard 305) and they require that the "scholastic achievement of students be evaluated" (Standard 304). Provision is made for the establishment of graduate programs, so long as they do not detract from the program for acquisition of the first professional degree. (Standard 307.)

Standards relating to the faculty are similarly general in nature. Law schools must have at least six full-time faculty members and as many more as are needed to fulfill the requirements of the Standards and the goals of a school's educational program. "Full-time faculty members," defined as those who "during the academic year devote[] substantially all working time to teaching and legal scholarship" (Standard 402), must bear the "major burden" of a school's educational program and must have the "major responsibility for faculty participation" in governance of the school (Standard

403). The Standards set certain maximums for the number of hours a faculty member can teach each academic period (Standard 404), require that law schools "establish and maintain conditions adequate to attract and retain a competent faculty," and require schools to establish policies "with respect to academic freedom and tenure." (Standard 405.)

The Standards governing law school admissions are aimed at establishing a modicum of quality control and consumer protection. Law schools are prohibited from "admit[ting] applicants who do not appear capable of satisfactorily completing th[e] [educational] program" of the school. (Standard 501.) In this vein, the Standards require law schools to "us[e] an acceptable test" for "determining [applicants'] apparent aptitude for law study." (Standard 503.) The Standards also set forth a procedure to be followed when a student "who has been previously disqualified for academic reasons" seeks readmission. (Standard 505.)

The Standards relating to law school libraries establish a general requirement that a school "maintain and administer a library adequate for its program" (Standard 601), and then elaborate upon this principle by enumerating a "Core Collection Library Schedule" of materials that every law school library must possess (Standard 602(a)). The Standards also prescribe that the library "contain or provide appropriate access to additional publications and information services reasonably necessary for the proper conduct of the school's educational and research programs." (Standard 602(b).) The law library must be administered by "a full-time law librarian" (Standard 605), who has "sufficient administrative autonomy" to "afford the best possible service" to the school (Standard 604).

With respect to a law school's "physical plant," the Standards require facilities "adequate both for [the] ... current program and for such growth in enrollment or program as should be anticipated in the immediate future." (Standard 701.) There should be sufficient classroom space for "reasonable scheduling of all courses," adequate facilities for a moot court program, and a private office for each full-time faculty member. (Standards 702, 703.) The law school library must be adequate to "accommodate the library's users, collection, staff, equipment and service" as well as students seeking to study in the library. (Standard 704.)

As contemplated by Standard 801(I), the Council of the Section of Legal Education and Admissions to the Bar has developed and published Interpretations of nearly every Standard. These Interpretations provide guidance to law schools for compliance with the Standards and frequently give illustrations of situations in which a law school would likely be found in violation of a particular requirement. Additional guidance of this sort can be found in the "Rules of Procedure for Approval of Law Schools by the American Bar Association," a Section publication that sets out the steps that law schools must take to obtain provisional accreditation and thereafter full approval.

C. Procedures for Adopting or Modifying Standards or Interpretations

(1) Standards

The ABA House of Delegates has the ultimate authority to adopt, revoke, or revise accreditation Standards. Generally, the House is guided in its actions on accreditation Standards by recommendations of the Council of the Section of Legal Education and Admissions to the Bar.

Proposed new Standards or modifications of existing Standards may come from a variety of sources, including law school deans, law students, state supreme courts, the practicing bar, bar examiners, members of the public, other ABA sections, and the ABA Accreditation Committee. Proposed new Standards or modifications are presented to the Standards Review Committee, where they undergo intensive review. The Committee makes a recommendation on the issue to the Council of the Section. If the Council determines that the proposal merits consideration, the Council returns the matter to the Standards Review Committee for further consideration and preparation of a formal recommendation. Upon the Committee's submission of a formal recommendation to the Council, public hearings are held. Requests for comment are made in writing to law school deans, judges, practitioners, faculty members, bar examiners, members of the public and other interested parties. If, after considering public comment, the Council concludes that a new Standard should be adopted or an existing Standard modified, the Council submits a recommendation to that effect to the ABA House of Delegates. The House makes the final decision as to any additions to or changes of the Standards.

(2) Interpretations

The process for adopting or modifying Interpretations is essentially identical to the process for adopting or modifying Standards. There are, however, two significant differences. Since 1973, when the current Standards were adopted, the Council has had the authority to adopt or modify Interpretations without the need for action by the House of Delegates. (Standard 801(I).) Moreover, the Council is empowered to make minor changes in Interpretations without seeking public comment.

On June 3, 1995, the ABA Board of Governors adopted a resolution that will change the current process so as to require that all "changes to the ... Interpretations and Rules ... be presented to the House of Delegates for approval."

The consent decree entered into by the American Bar Association and the Department of Justice on June 27, 1995, states that the American Bar Association shall "require that all Interpretations and Rules be subjected to the same public comment and review process and approval procedures that apply to proposed Standards."

D. The Site Evaluation Process

The "site evaluation process" is the mechanism by which the ABA, through its Section of Legal Education and Admissions to the Bar, determines whether to grant provisional approval to new law schools and thereafter reviews the school's compliance with the Standards and Interpretations.

A new law school may apply for provisional approval following a minimum of one year of successful operation. If the Council finds that there is satisfactory compliance with the ABA Standards, the Council will recommend to the House of Delegates that initial approval status be granted.

During the period of provisional approval, which lasts for at least two years, a school is subject to an on-site evaluation every year. Once the school has applied for, and been granted, full approval, it will undergo a site visit after three years and thereafter every seven years, unless circumstances warrant an earlier examination. In those instances, the ABA may send one or more fact-finders to the law school to review the situation.

Each site evaluation team is chaired by an individual with considerable past experience as an evaluator. The chairperson is responsible for organizing and managing the team's visit; providing team members with any necessary background information and orientation; focusing their efforts prior to and during the visit; coordinating and monitoring the assignment of topics to team members; serving as the official contact to the law school and the ABA; and assuring that a complete and timely final report is submitted to the Accreditation Committee.

The size of evaluation teams varies, with the average being a team of six members. Teams typically consist of a law school dean, three or four law school faculty members (generally including one clinical teacher and one law librarian), and a judge or practitioner. When the school being evaluated is an AALS member, a site evaluation team also includes a representative of the AALS. Pursuant to the resolutions adopted by the Board of Governors on June 3, 1995, site evaluation teams henceforth will include, "to the extent feasible[,] at least one person who is a university administrator who is not a full-time faculty member or dean of a law school."

The core function of the site evaluation visit is fact-finding. The team's written report is based on a review of the site evaluation materials supplied by the law school and meetings with faculty members and administrators at the law school. The team is instructed to refrain from stating its conclusions about whether the school is in compliance with the Standards, as that determination is reserved for the Accreditation Committee, the Council and, if approval is to be granted or withdrawn, the House of Delegates as the ultimate decisionmaker for the ABA.

The site evaluation report must address the following subjects:

- ! History and Organization of the Law School
- ! University and Law School Finances and Resources
- ! Self-Study
- ! Law School Administration
- ! Faculty
- ! Library
- ! Computing
- ! Course of Study
- ! Approved Programs of Foreign Study

for J.D. Students

- ! Advanced Degrees in Law
- ! Professional Skills
- ! Admissions
- ! Students
- ! Outputs
- ! Programs for Racial and Ethnic Minorities
- ! Physical Facilities

The general practice of chairpersons of site evaluation teams is to divide up responsibility for portions of the written report among members of the team, based in part on their respective areas of concentration. Usually, this is done in advance of the site visit so that team members can begin compiling information about their sections of the report prior to visiting the school.

Each school must provide a specified set of documents (certain reports, the self-study, Annual Questionnaire, course catalogues, and so forth) to the team before the visit. The school is expected to cooperate with the site team and to make available to it the appropriate staff, faculty and student representatives. As a general rule, teams meet with the University President, the Dean and other key administrators; observe classes; and interact with faculty and students, both formally and informally during their stay. An exit interview with the Dean is usual, as is some form of contact with local alumni, members of the Board of Trustees and others with knowledge about the school and a relevant perspective. Most sabbatical visits consume 2-1/2 to 3 days, with team members pursuing their fact-finding duties both collectively and individually.

At the completion of the visit, team members write their assigned sections of the report with appropriate guidance from the chairperson. The report is submitted to the Accreditation Committee. A copy is provided to the dean of the law school and s/he is afforded the opportunity to submit comments on any part of the report and to correct factual errors or omissions.

Although the site evaluation report and related documents are reviewed by all members of the Accreditation Committee, generally one member of the Committee assumes principal responsibility for being thoroughly versed in the facts and details of the report, the school's response to it, and any supporting documentation. All of the Committee members participate in the determination of the law school's status. At the conclusion of their deliberations, the Committee members make findings and conclusions and they vote on the wording of an "action letter" memorializing their findings and conclusions.

If the Committee determines that the law school has demonstrated compliance with the Standards, the action letter will indicate that the school "remains on the list of approved law schools." If the Committee needs additional information to clarify a point or to reach a decision, the school will be directed to "report back" in writing to the Committee by a specified date. If, after one or more report backs, the law school is unable to provide adequate assurance of its compliance with the Standards, the school may receive a show-cause notice that a hearing will be held before the Accreditation Committee regarding noncompliance. Such a hearing may eventually culminate in a

recommendation to the Council and the House of Delegates to revoke or deny approval.

II.

Evaluation of the Current Accreditation Process

A. The ABA's Role in Accreditation

As explained in the introductory section entitled "Process and Procedures of the Commission," the members of the Commission devoted substantial effort to soliciting comments from all sectors of the profession and public affected by or interested in the law school accreditation process. The Commission held hearings on three separate dates and also invited written submissions.

The Commission was impressed by the degree of support expressed for the ABA's role in the accreditation process. There was a consensus that the ABA can and should be the entity responsible for promoting quality in legal education and preventing abuses. Many comments lauded the job the ABA has done in this regard. This is not to say, of course, that there were no criticisms of particular features of the current system of accreditation. This report will describe and, to a certain extent, concur in criticisms of various aspects of the process as it is currently configured. But, significantly, even the harshest critics of the process had no quarrel with the need for some form of regulation nor the appropriateness and desirability of the ABA's serving as the predominant accrediting agency.

There was also strong support for the role that the ABA Standards have played in reducing barriers faced by members of minority groups and women within law schools and in the profession as a whole. For example, Professor Leslie Espinoza, Chair of the AALS Section on Minority Groups, stated that "[a]ccreditation has been the foundation for ... inclusion [of persons of color] in the academy" and for combatting "exclusionary practices in hiring and student composition." Cory M. Amron, Immediate Past Chair of the ABA Commission on Women in the Profession, observed that "the ABA accreditation process has already had an important role in the elimination of barriers to women's entry into law schools -- particularly in the ranks of the faculty," and that it has the potential for accomplishing the difficult task of "delving to the heart of many of the subtle barriers that plague women's progress in law schools, in the ranks of students, faculty, and the administration."

