

**COMMITTEE REPORT AND RECOMMENDATIONS  
TO  
THE BOARD OF BAR EXAMINERS  
AND  
THE SUPREME COURT  
REGARDING ANY POSSIBLE REVISIONS TO THE RULES  
GOVERNING ADMISSION TO THE PRACTICE OF LAW  
IN GEORGIA  
GOVERNING EDUCATIONAL ELIGIBILITY  
AND  
ANY OTHER RELEVANT ISSUE**

**Georgia Supreme Court Committee on Legal Education**

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## Part I.

### **CHAIRMAN'S INTRODUCTION AND OVERVIEW**

The Supreme Court Committee on Legal Education was appointed by Order of the Supreme Court dated April 4, 2007. As originally appointed, the Committee consisted of fifteen members, made up of representatives of the Georgia Board of Bar Examiners, the State Bar of Georgia, the Georgia judiciary, legal educators from law schools in Georgia, members of the public and at least five members of the General Assembly. By its Order, the Supreme Court directed five charges to the Committee and further directed that a response be made to the Court on or before June 30, 2008.

Of the fifteen members appointed by the Court, fourteen were able to participate. As chairperson of the Committee, I am pleased to report to the Board and to the Court that there was active participation by the members of the Committee, which facilitated the sharing of a great deal of information and open discussions concerning the issues presented by the Court to the Committee. Initially, the Committee met on a monthly basis at the headquarters of the State Bar of Georgia and held meetings on September 18, 2007; October 16, 2007; November 13, 2007; and December 12, 2007. Having utilized those meetings to gather information and data as directed by the Court, the Committee then met again on February 13, 2008, and April 9, 2008, for the purposes of discussing the information which had been accumulated and reviewed and formulating the recommendations of the Committee. In addition, the Committee, having been advised of a source of additional information in regard to the process utilized by the State of California for legal education and bar admissions, also gathered information

during a portion of its meeting on February 13, 2008.

This Introduction and Overview will provide a summary of the Court's charges and the Committee's responses thereto. **Part II.** of the report is a Summary of our entire report. **Part III.** contains the critical facts and figures the Committee learned and considered in preparing this report. **Part IV.** contains summaries of the testimony and presentations the Committee heard at the meetings described above. **Part V.** contains our Findings (Section A.), as well as our Conclusions and Recommendations (Section B.)

With those preliminary comments, a description of the Court's charges and the Committee's actions in response thereto follows:

**Charge 1.** Seek information from the American Bar Association Section of Legal Education and Admissions to the Bar about current accreditation processes and plans, if any, for changes in the Standards of Legal Education that might implicate educational eligibility to sit for the Bar Examination.

**Response to Charge:** At the meeting of the Committee on September 18, 2007, we began our efforts to respond to this charge by hearing testimony about the current rules for admission to the practice of law in Georgia, as determined by the Rules Governing Admission to the Practice of Law promulgated by the Supreme Court of Georgia (February 2008). (See testimony of Sally Lockwood, Part IV., Section A (i)) The Court, pursuant to Part B of the Rules, delegates to the Board of Bar Examiners responsibility for determining whether applicants for admission to practice law possess the competence requisite to be members of the State Bar of Georgia. Of interest is this

admonition of the Court: “The public interest requires that the public be secure in its expectation that those admitted to the Bar are competent to provide legal services to the public.”<sup>1</sup>

While this Committee was not charged with the responsibility of reviewing the rules and regulations as they pertain to the character and fitness of bar applicants, the Committee was provided with information pertaining to the issue.

It should also be noted that while there are very specific rules related to the educational requirements to take the bar exam, there is a Waiver Process and Policy in effect, the most recent version having been adopted on April 8, 2005. The most common request submitted to the Board of Bar Examiners is for a waiver of educational eligibility standards, usually because the applicant has no undergraduate degree, or has a law degree from a law school, domestic or foreign, that has not been approved by the American Bar Association (ABA). The Board considers each waiver application on a case-by-case basis. (For specific information on the Waiver Process and Policy, see Part III., (9)-(10) and testimony of Sally Lockwood, Part IV., Sections (A) and C (i)).

The rules also allow for admission on motion for those lawyers who have been admitted in other states. However, those rules require that the admission be reciprocal, (i.e., that the state from which the lawyer is applying to be admitted must admit Georgia lawyers on the same basis), that the individual have been for at least five of the previous seven years in the active practice of law, and that the applicant meet the same educational requirements as are required by the Georgia Rules.

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<sup>1</sup> See Admission to Practice, Board of Bar Examiners, Supreme Court of Georgia at <http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/AdmtoPracticeMemoSp08.pdf>.

The Committee heard an extensive report from Mr. Dan Freehling, Deputy Consultant on Legal Education of the American Bar Association. In his report, Mr. Freehling reported on the services provided by the American Bar Association Section of Legal Education and Admissions to the Bar as these services relate to bar admissions. He also reported on the process by which the ABA approves law schools in the United States.

