

## The Association of American Law Schools and The American Bar Association : Overlapping Roles and Differing Agendas

Elliott S. MILSTEIN<sup>1)</sup>

Law school in the United States consists of a three year course of study in a graduate professional school that follows four years of college and typically the award of the bachelor's degree. There is no prescribed curriculum for the undergraduate degree and nearly every undergraduate major, from the arts and humanities to engineering and the sciences, is represented in American law schools. The curriculum in law school is designed to build upon the general knowledge that students acquire in undergraduate school and does not presuppose that any of this knowledge is of the law. This fact distinguishes American legal education from that of much of the rest of the world, including Japan, in which law is taught in undergraduate school alongside non-legal subjects. The fact that all American law schools require an undergraduate degree<sup>2)</sup> is the result of a consensus that is reflected in the rules of accreditation that govern legal education.

Two organizations in the United States set standards for approving law schools, The American Bar Association (ABA) and the Association of American Law Schools (AALS). The ABA is the "official" accreditation body for law schools and schools that are in compliance with its rules and are accredited may certify their graduates to take the bar examination to be admitted to practice in all 50 states.<sup>3)</sup> In addition, because the ABA is recognized by the United States Department of Education as an accreditation agency,

---

1) Professor, Washington College of Law, American University. President of the Association of American Law Schools.

2) Std. 502 (EDUCATIONAL REQUIREMENTS) of ABA Standards for Approval of Law Schools  
(a) A law school shall require for admission to its J.D. degree program a bachelor's degree, or successful completion of three-fourths of the work acceptable for a bachelor's degree, from an institution that is accredited by a regional accrediting agency recognized by the Department of Education.

Section 6-2 (Admissions) of Bylaws of AALS

a. A member school shall admit only those applicants who appear to have the capacity to meet its academic standards.

3) A few states permit graduates of non-accredited schools that operates within their borders to take their bar examination as well. California is one such state and it has a separate state accrediting system for non-ABA approved schools.

students at such schools are eligible for federal financial aid.<sup>4)</sup> The AALS, on the other hand, is an organization of law schools that have met its membership requirements. All of the 162 AALS Member schools are accredited by the ABA but, because AALS membership rules are more stringent in certain areas, not all of the 183 ABA accredited schools qualify for membership.

### 1. The ABA Accreditation Process and Admission to the Bar

Admission to the bar in the U.S. is governed separately in each state, typically by the highest court of the state. Although there are exceptions, admission usually requires both an undergraduate and a law degree (from an ABA approved school), passage of a bar examination, and a determination of character and moral fitness. With the exception of California, where the exam takes three days, the examination consists of a two day written test. Many states also conduct a separate examination on knowledge of the rules of professional responsibility. Because there is no national licensing of lawyers, each state is free to design the bar examination as it chooses and therefore the precise format varies from state to state. In recent years many states have adopted tests prepared by a non-profit organization, The National Conference of Bar Examiners, (NCBE) and so there is a trend to uniformity around the country.<sup>5)</sup>

Having a national accreditation body relieves each of the states from the burden of having to determine the sufficiency of the education that entering lawyers have received. Indeed, given the numbers of law schools in the U.S., it would be impractical to do otherwise. Thus, without the requirement of graduation from a school that has met the standards necessary for accreditation, the bar examination would have to be more extensive than it is to ensure that only qualified people are admitted to practice.

There are three distinct goals of accreditation: “promoting lawyer competence to benefit future clients and members of the public; protecting student consumers; and fostering institutional excellence among law schools.”<sup>6)</sup> Although achievement of these three goals is important both to the ABA and the AALS, and they needn’t compete with each other, the ABA’s priorities emphasize the lawyer competence goal as the most

4) An educational institution must be accredited by a government-recognized accreditation agency in order for its students to get federal loans or scholarships. Most law schools are eligible because the universities of which they are a part are accredited by a regional accrediting organization. However, law schools that are not part of a university depends upon their ABA accreditation for this purpose.

5) The NCBE has four distinctive test instruments, an objective multiple-choice test on the basic subjects usually taught in the first year of law school, a multiple-choice test on professional responsibility, a set of one-hour essays testing legal analysis and more advanced subjects, and a written performance test in which the the applicant writes a document similar to one that would be written in actual practice.

6) Wegner, “Two Steps Forward, One Step Back: Reflections on the Accreditation Debate,” 45 J. Legal Educ. 441, 442 (1995).

important and the AALS's most important objective is to foster institutional excellence among law schools.