The Commission concluded that both the profession and the public have benefitted from the ABA's involvement in the accreditation process. By establishing uniform, published criteria that apply throughout the country, the ABA Standards assure the maintenance of high-quality legal education, provide consumer protection for law students, and promote public confidence in the training of lawyers. The existence of a single national standard spares law students in ABA-approved schools from having to satisfy divergent educational requirements if they wish to seek admission in more than one jurisdiction. And, as Robert MacCrate, former President of the ABA and chair of the Task Force on Law Schools and the Profession: Narrowing the Gap, observed in his testimony before the Commission, the use of a uniform standard helps to "perpetuate the ideal of a single, public profession of law, bound together by shared learning, acquired skills and professed

values."

The involvement of the ABA in the accreditation process has also made it possible for students at ABA-approved law schools to qualify for government-guaranteed student loans and fellowships, including CLEO grants. To be eligible for such government programs, students must attend an institution that has been certified by a "nationally recognized accrediting agency." As explained in Part I(A), the Commissioner of Education in 1952 designated the Council of the Section of Legal Education and Admissions to the Bar as the "nationally recognized accrediting agency" for legal education. That status has been periodically renewed in the years ever since, pursuant to the procedures set forth in 34 CFR Part 602. *See, e.g.*, Letter from Lamar Alexander, Secretary of Education, to James P. White, ABA Consultant on Legal Education (August 18, 1992) ("For a period of five years from the date of this letter, I shall continue to list the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association as a nationally recognized accrediting agency for the accreditation of professional schools of law.").

Finally, the vesting of the accreditation function in the ABA as a national entity has had the benefit of freeing each jurisdiction from the considerable task and attendant costs of devising and administering its own independent system of regulating legal education. As the Florida Supreme Court observed in explaining its reasons for requiring graduation from an ABA-accredited law school,

We were persuaded to follow the American Bar Association standards relating to accreditation of law schools because we sought to provide an objective method of determining the quality of the educational environment of prospective attorneys. This was deemed especially necessary because of the rapid growth in the number of educational institutions awarding law degrees. We wished to be certain that each of these many law schools provided applicants with a quality legal education, but we were unequipped to make such a determination ourselves because of financial limitations and the press of judicial business.

LaBossiere v. Florida Board of Bar Examiners, 279 So.2d 288, 289 (Fla. 1973); *accord*, *In re Application of Hansen*, 275 N.W.2d 790, 794-95 (Minn. 1979), *appeal dismissed*, 441 U.S. 938 (1979) (quoting *LaBossiere* as well as a three-judge federal district court's statement in *Rossiter v. Law Committee of the State Board of Law Examiners*, Civil Action No. C-4767 (D. Colo. 1975), that it is rational for the State of Colorado to rely on ABA accreditation standards for approval of law schools because "[i]t is ... patently obvious that judicial bodies are singularly ill-equipped to bring to bear the resources and expertise necessary to conduct a case-by-case evaluation").

As explained in Part II(E) of this report, the ABA has been able to defray much of the high cost of accreditation by relying on the volunteer efforts of the hundreds of deans, professors, practitioners, judges and non-lawyers who serve on site evaluation teams. However, many functions critical to the accreditation process are performed by the ABA's Office of the Consultant on Legal Education. The Office's staff of eleven serves as the institutional memory for the process and the creative center for the ABA's regulation of legal education. The staff coordinates all volunteer

activities, from assisting the Council and site committees to assembling and training the site evaluation teams; marshals, prepares, analyzes, disseminates and acts as the official repository of the wealth of statistical and other pertinent information vital to the process; conducts special studies on legal education and accreditation; cooperates and collaborates with affiliated organizations, such as the Association of American Law Schools, the National Conference of Bar Examiners, and the National Conference of Chief Justices; provides assistance and expertise in developing and enforcing accreditation policies and standards; and facilitates communications with the ABA itself, including budgetary and management activities.

B. Content of the Current Accreditation Standards

The Commission did not undertake an exhaustive examination of every specific provision of the current Standards. It was the understanding of the Commission that such a process of comprehensive review and re-drafting is presently being performed by the Section's Standards Review Committee. The Commission devoted its efforts to examining the following sets of provisions: those that relate to the overall functions of accreditation; individual Standards or Interpretations that the Commission was specifically directed by the Council to review; and other individual Standards or Interpretations that were the subject of comment at the public hearings or in written submissions.

Before addressing comments on specific Standards, it is necessary to discuss a broad-based critique voiced by some commentators. These critics suggested that the Standards generally are so rigid and intrusive as to stifle initiative and innovation in legal education. These critics urged that the Standards be rewritten to permit, and indeed to encourage, greater experimentation by law schools.

The Commission did not endeavor to test this criticism. But most Commission members are persuaded that the Standards have not precluded significant differences among America's law schools. An examination of the current state of legal education reveals great variations among the 178 ABA-approved law schools, not only with regard to curricular offerings but also with regard to the size of the student population, size of the faculty, use of adjunct faculty, geographic location (urban, suburban, and small town), composition of the student body, the choice of whether or not to adopt a religious affiliation and purpose, the mixture of part-time and full-time programs, graduate programs, foreign programs, and the scope and types of clinical offerings.

(1) Statement of Purpose

The overall goals of the ABA Standards can be gleaned from Standard 101, which states that the Standards "are promulgated in pursuance of" the "improvement of the legal profession," and from Standard 103, which explains that the accreditation process requires that "a law school ... demonstrate that its program is consistent with sound educational policies."

The Commission concluded that the Standards should include a preamble that more clearly

articulates what the Standards seek to accomplish. By delineating the themes already pervading the Standards, such a preamble would provide a framework for future development of the Standards as well as their Interpretations. A statement of purpose also would signify the ABA's commitment to complying with the regulations governing all accrediting agencies, which were set by Department of Education regulations issued on April 29, 1994 (to implement provisions of the Higher Education Amendments Act of 1993). These regulations require every accrediting agency to demonstrate that its standards are sufficiently rigorous to ensure that the agency is a reliable authority on the quality of education provided by the institutions it accredits and to set specific standards on matters such as curriculum, faculty, recruiting and admissions.

The Commission undertook to draft a preamble, which is set forth below. The preamble recognizes that there are three basic goals of a law school education. The first is to ensure that every law school graduate understand his or her ethical responsibilities as a lawyer and public citizen with special responsibility for the quality of justice, including the effective delivery and administration of justice. The preamble's language regarding this goal is drawn from the preamble of the Model Rules of Professional Conduct. It is worth underscoring, however, that the "ethical duties" of attorneys in this context embrace a broad range of ethical and other professional obligations to the public and profession, and not simply narrow adherence to a code of ethics. In articulating this goal of legal education, the preamble reflects the consensus of the profession as to what can be expected of lawyers and of schools that educate students to be lawyers.

The second goal of legal education recognized in the preamble is to ensure that every law school graduate has mastered a core curriculum that includes an understanding of the theory and philosophy of law and its institutions, a mastery of basic legal skills, and a knowledge of the fundamental principles of public and private law. The first aspect of this goal recognizes that new members of the profession must acquire an appreciation of the role that law does, and should, play in our society. The second aspect reflects the consensus within the profession that a basic legal education must, at the very least, develop students' skills in a number of areas, including critical analysis, communication, and research. The final aspect recognizes that students must have an understanding of the fundamental principles of substantive law in the United States and the diverse sources of those principles.

The last goal articulated in the preamble calls for law schools to provide students with an understanding of the *pro bono* obligations they will have as members of the profession. Because law is a public profession, lawyers have a responsibility to serve not only their clients but also the public at large. As the Model Rules of Professional Conduct state, "[e]very lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay." Comment to Model Rule 6.1. The final paragraph of the preamble reflects this obligation of members of the profession and also recognizes the responsibility that falls upon law schools to promote *pro bono* service.

The Commission recommends that the Standards be amended to add the following preamble:

The Standards for the Approval of Law Schools by the American Bar

Association should be and are designed, developed, and implemented for the purpose of advancing the basic minimal goal of a law school education. That minimal goal is to ensure that every law school graduate:

- i) Understands his or her ethical responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.**
- ii) Has mastered a core curriculum through which he or she:**
 - (A) Understands the theory, philosophy, development and ramifications of law as well as its institutions;**
 - (B) Develops analytical and critical legal thinking skills, oral and written communication skills, and obtains familiarity with legal research; and**
 - (C) Knows the fundamental principles of public and private law.**
- iii) Understands that law is a public profession requiring the performance of *pro bono publico* legal services.**

(2) Lawyering Skills (Standards 301 and 302)

In their comments to the Commission, some individuals expressed the view that the ABA Standards should be revised to address what they described as a growing lack of professionalism and practical skills on the part of new lawyers. They suggested that the Standards may now reflect the parochial interests of law schools more than those of the profession as a whole. They urged that the Standards be amended to require that law schools focus more heavily on profession-oriented training and skills. Such practical skills, they suggested, could be taught through a variety of means, including direct representation of clients in fieldwork clinics, simulations, and courses in negotiation, mediation, and drafting. To a considerable degree, this position mirrors many of the concepts articulated in the MacCrate Report, which helped animate discussions, both within the ABA and the academic community, of the importance of instruction in professional skills and values.

Other commentators opposed the adoption of a more extensive lawyering skills standard, contending that such a standard would compromise law schools' freedom to devise their own curricula. They argued that mandatory skills training is unnecessary because "[i]t does not take very long for a new lawyer to find his way to the courthouse and to discover the nuances of local procedures." As further support for their position that a traditional course of instruction is adequate to prepare lawyers for practice, these commentators asserted that many lawyers currently in practice are competent and productive even though they were not required to take skills training courses

while in law school.

Those opposing a more extensive lawyering skills standard also pointed to the prohibitive costs that such a standard would impose on law schools. One commentator predicted that a mandatory requirement of a live-client clinical course for every student would result in the closing of many law schools.

Having considered all of the viewpoints expressed during the hearings and in written comments, the Commission concluded that any effort to impose a particular curriculum on law schools in the skills area would be unwise and inconsistent with the Standards' approach to legal education. Historically, the Standards have sought to avoid undue interference with the academic freedom of law schools. Indeed, the Standards were crafted to encourage innovation and experimentation within broad curricular outlines. As the MacCrate Report recognized,

Excellence [in legal education] cannot be promoted by the kind of standardization involved in formulating any particular list of prescriptions and prerequisites. It is best supported by encouraging pluralism and innovativeness in legal education

ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT X AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 132 (1992). Moreover, the imposition of inflexible curricular requirements in the skills area or in other areas of the curriculum could impose unacceptable economic burdens on law schools and thereby drive up the already considerable costs of legal education for law students.

For these reasons, the Commission is of the view that the Standards should not be amended to prescribe a specific set of requirements for skills instruction. The Commission concluded, however, that it would be appropriate and desirable to make certain revisions of Standards 301 and 302 to give due recognition to the importance of professional skills instruction and to give effect to the House of Delegates' recent action in amending Standard 301(a) to require law schools to prepare law students "to participate effectively in the legal profession."

The new language of Standard 301(a), which was added by the House of Delegates in 1993 in response to a recommendation of the MacCrate Report, was intended to be a significant addition to the Standards. To ensure adequate implementation of this provision, Standard 301 should be amended to require a school, as part of the self-study mandated by Standard 201(a), to show how, given its resources and history, the school is seeking to accomplish the goal of "prepar[ing] [students] ... to participate effectively in the legal profession." Specifically, the Commission recommends that Standard 301 be amended to add the following language as a new subsection (b), with appropriate renumbering of current subsections (b) and (c) as, respectively, subsections (c) and (d):

The self-study required by Standard 201(a) must address and describe how the law school's education program conforms to the requirements of Standards

301(a) and 301(c).