Mr. Freehling noted that the ABA has considered the issue of distance learning, but not granted approval to an exclusively distance learning law school. The current ABA Standards do allow each student to obtain a total of 12 credit hours toward the J.D. degree by distance learning at the approved law school. The ABA has not approved any foreign law schools, and Mr. Freehling pointed out that in many foreign jurisdictions, law is considered an undergraduate degree, as opposed to a graduate degree.

While Mr. Freehling could not say whether such approvals would occur in the future, it was his belief that should such schools ever be considered for approval, consideration would start with those foreign law schools which treat the legal education as a graduate degree and teach under the same common law as is studied in the United States. (See Part IV., Section A (ii)) The report from the ABA as to its approval process is attached as **Exhibit "1"** and the ABA Standards and Rules of Procedures for Approval of Law Schools is attached as **Exhibit "2"**.

**Charge 2:** Seek information from the National Conference of Bar Examiners regarding national and international trends and issues in legal education in bar

admissions.

**Response to Charge:** At the meeting of the Committee on September 18, 2007, Sally Lockwood presented a brief overview of the services provided by the National Conference of Bar Examiners (NCBE). However, in order for the Committee to have an in depth understanding of the services provided by NCBE and its role in legal education and bar admissions, the Committee heard an extensive presentation from Erica Moeser, President of the NCBE, on December 12, 2007. In addition to her position at the NCBE, Ms. Moeser is a member of the ABA Standards Review Committee, and a former chair of the ABA Section of Legal Education and Admissions to the Bar. She also has served on several ABA law school site inspection teams. Ms. Moeser discussed with the Committee the role of the NCBE in United States bar admissions and the national and international trends in competency evaluations of lawyers. She also discussed the impact of distance legal education on bar admissions in other jurisdictions. (See Part IV., Section D (i))

**Charge 3:** Gather information about the growth and development of online legal education, with special attention to issues such as curriculum, quality, and accreditation and provide a review of what other states have done or are considering doing in this regard.

**Response to Charge:** In an effort to gather the information requested and to have a clear understanding of the trends in this area, the Committee utilized its entire meeting on October 16, 2007, and a portion of its meeting of December 12, 2007, to gather information on these issues and to hear from various interested parties as to



their views in regard to the issues.

At the meeting of October 16, 2007, the Committee invited several persons whose petitions for waiver of educational eligibility requirements have been denied. They were asked to provide their perspectives on their legal educations, their efforts to obtain waivers and their views on the waiver system. Many, but not all, of these applicants received their legal education through distance learning of one sort or another (correspondence only, asynchronous and/or synchronous online classes, etc.). Five of those applicants, who are identified in the testimony summaries below only by their initials, accepted the Committee's invitation to attend and to present their positions. This provided the Committee with a unique opportunity to hear first-hand about the nature of the applicants' legal training, the reasons they pursued their legal education through non-ABA-approved schools (whether traditional fixed facility, online, or correspondence), and to hear directly from the applicants their answers to questions propounded by the Committee. (See Part IV., Section B (i) - (v)).

At the same meeting, the Committee heard from Dean Daisy Floyd of the Walter F. George School of Law at Mercer University and Dean Rebecca White of the University of Georgia School of Law. The two Deans presented a joint written statement on behalf of the law schools at Mercer University, Emory University, the University of Georgia and Georgia State University, as well as provided testimony of their own. It should be noted that Dean Richard Lynn of John Marshall Law School in Atlanta is a member of the Committee and, for that reason, did not participate in the joint statement. The Deans' joint written statement is attached as **Exhibit "3."**

In addition, the Committee heard an extensive presentation by Dean Barry Currier, Dean of Concord Law School in Los Angeles, California, which is exclusively a distance learning law school. Dean Currier is the former Dean of Cumberland School of Law at Samford University, an ABA-approved law school. In his presentation, Dean Currier provided an overview of the development of distance learning and a demonstration for the Committee of the various methods of attending classes or accessing Concord's materials. At another session, Sally Lockwood and Roy Sobelson witnessed Concord's teaching modes remotely from an office at Georgia State University. The Committee noted that there is a wide variety of teaching methods encompassed by the term "distance learning" and they range from purely correspondence methods, with no interaction between students or students and faculty, to online interactive studies, such as that offered by Concord. (See Part IV., Section B (ix))

Finally, at the December 12, 2007 meeting, the Committee heard from Judge Mary Staley, William B. Hill, Jr., Esq. and William P. Smith, III, General Counsel of the State Bar of Georgia, on issues related to **Charge 3**. Judge Staley and Mr. Hill appeared in their capacities as co-chairs of the Legal Education Study Committee appointed by the State Bar of Georgia to present the State Bar's position on the issues being studied by the Committee, as well as their own perspectives on the importance of providing a legal education through the traditional law school method, as opposed to distance learning. The State Bar of Georgia Legal Education Study Committee Report to the Supreme Court of Georgia Committee on Legal Education is attached as **Exhibit**

“4.”

