1819 NEWS

Allen Mendenhall: Alabama's justices are quite capable, thank you

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Recently, I wrote (https://1819news.com/news/item/allen-mendenhall-alabama-should-rethink-aba-accreditation-for-law-schools), that the Alabama Supreme Court should end its reliance on the American Bar Association (ABA) as the accreditor of law schools whose graduates may sit for the state bar exam. I followed that with an argument in The Washington Times (https://www.washingtontimes.com/news/2026/jan/27/end-american-bar-associations-grip-law-schools/), contending that all red-state supreme courts should do likewise.

The responses were illuminating, not because critics identified flaws in the argument, but because the objections raised perfectly illustrate the pathology the argument seeks to cure.

The complaints were twofold: First, we need the ABA because it protects the legal profession and maintains high standards for lawyers; second, the Alabama Supreme Court (or any state supreme court) is not equipped to assume this accreditation role.

Both objections deserve a serious answer because both are seriously wrong.

First, the standards claim. The ABA has accredited American law schools since 1952, holding a federal government-granted monopoly over that authority; it's the only recognized programmatic accreditor in its domain. In the intervening seven decades, it has exercised its exclusive power with the diligence of a medieval guild: erecting barriers, inflating costs, and ensuring that the barriers and costs serve the interests of incumbent practitioners rather than students, clients, or the broader public.

Consider what ABA "standards" have wrought. Private law school tuition, which stood at roughly $7,500 annually in 1985, climbed to nearly $42,000 by 2013, the year when then-President Obama implicitly critiqued the ABA, suggesting law school be reduced from three to two years. Today, the average annual tuition at private ABA-accredited law schools is approximately $59,800, with many elite programs exceeding $80,000.

Historically, the ABA mandated expensive compliance – specific credit-hour requirements, physical infrastructure, restrictions on online instruction, while insulating schools from competitive pressures. When I was an associate dean at a law school, not long ago, the ABA Standard 306 (https://thedailyeconomy.org/article/end-the-abas-accreditation-power/), which long constrained distance education, still contemplated (https://jamesgmartin.center/2017/08/fight-abas-anticompetitive-discriminatory-practices/) video cassettes and CD-ROMs as exemplary technologies.

The costs imposed on students are ultimately passed to clients, pricing millions of low- and middle-income Americans out of access to legal representation. The ABA's "high standards," in practice, are a mechanism for

rationing legal services upward, a redistributive scheme that transfers money from the many to the few, laundered through the language of professional integrity. Even the Federal Trade Commission, not ordinarily given to hyperbole about professional associations, has described (https://www.reuters.com/legal/government/ftc-says-aba-is-law-school-accreditation-monopoly-2025-12-02/) the ABA as a monopoly.

Nor should we avert our eyes from the ABA's background when evaluating its stewardship of "standards." The organization was founded in 1878 to, among other goals, restrict minorities and the poor from entering the profession.

It officially excluded black members for roughly 65 years. In 1912, it expelled three black members – attorneys who had been admitted without the membership's apparent awareness of their race – with a resolution declaring that membership "has never been contemplated" for black people.

By whom is this history remembered most acutely inside the ABA? Is the ABA's contemporary DEI apparatus less a principled commitment to inclusion than an institutional act of penance, the organization's attempt to absolve itself of a founding sin? If so, Alabama's law students and the clients they will one day serve are being asked to subsidize a therapy session for an organization's guilty conscience. That's not a standard; it's an act of expatiation, and states are under no obligation to make it a condition of their bar admission.

This is the institution whose standards critics now invoke as indispensable to the republic's legal health.

The second objection – that the Alabama Supreme Court is not equipped for this task – is more philosophically confused than the first. State supreme courts possess inherent authority over bar admissions. They have exercised that authority since their inception. They did not need the ABA to do it for them; they chose, over several decades, to outsource that sovereign function to a private organization in a convenient act of bureaucratic delegation.

The suggestion that Alabama's justices lack the competence to evaluate law schools' individual merit should strike any student of institutional history as odd. They already permit graduates of non-ABA-accredited schools, such as Miles Law School and Birmingham School of Law, to sit for the Alabama bar exam.

The Texas Supreme Court, which in January became the first to formally end its 42-year exclusive reliance on ABA accreditation, did not announce itself unequal to the task. The Florida Supreme Court that same month concluded that retaining the ABA in its accrediting role was not in "Floridians' best interest," language that implies not helplessness but deliberate choice.

Ohio and Tennessee are examining the same question. These are not the actions of courts that consider themselves institutionally impotent.

State supreme courts need not reinvent an entire accreditation apparatus from scratch. Texas and Florida have both preserved automatic approval for currently ABA-accredited schools, eliminating disruption for existing students and faculty.

Florida's framework opens the door to graduates from schools accredited by other Department of Education-recognized agencies, a sensible, incremental reform that creates competitive pressure without abandoning all quality benchmarks. A working group convened by the Florida Supreme Court produced a number of proposed amendments (https://flcourts-media.flcourts.gov/content/download/2483731/opinion/Opinion_SC2025-2064.pdf) that could serve as a model for interstate cooperation or the eventual development of new accrediting bodies.

What's proposed, in short, is not the abolition of standards but the restoration of accountability: the return of a sovereign function to the institutions constitutionally responsible for it, and the introduction of competitive alternatives to an organization that has, over time, metastasized from a professional association into something closer to a partisan advocacy group.

The ABA: an organization whose standing committee on the federal judiciary has demonstrably rated originalist nominees more harshly than those with other judicial philosophies; whose model ethics rule 8.4(g) critics regard as a speech code of remarkable vagueness; whose Standard 206 demanded "concrete action" toward prescribed diversity outcomes in ways that multiple Republican attorneys general argued (https://katv.com/news/nation-world/21-republican-ags-caution-american-bar-association-against-diversity-requirements-gop-aba-law-school-legal-supreme-court-scotus-affirmative-action-ruling-race-based-admissions-hiring) violated federal civil rights law.

This organization is not a neutral umpire calling balls and strikes; it's a soldier in the culture wars.

Critics of reform have things precisely backward. It's not the Alabama Supreme Court that lacks the standing to evaluate law schools. It's the ABA that has forfeited, through decades of mission creep, cost inflation, and ideological adventurism, its claim to function as the disinterested guardian of American legal education.

Standards are not synonymous with the ABA's standards. Excellence is not the same thing as compliance. And the restoration of judicial authority over bar admissions is not a subtraction from the rule of law but an affirmation of it.

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