The need to recognize the importance of skills training also militates for the amendment of Standard 302. Subsection (a) of the current Standard requires, in part, that a law school

- (i) offer to all students instruction in those subjects generally regarded as the core of the law school curriculum;
- (ii) offer to all students at least one rigorous writing experience;
- (iii) offer instruction in professional skills ...

In order to place skills training on the same level of importance as the other categories of instruction, the Commission recommends that subsection (a)(iii) of Standard 302 be amended to add the phrase "to all students" between the first and second words on the line. Subsection (a)(iii) would then be consistent with subsections (a)(i) and (a)(ii) in using the phrase "offer to all students" The Standard, as revised would read as follows:

- (i) offer to all students instruction in those subjects generally regarded as the core of the law school curriculum;
- (ii) offer to all students at least one rigorous writing experience;
- (iii) offer **to all students** instruction in professional skills ...

To accompany this amendment to Standard 302, the Commission recommends the promulgation of a new Interpretation that would focus on the following specific lawyering skills, which were characterized as "fundamental" by the MacCrate Report:

1. Problem Solving
2. Legal Analysis and Reasoning
3. Legal Research
4. Factual Investigation
5. Communication
6. Counseling
7. Negotiation
8. Litigation and Alternative Dispute Resolution Procedures
9. Organization and Management of Legal Work
10. Recognizing and Resolving Ethical Dilemmas

The language of this Interpretation should make clear that a school is not required to offer the entire list of courses or skills to satisfy the requirements of new Standard 302(a)(iii).

The Commission recommends that the new Interpretation read as follows:

Professional Skills as used in Standard 302(a)(iii) include any of the following areas of instruction:

- 1. Problem Solving**
- 2. Legal Analysis and Reasoning**
- 3. Legal Research**
- 4. Factual Investigation**
- 5. Communication**
- 6. Counseling**
- 7. Negotiation**
- 8. Litigation and Alternative Dispute Resolution Procedures**
- 9. Organization and Management of Legal Work**
- 10. Recognizing and Resolving Ethical Dilemmas**

A school is not required to offer instruction in the entire list of skills to satisfy the requirements of Standard 302(a)(iii).

- (3) Definition of "Full-time Faculty Member"; "Core Faculty" Requirements; Student/Faculty Ratios (Standards 402, 403; Interpretations of Standard 201)

Standard 402(b) defines the term "full-time faculty member" as follows:

A full-time faculty member is one who during the academic year devotes substantially all working time to teaching and legal scholarship, and has no outside office or business activities and whose outside professional activities, if any, are limited to those which relate to major academic interests or enrich the faculty member's capacity as scholar and teacher, or are of service to the public generally, and do not unduly interfere with one's responsibilities as a faculty member.

Various Standards and Interpretations turn upon this definition. The requirements for student/faculty ratios, which are set forth in the Interpretations of Standard 201, are framed in terms of "the size of the full-time faculty of the school to its full-time-equivalent student body." Standard 402(a) states that "[t]he law school shall not have fewer than six full-time faculty members, in addition to a full-time dean and a full-time librarian ... [and] shall have such additional members as are necessary to fulfill the requirements of this Chapter and the needs for its educational program." Standard 403 provides that "[s]tudents shall receive substantially all of their instruction in the first year of the full-time curriculum or the first two years of the part-time curriculum, and a major

proportion of their total instruction from full-time faculty members."

A number of commentators argued that the current definition of "full-time faculty member," and the various provisions that flow from this definition, fail adequately to account for the important contributions that can be, and often are, made by individuals who are not "full-time faculty members." Emphasizing that adjunct instructors can make a special contribution to the overall strength of a law school program, some of these commentators stated that law schools are often forced to eliminate extraordinarily rich courses taught by sophisticated adjuncts because Standards 402 and 403 require that law students receive substantially all first-year instruction and a major portion of their total instruction from full-time faculty. Other critics maintained that the definition of "full-time faculty" fails to take into account the important contributions of faculty members with joint appointments in other academic departments or in other universities, including foreign universities, who often play a key role in broadening students' perspectives by exposing them to interdisciplinary approaches.

Some respondents argued that a student/faculty ratio generally is a crude instrument for measuring the quality of legal education. They urged the ABA to abandon assumptions based on the number of full-time faculty members. One commentator suggested that the Standards simply require "effective teaching." Critics of this Standard also asked the ABA to recognize that a specific ratio may not be appropriate for all law schools because different institutions have different missions and resources. At the very least, they argued, the ABA should adopt a flexible, non-formulaic approach that recognizes the variations among law schools.

Supporters of the current Standards argued that the requirement that students receive all of their first-year instruction and a "major portion of their total instruction from full-time faculty members" helps to ensure that students are adequately exposed to legal scholarship in core courses. With respect to adjunct instructors, one of these commentators suggested that such instructors, although a valuable resource, generally have only a limited commitment to teaching and are not regularly available to students. As a result, this commentator argued, adjuncts cannot compensate for a shortage of full-time faculty.

Having heard and considered these diverse viewpoints, the Commission concluded that the Standards should continue to emphasize the need for a core group of full-time faculty members at every law school in order to ensure the highest possible quality of legal education. Such faculty members can engage themselves fully in scholarship, teaching, and public service, and are best placed to be available to students and to provide role models for them. A critical mass of full-time faculty members is also needed if the faculty is to play a meaningful role in the governance of the law school.

The Commission further concluded that the Standards' use of student/faculty ratios is an appropriate, and perhaps the only effective, means to achieve a number of important educational benefits, including smaller classes (essential both for the teaching of theory and professional skills), and adequate contact between teachers and students outside of class. With respect to the criticisms of the student/faculty ratios as unduly prescriptive, it is important to recognize that the ratios are

designed to operate as guidelines. The Interpretations to Standard 201 set forth the following ratios as "a guide to compliance with Standards 201 and 401-405":

A ratio of 20:1 or less is presumably in compliance with Standards 201 and 401-405, but the Committee and Council may inquire into the educational effects of faculty size, to make certain that the size and duties of the full-time faculty meet those Standards.

A ratio of 30:1 or more is presumably not in compliance with Standards 201 and 401-405.

The fact that a school has a ratio of under 30:1 does not preclude examination by the Committee and Council to determine whether the School is in compliance with Standards 201 and 401-405.

An examination of the history of the Standards' student/faculty ratios reveals that the figures of 20:1 and 30:1 were set on the basis of a report by an ABA Special Committee to Study Student/Faculty Ratios in 1983. Drawing on the experiences of legal educators in teaching large and small classes, that committee found that a class size of 30:1 or smaller is critical for upper-level courses that focus on "subjects which [are] more complex and specialized than elementary law school instruction" and for clinical courses that involve fieldwork representation or simulations. The committee furthermore found that student/faculty ratios at this level are essential if faculty members are to devote adequate time to preparing for class, meeting with students outside of class, grading examinations and papers, developing new courses and improving their teaching techniques, engaging in scholarship and public service, and participating in faculty governance.

Given the importance of these functions of teachers, and the direct relationship between class size and the quality of the education that students receive, the Commission favors the continued use of a quantitative measure for student/faculty ratio guidelines even though, as later sections of the report explain, the Committee believes that the Standards generally should be framed in terms of qualitative criteria. The Commission does recommend, however, that the criteria for assessing student/faculty ratios under the Interpretations of Standard 201 be re-examined to ensure that they adequately take into account the contributions of adjunct instructors and faculty members who are still teaching although they have administrative posts or are on research leave or emeritus status. Such a re-examination also should carefully assess the extent to which faculty members with substantial responsibilities outside the law school are capable of fulfilling the functions and responsibilities of "full time faculty." Specifically, the Commission recommends the following:

The criteria for assessing student/faculty ratios under the Interpretations of Standard 201 should be re-examined to ensure that they adequately take into account that:

- D) Faculty members who are still teaching although they have administrative posts or are on research leave or emeritus status continue to play an active role in the law school community and therefore should be counted in some proportionate**

way in assessing student/faculty ratios;

- ii) **Adjunct instructors may enrich a law school's curriculum in a variety of ways, including expanding the number and types of course offerings and providing different perspectives. Therefore, it is reasonable to consider the effect of adjuncts on the quality of the academic program in assessing the significance of student/faculty ratios.**
 - iii) **Faculty members with substantial responsibilities outside the law school should not be deemed "full time faculty" for purposes of student/faculty ratios if their outside activities unduly interfere with their obligations as faculty members.**
- (4) Maximum Teaching-Hour Limits (Standard 404)

Standard 404(a) mandates that "[t]o the extent that a faculty member is teaching only regularly scheduled class sessions over fixed periods of time, the faculty member shall not teach more than (I) an average of eight scheduled class hours per week, counting repetitions during the same academic period as one-half for this purpose, or (ii) an average of ten scheduled class hours per week, counting repetitions during the same academic period at full value."

As indicated above, the Commission is of the view that qualitative measures are generally preferable to quantitative criteria. Unlike the above-discussed issue of student/faculty ratios, there is no compelling reason to use a quantitative approach to accomplish the educational interests underlying the maximum teaching-hour limits of Standard 404(a). The Commission therefore recommends that the present language of Standard 404 be deleted and replaced with the following, which is drawn from Interpretation 2 of Standard 403:

Each law school should have established policies with respect to faculty members' responsibilities in teaching, scholarship, service to the law school community, and professional activities outside the law school. Such policies should address themselves to:

- I) **Faculty teaching responsibilities, such as carrying a fair share of a law school's course offerings, preparation for classes, availability for student consultation, and creation of an atmosphere in which student and faculty may voice opinions and exchange ideas;**
- ii) **Research and publication, and integrity in the conduct of scholarship, such as appropriate use of student research assistants, acknowledgment of the contributions of others, and responsibility of faculty members to keep abreast of developments in their specialties;**
- iii) **Obligations to the law school or university community, such as participation in**

the governance of the law school, and

- iv) Conduct of professional activities outside the law school and university community and their relationship to teaching responsibilities.**

If further elaboration of this Standard is needed, it can be provided by means of Interpretations.

(5) Compensated Leaves of Absence for Faculty and Staff

Contrary to popular perception, the Standards have never required that law schools offer compensated leaves of absence to faculty or staff. Prior to February, 1995, Standard 405(b) mandated that faculty members be afforded "reasonable opportunity for leaves of absence and for scholarly research," but there was no requirement that these leaves be compensated. In any event, Standard 405(b) was amended by the House of Delegates at its February, 1995 meeting so as to delete the provision on leaves of absence.

None of the comments submitted to the Commission related to compensated leaves of absence. In response to an inquiry from the Council, the Commission discussed the issue. The Commission's discussion did not suggest any reasons to revive former Standard 405(b) or to make any new reference to leaves of absence, compensated or otherwise.