Mr. Smith appeared in his capacity as General Counsel of the State Bar of Georgia. He provided historical data demonstrating the different rates of bar discipline of graduates of ABA-approved law schools versus graduates of non-ABA-approved law schools. (See Part IV., Section D (iv))

Finally, in order to have a clear understanding of the educational system in California, which has a substantial number of non-ABA-approved fixed facility and distance learning law schools, the Committee heard from Jerome Braun at its meeting of February 13, 2008. Mr. Braun served as director of the Georgia Office of Bar Admissions for nearly eight years and then as Senior Executive of the Office of Admissions of the State Bar of California for fifteen years. He noted that there are over sixty law schools in California, of which twenty are ABA-approved. He also discussed the admissions procedures utilized in California, especially as they relate to unaccredited law schools and online law schools. (See Part IV., Section E (i)).

**Charge 4:** Survey the current form and content of legal education programs in foreign countries.

**Response to Charge:** At its November 13, 2007 meeting, the Committee heard testimony from Sally Lockwood, Professor Clark Cunningham and William P. Smith, III. Sally Lockwood discussed the requests for waivers of educational requirements that the Board of Bar Examiners has received from foreign educated lawyers in the past four years. Professor Cunningham, W. Lee Burge Professor of Law and Ethics at the Georgia State University College of Law, presented both historical and modern

perspectives on the education and training of lawyers. Professor Cunningham explained how modern legal education and the “Socratic Method” evolved from ancient English practice, and also spoke about the highly regarded report about legal education recently published by the Carnegie Foundation for the Advancement of Teaching (See Part IV., Section C (ii)).

Mr. Smith then reported on various contacts the State Bar of Georgia has had from foreign countries, such as Australia, in regard to the possible admission of their lawyers to the practice of law in Georgia. He also educated the Committee about various treaties and trade agreements which may affect such matters. (See Part IV., Section C (iii))

**Charge 5:** Present findings and recommendations to the Board of Bar Examiners and the Supreme Court regarding any possible revisions to the Rules Governing Admission to the Practice of Law in Georgia governing educational eligibility and any other relevant issues.

**Response to Charge:** The findings, conclusions and recommendations of the Committee to the Board of Bar Examiners and the Supreme Court in regard to these issues are included in Part V., Sections A. (Findings) and B. (Conclusions and Recommendations).

Presented to the Supreme Court of Georgia this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Paul Kilpatrick, Jr., Chair



## Part II.

### SUMMARY

In the Introduction and Overview, Committee Chair Paul Kilpatrick, Jr. explained the origins of this Committee, as well as its specific charges and responses thereto. As one can see, the Committee devoted substantial time and effort to learning about how the bar admissions and examination process works, from beginning to end. The Committee looked both at the process itself and the underlying substantive requirements imposed upon bar admission applicants. We collected substantial data and heard testimony from experts with years of experience in bar admissions in Georgia, as well as in other states and foreign countries.

Although it was not part of our charge, we also educated ourselves about the process through which applicants must go to demonstrate that they possess the character and fitness necessary for admission to the practice of law. We did this so that we could understand the admissions and examination process as a whole. We found that while the Board to Determine Fitness of Bar Applicants looks closely at every applicant's qualifications, it approves the vast majority of applicants, even those who have suffered some setbacks in their personal or professional lives. It is obvious that the process is rigorous and individualized enough to protect applicants from arbitrary denials of certification on character and fitness grounds.

The Committee also engaged in a survey of the current form and content of legal education programs in foreign countries. Our study included a brief discussion of whether the privileges of in-house counsel and *pro hac vice* admission should be

expanded to include foreign lawyers. It was felt that these issues fell outside the Committee's overall charge and that inasmuch as the Bar's International Transactions in Legal Services Committee was considering these same questions, no recommendations as to them should be included in our report.

More to the precise charges to this Committee, we examined the educational eligibility requirements published in the Rules Governing Admission to the Practice of Law in Georgia. The educational requirements are similar to those in the majority of American states. In particular, those who wish to be admitted to the practice of law in Georgia must generally demonstrate that they have graduated both from an accredited college and a law school approved by the American Bar Association's Council of the Section of Legal Education and Admissions to the Bar, which the United States Department of Education recognizes as the national agency for accreditation of programs leading to the first professional degree in law.<sup>2</sup> The Council has been performing this function nationwide for over fifty years.

