

## COUNCIL STATEMENTS

Periodically, the Council issues Statements intended to provide law schools with guidance on a variety of issues. These Statements are advisory in nature only. They are not and should not be considered the equivalent of Standards, Interpretations, and Rules for the Approval of Law Schools.

### **1. LL.M. and Other Post-J.D. Degrees and Qualification for Admission to Practice**

The American Bar Association's approval of a law school extends only to the first professional degree in law (J.D.) offered by a law school. ABA approval of a school's J.D. program provides bar admission authorities, students and the public assurance that the law school's J.D. program meets the Standards established by the ABA and that graduates of the school have completed an educational program that prepares them for admission to the bar and to participate effectively and responsibly in the legal profession.

ABA approval does not extend to any program supporting any other degree granted by the law school. Rather the content and requirements of those degrees, such as an LL.M., are created by the law school itself and do not reflect any judgment by the ABA regarding the quality of the program. Moreover, admission requirements for such programs vary from school to school, and are not evaluated through the ABA accreditation process. The ABA Accreditation process does not evaluate in any way whether a school's post-J.D. degree program ensures that students in the program gain the basic knowledge and skills necessary to prepare the student adequately for the practice of law. It is the long-standing position of the Council of the Section of Legal Education and Admissions to the Bar that no graduate degree is or should be a substitute for the J.D., and that a graduate degree should not be considered the equivalent of the J.D. for bar admission purposes.

*The Standards for Approval of Law Schools* prohibit an approved law school from establishing a post-J.D. program without first obtaining the acquiescence of the Council of the Section of Legal Education and Admissions to the Bar. However, the ABA reviews post-J.D. degree programs only to determine whether the offering of such post-J.D. program would have an adverse impact on the law school's ability to comply with the Standards that the ABA establishes for J.D. programs. If no adverse impact is indicated, the ABA acquiesces in the law school's decision to offer the non-J.D. program and degree. Acquiescence in a post-J.D. program does not constitute ABA approval or endorsement of such a program.

### **2. J.D. Degree - Ph.D. Degree Equivalency**

WHEREAS, the acquisition of a Doctor of Jurisprudence degree requires from 84 to 90 semester hours of post baccalaureate study and the Doctor of Philosophy degree usually requires 60 semester hours of post baccalaureate study along with

the writing of a dissertation, the two degrees shall be considered as equivalent degrees for educational employment purposes;

THEREFORE, BE IT RESOLVED, that all appropriate persons be requested to eliminate any policy, or practice, existing within their jurisdiction which disparages legal education or promotes discriminatory employment practices against J.D. degree-holders who hold academic appointment in education institutions.

### **3. Propriety of Examination by Public Authority before Admission to Practice**

A half century ago the American Bar Association adopted standards for legal education, the second of which is as follows:

“The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subject to an examination by public authority to determine his fitness.”

The criticism of bar examinations, which is daily becoming more prevalent, makes it most appropriate for the Council of the Section of Legal Education and Admissions to the Bar and the Board of Managers of the National Conference of Bar Examiners to state their opinion on the matter of the so-called Diploma Privilege.

It is the position of the Council and Board that the above-quoted standard, adopted in 1921, is as valid today — perhaps more so with the mobility of law graduates — as it was at the time and that every applicant for admission to the bar should be subject to examination by public authority.

Very great progress has taken place in the caliber of legal education in the fifty years intervening since 1921. In part the improvement in legal education has been the result of experimentation in teaching techniques. Not all such experiments have proved successful. Public authority should not dictate teaching techniques but it should make sure that all applicants have the training necessary to adequately serve the public upon their admission.

Not only are law schools quite properly experimenting in teaching techniques but they are experimenting in curriculum content. Again, public authority should not dictate curriculum content but by examination should determine that the content of the applicant’s education is such that upon admission he will be able to adequately serve the public. In one of the jurisdictions where graduates of certain law schools are admitted without examination, the Court found it necessary to a certain extent to dictate the curriculum content of those schools—an unfortunate limitation on the educational freedom of these schools.