(6) Law School Physical Facilities (Standards 701-705)

Under the current Standards, the subject of physical facilities is primarily covered by Standards 701-705. Standard 701 sets forth the general requirement of a "physical plant that is adequate both for its current program and for such growth in enrollment or program as should be anticipated in the immediate future," and the ensuing Standards elaborate upon this basic principle by applying it to classrooms, seminar rooms, and moot court rooms (Standard 702), faculty offices (Standard 703), the law library (Standard 704), and the areas for secretarial, administrative, and library personnel (Standard 705). A separate Standard addresses the physical space for placement services (Standard 214).

As a drafting matter, the Commission concluded that a more logical approach would be simply to set forth the general principle embodied in Standard 701 and then to elaborate upon that principle in Interpretations rather than other Standards.

The Commission therefore recommends that Standards 701-705 be replaced with a single Standard, which would read as follows:

The law school shall have a physical plant that is adequate for its educational program, library, scholarly and research activities, administrative and secretarial services, and student services, and for such growth in enrollment or program as should be anticipated in the immediate future.

The substance of former Standards 702-705 should be retained as Interpretations, except perhaps in

one respect: When current Standard 702(a) -- which creates an expectation that physical facilities "be under the exclusive control and reserved for the exclusive use of the law school" -- is reconstituted as an Interpretation, the entity charged with redrafting should carefully consider whether it is necessary to retain the present provision's requirement of exclusivity.

(7) Allocation of Resources Between the Law School and Its Parent University (Standards 201, 209, 210)

Issues concerning the relationship between a law school and its parent university are addressed in Standards 201-210. The Commission is of the view that, for the most part, these Standards establish appropriate mandates. There are, however, a few revisions that should be made.

The first of these concerns Standard 209, which provides as follows:

The present and anticipated financial resources of the law school shall be adequate to sustain a sound educational program.

- (a) If tuition is a substantial source of the law school's income, the school is faced with a potential conflict of interest whenever the exercise of sound judgment in the application of admission policies or academic standards and retention policies might reduce enrollment below the level necessary to support its program. The law school shall not permit financial considerations detrimentally to affect those policies and their administration.
- (b) The law school may not base the compensation paid any person for service to the law school (other than compensation paid a student or associate for reading and correcting papers or similar activity) on the number of persons enrolled in the law school or in any class or on the number of persons applying for admission to or registering in the law school.

The preamble of this Standard substantially duplicates an earlier provision, Standard 201(b), which states that "[t]he law school shall have the resources necessary to provide a sound legal education and accomplish the objectives of its education program, and shall be so organized and administered as to utilize fully those resources for those purposes." Subsections (a) and (b) speak to issues better addressed in Interpretations than in a Standard.

The Commission therefore recommends that Standard 209 be deleted in its entirety and that Standard 201(b) be amended to encompass the portions of Standard 209's preamble not already covered by 201. As revised, Standard 201(b) should read as follows:

The law school shall have the present and anticipated resources necessary to provide a sound legal education and accomplish the objectives of its educational program, and shall be so organized and administered as to utilize fully those resources for those purposes.

If the entity charged with redrafting deems it appropriate, the former subsections (a) and (b) of Standard 209 could be reconstituted as Interpretations of the revised Standard 201(b).

The second recommendation concerns Standard 210. In accordance with the decision of the House of Delegates in February, 1995 to remove matters of faculty compensation from the purview of the accreditation process, this Standard should be amended to delete all references to compensation.

One other aspect of Standard 210 bears mention. The Commission strongly supports, and views it important that any redrafting process preserve, the December, 1978 Interpretation of Standards 105 and 210, which makes clear the Standards' intent that "the resources generated by a university-affiliated law school should be fully available for the school to maintain and enhance its educational program." In adopting this principle, the Standards and Interpretations appropriately eschew any sort of quantitative criteria for determining the relative allocation of resources between a law school and a university. Contrary to popular perception, neither the Standards nor their Interpretations establish a ratio or other quantitative measure in this regard.

C. Procedures for Adopting or Modifying Standards or Interpretations

After carefully examining the procedures for adopting or modifying Standards or Interpretations (which are described in Part I8 *supra*), the Commission concluded that the process is quite open and democratic and that it affords ample opportunity for input from the public and all segments of the profession.

The Commission devoted considerable attention to the process for approval or modification of Interpretations. As explained earlier, that process differs from the procedure for approving or modifying Standards in that Interpretations, unlike Standards, are not sent to the House of Delegates for approval. The Commission concluded that this distinction is appropriate and should be retained. Through its adoption of Standards, the House of Delegates articulates the broad policy statements out of which Interpretations are developed, in much the same way as Congress legislates in broad strokes while leaving the development of more specific regulations to administrative agencies and the executive department. In the Commission's view, the House of Delegates should not take up the kinds of detailed matters generally implicated by Interpretation issues.

The ABA Board of Governors reached the opposite conclusion, however, when it recently considered the matter. On June 3, 1995, the Board adopted a Resolution stating that all "future changes to ... Interpretations ... will be presented to the House of Delegates for approval."

Prior to the action of the Board of Governors, the Commission had developed two recommendations for improving the current process for adoption or modification of Interpretations. Both of those recommendations were premised on the continuation of the current system. Indeed, both were designed to afford additional opportunities for review of Interpretations, given that they

are not reviewed by the House of Delegates. Since the Commission is not in a position to assess the full impact of the Board's recent resolutions, the recommendations will be presented below so that the appropriate officers of the ABA can determine whether these recommendations have been rendered moot by the action of the Board.

The first recommendation was that, when changes to Interpretations are being considered, notice should be specifically given to state bar presidents and university presidents. State bar presidents are already involved in the development of Standards, through their inclusion in the House of Delegates, and it was the view of the Commission they should have an opportunity to comment on Interpretations of those Standards. The Commission concluded that University presidents should be directly informed of proposed new Interpretations, given the impact the Interpretations may have on the law schools within their institutions.

The second recommendation was that there be an additional layer of review of Interpretations because they were not subject to review by the House of Delegates. The Commission concluded that this additional layer of review need not be expansive, given the extensive process of notice and comment that precedes the adoption of an Interpretation by the Council. It was the view of the Commission that any organization adversely affected by an Interpretation should be permitted to initiate a post-adoption review of the Interpretation by a three-person review board, consisting of a judge, a practitioner, and a Dean of an ABA-approved law school, for the limited purpose of determining whether the Interpretation in question is consistent with the Standard to which it relates.

The Commission developed the following language for a new Standard to create the desired type of post-adoption review process:

Post-Adoption Review of Interpretations

Right of Review. The action of the Council of the American Bar Association Section of Legal Education and Admissions to the Bar ("Council") adopting an Interpretation of a Standard for approval of law schools shall be reviewed as hereafter provided upon request in writing made by a party who is or may be adversely affected by such Interpretation. The review shall be conducted by an Interpretations Review Board ("Board) constituted as hereafter provided. The request for review shall be delivered to the Chair of the Board and to the Chair of the Council. Interpretations adopted by the Council shall not become effective until 60 days after adoption and, if review is sought within such time ("Pre-Effective Date Review"), the effective date of such Interpretation shall be stayed pending review and the decision of the Board. Review may be sought for a period of one year after an Interpretation becomes effective ("Post-Effective Date Review"), but in the absence of any order of the Board so providing, Post-Effective Date Review shall not operate as a stay of the validity of the Interpretation pending review.

Party Defined. As used herein, "party" shall include but not be limited to: all schools fully or provisionally accredited by the American Bar Association; all Sections and Divisions of the American Bar Association; the highest courts of each of the several states and of the District of Columbia; all state bar associations; all local bar associations

represented in the House of Delegates of the American Bar Association; and the Board of Governors of the American Bar Association. The Council may fully participate as a party in any review proceeding.

Composition of Board. The Board shall be comprised of three members, appointed by the Chair of the Council. One member shall be a judge or justice of the highest appellate court of one of the several states or of the District of Columbia and shall serve as Chair of the Board; one member shall be a practicing lawyer who is a member of the House of Delegates of the American Bar Association; and one member shall be the dean of a law school accredited by the American Bar Association. Members shall serve staggered terms of three years, with the initial term of the judge to be three years, the initial term of the practicing lawyer to be two years, and the initial term of the law school dean to be one year.

Standard for Review. The issue to be determined by the Board on review is whether the Interpretation in question is consistent with the Standard or Standards for approval of law schools to which the Interpretation relates. Unless the Board finds by clear and convincing proof and authority that the Interpretation is not consistent with the applicable Standard or Standards, it shall affirm the action of the Council.

Rules of Procedure. The Board may adopt such rules of procedure as are appropriate to govern its proceedings. The Board may review all or any part of the record developed with respect to the Interpretation in question, including the history of the applicable Standard or Standards. The Board may affirm the action of the Council, and in the case of Pre-Effective Date Review, the Interpretation that is the subject of review shall become effective at the time the Board promulgates its decision. The Board may reverse the action of the Council, invalidating such Interpretation, or the Board may reverse and remand the matter to the Council for further proceedings consistent with its decision and opinion. The Board shall render its decision in writing within 90 days of the time the request for review is delivered to the Chair of the Board.

D. The Site Evaluation Process

Criticisms of the accreditation system focused, in significant measure, on the site evaluation process. (A detailed description of this process can be found in Part I(D) *supra*.) Skeptics of the ABA's performance as an accrediting body repeatedly raised the same basic objections: the expense, burden and intrusiveness of the site evaluation process, especially with respect to sabbatical visits and foreign programs. Several of these tensions were also identified in the Ramsey Committee's review of ABA approval procedures in its 1990 Report of the Special Committee to Study the Law School Approval Process. In reviewing the site evaluation process, the Commission concentrated on those aspects identified by commentators as problematic.

(1) Timing of Site Evaluation Visits

Although not contesting the fundamental principle that a face-to-face visit is imperative at certain intervals to implement the ABA's regulatory functions and thereby protect consumers, some observers raised questions about the propriety or necessity of conducting site evaluations as frequently as the present rules provide.

Pursuant to existing procedures, each approved school is evaluated in the third year after receiving full approval and thereafter every seven years (the "sabbatical" inspection). Post-J.D. programs are inspected two years after initial acquiescence is granted, then folded into the seven-year sabbatical scheme. Foreign programs are on a reinspection cycle of three years after initial approval if the program is a cooperative or semester abroad program and on a reinspection cycle of five years after initial approval if the program is a foreign summer program.

(a) Regular Site Evaluations

The criticisms of regular site evaluations centered on the expense and effort required to comply with the evaluation schedules. In assessing the validity of these criticisms, the Commission reviewed the timetables used by other professions in their site evaluation programs. These were found to be as follows:

PROFESSION	INITIAL SITE VISIT	FOLLOW-UP INSPECTIONS
1. Architecture (119 accredited)	After 2 year candidacy	5 years (if in compliance); 3 years (general compliance with some serious deficiencies); 2 years (minimal compliance; probationary status)
2. Business Administration (280 accredited)		6 years after initial accreditation; 9 year cycle thereafter
3. Engineering (1,400 of 4,000 programs accredited)		6 years (full accreditation); 3 years (intermediate accreditation; may be extended for additional 3 years upon submission of satisfactory report)
4. Medicine (126 U.S. and 16 Canadian programs)		Provisional accreditation; annual visits until year charter class graduates; 7 years after full accreditation awarded
5. Nursing (1,100 out of 1,470 programs)	Retroactive to 12 months prior to accreditation; effective for 5 years	8 years
6. Pharmacy (1,100 out of 1,470 programs)	Retroactive to 12 months prior to accreditation; effective for 5 years	8 years

The Commission's view is that in light of the benefits derived and the obligations to the public, a site inspection every seventh year is not unduly burdensome or unfair. This conclusion is

bolstered by the evidence indicating that the present sabbatical cycle was squarely in the mainstream when compared to other professional accrediting entities. Furthermore, the Commission's study revealed that the ABA is the least intrusive of professional accrediting agencies in terms of curriculum inspection. Accordingly, the Commission concluded that there is no need to alter the schedule for regular site visitations.