There are now 196 ABA-approved law schools in the United States, more than forty of which have been approved in the past thirty years or so, and seven of which have recently been provisionally approved. One of the most recent additions to the list of provisionally approved law schools is Atlanta's John Marshall Law School. The accreditation process is clearly a dynamic one, with new schools seeking and gaining

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<sup>2</sup> Law schools which apply for and receive accreditation through the Council processes are often referred to as "ABA-approved" or "ABA-accredited." Both terms are intended to mean the same thing, and are used interchangeably in common discourse and in this report. Some states, such as California, have their own accreditation standards and processes which are not evaluated or approved by the Council.

approval on a regular basis. Georgia has three private and two public ABA-approved law schools, two of them offering both full and part time legal educations. This enables non-traditional students to obtain ABA-sanctioned legal educations on unconventional schedules and at reasonable prices. This is a significant improvement over days gone by, when Georgia was home to several law schools that did not meet minimum ABA standards. And as the Committee learned, there is at least one statistically demonstrable difference between those who graduated from some of the unaccredited schools and those who graduated from schools meeting the ABA's minimum accreditation Standards. Those who graduated from unaccredited law schools have been significantly more likely to suffer serious lawyer discipline in Georgia than those who graduated from ABA-accredited schools. Opening the process to yet more graduates of such schools is clearly not in the best interests of Georgia's consumers of legal services. This is especially true since the nation's non-ABA-approved law schools, some of which are accredited by other states and some of which are not accredited by any authority, are not subject to any local control or review of any sort.

Every United States jurisdiction recognizes a degree from an ABA-approved law school as sufficient to meet its law school education requirements for admission to the bar. Nevertheless, the Committee was not content merely to accept ABA accreditation as the sole measure of whether a law school's educational program was sufficiently rigorous and comprehensive to ensure that its graduates have received the training in law, ethics and professionalism necessary to practice law competently and ethically. Indeed, one Committee member pointedly asked whether the ABA's way was the only way to provide an acceptable legal education or merely a very good (or even the best)



way.

To answer that question, we looked to Dan Freehling, Deputy Consultant for Legal Education for the ABA Section of Legal Education and Admissions to the Bar. Mr. Freehling knows as much as anyone in the nation about the ABA accreditation process. He told the Committee the history of the process, how it works in practice, what factors and evidence accreditation teams consider, what steps schools may or must take to gain accreditation, and what unaccredited schools are missing that the evaluators deem critical to providing an appropriate legal education.

In the course of his testimony, Mr. Freehling made it clear that ABA-approved schools do not all look and act alike. Some are affiliated with universities, some are not; some are for-profit, some are not. Some have large traditional libraries, while others rely much more heavily on computerized resources. Some have religious affiliations and some have strong areas of academic concentration. Some are only for full time students, while some offer part time programs as well. Some have strong clinical components, some offer individual courses through “distance learning,” and so on. The list of differences in structure, emphasis, funding, teaching methodologies and the like is an impressive one. Simply put, there is no one model which all schools must emulate; indeed, many of the ABA’s approval Standards are rather open-ended in some regards. But all ABA-approved schools go through the same rigorous process to be approved provisionally, then fully. Thereafter, each school must conduct thorough self-studies and go through comprehensive reviews every seven years. Perhaps most importantly, though, each application and each review is judged against the same baseline Standards that have been defined and developed over a fifty year period by

the best legal educators in the nation.

Mr. Freehling and his colleagues are well aware of the proliferation of non-ABA-approved schools offering legal educations solely online or via correspondence. He confirmed that the ABA was struggling to decide the appropriate amount of “distance learning” a school could properly offer without diluting its educational product too much to be acceptable. He explained that the ABA has adopted a Standard allowing for students to take the equivalent of one full semester (12 credit hours) of course work (of a law school’s six semesters) via one form of distance learning or another. But the ABA has never approved a law school whose program is *solely* conducted online or via correspondence. The question is why. One of the primary reasons is revealed in Mr. Freehling’s answer to a Committee member’s inquiry about the essential difference(s) between an accredited law school’s educational approach and that taken by online or correspondence schools. Mr. Freehling referred to law school, especially its first year, as “formative.” He said the key is “the give and take one gets from being around colleagues and faculty . . . . [W]atching students change as their method of thinking changes throughout the first year is . . . amazing . . . .” That simply cannot happen in a school that is conducted online or via correspondence, and may not happen in many schools which fail to meet the ABA’s standards in many other important respects. That very concern may help explain why only California, New Mexico and the District of Columbia allow graduates of correspondence law schools to sit for their bar examinations.

This idea of being immersed in the law school environment and undergoing a dramatic transformation therein is a theme the Committee heard time and again. One

non-lawyer educator on the Committee was especially impressed by how profoundly students seem to be affected by having their ideas constantly challenged by fellow students and professors. It was apparent to him that it is the rigorous intellectual environment, at least as much as the actual material one learns, that makes law school such a vibrant and challenging enterprise capable of producing high functioning professionals.