Bar examinations themselves serve additional functions. They encourage law graduates to study subjects not taken in law school. They require the applicant to review all he has learned in law school with a result that he is made to realize the interrelation of the various divisions of the law—to view the separate subject courses which he took in law school as a related whole. This the curriculum of most law schools does not achieve. Also, it is the first time many of the applicants will have been examined by persons other than those who taught them, a valuable experience in preparation for appearing before a completely strange judge.

To reiterate, it is the position of the Council and the Board of Managers that there must be examination by public authority. This is not to say that public authority must not be very careful in its examination procedure to make sure that it is fulfilling its responsibilities. It should continually strive to make its methods of examination more effective so that the results will be the nondiscriminatory admission of none not qualified and the exclusion of none qualified, even though this requires the use of innovative examining techniques and constant consideration of the ever changing needs of our society. The necessity to train lawyers to represent all members of society is a continual challenge to teachers of law and legal education. To test this properly the examining authority can perform effectively and satisfactorily only if it makes responsive changes in its techniques.

#### **4. Law Students Called to Active Military Duty**

Resolved, that any student who leaves his/her law school prior to completion of a semester, quarter or session as a result of being called to active military duty in the armed forces of the United States may be granted by any approved law school appropriate credit for any quarter, semester or session which was interrupted by the call to active military duty. A law school may establish its own policies with respect to adequate completion of further work by the student.

#### **5. Rating of Law Schools**

No rating of law schools beyond the simple statement of their accreditation status is attempted or advocated by the official organizations in legal education. Qualities that make one kind of school good for one student may not be as important to another. The American Bar Association and its Section of Legal Education and Admissions to the Bar have issued disclaimers of any law school rating system. Prospective law students should consider a variety of factors in making their choice among schools.

#### **6. Law School Policy Encouraging Faculty to Engage in Reasonable Post-Examination Review with Students**

It is recommended that a law school have a policy encouraging faculty members to engage in reasonable post examination review with students, preferably individual review upon request. Absent good cause, students should also have a

right reasonably to review their examination papers. This does not mean that faculty members are obligated to review examinations individually with all students in every course. A reasonable policy may take into account the workload of individual teachers, the number of examinations in the course, the academic needs of the particular students requesting review, and the availability of review in courses throughout the school. Faculty members may choose to carry out such a policy using alternative means, including engaging in individual review of examinations upon student's request, by holding a general review concerning the examination open to all students, or by providing an outline or exemplar of good examination answers.

## **7. Period of Retention of Examination Materials**

Law schools approved by the American Bar Association should practice the policy of retaining examination booklets for a period of one year. This policy applies only if the examination booklet has not been returned to the student.

## **8. Retention of Records**

Law schools approved by the American Bar Association should retain admission, financial aid and placement records for a one-year period.

## **9. Interference in Law School Clinical Activities**

Improper attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs and courses have an adverse impact on the quality of the educational mission of affected law schools and jeopardize principles of law school self-governance, academic freedom, and ethical independence under the ABA Code of Professional Responsibility. In appropriate ways, the Council shall assist law schools in preserving the independence of law school clinical programs and courses.

## **10. Timely Grading of Law School Examinations**

Law schools should adopt and maintain policies for timely grading of law school examinations. It is urged that such policies provide for completion of the grading and notification of results to the students not later than 30 days following the last examination of the term.

## **11. Pass/Fail Grading**

At its August, 1970 meeting the Council of the Section of Legal Education and Admissions to the Bar decided to endorse the following statement issued earlier by the Law School Admission Council on the impact of pass/fail grading by undergraduate colleges upon the law school admission process. This statement

has also been endorsed by the Executive Committee of the Association of American Law Schools.

The adoption by an increasing number of colleges and universities of pass/fail or similar grading systems for some or all of their students' work has implications for the law school admissions process. When a student with a transcript bearing such grades seeks to enter law school, law school admissions committees will be deprived of data that have served them well in the past in making the admissions decision. In the belief that college and university faculties and administrations who are considering conversion of a conventional grading system to a pass/fail or some variant system may be interested in the possible effect of such grading systems upon their graduates who seek admission to law school, the Law School Admission Council issues this statement.

