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SRC REVIEW OF SPECIAL REPORT ON TRANSPARENCY

Summary of Comments and List of Issues
March 14, 2011

Executive Summary

During its hearings, the Accreditation Policy Task Force of the ABA Section on Legal Education and Admissions to the Bar heard testimony critical of the accreditation process particularly regarding the interpretation and application of the Standards. In brief, criticism surrounded the openness and accessibility of those processes and concern was expressed that information was limited to schools under review and not generally available to the public. The question was raised as to the extent that consumers ought to have more information about law schools.

The Task Force concluded:

(1) The Section should take steps to achieve greater transparency in the accreditation process by disclosing as much information as is legally permissible about law schools and their compliance with the Standards.
(2) The Section should seek to improve the quality and consistency of its site inspection report and action letters and consider assigning a static member to participate in each site inspection.

To address these issues, a Special Committee on Transparency was appointed to submit recommendations regarding these findings. The Special Committee met twice, reviewed materials regarding accreditation processes of other accreditation agencies, solicited views from accreditation leaders in higher education, distributed the survey to a large number of legal educators, and debated the advantages and disadvantages of possible recommendations. The Special Committee issued its report in 2008.[1]

The Report opens by recognizing that accreditation agencies have, in the past, required substantial confidentiality in their processes. The Report also noted that agencies have been

[1] Section of Legal Education and Admissions to the Bar, Special Committee on Transparency, *FINAL REPORT: Section of Legal Education and Admissions to the Bar Special Committee on Transparency* (2008) available at http://apps.americanbar.org/legaled/committees/subcomm/Final%20Transparency%20Committee%202008%20Report.DOC.

considering questions of openness and transparency particularly relative to providing consumer information to the public. The central issue, then, concerns the public credibility of higher education in general and law schools in particular. The Report, for example, cites an Occasional Paper published by the Council for Higher Education Accreditation which addresses confidentiality, accountability, and staff resources necessary for the provision of more public information.[2] The Report also notes a study by Professor William Mock which discusses the issue of transparency particularly as it relates to university and law school websites which publish strategic plans and self-studies albeit unevenly.[3]

The Special Committee reviewed accreditation processes in other disciplines including medicine, architecture, and journalism. Additionally, the Committee drafted and distributed a questionnaire and received a total of 154 responses. The survey revealed: (1) 56% of the deans indicated they would support an accreditation requirement that one or more key documents be made available on a regular basis -- Accreditation Committee decision letters (70%) and school follow-up reports (50%); (2) 48% of associate/assistant deans supported an accreditation requirement that one or more key documents be made available -- Accreditation Committee decision letters (60%) and self-studies (59%); and (3) 55% of all responses, supported requiring availability of one or more key documents, with Accreditation Committee decision letters (70%), school follow-up reports (57%), and self-studies receiving the most affirmative responses (58%). Summary data can be found at http://www.abanet.org/legaled/nosearch/survey.html.

Special Committee Recommendations

The Special Committee issued several recommendations and attempted to balance the desire for openness, on the one hand, with concern for ensuring candor and enhancing the quality of legal education, on the other. A major concern, was the possibility that generally available material may be misused (e.g. by law school rating organizations) and may be misunderstood by the public.

Recommendation 1

On a vote of 5 to 4, the Special Committee recommended that unredacted accreditation decision letters and follow-up correspondence between a school and the Accreditation Committee be available prospectively on the Section's website, password-protected, to deans of approved law schools and, as determined by each dean, to other faculty members "for use in the accreditation process."

The Special Committee noted that although it did not address self-studies and team reports, these documents might be available from public law schools through FOIA requests.

[2] *Id.* at 2-3.
[3] *Id.* at Appendix A.

Recommendation 2

The Special Committee recommended that a memorandum, reflecting the Consultant's presentation, be placed prominently on the Section's website and brought to the attention of deans and others on a regular basis. It should be available to the public without restriction.

This recommendation was made after hearing from the Consultant on Legal Education about the full accreditation process.

Recommendation 3

The Special Committee recommended that the Accreditation Issues Summary be available on the Section's website.

The Committee reasoned that such information would highlight particular Standards and Interpretations with which significant numbers of schools are having difficulty and might thus suggest possible further action by individual schools and/or the Section.

Recommendation 4

The Special Committee recommended that in appropriate circumstances, the Consultant's Office prepare a "Consultant's Memo" to assist schools in coming into compliance with the Standards.

The idea behind this recommendation was that Consultant's memoranda, after approval by the Accreditation Committee and the Council, could be placed on the Section's website and made available without restriction to better inform the public. The Committee recognized, depending on volume, that this recommendation could have staffing implications.

Recommendation 5

The Special Committee discussed making the Section's website more accessible, user-friendly, and interactive. The site, for example, could link Standards, Interpretations, and explanatory commentary such as the bar passage memorandum, so that users could move more easily among items.

The Special Committee recommended that a committee be appointed to undertake this project.

It should be noted that the Special Committee recommended that items such as meeting dates, committee membership lists, agendas, and minutes be posted on the website and that comments be invited. The Standards Review Committee has followed the suggestion and has

expanded the information available on its website. *See* Standards Review Committee homepage at http://apps.americanbar.org/legaled/committees/comstandards.html. \

Recommendation 6

The Special Committee recommended that the Section consider using a staff member and/or the use of "super volunteers" who would agree to serve on multiple site visits each year on site visits to enhance consistency.

This recommendation was based upon reviewing sabbatical site inspection processes of other accreditation agencies.

Recommendation 7

The Special Committee recommended that the Section consider additional ways in which accreditation information can be shared with deans, law schools, and the public.

The idea behind this recommendation was that such information might be a regular topic at the New Deans' seminars or annual Deans' workshops as well as through pod casts or webinars.