As the Committee member's reaction suggests, this impression of law school is not limited to those who have experienced it firsthand. At the beginning of this Committee's work, all of its members were provided with excerpts from Educating Lawyers: Preparation for the Profession of Law<sup>3</sup>, a study and critique of American legal education published in 2007 by the Carnegie Foundation for the Advancement of Teaching. The study was conducted by a group of educational experts, and is only one of several books the Foundation will eventually publish about training of many professionals, including doctors, nurses, lawyers, engineers and members of the clergy. While the report levels many criticisms at legal education in its second and third years, it expresses great admiration and respect for legal education's "signature pedagogy" – the "case-dialogue method" – employed in virtually all of today's accredited law schools. In Part III. of this report, we present some of the Foundation's detailed observations about this method of instruction; the critical point here is that this pedagogy is dependent upon a student's participation in the law school community, where one must constantly demonstrate preparation and knowledge of the materials

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<sup>3</sup> Educating Lawyers: Preparation for the Profession of Law (Sullivan, et al. 2007) (Educating Lawyers).

assigned, as well as the ability to present one's ideas and respond to those of others in a highly competitive atmosphere. It is no accident that these skills are the same as those a practicing lawyer might be called upon to use before a client, a court, a legislature or other governmental body, or an administrative agency.

This is not to say that all law schools must be the same to be effective. Neither the Committee nor the ABA itself would take such a position. It is to say, however, that there are certain skills that one can master only through practice and testing, something that can be done appropriately only with significant amounts of personal exposure to professors, colleagues, campus organizations, speaker programs, curricular and extra-curricular activities, law school competitions and the like. Put another way, law schools are not mere purveyors of information about law and they should not aspire merely to graduate persons who can answer simple questions about the law on a test. Rather, they are in the business of honing students' analytical and social skills so that they are capable of rendering professionally competent and ethical advice, often on complex or novel questions.

The Board of Bar Examiners itself has not taken the position that education at an ABA-approved law school is absolutely essential to gain admission to the bar. The Board has a written Waiver Process and Policy (See Part III., (9)-(10)) through which applicants who do not meet the traditional educational or other requirements may demonstrate that they have otherwise obtained the education, knowledge and experience appropriate to be entrusted with handling the important legal affairs of the

citizens of Georgia.<sup>4</sup> Indeed, the Committee met and heard testimony from several persons who have sought such waivers.<sup>5</sup>

The waiver applicants' educational backgrounds and experiences were quite varied. Some went to schools that are not ABA-accredited, but still offer rigorous academic programs. Others went to unaccredited schools in which they were not required to attend or even live in the same state as the school; in short, their entire education was gained through correspondence or online contact with the school. In some instances, the applicant had not earned a college degree before going to law school, either. As of today, some of the applicants' waivers have been granted, and some have not. Given the significant differences in the educational and professional backgrounds of the applicants, it is hardly surprising that while some were ultimately granted waivers, others were not. Disparate decisions for applicants of such varied educational and experiential backgrounds are the hallmark of a fair and rational system.

While the Committee found the existing rules for waiver of the educational requirements appropriate, as well as fairly and consistently applied, we did find room for improvement in the administration of the waiver process. In particular, we recommend that waiver applicants be given more specific direction about what information they

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<sup>4</sup> The waiver process is open to lawyers educated in foreign law schools, as well as those educated in the United States law schools. In fact, the Board receives more waiver requests from foreign-educated lawyers than from lawyers educated in United States law schools.

<sup>5</sup> One of the witnesses testified that he had declined to formally apply for waiver of the educational requirements when he learned that the application of a graduate of the same California-based unaccredited law school from which he was graduated was denied.

must provide in support of their waiver petitions, and in what format. We also recommend that the Board of Bar Examiners inform each person whose petition is denied of the specific reasons for denial and what steps, if any, the applicant should take to remedy any defects in his or her waiver request.

Finally, the Committee was faced with those who question the need for stringent educational requirements on the theory that if one can pass the bar examination, that alone confirms that one is capable of practicing law. The Committee found at least two powerful reasons to reject this argument. One was initially presented to us by Jerome Braun, the former Director of the Office of Bar Admissions in Georgia. Mr. Braun subsequently served as the Senior Executive of the Office of Admissions in California, the home of more non-ABA-approved law schools than all other states combined. Mr. Braun reported that many unapproved law schools in California simply “teach the test,” spending virtually all of their time tutoring students to take the bar examination. Indeed, Mr. Braun told us that some “schools” are nothing more than a practicing lawyer or two providing individual test tutoring to a few students.