The Law School Admission Test (LSAT) was developed more than twenty years ago in response to an expressed need of law schools for additional data upon which to base their admissions decisions. Validity studies conducted over the years demonstrate that the LSAT score contributes significantly to the prediction of an applicant's grades in law school and thus aids in the making of the admissions decision. These studies show that the LSAT score and the undergraduate grade-point average are the two best quantitative predictors, and that when they are used together they are better than either used separately. College grades represent both academic competence and achievement; the LSAT score largely indicates academic competence—the kind relevant to the study of law. The academic achievement of an applicant to law school indicates the extent of his preparation and motivation for the study of law. It is apparent, then, that college grades make a significant contribution to prediction of law school grades that is not supplied by the LSAT score.

Where an applicant for admission to law school submits a transcript in which all or virtually all of his grades are on pass/fail basis, and submits no other indication of his level of achievement in college, the admissions committee can make little specific use of his college work in predicting his law school grades. This means that this prediction must be based on the LSAT score, even though the committee would much prefer not to place sole reliance on the test scores in making this prediction. Even when such a transcript is supplemented by a narrative evaluation of the applicant by several of his teachers and deans, the committee can make only limited use of the college work in predicting performance in law school. Like interviews, these evaluations give the committee some help in making the admissions judgment, but they are largely helpful in deciding which risks to take and which to reject.

Where the applicant for admission to law school submits a transcript containing some conventional grades and some pass/fail grades, the admissions committee can develop a grade-point average for that portion of the student's college work bearing the conventional grades. However, many admissions officers will not feel

justified in assigning to that average the conventional weight. They may well assume that the student chose to receive a conventional grade in those courses in which he gauged his probabilities for a premium grade to be good. This indicates that his grade-point average so developed will overstate his academic competence and achievement as compared with the average of a student whose grades are all conventional. Furthermore, the committee may reasonably assume that the applicant did not make the same effort in the courses graded on a pass/fail basis as he did in those graded on the conventional basis. In short, a grade-point average based only upon the limited part of a student's work in which conventional grades were assigned seems to overstate in a compound way the student's general academic ability and achievement. Therefore, it is understandable that many admissions officers are already discounting such a grade-point average, and discounting it more if there is a large proportion of pass/fail grades.

The Council recognizes that the increased use of the pass/fail grading system—or some variant thereof—will mean that law school admissions committees and officers will place an increased reliance upon the LSAT score, a greater reliance than either the Council or law school admissions committee would like. The Council recognizes that there are many educational considerations to be taken into account by the faculty and administration in determining the appropriate grading system for that college or university. The Council, of course, respects the authority and judgment of the college and university faculty and administration in making that decision. The Law School Admission Council offers this statement concerning the effect of pass/fail grades upon the proper evaluation of a college graduate's application for admission to law school only in the hope that it may be useful to college faculties and administrations in determining what grading system to use.

## **12. Student Complaints**

Each law school approved by the American Bar Association should communicate in written form to its students the manner in which it receives and responds to student complaints.

## **13. Law School Admission Fees**

The American Bar Association Section of Legal Education and Admissions to the Bar condemns the practice of requiring persons seeking admission to a law school to pay a fee, in addition to the regular application fee, to be placed on a list of persons who will be admitted if additional places become available, commonly known as a "waiting list."

## **14. Law School Curricula**

The Council is the governing body of the Section of Legal Education and Admissions to the Bar, and it also serves as the United States Department of

Education recognized accrediting agency for J.D. programs in the United States. In its role as an accrediting authority the Council has adopted Standards and Interpretations for the Approval of Law Schools. A number of those Standards and Interpretations speak to the program of legal education that the Council believes a law school must offer to prepare its graduates for careers in the legal profession.

The Standards and Interpretations reflect the general principle that law schools should be given considerable discretion to fashion their own curricula, consistent with their varied and diverse missions. There are many more courses and subjects that might be appropriate and worthy of inclusion in a law school course of study than can be accommodated in a three-year full-time course of study (or its part-time equivalent). Choosing among many worthy and important courses, subjects and topics is a matter best left to each law school within the basic framework established by the Standards and Interpretations.

It is inconsistent with the Council's role as an accrediting agency to support proposals that law schools include in their curricula matters that are not specifically required by the Standards. Moreover, a resolution adopted by the ABA House of Delegates to encourage law schools to include specific courses or subjects in their curricula will lead many to believe that such courses and subjects are related to accreditation requirements.

