

requirements that are unnecessary and intrusive and aspects of the site evaluation and accreditation processes that could be improved.

ABA standards and interpretations are criticised as being unduly detailed and focusing on matters not central to quality legal education. However, the vast majority of standards are appropriate, focus on core issues of legal education and represent a reasonable consensus among legal educators. I am not among those who criticise the position taken in regard to student/faculty ratios. The relevant interpretation provides that a student/faculty ratio of greater than 30:1 is presumably not in compliance with the standards. The rationale is that a school with such a high student/faculty ratio is probably unable to provide the necessary quality of education and skills training required to train law students adequately for the profession that best occurs in small classes.

The unnecessary detail of some standards and interpretations may constrain innovation in approaches to legal education, but, on the whole, the standards do not generally restrict innovation in an inappropriate way. The wide variation of programs, missions and directions at the 178 ABA-approved law schools attests to the proposition that the existing standards do leave room for experimentation and innovation. Many significant aspects of legal education are untouched by ABA standards. Finally, the barriers to change created by the standards are generally justified. While there is general agreement that judges and practising attorneys can and do add importantly to the quality of education that students now receive, the author detects no change in the fundamental consensus that the bulk of legal education should be provided by a

core of highly qualified full-time faculty.

Recently, there have been substantial improvements in the site evaluation process. Suggestions that the site evaluation team be reduced to one or two persons fail to appreciate that law schools have become vastly more complex over the last quarter century in terms of training, technological equipment, admissions procedure and financing. A five or six-person site evaluation team is essential if it is to have a realistic chance to make the factual findings necessary for a responsible evaluation of the school's program and convey its findings to the school and university. Furthermore, the consent decree requires that each team include at least one university administrator (not a dean or faculty member) and one practising lawyer or judge. The review of the law school's materials before the site visit and the preparation of a report after the visit are likely to fall to the law school members of the team. The quality of fact-finding and reporting will suffer significantly if the team does not have a sufficient number of law school members.

My main criticism of the present site evaluation process is the amount of detailed information that must be provided in advance of a visit. It needs to be pruned substantially. Some of the information is unnecessary, some should be made available on site and some information duplicates what would normally be provided in a self-study and should be listed only in suggestions for a self-study.

There are two main criticisms of specialised accreditation: first, that it is used as leverage to divert university resources to academic units that have accreditation; and secondly that it focuses unduly on inputs and resources, rather than outputs and quality programs.

While there is less reason to find fault on these grounds, in recent years the accreditation committees have failed to distinguish carefully between offering peer advice and identifying shortfalls in standards or membership requirements. A radical distinction should be made between the two, with peer evaluation being left entirely to the evaluation teams. The action letters of the accreditation committees should be limited solely to identifying ways in which the operations of the law school fail to meet ABA standard and interpretations or the AALS requirements of membership.

Finally, too many law schools are being required to report back concerning deficiencies that have been identified. Schools should be told that, although there are concerns about the school's overall compliance with a few specific standards, the school is generally in overall compliance and will not have to report further until the next sabbatical evaluation. This would permit accreditation committees to devote more energy and attention to those law schools at which there may be serious problems.

Two steps forward, one step back: reflections on the accreditation debate

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45 *J Legal Ed* 3, September, 1995, pp 441-456

1995 has been marked by important upheavals in the process of ABA accreditation which began when its Board of Governors imposed a number of changes in the provisions governing accreditation. Later in the same month, the Board of Governors entered a proposed consent decree with the US Department of Justice which had been pursuing a civil investigation of the ABA accreditation process to determine whether it conformed with anti-trust laws. With the

concurrence of the Board of Governors, the consent decree significantly modified certain aspects of that process. In related developments, the Wahl Commission issued its preliminary report and made a variety of recommendations. It determined the ABA should continue to administer the accreditation process, suggested amending several of the ABA's standards and interpretations and proposed changes in the site evaluation process.

Both envision the change of several accreditation standards that could significantly alter the face of legal education. These include the standards governing student-teacher ratios, teaching loads and financial resources, all of which are reasonably related to educational quality and, in turn, to the level of preparation and competence of law school graduates. Both contemplate several specific procedural reforms, but it is unclear how significant these are likely to be in practice. The Wahl Commission recommends that a clear line be drawn between required compliance with governing standards and observations and suggestions concerning how schools might better meet their own aspirations. It remains unclear how this distinction will be made in the light of recent history in which virtually all shortcomings gave rise to reports back and further review. Further, the changes in the accreditation process pursuant to the proposed consent decree appear to open the way for more rapid changes in the design and delivery of legal education by those providers who are able to survive increasing economic pressures.

Protection of student consumers about to invest in legal education is a second goal sometimes associated with the accreditation process.

Although the Department of Education has its own process of certifying accrediting agencies to students, the ABA has traditionally been the Department's authorised accrediting body for legal education. In recent years, however, the department has mandated that all accrediting agencies should require the schools within their jurisdictions to publish basic consumer information to all applicants. The ABA has translated this into a newly promulgated standard and interpretation under which schools may either publish the information in their own publications or in a designated ABA publication. These new requirements make the role of the accreditation process in protecting student consumers more important. It remains to be seen how the ABA and the individual schools will present the information so that it is meaningful to prospective students. On top of this, there is the critical question of how the information will be verified.

A third goal of accreditation processes is to foster institutional excellence which is central to the AALS membership process. Established in 1900 as an organisation of reputable law schools committed to the improvement of the legal profession through legal education, the Association's membership has grown from 32 charter members to 160 law schools around the country. The association requires that membership be limited to schools that satisfy core requirements and that periodic reviews be undertaken to ensure that these requirements continue to be met. During the last two years, the Executive Committee has examined the Association's role in the accreditation process and has determined that it should consider making changes to its membership review process. It has sought to

shape this process to reflect its core mission as an organisation of member schools still dedicated to its original commitment. To that end, the Committee has concluded that the review process performs three distinctive goals: articulation of broadly shared values and norms about the attributes of quality legal education; the review of applicant and member schools' conformance with those requirements; and the provision of peer advice to schools which rely on the tradition of being able to seek objective advice from colleagues.

Informational report from the ABA Board of Governors to the House of Delegates

27 Syllabus 2 (ABA Section of Legal Education and Admissions to the Bar), Spring 1996, pp 4-5

In 1993 the Massachusetts School of Law, which had been denied provisional accreditation by the ABA, commenced an anti-trust action in the Federal District Court. The Anti-Trust Division of the Department of Justice (DOJ) completed an investigation of the ABA's accreditation activities in June 1995. Subsequently, the ABA settled this action through the entry of a consent decree.

The DOJ focused on six specific accreditation criteria that it contended could have anti-competitive effects and suggested that the ABA form a special commission to review the criteria in the light of its anti-trust concerns. This function, with the consent of the DOJ, was carried out by the pre-existing Wahl Commission, which reported in August 1995. The ABA Board of Governors transmitted the report to the Court and the DOJ with its approval and has now resolved to complete a recodification of the ABA Standards for Approval of Law Schools, a draft of which has now