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How Minorities and the Poor are Kept out of Law School

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If law school enrollment today is made up largely of the white and the wealthy, it is because the American Bar Association, the chief accreditor of the nation's law schools, has designed the rules that produce this outcome. It's not that minorities and students from low-income households don't want to attend law school; it's that they are being priced out by soaring tuition costs, up 267 percent since 1990, and shut out by the culturally biased Law School Admissions Test(LSAT).

Only 3.9% of the nation's one million lawyers are Black, only 3.3% are Hispanic, and whites of modest means likely are underrepresented as well. How many families can afford to pay $100,000 to $150,000 to put a child through three years of law school? At present, law school enrollment is just 6.6% for African-Americans and 5.7% for Hispanics.

The ABA is aware of this. Five years ago, then-president William Paul decried the alarming lack of "minority representation in the legal profession." And the ABA's own Commission on Racial and Ethnic Diversity in the Legal Profession has since reaffirmed his view. New York Law School professor Elizabeth Chambliss, author of the Commission's report, described law as "one of the least racially integrated professions in the United States ..." She called the LSAT "one of the main barriers to increasing diversity among law students." Yet ABA insists that the 200 law schools it accredits administer the LSAT, and for ABA schools it often is the main determinant of admission and is always one of the two main determinants.

What the ABA continues to be about is lining the pockets of law professors, some of whom earn as much as $300,000 or more a year, often for teaching very few hours. Renowned Federal Judge Richard Posner thinks the ABA conducts itself like a "medieval guild" in behalf of its members. George Leef, vice president for research at The John William Pope Center for Higher Education Policy, Raleigh, N.C., believes the ABA's aim is to keep legal fees high by restricting the overall number of attorneys. Leef, a Juris Doctor from Duke University School of Law, says that because of the "connivance" between state bodies and the American Bar Association, "law school costs much more than it needs to. If we allowed a free market in legal education, the cost of preparing for a legal career would fall dramatically." Leef adds, "The ABA's accrediting body, the Council of the Section of Legal Education, has established standards that are designed to keep law school very costly and very restrictive."

As President Saul Levmore and Vice President David Van Zandt of the American Law Deans Association (ALDA) stated: "The ABA continues to impose requirements on the law schools it accredits that are not only extraneous to the process of assuring the quality of legal education, but also that improperly intrude on institutional autonomy in seeking to dictate terms and conditions of employment." Levmore is dean of the University of Chicago Law

School. Van Zandt is dean of Northwestern University Law School.

ALDA's "improperly intrude" depiction is an understatement. In 1995, the Justice Department formally charged the ABA with fixing law professors' salaries, among other Sherman Anti-Trust Act violations. Justice asserted the ABA acted to further "the self-interest of professors instead of improving education." In 1996 the ABA entered into a consent judgment agreeing to reform its practices and to stop dictating a number of dubious, costly and illegal regulations to schools. Yet, in 2006, the Justice Department charged the ABA with violating provisions of the decree and called for it to take remedial action as well as to pay Justice $185,000 for its enforcement troubles.

The ABA shackles law school deans by imposing accreditation rules on them that focus on "inputs" — the ABA's idea of the kind of plant, policy, and personnel a law school should have. These rules do not focus on what students learn or if they are learning what they need to know to practice law, i.e., the "outcomes." The ABA input rules demand hiring of very large and expensive full-time faculty with light teaching loads; they place de facto limits on hiring of less expensive adjunct professors from the ranks of expert lawyers and judges who could contribute their expertise; they demand the building of $70- and $80 million palaces; they require stocking of large, multi-million dollar hard copy libraries even though nearly all needed legal materials may be found on line or obtained on CD-ROMs; and they require applicants to post high LSAT scores.

If many of the ABA's costly rules are in writing, the ABA has other, unwritten policies that make the published rules even more daunting. The existence of these subterranean codes was brought to light in 2006 at a Federal Department of Education hearing in Washington on renewing for five years the ABA's federally-approved accreditation status. A classic example of the ABA's secret rules is that, although ABA guidelines do not specify that the LSAT is obligatory, in practice the ABA secretly requires law schools to use the test and has never accredited a law school that did not use it. By discouraging law schools from accepting applicants who score below a particular score, the ABA screens out large numbers of low-income whites, Hispanics, and African-Americans — graduates of poorer quality high schools and colleges than those attended by the children of the rich.

Writing in the Journal of Legal Education, Emory law professor George B. Shepherd notes if the ABA lowered its LSAT score accreditation cutoff just slightly, it "would allow the creation of more than 40 new 600-student majority-black law schools. Eliminating the LSAT cutoff altogether would permit more than 80, an average of one or two per state." "The ABA 's accreditation standards and the way the ABA applies them have had the same impact on blacks as (former Governor) George Wallace standing with policemen at the school house door in Alabama , blocking blacks from entering," he wrote.