With respect to graduate programs, the ABA looks principally at the impact of the graduate program on the J.D. program. The Commission saw no reason to change this approach or its timetable.

(b) Foreign Programs

The Commission extensively discussed the frequency of site evaluations of foreign programs, which currently take place every three years after initial approval if the program is a cooperative or semester abroad program and every five years after initial approval if the program is a foreign summer program.

According to the Commission's research, few professions other than law accredit off-site or foreign programs. Thus, unlike the Commission's analysis of regular site visits, it was not possible to compare the timing of the legal profession's treatment of foreign programs with that of other professions.

In examining the reasons for the adoption of the current schedules for foreign program evaluations, and the experience in employing those schedules, the Commission found that there are several valid consumer protection justifications for conducting inspections of foreign study programs more frequently than the sabbatical schedule of every seven years.

The turnover in directors of foreign programs is fairly high, leading to a certain degree of instability. Moreover, as the number of such programs has been proliferating at a rapid rate (due to the high degree of interest on the part of faculty and students), attention to detail has often been a casualty. Horror stories of abuse and mismanagement, particularly in the formative years of a foreign summer program, have been well-documented. The extra guidance from and consultation with the ABA regulators every five years have been instrumental in helping schools and program administrators avoid pitfalls.

The foreign setting also presents unique risks of political, social or economic uncertainty or disruption. At the same time, logistical realities militate against close monitoring of the foreign site by the American law school. There may be, as a consequence, no substitute for an in-person visit to ascertain whether an overseas program has been compromised in a material way.

Yet another factor supporting close scrutiny is the high degree of credits commonly awarded to study abroad. Students may be able to earn up to one-third of their total law school credits from foreign programs. Accordingly, a significant proportion of many students' overall legal education hinges on the quality of the foreign experience and offerings.

Critics of the current process of accrediting foreign programs argued that unnecessarily intrusive accreditation policies can interfere with and constrain innovative and stimulating foreign programs that heighten student knowledge and appreciation of foreign perspectives. At a minimum, they contended, the frequency of inspections of foreign programs should be reduced.

In the course of examining these issues, the Commission gave some consideration to the possibility of distinguishing between the visitation schedule for summer and cooperative programs on the one hand and semester-abroad programs on the other. In the former situations, the host institution in the foreign jurisdiction generally is well-established (with a correspondingly higher degree of stability of resources and faculty) and the school-to-school relationship usually is quite formalized. Semester-abroad programs have historically been susceptible to a greater amount of change in directors, curricula, sites and faculty; the arrangements often are more informal and dependent on the particular director's personal contacts.

In the final analysis, the Commission concluded that it would be possible, and not unduly risky, to shift to a somewhat more flexible inspection schedule, with longer intervals between reinspections for at least certain types of foreign programs. Given the particularized need for public protection in this area, however, the Commission determined that there should be a proviso that earlier evaluations may occur if there is substantial evidence that a program has undergone an adverse material change. The Commission recommends, therefore, that:

Site evaluations should be conducted in accordance with the following schedule:

- I) Sabbatical inspections: Every 7 years (no change from the present rule).**
- ii) Post-J.D. programs: After initial acquiescence, evaluated 2 years later, then incorporated into the sabbatical cycle (no change from present rule).**
- iii) Foreign programs:**
 - (A) Semester abroad: After initial inspection, evaluated every 3 years (no change from present rule).**
 - (B) Cooperative programs: After initial inspection, evaluated 3 years later, and thereafter every 5 years (subject to reservation of the right to inspect more often if there is substantial evidence of material change(s) in the program).**
 - (C) Summer programs: After initial inspection, evaluated 5 years later, and thereafter every 7 years (subject to reservation of the right to inspect more often if there is substantial evidence of material change(s) in the program).**
- (2) Law Schools' Preparation for Site Evaluation Visits**

(a) Annual and Sabbatical Questionnaires

One of the criticisms directed at the ABA accreditation process by some law school deans is that the preparation for site evaluation visits is inordinately burdensome and costly. A particular source of friction is the Annual Questionnaire and the often duplicative effort required to complete an additional, separate sabbatical questionnaire when the school is due for its periodic inspection. In recent years, confusion and delays occasioned by ABA data collection and programming malfunctions have exacerbated the frustration experienced by many deans.

The Commission recommends that the Annual Questionnaire be modified to minimize duplication with the inquiries on the sabbatical questionnaire. It would also be appropriate to reformat the Questionnaire to distinguish the information that is: (a) required of all schools; (b) only required of schools being evaluated that year; and (c) being voluntarily submitted for "take-offs." The take-off data is assembled, analyzed and shared with law schools that pay a fee to the ABA for this service. Additionally, changes to the Questionnaire may be needed to address new disclosure requirements in Department of Education regulations.

The above revisions should save time and effort on the part of the law schools. It is also advisable to clarify that providing the statistical information for the "take-offs" is truly optional and not part of the accreditation process itself. Although the gathering and dissemination of the data are of obvious value to the participating schools, there needs to be a more explicit explanation of the voluntary nature of schools' participation in this process.

The Committee recommends, therefore, that:

The Annual Questionnaire should be streamlined and reformatted to be more efficient and to reduce duplication of effort. At a minimum, the form should be revised to contain the following:

- I) A section requesting mandatory information from all schools (including the new Standard 215 disclosure requirements imposed by the Department of Education);**
- ii) A section requesting information only from schools that will be evaluated that year (thus replacing the separate sabbatical questionnaire);**
- iii) A section, clearly marked, that calls for information that need only be submitted by schools on a voluntary basis and that will be collected, analyzed and distributed to participating schools for a prescribed fee (the "take-offs").**

It is worth noting at this juncture that the June 3, 1995 resolution of the Board of Governors will affect the Annual Questionnaire in two respects. First, the resolution requires that the Annual

Questionnaire be submitted to the Council for approval before its use. Second, it directs that the Board of Governors be provided with copies of all forms employed in the accreditation process on an annual basis.

(b) Self-Study

Another bone of contention is the self-study requirement, which has generated both praise and criticism. On the positive side, the self-study greatly facilitates the accreditation process by providing the site evaluation team with an essential framework for understanding the law school. Moreover, if approached in the proper fashion, the self-study can be of great use to the school itself. Even though prompted by an outside agency, the self-study process enables a school to reflect upon its long-range objectives, the degree to which it is progressing in the attainment of those objectives, and the solutions to any impediments. The value of this exercise is magnified when, as contemplated by the ABA, the faculty and others within the law school community are involved in the process in a meaningful way.

Those with negative comments about the ABA self-study procedure asserted that it uses a great deal of resources, is unnecessary in light of ongoing reviews to which every responsible institution is already committed (often on a schedule that is inconsistent with the seven-year sabbatical interval, thereby compelling a school to conduct such self-examinations on multiple occasions within a short time period), and induces site team members to stray from their primary focus on compliance with the Standards and wander instead into analyses of the school's aspirational goals and objectives.

The Commission was persuaded that the Self-Study, as currently conceptualized by the Standards, plays a vital role in the accreditation process. Moreover, the Self-Study is required by Department of Education regulations, which mandate that accrediting agencies include a self-study as part of the accreditation process. Accordingly, the Commission does not recommend any modifications of the present self-study process.

(3) Size and Composition of Site Evaluation Teams

As explained in Part I(D) *supra*, sabbatical teams generally have 6 members. Teams typically are composed of legal educators (including an AALS evaluator and usually a clinical legal educator and librarian) and a practitioner or judge; some may have a public member or university administrator as well.

Some law school deans feel that there are too many persons on site teams. A greater number of people means more out-of-pocket expenses for the school, which currently reimburses members for their travel, lodging, meals and incidental expenses. A greater number of people generally also results in more requests for information and consultation.

The Commission agrees that efforts should be undertaken to streamline the site evaluation process and eliminate unneeded expenses or activities, thereby lowering the overall costs for all

concerned. The Commission found, however, that a significant reduction in team size could prevent the site evaluation process from accommodating several important systemic interests.

As a preliminary matter, site teams must be of an adequate size to render a full, fair and comprehensive evaluation and final report. Given the number of topics that must be covered in a site evaluation report, a reduction in the current size of teams would result in an excessive burden on each team member. In addition to impairing the quality of the particular site evaluation, such overloading of team members may result in an erosion of the volunteer base upon which the entire process depends.

In addition, the ABA has endeavored to assure gender, racial, and ethnic diversity of site evaluation teams. The Commission heard concerns that the present process fails to produce adequate representation of women and people of color on site evaluation teams. Gender, racial, and ethnic diversity are appropriate in light of the changing demographics of the law school population and the legal profession as a whole. Moreover, as commentators pointed out, representatives of traditionally excluded groups play an important role in identifying biases that adversely affect the education students receive. A policy of diversity of site evaluation teams furthermore is consistent with the ABA's Goal IX, which promotes full and equal participation in the legal profession by women and minorities. The goal of diversity is more readily achieved when site evaluation teams are larger.

Team size also is influenced by the need for adequate representation of specialists like clinical legal educators and librarians. Inclusion of experts of this sort is important because non-specialists generally lack the requisite background and expertise to identify and analyze problems in these areas. Indeed, some members of the practicing bar expressed the view that there is an insufficient emphasis on law practice and professional skills training in the accreditation process. They advocated that site inspection teams should have a greater proportion of members who possess an understanding and appreciation of professional skills instruction than teams presently do.

Other critics of the current process complained that the inclusion of specialists, such as law librarians and clinical legal faculty members creates a "special interest" bias. These critics assert that librarians and clinicians tend to be especially sympathetic to expansion of these aspects of law schools. For that reason, these specialists assertedly tend to view any law school's current commitment of resources to their area of specialized interest as less satisfactory than others generally see it. On this view, librarians and clinicians have promoted their interests through mutual support in the inspection process. Although some members of the Commission share this view, the majority believes that any such problems of special interest bias, if they exist, can be addressed by training of site inspectors and monitoring by team chairpersons. It is also not insignificant that law school and university officials have an opportunity to directly comment or complain to the Accreditation Committee and to the Council concerning any evidence of bias by site evaluation team members.

The issue of team size will also be affected by a resolution adopted by the ABA Board of Governors on June 3, 1995. That resolution mandates that every site evaluation team include "at

least one member, such as a practicing lawyer, a judge, or a public member who is not a full-time faculty member or dean of a law school" and also, "to the extent feasible[,] at least one person who is a university administrator who is not a full-time faculty member or dean of a law school." Given this directive to integrate more non-academic participants, a reduction in the overall size of teams would severely curtail opportunities for participation by representatives of the legal academic community.