Perhaps the reason that accreditation by the ABA has legitimacy for bar admission purposes is that its processes involve practicing lawyers, judges and academics. The ABA is a membership organization of individuals, each of whom typically is also a member of one or more sub-organizations, called "sections." One such section, the Section of Legal Education and Admissions to the Bar, governs law school accreditation through its elected Council of Legal Education and Admissions to the Bar. The Council includes members from all three of those branches of the profession. It promulgates accreditation standards and decides whether particular schools are in compliance with those standards. Those decisions are based upon information submitted by the schools and upon facts learned during a site visit by an accreditation team. These visits, conducted jointly with the AALS, take place when a school applies for initial accreditation and thereafter every seven years for schools that are approved. This process is described more completely below.

#### The ABA Accreditation Standards

The substantive provisions of the American Bar Association Standards for the Approval of Law Schools<sup>7)</sup> are structured into six chapters that comprehensively regulate the framework for American law schools

Organization and Administration These standards include :

- Requirement of adequate financial resources (Std. 201)
- Requirement of periodic self-studies (Std. 202)
- Apportionment of governance responsibility among the governing board, dean, faculty, and university administration (Std. 203 to 209)
- Equality of opportunity and non-discrimination (Std. 210 to 212)

The requirement of adequate financial resources has been enforced, along with several other standards to enhance the size and quality of the faculty, the curriculum and the library of American law schools. It has helped ensure that the tuition and fees paid by law students should be used first to make certain that the necessary or basic requirements of the law school's educational program are met. Standard 201 states that 'a law school shall have the resources necessary to provide a sound legal education and accomplish the objectives of its educational program.' Standard 209 states that 'the present and anticipated financial resources of the law school shall be adequate to sustain a sound educational program.' Standard 405 states that 'a law school shall establish and maintain conditions adequate to attract and retain a competent faculty.' These three standards have provided substantial support for ABA- approved law schools in their effort to acquire the

---

7) The Standards are available on the internet, [www.abanet.org/legaled](http://www.abanet.org/legaled)

resources necessary to provide a quality legal education.<sup>8)</sup>

Requirements regarding curriculum (Std. 301 and 302)<sup>9)</sup>

Curriculum must prepare graduates for admission to the bar and for effective and responsible participation in the legal profession

Only one subject required is Professional Responsibility

Otherwise requires substantive law, skills and values in general terms

Requires clinical education for at least some students

Forbids credit for bar review course

The salient characteristic of the rules regarding curriculum is their flexibility. With a few exceptions, they are stated in general terms and schools are still free to design the course of study in a manner consistent with the values, resources and interests of the faculty. The rules have protected law schools from being forced to require particular courses that from time-to-time are urged upon them by judges and practitioners.<sup>10)</sup> At the same time, in recent years the rules have begun to reflect a shift in emphasis towards courses, particularly

---

8) See Ramsey, "The History, Organization, and Accomplishments of the American Bar Association Accreditation Process," 30 Wake Forest L. Rev. 267, 277 (1995).

9) Std. 301 (OBJECTIVES).

(a) A law school shall maintain an educational program that prepares its graduates for admission to the bar and to participate effectively and responsibly in the legal profession.

(b) A law school shall maintain an educational program that prepares its graduates to deal with current and anticipated legal problems.

(c) A law school may offer an educational program designed to emphasize certain aspects of the law or the legal profession.

Std. 302 (CURRICULUM).

(a) A law school shall offer to all students in its J.D. program:

(1) instruction in the substantive law, values and skills (including legal analysis and reasoning, legal research, problem solving and oral and written communication) generally regarded as necessary to effective and responsible participation in the legal profession;

(2) at least one rigorous writing experience; and

(3) adequate opportunities for instruction in professional skills.

(b) A law school shall require of all students in the J.D. degree program instruction in the history, goals, structure, duties, values, and responsibilities of the legal profession and its members, including instruction in the Model Rules of Professional Conduct of the American Bar Association. A law school should involve members of the bench and bar in this instruction.

(c) The educational program of a law school shall provide students with adequate opportunities for small group experiences in seminars, directed research, small classes, or by collaborative work.

(d) A law school shall offer live-client or other real-life practice experiences. This might be accomplished through clinics or externships. A law school need not offer this experience to all students.

(e) A law school should encourage and provide opportunities for student participation in pro bono activities.

(f) A law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition for graduation

10) Ramsey, at 279.

clinical courses, that teach the skills and values necessary to the practice of law. This trend has resulted from and also contributed to the success of the clinical movement within American law schools.