The bar examination is a sophisticated testing instrument, but the market forces are such that many individuals and companies continue to engage in extraordinary measures to beat the system. It is well known that there are individuals nationwide who repeatedly take bar examinations so that they can pass along information about them to future takers. Under these circumstances, it is hardly surprising that there are people capable of passing the bar examination, even though they are not otherwise well prepared to enter the practice of law.

That leads to the second reason to reject exclusive reliance on one’s ability to

pass the bar examination, strongly emphasized by Erica Moeser, President of the National Conference of Bar Examiners (NCBE). The NCBE is the national clearinghouse for bar examination information and the creator of the Multistate Bar Examination and the Multistate Performance Test. Ms. Moeser told the Committee that it would be a “horrible mistake” to view the bar examination alone as sufficient to separate the qualified from the unqualified. It is unrealistic and irresponsible to suggest that a two-day test can do anything more than scratch the surface and test for information, basic knowledge and rudimentary skills. It is a test of minimal competence nothing more and nothing less. Even with the recent incorporation of the Multistate Performance Test into the bar examination, a two day test simply cannot fully account for one’s analytical skills, maturity of judgment, ethical standards, professionalism, and appreciation for the history and purposes of a noble profession in the same way that a high quality legal education can.

The best way to ensure that all applicants have a sufficient grounding in these respects is to require that they have an education that meets the minimum Standards set by the ABA (whether the school is ABA-approved or the graduate’s education is deemed the equivalent of such a school’s education), as the majority of states have been doing for over fifty years, and as Georgia has increasingly done in recent years. We are confident that the Board of Bar Examiners, using the current Waiver Process and Policy with the changes we recommend, can properly take these considerations into account and continue to render decisions which are fair, consistent and in the best interests of the citizens of this state.

Accordingly, we conclude that while modest changes to the Waiver Process and

Policy are appropriate to make the process objective, specific and transparent, the Court should not make any substantive changes to the educational requirements candidates must currently meet to be eligible to sit for the Georgia bar examination.



### Part III.

#### **FACTS AND FIGURES**

The Committee's Findings, Conclusions and Recommendations (Part V.) are largely based on a great deal of basic information about the bar admissions and examination process. We produce below some of this information, all of which was provided in the witnesses' testimony or documentation, or is otherwise available from public sources. Summaries of testimony presented to the Committee may be found in Part IV.

1. Each United States jurisdiction makes its own independent decisions regarding qualifications for admission to its bar. Generally speaking, such decisions are made by a body or bodies acting under the auspices or direction of the state's highest court.<sup>6</sup> Locally, the Supreme Court of Georgia has delegated to the Office of Bar Admissions<sup>7</sup> the responsibility of determining whether applicants for admission to practice law possess the competence requisite to be members of the State Bar of Georgia.<sup>8</sup>

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<sup>6</sup> Rules for admission to the bar are promulgated by the state's highest court in over forty states. The rules are legislatively mandated, in whole or part, in Alaska, California, Maryland, Massachusetts, Michigan, Mississippi, Virginia and Wyoming. Comprehensive Guide to Bar Admission Requirements (Comprehensive Guide) Chart I (2007).

<sup>7</sup> The Supreme Court of Georgia has opined numerous times that the regulation of the practice of law (including creation of the State Bar and regulation of admission and discipline of attorneys) is a function within the inherent powers of the Court. See, e.g., In re Oliver, 261 Ga. 850 (1992); Wallace v. Wallace, 225 Ga. 102 (1969); Sams v. Olah, 225 Ga. 497 (1960), *cert denied*, 397 U.S. 914 (1970);

<sup>8</sup> Like most states, Georgia has a mandatory bar. In order to practice law in Georgia, one must also be a member of the State Bar of Georgia.

2. With the exception of Wisconsin, all American states require that bar applicants take a bar examination before receiving their first state bar admission. Wisconsin is the only state still using a “diploma privilege,” allowing those who graduate from any Wisconsin law school (University of Wisconsin Law School and Marquette University Law School, both of which are accredited by the American Bar Association) with a minimum grade point average to gain admission to the Wisconsin bar without taking a bar examination. Montana, South Dakota, Mississippi and West Virginia have all abandoned similar practices over the last twenty years or so.

3. The Georgia bar examination is administered twice a year. In February, approximately 600-650 applicants sit for the examination; in July the number is typically between 1200 and 1400. Georgia is one of forty-eight states that utilizes the Multistate Bar Examination (MBE) as part of its bar examination process.<sup>9</sup> The MBE is prepared and rigorously tested by the not-for-profit National Conference of Bar Examiners (NCBE), which produces four law-related standardized tests: (i) the Multistate Bar Examination (MBE)<sup>10</sup>; (ii) the Multistate Essay Examination (MEE)<sup>11</sup>; (iii) the Multistate

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<sup>9</sup> According to the National Conference on Bar Examiners, it is also used by Washington, D.C., Guam, the Northern Mariana Islands, the Republic of Palau and the Virginia Islands. The complete list may be found at: <http://www.ncbex.org/multistate-tests/mbe/mbe-faqs/jurs/>.