No other professional accrediting body uses input rules as does ABA: not in medicine, not in dentistry, nowhere. But in the world of legal education, a law school that finds better, less expensive ways to teach effectively is not allowed to exist in almost any state. The private initiative of such schools is deliberately choked off by the controlling ABA accreditors, each a hand-picked employee of or friend to the ABA schools toeing the ABA line. Even many state-supported law schools must charge $15,000 to $30,000 or more in tuition to survive. The ABA's input-based policies begun in the 1970s are driving law school tuition and fees far ahead of inflation. During the 1990s, tuition, room and board at undergraduate institutions increased by 58%, but comparable law school costs jumped 88%. Today, more law schools

are punching through the $40,000 tuition barrier and the $50,000-a-year law school appears only a few years away.

Among the big winners of the ABA accreditation game have been ABA officials themselves. The ABA in the past has encouraged fledgling law schools seeking its imprimatur to hire ABA officials, or current accrediting committee members, as deans at handsome salaries. In 1994, at Texas Wesleyan University School of Law, Ft. Worth, only 53% of graduates passed the Texas bar on their first attempt compared with 74% for the state overall. The ABA said the school suffered from a number of gross deficiencies. Happily for TW, these supposedly vanished less than a month after the school hired as dean Frank Walwer from the ABA's Accreditation Committee. A mere 27 days after he was hired the law school got ABA accreditation! What's more, although the ABA's written policy forbids a school to delay students' graduation until after it is accredited, the ABA ignored this requirement for Dean Walwer to allow TW's graduates to take the Texas bar.

Writing in the Chicago Tribune of February 15, 2004, Ameet Sachdev, reported, "The coziness between the ABA and law schools, though, troubles some educators and others involved in accreditation. They question whether such hiring is at odds with the ABA's ethics policy and contend such arrangements raise the appearance of a conflict of interest." He quoted Gary Palm, a Chicago lawyer who had served on the ABA's governing body overseeing accreditation as saying, "I think it's wrong that people in leadership in the accreditation process end up back at law schools doing business before the accreditation council . . . ."

The ABA has prevailed upon Supreme Courts and Legislatures in 45 states to keep students from non-ABA law schools even from taking State bar exams. This restraint of trade funnels students into schools belonging to the ABA guild. Graduates of non-ABA law schools are denied even the opportunity to sit for a bar exam at all in most states or are not permitted take a state's bar exam until three, five or ten years of practice elsewhere (in the minority of states that do let them take bar exams ultimately). One wonders how the United States ever produced lawyers such as Abraham Lincoln and Clarence Darrow in the years prior to 1921, before the ABA undertook its campaign to "upgrade" the profession.

There are several impartial educational accrediting bodies that can also bestow accreditation on law schools. One of these, the New England Association of Schools & Colleges, accredits Massachusetts School of Law at Andover (MSL). With no vested interest in enriching law school professors, such bodies have, in fact, established rational standards applicable to law schools, focusing on the quality of the education. More of these general bodies would flourish except that they have been discouraged because the Federal Department of Education has made ABA its sole federally-recognized, accreditor. This controversial arrangement, though, may change since, at its December, 2006, review, DOE rejected the ABA's request for a five-year renewal of recognition, granting the ABA just 18 months to get its act together owing to DOE's dissatisfaction with the ABA's performance.

The ABA likes to say only schools it accredits can provide a quality education, yet student teams from MSL swept all four top spots in the Black Law Students Association Northeast Regional trial competition last February, finishing ahead of prominent schools such as Harvard University Law School, St. John's University Law School and Syracuse University School of Law, and MSL then placed third nationally in the finals at Detroit. MSL, which was in the eastern region of the American Constitutional Society's appellate competition in Washington, had the highest scoring brief of 31 teams in the east region, and its brief was

scored higher than the best western region brief, submitted by a team from the prominent University of Michigan Law School. Staffed only by a small core of full-time professors and relying largely on adjunct instructor-lawyers that teach in their specialties as well as sitting judges, MSL can educate a student for a tuition of $14,490, a sum less than half of what ABA-accredited New England law schools charge.

The key to providing a quality legal education that is affordable to ordinary citizens is to once again allow the sunlight of free market competition to shine through law school windows. Schools must be allowed to take steps to reduce their costs and focus on student performance outcomes. Deans must be allowed the autonomy to run their own schools without ABA meddling. The Department of Education must drop the ABA as the federally approved national accreditor of law schools and make room for objective educational bodies. State Supreme Courts must open bar examinations to all applicants. And if the courts do not allow competition, State representatives need to legislate to make the courts respect free market principles. Again, to quote Shepherd, "A law school that is good enough to receive accreditation in one state should be good enough in all states."

The ABA claims that unless law schools follow its pricey rules, students won't get a good education. That's bunk. Price and quality are not synonymous, as shown by medical care. The ABA has misused the absolute power granted it by our government and has beguiled state supreme courts to accept its dictates in determining who can sit for the bar. It deliberately causes to remain largely unserved by the nation's law schools people from working-class backgrounds, immigrants, and minorities. America urgently needs new law schools that will serve the American working-class and minorities so that their voice may be heard. Nothing less than the substance of our democracy is at stake.

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