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## **Raising the Bar: The ABA's Pulling of Accreditation and Its Oversight in Legal Education**

**By Alex Gass\***

The American Bar Association (ABA) pulled the accreditation of embattled private Phoenix law school Arizona Summit in June 2016 without precedent in a move that was described as “historic.”<sup>1</sup> The same school’s 96.7% bar passage rate in 2008 had declined to under 30% regularly by 2018.<sup>2</sup> Following the pulling of accreditation, the school lost its building,<sup>3</sup> cancelled classes for the Fall 2018 semester,<sup>4</sup> and ultimately, despite a “teach out” plan, announced its closure.<sup>5</sup>

While this may seem unfair, it was within the ABA’s power. The ABA is empowered to outline, for example, admissions standards for the law schools it chooses to accredit and find any school which violates those standards out of compliance.<sup>6</sup> The ABA’s position as the arbiter of law school quality is becoming more significant as law school application rates

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<sup>1</sup> Staci Zaretsky, *In Historic Move, ABA Revokes Abysmal Law School’s Accreditation*, Above the Law, (Jun 11, 2018, 10:42 AM), <https://abovethelaw.com/2018/06/in-historic-move-aba-revokes-abysmal-law-schools-accreditation/>

<sup>2</sup> *Id.*

<sup>3</sup> Staci Zaretsky, *Law School Kicked Out Of Building Due To Alleged Failure To Pay Rent*, Above the Law (Aug 21, 2018, 2:15 PM), <https://abovethelaw.com/2018/08/law-school-kicked-out-of-building-due-to-alleged-failure-to-pay-rent/>.

<sup>4</sup> Patrick O’Grady, *Phoenix law school cancels fall classes, tells students to transfer*, Phoenix Business Journal (Aug. 15, 2018, 9:34 AM), <https://www.bizjournals.com/phoenix/news/2018/08/15/phoenix-law-school-cancels-fall-classes-tells.html>.

<sup>5</sup> Anne Ryman, *Arizona Summit Law School details plans to eventually close its doors*, AZ Central, (Oct. 25, 2018, 4:04 PM), <https://www.azcentral.com/story/news/local/arizona-education/2018/10/25/arizona-summit-law-school-details-plans-close-its-doors/1763964002/>.

<sup>6</sup> See ABA Standards and Procedures for Approval of Law Schools Standard 101 (“...approval by the Council shall demonstrate that it is being operated in compliance with the Standards.”); ABA Standards and Procedures for Approval of Law Schools Standard 501 (“A law school shall only admit applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar”).

continue to rise.<sup>7</sup> In response to increased oversight, several schools have even turned to litigation calling ABA reviews unfair, in an unprecedented technique some have termed “accreditation by lawsuit.”<sup>8</sup> In spite of this, the ABA’s more active role in ensuring that American law schools are able to produce students capable of passing their state’s bar exam is more important than ever with the increase in applications, and should be continued to protect future lawyers from grift.

Things did not always appear so grim, nor did schools seem to have poor relationships with the Council of the ABA’s Section Legal Education and Admissions to the Bar. In 2010, law school admissions were reaching a peak before massively declining for a roughly five-year period. This decline, of around 38%, led many schools to decide to either reduce entry requirements or the size of incoming classes, with most schools deciding to do both.<sup>9</sup> Historically-low levels of admissions standards reached the schools near the “bottom” of the ABA’s accreditation standards.<sup>10</sup> Ultimately, what resulted was national historically low bar passage rates, during which time the ABA still accredited several schools.<sup>11</sup> The ABA’s direction during this period would ultimately produce a major crisis within the field of legal education: the ABA being the defendant in suits over accreditation standards.

This “accreditation by lawsuit” strategy from schools came in response to increased vigilance by the ABA over its standards. In 2016, the Department of Education recommended that the accreditation powers of the ABA be suspended for one year for failing to implement student achievement

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<sup>7</sup> Johanna Trovato, *Is the “Trump Bump” for Legal Education Here to Stay?*, Encoura, (July 17, 2018), <https://encoura.org/is-the-trump-bump-for-legal-education-here-to-stay/>.