Finally, teams must be large enough to permit an appropriate balance of experienced site evaluators and individuals who are new to the process. It is vitally important for an accreditation process to be able to draw on a dependable, highly qualified cadre of expert evaluators. To accomplish their objectives, chairpersons of teams and sole site evaluators by definition must be well-versed in all the substantive issues and procedural nuances implicated in a typical site evaluation. Although a few commentators contended that veterans of the accreditation process are resistant to innovation, the Commission was not presented with any evidence on that point. If any such problems exist, they can readily be redressed by more stringent monitoring of the process.

Yet, the Commission also was persuaded that the accreditation process benefits from periodic infusions of new blood. The Commission fully supports continuing and enhancing outreach activities to enlarge and train the available pool of site evaluation team members.

Taking all of the various factors and values into account, the Commission concluded that the proper accommodation of systemic interests probably does not permit teams often to be significantly smaller than their current size. While reducing the size of accreditation teams might result in some savings, in the general run of cases this fiscal benefit is outweighed by the adverse impact on the system as a whole.

Apart from the foregoing considerations regarding team size, the Commission fully encourages the ABA to use whatever methodologies can be found to reduce the costs and improve the efficiency of the site evaluation process. For example, it may be possible for evaluators, communicating with relevant law school personnel through the chairperson, to use telephone calls and correspondence to gather information in advance of on-site face-to-face meetings; in addition to generally improving the efficiency of on-site evaluations, such measures might, in appropriate cases, enable a chairperson to employ a smaller on-site team or to shorten the length of a site visit. However, in formulating and employing such cost-saving devices, ABA staff and site team members must be alert to the risks of deleterious effects on the overall quality and thoroughness of site evaluations.

The Commission concluded that one change in the current process is warranted for the sake of increasing flexibility and facilitating the tailoring of the composition of a team to the needs of a particular site evaluation. Law schools subject to a site evaluation should be given the opportunity to invite the chairperson of the site team to the school in advance of the team's visit for a preview observation. Such consultations would occur only if the school requests it and they would be at the school's expense. By enabling the chairperson to make an informed judgment about the number and qualifications of team members, this preliminary step could result in a smaller, more focused team or

a shorter visit.

The Commission therefore recommends that:

The ABA should develop and implement means to reduce the cost of and time involved in all aspects of the site evaluation process and to increase flexibility and individualization in selecting site inspection teams, without sacrificing quality or imposing an undue burden on volunteers. Suggested techniques for promoting greater efficiency include:

- I) Encouraging appointment of the site evaluation team chairperson at an early date;**
- ii) Affording the law school an opportunity to invite the chairperson for a preview visit to the school to acquire a better understanding of any special needs;**
- iii) Tailoring the composition of a site evaluation team to the size, complexity and unique circumstances of a particular evaluation;**
- iv) Urging the chairperson to make early assignments to team members of their sections of the written report and to encourage them to get an early start on gathering information via document review and, if necessary, telephone contact by the chairperson with appropriate school officials prior to the site visit;**
- v) Providing training in site evaluation methods to all first-time team members.**

(4) Scope of Review: Aspirational Goals

Some critics of the current ABA accreditation process contended that a law school should be evaluated solely for the purpose of reviewing compliance with minimum standards of instructional competence. These commentators faulted the current process for exceeding this minimum review by examining the stated aspirations of a law school and the degree to which a school is fulfilling (and has the resources necessary to fulfill) its aspirations. See also the discussion of the self-study in Part II(D)(2) *supra*. According to these critics, the expense involved in this aspect of the accreditation process is wholly unnecessary because law schools would attempt to attain their aspirational goals even without the ABA's review.

Moreover, it was claimed, an inquiry into aspirations is an invitation to arbitrariness. Finally, opponents argued that a focus on aspirational goals can disadvantage schools because it may result in negative feedback, with a decidedly detrimental impact, even though the school is adequately satisfying minimum standards of instructional competence.

The Commission concluded that it is appropriate for an accreditation system to consider the stated aspirations of a law school and the extent to which its resources permit the attainment of those aspirations. As Dean Steven R. Smith of Cleveland-Marshall College of Law observed in a statement he submitted to the Commission, there are fundamental questions of consumer protection at stake when a law school professes to pursue certain goals but lacks the resources to attain them:

A school that is not organized and does not have the faculty, library, and other resources needed to meet its mission and related objectives is misleading the public, potential students, faculty, and others. Furthermore, it seems unlikely ... that any law school can succeed over time where its organization and resources are inconsistent with its mission.

In the view of the Commission, the very process of articulating a mission and endeavoring to adhere to it is one of the best guarantees of a law school's continued vitality. Without due consideration of the school's goals and the extent to which it has attained those goals, a site evaluation team cannot develop an accurate picture of the totality of the law school's progress and quality.

It would be appropriate, however, for the ABA's action letters to distinguish more clearly between failures to comply with the Standards and failures to attain aspirational goals and objectives. In addition to guarding against undue repercussions for schools that receive negative feedback on aspirational issues, such an approach would provide greater guidance to schools in remedying current failings.

The Commission therefore concludes that:

Site evaluation teams may properly inquire into a law school's commitment to and fulfillment of its aspirational goals. The ABA should clarify that:

- I) Failure to attain aspirational goals and objectives is not, in and of itself, a basis for a loss or denial of accreditation, and that only violations of the Standards can lead to that result;**
- ii) Comments pertaining to a school's realization of its stated aspirations are advisory.**

(5) Action Letters

As explained in Part I(D) *supra*, the "action letter" is the culmination of the site evaluation process -- the official communication from the ABA to the law school, informing it of the determination reached as a result of the review of the site evaluation report and record. As evidenced by the public comments and hearing testimony received by the Commission, as well as the observations of individual members of the Commission, the tone and content of Accreditation

Committee action letters have been a source of friction. Primary among the complaints voiced by commentators are charges that action letters often have an unduly negative tone; that they employ excessively bureaucratic language; and that they inappropriately focus on minor infractions.

With respect to the perception that action letters are unduly negative in tone, it is important to bear in mind the purpose of an action letter. As the Ramsey Committee explained in its 1990 Report of the Special Committee to Study the Law School Approval Process, an action letter has the following functions: (I) to state the Accreditation Committee's findings and conclusions; (ii) to create a reliable record of actions taken; (iii) to serve as an official communique between the ABA and the law school; (iv) to aid in developing a corpus of internal "common law" for the accreditation process; (v) to build bridges to the law school and the broader academic community; and (vi) to educate and exhort the recipient regarding the nature and purpose of the ABA's system of accreditation.

Thus, in preparing and issuing action letters, the Accreditation Committee and the Council are executing an enforcement function, not a management review. When viewed in this light, it is understandable that action letters generally focus on problems and decline to provide law schools with positive feedback. Silence implies compliance; praise and compliments are outside the purview of the letter's functions.

The Commission examined the practices of the Accreditation Committee to determine whether the Committee adequately conveys to law schools the functions of an action letter. The Commission recognized that, although the action letters contain a statement of purpose, that statement has not conveyed the Accreditation Committee's views in a way that has been understood by law school and university administrators. The Committee should endeavor to find language that better articulates the nature of the letters and perhaps the Committee should also explore ways to make clear to the academic community why action letters focus on problems, deficiencies and infractions rather than describing positive as well as negative aspects of a school's performance. Further, the current letters at times do not adequately separate core accreditation concerns from observations arising from the review of a school's efforts to meet its aspirations.

Relative to the complaint about overly bureaucratic language, the Commission concluded that the Accreditation Committee should try to avoid overly formalistic stock phrases in its action letters. There are certainly virtues in developing a set of standardized terms and phrases. Such a practice provides a degree of uniformity, consistency and calibration over time; facilitates drafting by the volunteers who serve on the Accreditation Committee; and contributes to the evolution of an internal "common law." It should be possible, however, to achieve these benefits without resort to heavily bureaucratic phrases that run the risk of confusing and irritating recipients of the letters.

As to the contention that action letters unduly focus on minor problems, the Commission found that the Accreditation Committee may, in some instances, properly focus on minor as well as major problems. If seemingly minor problems, either by themselves or in conjunction with more serious problems, raise serious questions about an institution's overall compliance record, the Committee should explain each of the problems. In other instances, however, it may be preferable

not to elaborate minor problems that do not raise accreditation concerns.

In accordance with the discussion in Part II(D)(4) *supra*, the Commission recommends that action letters distinguish between violations of Standards and failures to attain aspirational goals. The letter should make it clear that law schools are neither required nor asked to report back on items mentioned in the section of the letter describing aspirational matters.

In reviewing the procedure for issuing action letters and considering the complaints that have been lodged about them, the Commission determined that one further change should be made in the form of the letter. At present, action letters are signed by the ABA Consultant on Legal Education. The Commission concluded that it would be more appropriate for the letters to be issued over the signature of the chairperson of the Accreditation Committee. This approach will more accurately convey the source of the actions reflected in the correspondence.

The Commission therefore recommends that:

The ABA should, through education and communication, emphasize the purpose of action letters and the reasons why they focus on problems, deficiencies and infractions.

In preparing and issuing action letters, the Accreditation Committee and the Council should:

- I) Distinguish between the section of the letter pertaining to noncompliance issues and the section dealing with aspirational issues that will not form the basis of any enforcement action;**
- ii) Clarify that schools will not be asked to report back to the Accreditation Committee on aspirational matters;**
- iii) To the greatest extent possible, avoid stock phrases that are overly bureaucratic and formalistic in tone;**
- iv) Issue the letter over the signature of the chairperson of the Accreditation Committee.**

E. Costs and Financing of the Accreditation Process

(1) Costs of the Process

The Process Subcommittee of the Commission made an effort to determine the cost of the accreditation process, both to the schools being evaluated and to the ABA. For this undertaking, the Subcommittee developed three questionnaires: one for law schools (sent to Deans), one for individual members of the site evaluation teams, and one for members of the ABA Accreditation

Committee. In addition, the then ABA Deputy Consultant on Legal Education, Dean Frank T. Read, reported on the time he spent on setting up and supervising site evaluation teams, as well as the time the staff of the Consultant's Office expended on the accreditation process.

The questionnaires covered all evaluations performed during academic years 1991-92, 1992-93, and 1993-94, including sabbatical evaluations, Post-J.D. evaluations and foreign program evaluations. The participants who received the questionnaires were not a random sample, but rather constituted the entire universe of all participants involved during that three-year period. Copies of the questionnaires and transmittal letters used in the survey are included in Appendix C1.

All participants were asked to provide information concerning both direct costs (*i.e.*, out-of-pocket) and indirect costs (*i.e.*, time spent on the process). The survey sent to members of the site evaluation teams and the Accreditation Committee did not specify whether their time should be valued at their salary rate or their consulting rate or law firm billing rate. Many of the site team members and Accreditation Committee members made no effort to assign any value to their time and indicated that the hours listed were merely an estimate.

(a) Deans' Surveys

During the three-year period under study, the ABA conducted 169 evaluations, involving 111 different schools. Responses were received from 50 different schools (45% of the total), involving 68 evaluations (40%). Of the 68 evaluations received, 29 described sabbatical evaluations (41%); 6 described Post-J.D. programs (9%); 19 described foreign programs (29%); and 7 were coded as "other" because they were special types of evaluations (10%).