Recommendation 8

The Special Committee discussed whether memorandum regarding "best practices" in accreditation should be prepared. It suggested that such topics might include discussion about the availability of information such as team reports in decision letters as well as the use of students in the accreditation process.

The Special Committee recommended that this issue deserves further consideration.

Recommendation 9

The Special Committee recommended that the Standards Review Committee consider clarifying Standards 202 and 203.

The Committee discussed the interaction between self-studies and strategic plans and concluded that many law schools were unclear about the difference between planning and entailed in a strategic planning process and the self-reflection and analysis required in a self-study.

Recommendation 10

The Special Committee recommended that the matter of consumer information be referred to the appropriate Section committee for consideration.

The Standards Review Committee will address consumer information in its recommendations regarding Standard 509.

Recommendation 11

The Special Committee recommended that further consideration be given to these and other possibilities for involving students more meaningfully in the accreditation process.

The committee was of the opinion that student involvement in the current accreditation process (a meeting open to students and a lunch with student leaders) has not been very effective in generating insights from the perspective of students as consumers. Other accreditation agencies have found ways to include students in the process such as through surveys or having a separate law student area on a website.

Standards Review Committee Discussion

The SRC appointed a subcommittee to discuss and consider the report of the Special Task Force and was in agreement with many of the recommendations. Generally, the SRC agreed that Consultant's memoranda were valuable in providing guidance regarding standard; agreed that Standards 202 and 203 need to be clarified; agreed that consumer information should be expanded and to that end the SRC specifically addressing Standard 509; and, the SRC expressed concern regarding how extensively the self studies should be made available to the public.

The Subcommittee on Transparency, in its first report to the SRC, was divided regarding which documents should be publicly available and when they should be made available. The Subcommittee generally agreed that documents produced by law schools, such as the self-study, the strategic plan, and the report of the site team should not be made available. They agreed that unredacted decision letters of the Accreditation Committee and subsequent correspondence between the school and the Accreditation Committee should be made available. The Subcommittee further believed that serious consideration should be given to making documents available not only to deans but to the general public.

The Subcommittee suggested that the release of decision letters and subsequent correspondence be delayed until final action by the Accreditation Committee. It also recognized that the process can be protracted, therefore the SRC should consider releasing such documents after the passage of an appropriate amount of time such as two years after the initial decision letter. The Subcommittee also suggested that decision letters should not be released without the

responsive correspondence from the law school. The Subcommittee also noted that transparency could be increased through Consultant's memoranda and through website enhancements.

The Subcommittee also reviewed Rule 25 *Confidentiality of Accreditation Information and Documents* and Rule 26 *Release of Information Concerning Law Schools*. The Subcommittee discussed what types of information, other than decision letters on regular sabbatical visit, should be released. This information included applications for provisional or full approval, acquiescence in a major change, Rule 13 (b) violations, requests for variances, and complaints.

The Subcommittee proposed a revised Rule 25 that combined current Rules 25 and 26. The recommended rule was approved by the SRC. The new rule provides that the Consultant shall provide public notification, after the time for appeal has expired, of Council decisions regarding accreditation matters. The proposed Rule also provides for public notification of Accreditation Committee decisions upon a finding of full compliance or two years from the date of the Accreditation Committee decision. The Subcommittee recognized that the provision of additional information may require further staff support in the Consultant's office.

The redlined version of Proposed Rule 25 follows (strike-outs and underlines show changes from the draft of January 2010):

RULE 25. Confidentiality of Accreditation Information and Documents

(a) The Consultant shall provide public notification of decisions of the House concerning an appeal of a Council decision under Rule 10.

(b) The Consultant shall provide public notification, after the time for appeal under these Rules has expired, of Recommendation Letters or Decision Letters ~~recommendations~~ of the Accreditation Committee, ~~decisions~~ Decision Letters of the Council, and any subsequent correspondence ~~from~~ between the School and the Consultant's Office ~~concerning such recommendations and decisions,~~ regarding:

(1) the granting of applications for provisional approval or the extension of the period of provisional approval under Standard 102;
(2) ~~the granting of~~ applications for full approval under Standard 103;
(3) ~~the granting of~~ applications for acquiescence in major changes under Standard 105;
(4) ~~the granting of~~ applications for variances under Standard 802;
(5) an appeal by a School under Rule 9; and
(6) sanctions imposed under Rules 16 or 17.

(c) The Consultant shall provide public notification of ~~decisions~~ Decision Letters of the Accreditation Committee and any subsequent correspondence ~~from~~ between the School and the Consultant's Office concerning such decisions, regarding a School's compliance or noncompliance with the Standards; provided, however, that such public notification regarding

~~decisions~~ Decision Letters following a sabbatical site visit shall occur at the earlier of: 1) a ~~decision~~ Decision Letter by the Committee finding that a school is in full compliance with the Standards; or 2) 2 years from the date of the original decision by the Committee.

(d) All other matters relating to the accreditation of a law school, including proceedings and deliberations of the Accreditation Committee and Council, site evaluation reports, and all other non-public documents and information received or generated by the American Bar Association, shall not be publicly disclosed, except as provided in subsection (e) of this Rule. Public disclosure of self-studies and strategic plans are entirely within the discretion of the law school.

(e) The law school or the university may release an entire site evaluation report or portions of it as it sees fit. If the law school makes public the site evaluation report or any portion thereof, notification must be given to the Consultant at the time of the disclosure, and disclosure of the report may be made by the Consultant, upon approval of the chairperson of the Council.

(f) Discussion of the contents of a site evaluation report with, or release of the report to, the faculty, the university administration or the governing board of the university (or a free standing law school) does not constitute release of the report to the public within the meaning of this Rule.