#### Grading Standards (Std. 303)

Only requires that there be standards, does not mandate particular ones

#### Length of the course of study (Std. 304)

Requires three years of education for full-time students, four years for part-time

Restricts full-time student's outside employment to 20 hours per week

Requires 56,000 minutes of instruction over six semesters to receive J.D. degree

This section standardizes, to the minute, the amount of classroom instruction each student will receive at every law school in the United States and is designed as well to ensure that law students are not distracted unreasonably from their studies by outside employment. Because legal education has a traditional role in American Society as an important vehicle for upward social mobility, the accreditation rules anticipate and permit that some students will be employed full-time and go to school part-time. For those student, the rules mandate a longer course of study with the same number of minutes of instruction as for full-time students.

#### Externships and Foreign Study (Std. 305)

Requires academic component for granting credit for study outside of the law school

Sets standards for and restrictions upon granting credit for study in a foreign law school<sup>11)</sup>

These sections have been quite controversial in recent years as schools have wanted both to create more experiential learning programs and also to provide opportunities and incentives for students to study abroad. These trends have resulted from a sense that the traditional classroom-based curriculum has been insufficiently broad. Although there are a variety of programs permitted by the rules, many of the law schools that have externships and study-abroad programs utilize student experience in those settings as the beginning point for reflective critical understanding of the lawyer's role in multiple settings.

#### Faculty (Stds. 401 to 405)

Expectation of a competent full-time faculty, with limited outside employment

Creates minimum requirements for student-faculty ratio and complex formula for

---

11) "Under its authority 'to adopt rules implementing the Standards,' the Council for the Section of Legal Education and Admissions to the Bar to the ABA has adopted Criteria for Approval of Foreign Summer Programs, Criteria for Approval of Semester Abroad Programs, Criteria for Approval of Cooperative Programs for Foreign Study, and Criteria for Approval of Individual Student Study Abroad for Academic Credit". (<http://www.abanet.org/legaled/studyabroad/abroad.html>)

computing it

Urges schools to include lawyers and judges as adjunct faculty but requires that major portion of instruction be by full-time faculty

Requires policies defining faculty responsibilities for teaching, scholarship and service

Mandates academic freedom

Full-time faculty must be eligible for tenure or, in the case of clinical faculty, for a form of security similar to tenure

These rules regarding faculty have been extraordinarily important in defining and creating the American law professoriate. It differentiates between full-time tenure-track faculty and others for purposes of determining faculty student ratios and then sets standards for acceptable ratios, within a range. Under the rules a ratio of fewer than 20 : 1 is acceptable and of greater than 30 : 1 is unacceptable, and for schools whose ratios are between 20 and 30 to 1, a qualitative judgment is made regarding the sufficiency of the faculty.<sup>12)</sup>

The provisions regarding academic freedom and tenure are of central importance to the standards, since because the scholarship, teaching and service of law professors is often political in nature, protection of the right of faculty to take unpopular positions is fundamental in a democracy.<sup>13)</sup> The ABA Standards have been extended to include clinical teachers within the ambit of those entitled to academic freedom and job security.

+

#### Admissions (Std. 501 to 509)

Limits admission, except in extraordinary situations, to students with 3 years of undergraduate study

Requires an admission test such as the Law School Admission Test administered by the Law School Admission Council

Permits character and fitness qualifications and requires notice to applicants that admission to the bar includes such determinations

Sets standards for readmitting students who have flunked out and admitting students with transfer credit for unaccredited and foreign law schools

Requires publication of accurate consumer information regarding admissions, costs, graduation rates, faculty, curriculum, library, building, and placement and bar passage rates

#### Library

Requires an adequate library under control of the law school and directed by a full-time librarian who is a member of the law faculty

Sets general standards for determining adequacy of collection, staff and services

---

12) Interpretation 402-2.

13) Ramsey, at 278.

### Physical Plant

Mandates adequate physical space for present and future academic program and library

Requires space and seating for students to study and do research

Taken together, the library and physical plant standards have led to large construction projects in nearly every law school in the United States in recent years. The general expansion in the size of faculty and student bodies coupled with changes in the way law is taught have caused most schools to out-grow their buildings. In addition, modern legal education requires a large technological infrastructure for internet access, computer networks, information networks, and classroom display equipment. Library collections have grown along with their needs for technology. The accreditation process has been helpful to schools in developing the will, means and plans to bring to fruition new buildings or remodeled and expanded versions of old ones. The combination of peer-advice that is inherent in the accreditation process plus the threat to remove accreditation for schools with insufficient physical plants, has been instrumental in making the many law school construction projects completed in the past decade successful.