Summary data for the Deans' Responses are presented for all responses and all items, then broken out according to type of evaluation in Appendix C2. For convenience, minimum and maximum ranges for responses by item (excluding 0) are also presented here. The maximum ranges indicated below tend to reflect the costs for provisionally approved schools, which are inspected annually.

<u>DIRECT COSTS</u>			
	<u>Minimum</u>	<u>Maximum</u>	<u>Total (sum for all responses)</u>
<u>Direct Costs for All Responses (N=68)</u>			
Inspection Fee	\$350	\$17,000	\$311,300
Travel/Lodging/Food for Site Team	\$178	\$17,274	\$417,514
Production & Delivery of Materials for Site Team	\$40	\$11,984	\$85,373
Other Direct Costs	\$40	\$20,779	\$107,679

Direct Costs for All Complete Responses (N=56)*

*Only 56 responses presented information for all 4 of the questions about direct expenses summarized above.

Total Direct Costs	\$2,400	\$51,000	\$851,414
--------------------	---------	----------	-----------

INDIRECT COSTS

	<u>Minimum</u>	<u>Maximum</u>	<u>Total (sum for all responses)</u>
<u>Staff Time</u>			
Hours (excl. 0) (sum across all schools)	10	1,040	9,983
Value	\$90	\$30,000	\$223,756
<u>Faculty Time</u>			
Hours (excl. 0)	8	2,000	19,561
Value	\$280	\$200,000	\$1,219,166
<u>Dean's and Dean's Office Time</u>			
Hours (excl. 0)	1	1,920	15,444
Value	\$60	\$80,200	\$778,401
<u>Consultants</u> (only 8 schools reported using)			
Direct Costs (travel & fees only)	\$1,000	\$43,525	\$84,667
Indirect Costs			
Hours	8	30	78
Value	\$336	\$2,000	\$3,836

Total Direct Costs for all schools with complete information about direct expenses:

Total Hours (56 evaluations)	44,905
Total Value (49 evaluations)	\$2,303,425

(b) Site Evaluation Team Members' Surveys

Questionnaires were sent to 404 individual site team members who participated in the 169 evaluations performed during the three-year period under study. These 404 individuals were identified as: Professors (214 or 53%); Deans/Associate Deans/ University Presidents (134 or 33%); Attorneys (32 or 18%); Judges (19 or 5%); or ABA Council Staff/Administrators (5 or 1%). Academic evaluators (Professors and Deans/Associate Deans/ University Presidents) made up the largest number of evaluators (348 or 86%).

190 (47%) site team members responded to the questionnaire. Of those who responded, 121 (64%) participated in only one evaluation, while 69 (36%) participated in more than one evaluation. Of these 69, 32 participated in two evaluations; 17 participated in three evaluations; 10 participated in four evaluations; 6 participated in five evaluations; and 4 participated in more than five evaluations. Of these four frequent participants, 2 participated in six evaluations, 1 participated in 8 evaluations, and one participated in 15 evaluations.

The ten team members who participated in five or more evaluations constitute 2% of the team members, but they participated in 38% of the site evaluations. Of these ten, three were professors, four were deans/associate deans, two were attorneys, and one was the ABA Deputy Consultant (who frequently served as a "pinch hitter" when assigned team members canceled).

Summary data for the Site Team Members' Responses are presented in Appendix C3. For convenience, minimum and maximum ranges for all responses by item (excluding 0) are presented here:

	<u>DIRECT COSTS</u>		
	<u>Minimum</u>	<u>Maximum</u>	<u>Total</u>
Travel/Lodging/Food Reimbursed by School (N=269 responses)	\$30	\$3,847	\$235,636
Unreimbursed Costs (N=327 responses)	\$0	\$800	\$12,709

INDIRECT COSTS

	<u>Minimum</u>	<u>Maximum</u>	<u>Total</u>
Time Spent Preparing for Site Evaluations:			
Hours (N=338 responses)	2	60	4,862
Value (N=253 responses)	\$0	\$7,000	\$437,798
Time Spent on Site Evaluations (including travel):			
Hours (N=336 responses)	9	120	16,914
Value (N=247 responses)	\$30	\$18,400	\$1,356,254
Time Spent after Site Evaluations in Preparing and Reviewing Report:			
Hours (N=336 responses)	2	90	6,705
Value (N=251 responses)	\$30	\$10,500	\$632,333

CALCULATION OF TOTAL DIRECT COSTS,
TOTAL HOURS, AND INDIRECT COSTS

	<u>Minimum</u>	<u>Maximum</u>	<u>Total</u>
Total Direct Costs (N=268 responses)	\$31	\$3,847	\$245,941
Total Indirect Costs: Hours (N=334 responses)	21	215	28,299
Total Indirect Costs: Value (N=246 responses)	\$90	\$30,800	\$2,410,535

(c) Accreditation Committee Members' Surveys

The Chair of the Accreditation Committee, Pauline A. Schneider, calculated the total amount of time and the cost to her firm of her Accreditation Committee activities since January 1, 1992. The total amount of time came to approximately 1,500 hours at a total value of just under \$375,000 during the three-year time span. (This calculation does not include the total time she spent as a member of the Accreditation Committee, which dates back to 1989.)

Questionnaires were sent to twenty-nine persons who served as members of the Accreditation Committee between 1991 and 1994. Thirteen responses were received. The results are presented in Appendix C4. The Committee members who responded spent a minimum of 8 hours and a maximum number of 250 hours reviewing materials; the value of their time ranged

between a minimum of \$3,500 and a maximum of \$38,400. They spent a minimum of 48 hours and a maximum of 288 hours attending committee meetings, at a value ranging between a minimum of \$4,800 and a maximum of \$21,600. They spent a minimum of 24 hours and a maximum of 75 hours in travel time, at a value ranging between a minimum of \$655 and a maximum of \$24,000.

(d) Deputy Consultant's Report

The Deputy Consultant, Dean Frank T. Read, was the person responsible for setting up and supervising the site teams during his term of office from August 1, 1993, to June 30, 1995. He estimated that 95% of his time as Deputy Consultant was devoted directly to accreditation matters. The remaining 5% was spent on educational programs, such as the New Deans Seminar and Annual Deans Workshop, which he characterized as indirectly related to accreditation issues.

Dean Read estimated that the 11-member staff of the Office of the Consultant spends 85% to 90% of its time on accreditation matters. The staff collects statistics, provides training sessions for accreditation, assembles teams, and organizes and provides support for meetings of the groups of volunteers who work on aspects of the accreditation process (the Standards Review Committee, Accreditation Committee, Graduate Legal Education Committee, and so forth). The other 10% of the staff's time is devoted to tasks related to accreditation, although somewhat less directly. These include, for example, organization of workshops and publication of information.

The process of assembling site evaluation teams is a particularly time-consuming one. The Office endeavors to produce site evaluation teams with appropriate balance, experience and expertise. The survey reveals that over the past 3 years, 407 people were involved in 169 evaluations. (In a typical year, from 25 to 30 schools will be on the sabbatical inspection list.) Because of the number of people involved, the difficulties of coordinating schedules, and the particular problems posed when trying to juggle the trial schedules of practicing lawyers, judges, and clinical legal educators, several dozen calls may be required to find individuals available to serve on a certain team. The Office estimates that approximately 1400 telephone calls are required each year to enlist the requisite number of team members.

The total operating expense of the Consultant's Office is approximately \$1,300,000. Dean Read estimated that \$1,150,000 of that budget is spent on issues directly dealing with accreditation and the rest is spent on issues that deal with accreditation in a somewhat less direct way.

(2) Financing of the Process

At present, the ABA accreditation process is funded by an annual subsidy from the Association (approximately \$619,000 in 1994-95) and revenues earned from law school fees, publications and workshops (approximately \$577,000 for the same year). Augmenting these hard dollars is the impressive quantity of volunteer time. As demonstrated in the preceding section, the Commission's written survey showed that volunteer time for site evaluations can amount to roughly \$2,500,000 over a three year period.

The Commission devoted considerable time to examining the best means for obtaining a stable and adequate funding base to support the accreditation process. The urgency of the situation is compounded by recent litigation and related challenges to ABA accreditation, and by law schools' demands for reductions in expenses. It is apparent that the ABA, already adjusting to a declining membership and facing multitudinous demands upon its revenue base, is unlikely to increase its general fund allocation for accreditation. At the same time, the Consultant's office is seriously underfunded and understaffed in terms of meeting its present obligations, let alone coping with a myriad of new mandates and expectations that are being imposed upon the Office.

The Commission is aware that suggesting changes in the way the accreditation process is financed is bound to stir up controversy. While some deans urge the ABA to do more, the majority can be predicted to resist an expansion of the accreditation function or increases in staffing of the Consultant's office. Yet the need to establish modalities for secure and adequate funding to support the process has never been greater.

The Commission therefore recommends that the ABA develop and employ an annual fee assessment system for the 178 approved law schools. Under such a system, the ABA would absorb the costs for all sabbatical evaluations, relieving the schools from those expenses. The approach proposed here parallels the financing arrangements common in other professional accrediting bodies and in the AALS.

There are several advantages to an annual fee collection system of this sort. First, it affords both the ABA and the law schools a degree of predictability in their annual budgeting. Second, it permits amortization of the law school's expenses, avoiding a painfully large budget "hit" every seven years, which can wreak havoc on a dean's discretionary budget. Third, it enables the ABA to reimburse site evaluation team members for the expenses incurred from their visit, thereby eliminating the conflict of interest inherent in evaluators receiving reimbursement from the law schools they evaluate.

Further study is required to determine an appropriate fee schedule. For example, it may be reasonable for fees to vary according to the size of the law school. The Commission recommends that a special task force be formed to determine the appropriate fee levels and develop other specifics, including additional funding sources. Ideally, the task force would include in its membership a broad range of participants who have an interest in or who benefit from the law school accreditation functions of the ABA.

The Commission therefore recommends that:

- I) **The funding of the ABA law school accreditation system be stabilized by assessing law schools an appropriate annual fee to cover their proportionate share of the expenses of the accreditation process, including the travel costs incurred by volunteers serving on sabbatical evaluation teams.**

- ii) **A special task force be created by the Council to propose an appropriate and fair fee schedule for the law schools and to explore additional sources of revenue**

for the system. The task force should include representatives from the legal education community, the states' highest courts, state bar examiners, University administrators, the practicing bar and other constituents who have an interest in or who benefit from ABA law school accreditation.

III.

RECOMMENDATIONS OF THE COMMISSION

A. General Recommendation

The ABA should continue to administer the law school accreditation process, working through its Section of Legal Education and Admissions to the Bar and through the Section's Office of the ABA Consultant on Legal Education.

B. Recommendations Relating to the Content of the Accreditation Standards

(1) The Standards should be amended to add the following preamble:

The Standards for the Approval of Law Schools by the American Bar Association should be and are designed, developed, and implemented for the purpose of advancing the basic minimal goal of a law school education. That minimal goal is to ensure that every law school graduate:

- (a) Understands his or her ethical responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.
- (b) Has mastered a core curriculum through which he or she:
 - I) Understands the theory, philosophy, development and ramifications of law as well as its institutions;
 - ii) Develops analytical and critical legal thinking skills, oral and written communication skills, and obtains familiarity with legal research; and
 - iii) Knows the fundamental principles of public and private law.
- (c) Understands that law is a public profession requiring the performance of *pro bono publico* legal services.

