

# ALWD

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ASSOCIATION OF LEGAL WRITING DIRECTORS

May 7, 2009

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Council of the Section of Legal Education and Admissions to the Bar  
c/o Maxine Klein  
American Bar Association  
Section of Legal Education and Admissions to the Bar  
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Re.: Council Mini-Retreat

Dear Bucky and Randy:

Thank you for the opportunity to provide some background reading for the roundtable discussion at the Council's June mini-retreat. For each discussion topic, we have collected recent articles, listed at the end of this letter in a bibliography. Hard copies of the shorter materials are also appended to this letter for your reference. We also have summarized and commented on salient points from the articles. The comments relate to the umbrella theme of the retreat: the impact of the current financial situation on the Accreditation Standards and potential responses by the Council. Finally, a brief summary follows the comments.

1. How to Enhance, or at Least Maintain, Diversity While Under Financial Stress

Minority enrollment is down in law schools. Some have noted that the financial downturn may be a deterrent to minority candidates attending law school. Arguably, minority candidates are more likely than their white counterparts to come from low-income families, and the idea of incurring additional debt for law school may be a barrier to some who wish to enroll in law school, especially when they may already have debt from financing college. The economic downturn, however, is relatively recent, so that alone cannot explain the decline in minority enrollment.

Many commentators attribute the decrease in minority enrollment to law school policies that are driven by rankings, especially *U.S. News and World Report*. These rankings evaluate law schools, in part, based on factors such as LSAT scores and bar passage rates. These commentators argue that minorities tend to score lower on the LSAT and have lower bar passage rates; thus, law schools worried about their rankings refuse to admit students who might bring diversity to the law school and instead accept applicants who will help the school's ranking.

ALWD favors retaining diversity as an important goal because it provides greater employment opportunities to minorities and enriches the educational experience for all. Diversity in legal education is also important to the public, because clients often seek attorneys they can identify with, and the number of minority attorneys is not reflective of their percentages in the population.

The current Accreditation Standards permit law schools to admit only those students who appear capable of “satisfactorily completing its educational program and being admitted to the bar,” and this requirement makes sense from a consumer protection perspective. To date, however, the only meaningful measurements of an individual’s capacity in this regard are LSAT scores and bar passage rates. ALWD encourages the Council, as well as the appropriate affiliate organizations, to explore developing other indicia of success for admission to law school and to the practice of law. From the Council’s perspective, this would include beginning a comprehensive review of the Standards with the goal of reframing them to focus more specifically on outcome measurements, as envisioned by the Section’s Report of the Outcome Measures Committee.

Moreover, ALWD notes that placing a priority on diversity has resource implications. Teaching students from diverse backgrounds requires a core group of experienced and dedicated full-time faculty. Full-time faculty are much more likely than others to possess the ability and interest in pedagogy necessary to teach students from varying backgrounds—especially students requiring extra individualized attention, such as non-native English speaking students and those who have had less-than-exceptional secondary and undergraduate educational experiences. ALWD believes that the Accreditation Standards should continue to mandate that law schools “demonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups.” It would be inappropriate to relax the Standards and Interpretations that require and define how schools calculate full-time faculty.

## 2. The New Job Market and Its Implications for Future Law School Development Efforts

The fundraising picture is bleak. Recent articles detail that existing endowments are plummeting, and fundraising is down. Concomitantly, the cost of legal education continues to increase while the job market shrinks. Moreover, legal employers have little excess money for training recent graduates. This situation tends to increase demand for graduates whose education has prepared them well for practice. Hence law schools are competing for scarce resources, placing fewer graduates in plum jobs, and facing growing demand for young lawyers who are well-prepared.

Commentators predict that these developments will prompt donors to behave more strategically. Donors will seek outcome measures and will better scrutinize the effects of their donations. They will also more assertively choose whether to fund traditional scholarship (the “think-tank” function of law schools) or preparation of students for practice (the teaching function). This result seems particularly likely for donors who are

legal employers. They have the greatest incentive to fund programs whose graduates are promptly ready to work as lawyers.

The Council should closely monitor the choices that law schools and donors make during this economic downturn. Is the funding aimed mainly at buoying a school's *U.S. News* ranking to the detriment of the program of legal education?