<sup>10</sup> The MBE covers contracts, torts, constitutional law, criminal law, evidence, and real property. See Rules Governing Admission to the Practice of Law, Part B, Section 6(d) (February 2008) at <http://www.gabaradmissions.org>.

<sup>11</sup> Areas of law that could have been covered on the July 2007 MEE include the following: Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Conflict of Laws, Constitutional Law, Contracts, Criminal Law and

Professional Responsibility Examination (MPRE); and (iv) the Multistate Performance Test (MPT).<sup>12</sup> A full description of NCBE, its products and their uses may be found at <http://www.ncbex.org/>.

Georgia uses the MBE, the MPT, and the MPRE, but provides its own essay questions.<sup>13</sup> The MBE, MPT and Georgia's own essay examination questions are all administered together over a two day period.<sup>14</sup> The MPRE is administered separately.<sup>15</sup>

Even while using the standardized NCBE tests, each state sets its own standards for "passing." Georgia's standards for passing the bar examination are

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Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates (Decedents' Estates; Trusts and Future Interests), and Uniform Commercial Code (Commercial Paper (Negotiable Instruments); Secured Transactions). Some questions may include issues in more than one area of law.

<sup>12</sup> The MPT consists of two 90-minute skills questions covering legal analysis, fact analysis, problem solving, resolution of ethical dilemmas, organization and management of a lawyering task, and communication. See Rules Governing Admission to the Practice of Law, Part B, Section 6(e) (February 2008) at <http://www.gabaradmissions.org> and <http://www.ncbex.org/multistate-tests/mpt/>.

<sup>13</sup> Essay questions are prepared by the Board of Bar Examiners. The subject matters that may be tested therein are Business Organizations, Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Practice and Procedure, Georgia Practice and Procedure, Non-Monetary Remedies, Professional Ethics, Property, Torts, Trusts, Wills and Estates, and the Uniform Commercial Code (Articles 2, 3 and 9). See Rules Governing Admission to the Practice of Law, Part B, Section 6(c) (February 2008) at <http://www.gabaradmissions.org>.

<sup>14</sup> For a full description of the tests incorporated in the Georgia bar examination and their structure and purposes, see "A Message from The Georgia Board of Bar Examiners On Preparing for The Georgia Bar Examination" at <http://www.gabaradmissions.org>.

<sup>15</sup> For an explanation of Georgia's requirements for taking and passing the MPRE, see "MPRE - Multistate Professional Responsibility Exam" at <http://www.gabaradmissions.org/>.

“mainstream” and “middle of the road,” according to Erica Moeser, President of NCBE.

4. In order to sit for the bar examination in Georgia, an applicant must generally demonstrate to the Board of Bar Examiners and the Board to Determine Fitness of Bar Applicants (Fitness Board) that he or she has met both educational and character and fitness requirements. As for education, an applicant: (1) Must have been awarded an undergraduate degree, BA, BS, BBA, or equivalent by an institution accredited by the Commission on Recognition of Postsecondary Accreditation; (2) Must have been awarded the first professional degree in law (J.D. or LL.B.) from a law school approved by the American Bar Association; and (3) Must have taken and scored 75 or better on the Multistate Professional Responsibility Examination.<sup>16</sup> These requirements may be waived by the Board of Bar Examiners, as discussed fully below in Part III., (9) - (10).

In addition to meeting these educational requirements, the applicant must be certified by the Fitness Board as fit to practice law. Certification is issued upon application and investigation of the applicant’s background, the purpose of which is to determine “whether applicants possess the integrity and character requisite to be members of the Bar.”<sup>17</sup> In conducting its investigation, the Fitness Board has the discretion to waive some of its procedural rules.

The conduct the Board to Determine Fitness may consider includes, but is not limited to: unlawful conduct; academic misconduct (such as plagiarism); making of false

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<sup>16</sup> See Rules Governing Admission to the Practice of Law (February 2008) at: <http://www.gabaradmissions.org>.

<sup>17</sup> Part A, Section 2 of the Rules Governing Admission to the Practice of Law.

statements in the fitness process; misconduct in employment; acts of dishonesty, fraud, deceit or misrepresentation; abuse of legal process; neglect of financial responsibilities; neglect of professional obligations; violation of a court order, especially to pay child support; evidence of emotional instability; evidence of drug or alcohol dependency; denial of admission to the bar in another jurisdiction on character and fitness grounds; and disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency in any jurisdiction.<sup>18</sup>

5. Every jurisdiction in the United States has determined that graduates of ABA-approved law schools are able to sit for the bar examination in their jurisdictions. Currently, eighteen states purport, by rule, to limit eligibility to take their bar examinations to J.D. or LL.B. graduates of ABA-approved schools.<sup>19</sup> That number is somewhat misleading because for a number of states, educational eligibility is limited to graduates of ABA-approved schools with an exception for graduates of foreign law schools who must have years of practice and undergo an equivalency evaluation. Moreover, while the general rule in a number of states requires graduation from an ABA-approved school, the exceptions are found not in the rule but in policy statements or waiver processes. Of the states that do not limit educational eligibility to graduates of ABA-approved schools, only Alabama, New Hampshire and Washington, D.C. appear

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<sup>18</sup> Policy Statement of the Board to Determine Fitness of Bar Applicants Regarding Character and Fitness Reviews. The full policy statement may be found at: <http://www.gabaradmissions.org>.