The questions of who will be admitted to the legal profession, how and what they will be taught, and by whom, have historically been contested in the United States. Accordingly, the ABA Standards are themselves contested and have recently been the subject matter of litigation, administrative action within the Department of Education, and controversy within the ABA. The current iteration of the Standards reflects a number of revisions that are the result of those controversies and a number of others are still under consideration. At the same time it should be noted that the Standards and the process of accreditation permits and accommodates wide variations in the character, curriculum, emphases, values, resources, faculty and students of law schools in the U.S.

## 2. AALS Membership

### AALS Membership Review

The AALS is a membership organization of law schools and therefore is governed exclusively by academicians. There is a nine member Executive Committee made up of law professors and deans. The organization operates as the learned society of legal educators and, in addition to its role in setting standards for members and determining whether they meet them, its most important work involves the ways it supports faculty scholarship, teaching and service. It was founded in 1900 and is now celebrating its Centennial Year.

The AALS membership rules are quite different in their scope and their purpose, since they are intended to perform three distinctive but interrelated goals: articulation of

broadly shared values and norms about the attributes of quality legal education ; review of applicant and member schools' conformance with those requirements to assure a continuing commitment to excellence for the schools' own sakes and for the benefit of the other member schools who participate together in the activities of the association ; and provision of peer advice to schools who rely on the long-established academic tradition of seeking objective evaluation from colleagues outside their immediate circle in order to retain a self-critical and open-minded approach to the responsibilities of legal educators.<sup>14)</sup>

Because these are the goals, the AALS membership review process is, except as to a few matters, qualitative rather than quantitative. In general, the AALS process involves the quality of teaching, the quality of and support for scholarship, the existence of an intellectual community, faculty participation in governance, diversity and non-discrimination and commitment to justice and public service. AALS membership rules are contained in its Article 6 of its Bylaws and in the Executive Committee Regulations.<sup>15)</sup>

#### AALS Membership Rules

AALS membership requirements deal with the following:

##### Admissions

Undergraduate degree normally expected

Only intellectually qualified applicants, based upon undergraduate performance and admissions test, should be admitted

Consumer information must be provided to applicants

Schools should seek to have a diverse student body

Transfer students from non-member schools admitted only with caution

##### Degree Requirements

Six semesters of full-time study or part-time equivalent, including 1120 class hours of 50 minutes each (same as ABA)

Courses taken outside of law school in joint degree programs or foreign schools count towards degree

Full-time students not permitted to have outside employment for more than 20 hours per week

##### Diversity and Non-discrimination

Schools are required to enforce policies of non-discrimination and equal opportunity on the ground of race, color, religion, national origin, sex, age, handicap or disability, or sexual orientation. This applies to every facet of institutional operation and to

---

14) Wegner at 453.

15) All of the AALS publications, including Bylaws and Executive Committee Regulations, can be found at on its website, <http://www.aals.org/aalspub.html>



employers using career services office

Schools are required to seek diversity of race, color, and sex in faculty, students and staff

#### Faculty

Two-thirds of instruction must be by full-time faculty

Requires tenure-track and academic freedom. AALS Committee on Academic Freedom and Tenure is available to hear complaints against schools regarding denials of academic freedom

Power to govern by vote on all academic matters including curriculum, faculty appointments, promotions and tenure, and the appointment of a dean

Teaching load limited to permit time for scholarship to 8 class hours per week<sup>16)</sup>

Schools are required to support faculty scholarship and professional development by

Recognizing scholarship in appointment and advancement

Reducing workload and providing sabbatical leaves

Funding of research assistants, travel, books and the like

Providing secretarial and library assistance

#### Curriculum

Emphasizes importance of a variety of courses and objectives, including “jurisprudential, transnational, multicultural, and interdisciplinary perspectives on law, lawmaking, and legal practice.”

Requires teaching of skills of legal research and writing, oral communication and legal analysis and encourages teaching of other skills

Limits the number of credits permitted for externships and articulates a standard for such programs

#### Library and Physical Plant

Requires sufficiency of collection, service, budget, seating and autonomy of library in terms of the curricular and scholarly agenda of faculty and students

Requires that physical space of the law school be controlled exclusively by the law school and that each faculty member has an individual office.