The new job market presents another reason for the Council to focus the Accreditation Standards on the primary mission of law schools—offering a program of legal education that prepares students to enter the profession. The Standards can and should more effectively foster what the legal profession most values: preparing competent lawyers. To the extent the Council reframes the Standards, particularly those in Chapter 3 (Program of Legal Education), ALWD urges the Council to strengthen requirements for core competencies and formative assessments.

### 3. Need v. “Merit” Grants and Their Consequences

Commentators have also noted the well-established trend toward basing scholarships on “merit” rather than need. As with the diversity point, this trend is attributable to the *U.S. News* rankings. These rankings are driving-up the costs of, and restricting access to, legal education. Scholarship funds seem unlikely to grow in a troubled economy. Moreover, the literature suggests that merit-based scholarships are awarded mainly to high-income or middle-income students. As their slice of the scholarship pie grows, less remains for low-income students, including many minorities. ALWD remains concerned about the lack of need-based scholarships in legal education. We therefore urge the Council to continue to encourage, and indeed to strengthen, funding models that promote access to legal education for low-income students.

### 4. Filling Entering Classes with Qualified Students

The literature is clear that law school admissions are driven by LSAT scores, which are more a consequence of the *U.S. News* rankings than the predictive value of the test. The LSAT is validated only as a predictor of law school first-year grades. It is not a predictor, nor is it intended to be a predictor, of ultimate success as a lawyer. Because of the rankings, however, law schools give applicants' LSAT scores undue weight. As a consequence, schools are not admitting students who might make good lawyers, but rather are good (i.e., “fast”) test takers.

The question becomes, how do schools measure whether a student is “qualified” in the absence of *U.S. News* rankings? Unless legal education itself—in terms of the Council and other affiliate organizations—tackles the dual issues of appropriate inputs and output assessment, *U.S. News* will dictate the program of legal education.

### 5. Identifying Steps That Might Reduce the Cost of Legal Education While Maintaining Quality

Commentators have noted that the accreditation process must recognize the needs of both students and the public: Students are often mortgaging their futures for the chance

at a legal education, yet the public directly funds state law schools (to some degree) and indirectly funds all law schools through public financing of student loans. Furthermore, when accreditation is tied to licensing, the goal of accreditation must be to accredit programs that produce competent professionals.

Some have suggested that an accrediting agency tied to licensing should be focused on promoting faculty scholarship only to the extent that this scholarship promotes effective teaching. Others have suggested that the knowledge the scholarship produces provides value to society even beyond its value in the classroom. At the very least, the importance of scholarship has led to both raised tuition (because schools have sought more prestigious scholars for their faculties) and to reduced classroom time (because scholars have sought more time for their scholarly productivity).

ALWD urges the Council to articulate and enforce Standards that promote the goal of producing well-qualified attorneys. This can best be done in two ways: first, the Council must develop methods to measure the educational benefit that a law school education provides. Second, the Council must determine what qualities within a law school—curriculum, staffing, educational resources, and the like—will best promote the development of these educational benefits. This analysis necessarily leads to reframing the Standards to focus on outcome measurements.

Summary:

Fundamentally, legal education is in a difficult position because of the financial pressures on students and on law schools. ALWD applauds the Council for examining the role of the Standards on legal education more broadly, and in terms of the specific issues identified in your call for materials, such as diversity and need versus “merit” grants. ALWD encourages the Council to consider these issues as part of its comprehensive Standards review, but also to act cautiously in terms of deregulating legal education. Most significantly, ALWD encourages the Council to confront more directly the problems created by law school rankings.

As always, we thank you for your time and for providing us with the opportunity to participate in the debate on these important issues.

Sincerely,

*Judy*

Judith M. Stinson  
President, Association of Legal Writing Directors

## Bibliography

### 1. How to Enhance, or at Least Maintain, Diversity While Under Financial Stress

Thomas Adcock, *Deans, Professors Ponder Reasons for Decline in Minority Enrollment*, N.Y. L. J. (Nov. 14, 2008) (available at <http://www.law.com/jsp/nylj/PubArticleFriendlyNY.jsp?hubtype=&id=1202426007533>).