(2) Standard 301 should be amended to add the following language as a new subsection (b), with appropriate renumbering of current subsections (b) and (c) as, respectively, subsections (c) and (d):

The self-study required by Standard 301(a) must address and describe how the law school's education program conforms to the requirements of Standard 301(a) and 301(c).

(3) Standard 302(a)(iii) should be amended so as to insert the following underscored

language:

offer to all students instruction in professional skills ...

- (4) A new Interpretation to Standard 302(a)(iii) should be adopted, stating:

Professional Skills as used in Standard 302(a)(iii) include any of the following areas of instruction:

1. Problem Solving
2. Legal Analysis and Reasoning
3. Legal Research
4. Factual Investigation
5. Communication
6. Counseling
7. Negotiation
8. Litigation and Alternative Dispute Resolution Procedures
9. Organization and Management of Legal Work
10. Recognizing and Resolving Ethical Dilemmas

A school is not required to offer instruction in the entire list of skills to satisfy the requirements of Standard 302(a)(iii).

- (5) The criteria for assessing student/faculty ratios under the Interpretations of Standard 201 should be re-examined to ensure that they adequately take into account that:

- (a) Faculty members who are still teaching although they have administrative posts or are on research leave or emeritus status continue to play an active role in the law school community and therefore should be counted in some proportionate way in assessing student/faculty ratios;
- (b) Adjunct instructors may enrich a law school's curriculum in a variety of ways, including expanding the number and types of course offerings and providing different perspectives. Therefore, it is reasonable to consider the effect of adjuncts on the quality of the academic program in assessing the significance of student/faculty ratios.
- (c) Faculty members with substantial responsibilities outside the law school should not be deemed "full time faculty" for purposes of student/faculty ratios if their outside activities unduly interfere with their obligations as faculty members.

- (6) The present language of Standard 404 should be deleted and replaced with the following:

Each law school should have established policies with respect to faculty members responsibilities in teaching, scholarship, service to the law school community, and professional activities outside the law school. Such policies should address themselves to:

- (a) Faculty teaching responsibilities, such as carrying a fair share of a law school's course offerings, preparation for classes, availability for student consultation, and creation of an atmosphere in which student and faculty may voice opinions and exchange ideas;
- (b) Research and publication, and integrity in the conduct of scholarship, such as appropriate use of student research assistants, acknowledgement of the contributions of others, and responsibility of faculty members to keep abreast of developments in their specialties;
- (c) Obligations to the law school or university community, such as participation in the governance of the law school, and
- (d) Conduct of professional activities outside the law school and university community and their relationship to teaching responsibilities.

- (7) Standards 701-705 should be replaced with a single Standard, which reads as follows:

The law school shall have a physical plant that is adequate for its educational program, library, scholarly and research activities, administrative and secretarial services, and student services, and for such growth in enrollment or program as should be anticipated in the immediate future.

- (8) Standard 209 should be deleted in its entirety. To preserve the substance of its preamble, Standard 201(b) should be amended to read as follows:

The law school shall have the present and anticipated resources necessary to provide a sound legal education and accomplish the objectives of its educational program, and shall be so organized and administered as to utilize fully those resources for those purposes.

- (9) Standard 210 should be amended to delete any references to compensation.

C. Recommendations Relating to the Site Evaluation Process

- (1) Site evaluations should be conducted in accordance with the following schedule:

- (a) Sabbatical inspections: Every 7 years (no change from the present rule).
 - (b) Post-J.D. programs: After initial acquiescence, evaluated 2 years later, then incorporated into the sabbatical cycle (no change from present rule).
 - (c) Foreign programs:
 - I) Semester abroad: After initial inspection, evaluated every 3 years (no change from present rule).
 - ii) Cooperative programs: After initial inspection, evaluated 3 years later, and thereafter every 5 years (subject to reservation of the right to inspect more often if there is substantial evidence of material change(s) in the program).
 - iii) Summer programs: After initial inspection, evaluated 5 years later, and thereafter every 7 years (subject to reservation of the right to inspect more often if there is substantial evidence of material change(s) in the program).
- (2) The Annual Questionnaire should be streamlined and reformatted to be more efficient and to reduce duplication of effort. At a minimum, the form should be revised to contain the following:
- (a) A section requesting mandatory information from all schools (including the new Standard 215 disclosure requirements imposed by the Department of Education);
 - (b) A section requesting information only from schools that will be evaluated that year (thus replacing the separate sabbatical questionnaire);
 - (c) A section, clearly marked, that calls for information that need only be submitted by schools on a voluntary basis and that will be collected, analyzed and distributed to participating schools for a prescribed fee (the "take-offs").
- (3) The ABA should develop and implement means to reduce the cost of and time involved in all aspects of the site evaluation process and to increase flexibility and individualization in selecting site inspection teams, without sacrificing quality or imposing an undue burden on volunteers. Suggested techniques for promoting greater efficiency include:
- (a) Encouraging appointment of the site evaluation team chairperson at an early date;

- (b) Affording the law school an opportunity to invite the chairperson for a preview visit to the school to acquire a better understanding of any special needs;
 - (c) Tailoring the composition of a site evaluation team to the size, complexity and unique circumstances of a particular evaluation;
 - (d) Urging the chairperson to make early assignments to team members of their sections of the written report and to encourage them to get an early start on gathering information via document review and, if necessary, telephone contact by the chairperson with appropriate school officials prior to the site visit;
 - (e) Providing training in site evaluation methods to all first-time team members.
- (4) The ABA should continue to direct site evaluators to inquire into a law school's commitment to and fulfillment of its aspirational goals. The ABA should, however, make clear to participants in the accreditation process, law schools, and other interested parties that:
- (a) Failure to attain aspirational goals and objectives is not, in and of itself, a basis for a loss or denial of accreditation, and that only violations of the Standards can lead to that result;
 - (b) Comments pertaining to a school's realization of its stated aspirations are advisory.
- (5) The ABA should, through education and communication, emphasize the purpose of action letters and the reasons why they focus on problems, deficiencies and infractions.
- (6) In preparing and issuing action letters, the Accreditation Committee and the Council should:
- (a) Distinguish between the section of the letter pertaining to noncompliance issues and the section dealing with aspirational issues that will not form the basis of any enforcement action;
 - (b) Clarify that schools will not be asked to report back to the Accreditation Committee on aspirational matters;
 - (c) To the greatest extent possible, avoid stock phrases that are overly bureaucratic and formalistic in tone;
 - (d) Issue the letter over the signature of the chair of the Accreditation

Committee.

- (7) The funding of the ABA law school accreditation system should be stabilized by assessing law schools an appropriate annual fee to cover their proportionate share of the expenses of the accreditation process, including the travel costs incurred by volunteers serving on sabbatical evaluation teams.
- (8) A special task force should be created by the Council to propose an appropriate and fair fee schedule for the law schools and to explore additional sources of revenue for the system. The task force should include representatives from the legal education community, the states' highest courts, state bar examiners, University administrators, the practicing bar and other constituents who have an interest in or who benefit from ABA law school accreditation.

SEPARATE STATEMENT OF RONALD A. CASS

As with other members of the Commission, there are many aspects of the Commission's report and recommendations that I endorse as well as aspects with which I am not comfortable. Because my perspective on accreditation differs significantly from that of the Commission majority and because I also disagree with the Commission's treatment of specific issues, I have prepared a lengthy separate statement of personal views. I have no doubt that in most of the areas addressed in that statement some other Commission members will believe that the compromise reached in our deliberations moves too far from the present rules and practices despite my contention that it does not go far enough. In large part, my personal statement urges the need for additional attention to several issues that, although addressed by the Commission, may be revisited by this Commission when it reconvenes this coming Fall.

I take issue with the Commission's treatment of the student-faculty ratio, of the Standard regulating the allocation of funds between university and law school, of the ABA's practices respecting self-study requirements, and of the ABA's treatment of a school's failure to meet its aspirations -- or the absence of resources apparently sufficient to allow those aspirations to be attained -- as an element in accreditation that potentially can be a basis for denying or revoking accreditation. I also explain my disagreement with the proposal for financing the accreditation process (and, probably, for expansion of the staff that largely has practical responsibility for this process), as well as noting other areas in which I believe there is a basis for skepticism about either present accreditation practices or changes proposed by the Commission.

That statement is available to the Council of the Section on Legal Education and Admissions to the Bar and to the Board of Governors. At the request of a number of Commission members, however, I have separated my statement from the Commission's report and will withhold publication to a wider audience until the Commission completes its work. This step is taken in part as an accommodation to colleagues, none of whom wrote a separate statement and who, given the time constraints on our work, did not have much opportunity to discuss my statement with me. This step also is taken partly to emphasize that the Commission has made important progress. I believe that the Commission's report and recommendations generally move in a positive direction and do not want an extended separate statement to signal disrespect for our work product. And in part withholding publication recognizes that the work of the Commission is not yet done. That said, I hope that, while implementing the Commission's recommendations, the ABA will give scrutiny to a few of our suggestions that I am not persuaded point us in the right direction. On several matters, where the Commission considered and rejected more significant changes, I hope that the Commission will recommend such changes when it meets again. If it does not, I hope that the ABA will take further steps to improve law school accreditation.

Bibliography

AMERICAN BAR ASSOCIATION, RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (1994)

AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS (1994)

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 1994-95 (1994)

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, CONSULTANT'S ANNUAL REPORT, 1993-94 (1994)

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS X REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY (1979) ("Cramton Report")

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT X AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) ("MacCrate Report")

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE TO STUDY THE LAW SCHOOL APPROVAL PROCESS (1990) ("Ramsey Committee Report")

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE ON LAW SCHOOL STANDARDS, PROCEEDINGS OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (August 6-8, 1973) ("Nahstoll Committee Report")

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT OF THE SPECIAL COMMITTEE TO THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, PROCEEDINGS OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (August 30, 1921) ("Root Committee Report")

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES (1994)

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, THE ROLE OF THE AMERICAN BAR ASSOCIATION IN LEGAL EDUCATION: A SUMMARY OF THE 1969 CHICAGO SYMPOSIUM (1970)

Robert W. Bennett, *Reflections on the Law School Accreditation Process*, 30 WAKE FOREST L. REV.

379 (1995)

SUSAN K. BOYD, THE ABA'S FIRST SECTION: ASSURING A QUALIFIED BAR (1993)

Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89 (1994)

Henry Ramsey, Jr., *The History, Organization and Accomplishments of the American Bar Association Accreditation Process*, 30 WAKE FOREST L. REV. 267 (1995)

Frank T. Read, *Legal Education's Holy War Over Regulation of Consumer Information: The Federal Trump Card*, 30 WAKE FOREST L. REV. 307 (1995)

ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921)

ROBERT B. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S (1983)

James P. White, *The American Bar Association Law School Approval Process: A Century Plus of Public Service*, 30 WAKE FOREST L. REV. 283 (1995)

James P. White, *Legal Education in the Era of Change: Law School Autonomy*, 1987 DUKE L.J. 292