

AMERICAN BAR ASSOCIATION STIFLES LEGAL EDUCATION

AUGUST 1, 2017

By [Allen Mendenhall](#)

The journalism programs at Northwestern University and the University of California at Berkeley, two of the most prominent such programs in the country, recently dropped out of the national accreditation process.



The reason? Accreditation standards are both costly and obsolete.

In the field of law, the social and financial costs of accreditation are even more pronounced.

Small businesses and Americans of modest income face high costs when hiring an attorney or litigating a case. Yet the American Bar Association (ABA), the only accrediting body for law schools in the United States, regulates legal education in a way that drives up those costs.

Forcing Costs Up

ABA fixes the number of credit hours required for law students to graduate, effectively eliminating the possibility of graduating in less than three years. It designates “full-time” faculty in a way that excludes lawyers who are paid by a law firm or business. Its requirements for equipment and technology force many schools to buy expensive computers and furnish computer labs that students may never use.

ABA scrutiny of attrition rates has contributed to a change in law-school culture and practices. In the past, law schools could accept a high percentage of applicants who, as students, had to prove their competence and stand or fall on their academic merit. Those who couldn't cut it flunked out. They didn't incur three years of debt only to take and retake a bar exam they couldn't pass.

But now ABA penalizes law schools for high attrition, creating an incentive to retain students who should drop out. That policy encourages grade inflation and more student loans.

Bias Against Business

Law schools recently came under criticism for hiring their own graduates to boost their post-graduation employment statistics. ABA responded by telling law schools they must promote “J.D.-required” and “bar-passage-required” jobs to their graduates, at the expense of corporate or financial positions that pay higher salaries but don’t require a law license. If you graduate from law school today and become the CEO of a large, multinational company tomorrow, you will unfavorably skew your school’s data.

To serve their students, law schools should feel free to guide them toward alternative careers that would apply the knowledge and leadership they gained from legal education.

Underdogs Underrepresented

Unintended harm, however, is nothing new for ABA.

Founded in 1878 by an elite group of lawyers, ABA soon became a fraternal guild that sought to enforce rigid barriers to entry into the legal profession. It officially excluded African Americans for 66 years. In response to protests when ABA ousted three African Americans in 1912 on the basis of their skin color, ABA said, “it has never been contemplated that members of the colored race should become members of this Association.”

ABA has tried to make up for its past racism by increasing the ethnic diversity of its membership, creating a commission on sexual orientation and gender identity, and strengthening its rules against racial harassment or discrimination. But even today, ABA’s function is to exclude certain groups from membership in order to give its members a monopoly on legal services. The result is a decrease in the number of low-income, immigrant, and minority lawyers.

That effect will continue if ABA revises Standard 316, as it is proposing. The revised standard would require that in three of the last five years, 75 percent of the graduates of a currently approved law school have to have passed the bar.

Because there is a large gap in African-American bar passage rates, the effects of the revised standard would fall disproportionately on those schools with higher numbers of African American students. A few months ago, Lawrence P. Nolan, president of the State Bar of Michigan, [told ABA delegates](#) minority organizations—including ABA’s own Council for Racial and Ethnic Diversity in the Educational Pipeline—opposed the revision.

Declining Enrollments

Defenders of the proposed revision argue law schools are [exploiting](#) racial minorities by admitting underqualified applicants to make up for an overall decrease in admission applications. There’s truth to this characterization. Law-school admissions standards have [dropped precipitously](#) as enrollment has declined.

But why trust the organization that caused or at least exacerbated many of these problems to fix them? Law schools need to address declining enrollments with imagination and rational risk-taking. Proposals as wide-ranging as [abolishing the bar exam](#) and broadening the curriculum beyond J.D.-focused courses should be considered. In addition, the U.S. Department of Education might consider stripping ABA of its accrediting powers altogether.

Need for Reform

ABA is systematically harming ethnic minorities and low-income individuals. It may well be time for top-ranked law schools to follow in the footsteps of the J-schools at Northwestern and Berkeley. Law schools with lower rankings may lack the credibility to resist, given their stake in the accreditation process.

The legal profession is, in the [words](#) of Benjamin Barton, “facing a major retrenchment” because it is mired in outmoded tasks that artificial intelligence [may replace](#). It’s time for an energetic rethinking of the goals of legal education and the legal profession. Ending ABA’s accreditation authority would be an exciting first step. It would lower costs and enable administrators to focus on their true mission: educating prospective lawyers and bringing justice and order to rich and poor alike.

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