Frank DiMaria, *Alarming Drop in Mexican-American Law School Enrollment*, 18 *Hispanic Outlook in Higher Educ.* 30, issue 13 (Apr. 7, 2008) (available at 2008 WLNR 7536057).

Gail Heriot, *Affirmative Action in American Law Schools*, 17 *J. Contemp. Leg. Issues* 237 (2008).

Jesse Rothstein & Albert H. Yoon, *Affirmative Action in Law School Admissions: What Do Racial Preferences Do?*, 75 *U. Chi. L. Rev.* 649 (2008).

Laura Rothstein, *The LSAT, U.S. News & World Report, and Minority Admissions: Special Challenges and Special Opportunities for Law School Deans*, 80 *St. John's L. Rev.* 257 (2006).

### 2. The New Job Market and Its Implications for Future Law School Development Efforts

Tara Siegel Bernard, *In Grim Job Market, Student Loans Are a Costly Burden*, N.Y. Times B6 (Apr. 18, 2009) (available at <http://www.nytimes.com/2009/04/18/your-money/student-loans/18student.html>).

Conference Board, *The Conference Board Finds the Economic Downturn Will Have Major Effects on Corporate Philanthropy* (Mar. 3, 2009), [http://www.conference-board.org/utilities/pressPrinterFriendly.cfm?press\\_ID=3595](http://www.conference-board.org/utilities/pressPrinterFriendly.cfm?press_ID=3595).

John Hechinger, *College Fund-Raising Outlook Darkens After Surge*, Wall St. J. A4 (Feb. 25, 2009).

Nathan Koppel, *Best Defense? Seeking a Haven in Law School*, Wall St. J. D1 (Mar. 19, 2009).

James Edward Maule, *Mauled Again, How A Transformative Recession Affects Law Practice and Legal Education*, [http://mauledagain.blogspot.com/2009\\_03\\_01\\_archive.html#4016227163068572514](http://mauledagain.blogspot.com/2009_03_01_archive.html#4016227163068572514) (Mar. 16, 2009).

James Edward Maule, *Mauled Again, Law Schools, Teaching, Legal Scholarship, and the Economy*, [http://mauledagain.blogspot.com/2009\\_03\\_01\\_archive.html#9022320181125577390](http://mauledagain.blogspot.com/2009_03_01_archive.html#9022320181125577390) (Mar. 27, 2009).

Katharine C. Patterson, *Tough Times for Law Firms, Lawyers May Be Catalyst for Positive Change* (Apr. 6, 2009), <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202429659245>.

Stephanie Potter, *Firms Urged to Set Plan for Charity Works*, Chi. Daily L. Bull. 10001 (Oct. 29, 2008).

Stephanie Strom, *Colleges Ask Donors to Help Meet Demand for Aid*, N.Y. Times A16 (April 16, 2009) (available at <http://www.nytimes.com/2009/04/16/education/16college.html>).

### 3. “Need” v. “Merit” Grants and Their Consequences

Marcia Clemmitt, *Student Aid: The Issues*, 18 CQ Researcher 75 (Jan. 25, 2008) (available at <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2008012500>).

### 4. Filling Entering Classes with Qualified Students

Pamela Edwards, *The Shell Game: Who is Responsible for the Overuse of the LSAT in Law School Admissions?* 80 St. John’s L. Rev. 153 (2006).

Deborah Rhode, *Legal Education: Professional Interests and Public Values*, 34 Ind. L. Rev. 23 (2000).

### 5. Identifying Steps That Might Reduce the Cost of Legal Education While Maintaining Quality

Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 St. Mary’s L. J. 301 (2003).

Harry T. Edwards, *Renewing our Commitment to the Highest Ideals of the Legal Profession*, 84 N.C. L. Rev. 1421 (2006).

Daniel J. Morrissey, *Saving Legal Education*, 56 J. Leg. Educ. 254 (2006).

Edward Rubin, *Should Law Schools Support Faculty Research?* 17 J. Contemp. Leg. Issues 139 (2008).

Steven R. Smith, *Gresham’s Law in Legal Education*, 17 J. Contemp. Leg. Issues 171 (2008).