<sup>8</sup> David Frakt, *Admissions, Accreditation and the ABA: An Analysis of Recent Law School Lawsuits*, The Faculty Lounge (May 23, 2018, 12:18 AM), <http://www.thefacultylounge.org/2018/05/admissions-accreditation-and-the-aba-an-analysis-of-recent-law-school-lawsuits-.html>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (Schools accredited fully or probationally between 2011 and 2016 include UC Irvine, Elon, Charlotte, Charleston, Drexel UMass Dartmouth, LaVerne, Lincoln Memorial, Concordia, Belmont, and Indiana Tech.)

standards.<sup>12</sup> In response, the ABA began more actively sanctioning schools generally that had low LSAT acceptance scores and low bar passage. Ave Maria, Valparaiso, and Charlotte all received some form of remedial action in 2016.<sup>13</sup> The trend continued, and a variety of schools continued to be sanctioned throughout 2017, with some improving.<sup>14</sup> However, perceived unfairness in finding some schools in compliance but not others would lead to suit, something that the ABA had never been subjected to in this manner.

Florida Coastal sued first, alleging that the ABA Standards and Rules of Procedure for the Approval of Law Schools were vague and subjective and that enforcement was arbitrary.<sup>15</sup> Charlotte, a school closed by the time filed, was next, alleging that their placement on probation violated their due process rights and that the ABA did not inform them of what they needed to do to be found in compliance.<sup>16</sup> One of the more interesting cases, again alleging the perceived unfairness of the ABA's standards, was filed by Thomas Cooley. After finding the school in compliance in 2015, the ABA then instituted monitoring, which led to a November 2017 finding of being out of compliance with Standard 501.<sup>17</sup> Much to the confusion of commenters, and without changes to Cooley's standards, the ABA found Cooley in compliance by March 2018.<sup>18</sup> Frakt observes that the ABA, in reversing itself, seems to have "shot itself in the foot" and given every other school suing them for arbitrary enforcement of Standards an argument with which to bring suit.<sup>19</sup>

In its brief era of minimal enforcement, the ABA, to some, laid the stage for their modern litigation defense-intensive reality.<sup>20</sup> However, the author

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<sup>12</sup> Stephanie Francis Ward, *ABA threatened with 1-year suspension of law school accreditation powers*, ABA Journal, (Jun. 24, 2016, 2:00 PM), [http://www.abajournal.com/news/article/aba\\_threatened\\_with\\_1-year\\_suspension\\_of\\_law\\_school\\_accreditation\\_powers/](http://www.abajournal.com/news/article/aba_threatened_with_1-year_suspension_of_law_school_accreditation_powers/).

<sup>13</sup> *Supra* note 8.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* (Frakt observes that, given Charlotte's 2016 enrollment of a class with 148/144/141 LSAT percentiles, "...it should have been obvious that they needed to substantially raise their admission standards.").

<sup>17</sup> David Frakt, *Cooley vs. the ABA – The Plot Thickens*, The Faculty Lounge, (May 25, 2018).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

does not seek to question the ABA's past. Rather, the author seeks for the ABA to become vigilant and not back down from schools that would seemingly rather fight with their accreditor than support the success of their students or contribute to legal education. These suits, while perhaps the result of the ABA's low enforcement in the past, should not deter aggressive enforcement of the Standards now, and may in fact only strengthen the ABA's abilities by countering defenses by poorly performing schools in court. The ABA's duty as arbiters of legal education, and thus protectors of the future lawyers of America, depends on responding to these borderline frivolous suits with passion and harshly sanctioning schools that fail to prepare students adequately for bar passage. Legal education's future depends on the ABA's ability to do this, and their actions in doing so will both protect future attorneys from being taken advantage of, and project to the public a measure of confidence and strictness that is necessary to keep up the reputation of law schools in the public sphere.

Edited by Carter Gage