#### The Site Evaluation Process

The AALS and the ABA conduct site evaluations of each law school every seven years and, in the case of AALS schools, do those visits jointly. Teams consisting of law professors, judges and practitioners, conduct an inspection. One of the academic representatives is designated by the AALS as its representative. The schools prepare for

---

16) A repetition of a course counts for one-half for this calculation. Most law schools require faculty to teach 4 courses per year, although many now have smaller teaching loads.

the visit by engaging in a self-study and submitting a long list of required information. Team members interview faculty, attend classes, meet with university and law school administrators, meet alumni and students and gather information to write a report for the ABA. The AALS representative writes a separate report for that organization.

Site inspection reports are quite comprehensive and most often contain important peer advice regarding how the school might improve. Appropriate committees in each organizations recommend a response to the report and the governing body of each decides the extent to which schools are out of compliance with particular parts of each organization's rules. When a school is found out of compliance, each organization has a range of sanctions, few of which are ever actually imposed. Instead, the school is sent a letter requiring action and subsequent reports. A full description of the sanction process is beyond the scope of this paper, but suffice it to say that schools ultimately either demonstrate that they are in compliance or make the necessary changes to retain their accreditation and their membership in the AALS.

#### Statements of Good Practices

The AALS also has promulgated Statements of Good Practices, essentially a moral code for the legal academy. These are not rules but are instead precepts that are enforced only by good faith adherence to the principles set forth, and compliance with them is nearly universal. There are currently three such statements, one dealing with impartiality in the membership review process, a second dealing with resignation and recruitment of faculty members and another dealing with the ethical and professional responsibilities of faculty members.<sup>17)</sup>

### 3. The AALS as Learned Society

Perhaps more important to the success of the AALS than its membership review function is its role as the learned society of the legal academy. The AALS is the epicenter of the legal intellectual community through the work of its sections and committees, its Annual Meeting Program, Professional Development Programs, and its publications.

There are currently 79 sections, groups within the AALS that are organized around common agendas of the faculty members who join. Some involve substantive legal areas, for example the Section on Torts or the Section on Constitutional Law. Others are focussed on both personal affinities and related legal areas, such as the Section on Women in Legal Education or the Section on Minority Groups. Some are focused on community service, on teaching methods, on scholarship, on interdisciplinary studies and more. Indeed, it has been the practice of the AALS to be open to the formation of new sections

---

17) These can be found on the AALS website at <http://www.aals.org/state.html>

as legal education changes. The largest section, The Section on Clinical Legal Education, has more than 1000 members.<sup>18)</sup>

Each section organizes a program at the AALS Annual Meeting, typically a panel discussion centered around scholarly papers, developments in law, teaching methods, or other topics of interest to members and others who are attracted to attend. In addition, many sections publish newsletters and some sponsor on-line discussion groups (listservs) to ensure that there is an ongoing dialogue among a national network of people interested in similar issues. These events permit the exchange of ideas rapidly and usefully across the entire range of law schools.

The Annual Meeting of the AALS is held in January each year for four days and more than 3000 academicians attend. Most of the time of the meeting is taken up with the programs of the individual sections, although there are some programs of general interest that meet for whole days and there is also a plenary session that attracts a large audience. At this meeting several hundred professors give presentations, providing an opportunity for new ideas to be disseminated, challenged or supported and for new voices to be heard. This meeting makes an important contribution to the dynamism and vitality of American legal education and ensures that professors can meet and collaborate with others working in their field.

In addition to the Annual Meeting, the AALS organizes professional development workshops and conferences to permit more in-depth discussions of pedagogy or scholarship. In the current year there will be 11 such conferences. These meetings are undertaken at the request of one or more of the sections and are attended by 50 to 300 faculty members each. This professional development effort includes annual conferences to acculturate and train new law teachers, and another for clinical teachers. The others vary from year to year, depending upon the recommendations of a standing committee.

As part of its mission to improve legal education, the AALS sponsors The Journal of Legal Education, and co-sponsors The Clinical Law Review, both peer-reviewed and faculty edited publications dealing with issues that concern legal educators. The first deals with general curricular development and legal scholarship questions while the second is devoted to issues of lawyering theory and clinical legal education.

The AALS undertakes a number of special projects to assist law schools in solving particular problems. Currently, there are projects dealing with promoting pro bono work by students, with improving minority enrollment in law schools, and with involving law schools in working on issues related to access to lawyers by the poor. It also is the representative of the legal academy to the federal government, to other higher education organizations and to learned societies both in the U.S. and abroad.

---

18) A list of sections is at <http://www.aals.org/sections/index.html>