<sup>19</sup> See Comprehensive Guide, Chart III (2007).

to allow graduates of schools not approved by the ABA or their own state to take the bar examination.<sup>20</sup> Only three jurisdictions – California, the District of Columbia, and New Mexico – allow graduates of correspondence law schools to sit for their bar examinations.<sup>21</sup>

6. Since 1952, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association has been approved by the United States Department of Education as the recognized national agency for the accreditation of programs leading to the first professional degree in law. The Standards applied by the ABA in determining whether a school should be approved may be found at:

<http://www.abanet.org/legaled/standards/standards.html>.

As of September 2007, a total of 196 institutions were approved by the American Bar Association. Seven of the 196 approved law schools were provisionally approved. Even after a school is granted full approval, it undergoes a full site evaluation in the third year after full approval and then a full sabbatical evaluation and visitation every seven years.

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<sup>20</sup> Comprehensive Guide, Chart III (2007). Ironically, while California is home to most of the nation's unaccredited schools, it does not allow students from unaccredited schools outside of California to sit for the California bar examination.

<sup>21</sup> Comprehensive Guide, Chart III (2007). Washington, D.C. also joins Alabama and New Hampshire as the only jurisdictions allowing graduates of non-ABA-approved law schools, wherever located, to sit for their bar examination. To see the entire chart, which reveals what other methods of study or practical experience states deem sufficient to permit applicants to take the bar exam, see: <http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/PermittedBarExamPrep.pdf>.

7. The Council of the American Bar Association Section of Legal Education and Admissions to the Bar requires that any law school seeking approval comply with the Standards and Rules of Procedure (ABA Standards) which mandate, among other things, that a law school:

- (a) require that each student receive substantial instruction in:
  - (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
  - (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
  - (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
  - (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
  - (5) the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.<sup>22</sup>;
- (b) offer substantial opportunities for “live client or other real-life practice experiences,” “student participation in pro bono activities,” and “small group work through seminars, directed research, small classes or collaborative work”<sup>23</sup>; and
- (c) require “regular and punctual class attendance.”<sup>24</sup>

The ABA Standards also set baseline standards for the length of the school year,<sup>25</sup> the maximum time a student may take to obtain his or her degree,<sup>26</sup> the maximum number of credit hours a student may take at one time,<sup>27</sup> and the maximum

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<sup>22</sup> ABA Standard 302(a).

<sup>23</sup> ABA Standard 302(b).

<sup>24</sup> ABA Standard 303(d).

<sup>25</sup> ABA Standard 304(a).

<sup>26</sup> ABA Standard 304(c).

<sup>27</sup> ABA Standard 304(d).

number of hours a student may earn toward his or her degree via “distance education,”<sup>28</sup> just to mention a few of the academic standards. The Standards also mandate that “A law school shall not continue the enrollment of a student whose inability to do satisfactory work is sufficiently manifest so that the student’s continuation in school would inculcate false hopes, constitute economic exploitation, or detrimentally affect the education of other students.”<sup>29</sup>

8. Georgia has five law schools, two public and three private. The two public law schools are the University of Georgia School of Law and the Georgia State University College of Law. The private schools are Emory University School of Law, the Walter F. George School of Law at Mercer University , and John Marshall Law School. Georgia State and John Marshall each have full and part-time programs. Tuition at the Georgia law schools ranges from approximately \$8400/two-semester year (Georgia resident) to more than \$30,000.

As is the case in the majority of states, Georgia now has no law schools which are not ABA-approved.<sup>30</sup> California is the most significant outlier. It has sixty-six law schools, some accredited only by the state of California and some not accredited at

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<sup>28</sup> ABA Standard 306(d).

<sup>29</sup> ABA Standard 303(c).

<sup>30</sup> John Marshall is the most recent addition to the list of ABA-accredited schools. It has been provisionally accredited since February 14, 2005.



all.<sup>31</sup>

9. Georgia's Board of Bar Examiners, which meets several times a year, may "for good cause shown by clear and convincing evidence" waive the educational requirements mentioned above.<sup>32</sup> The burden is on the applicant to provide the clear and convincing evidence supporting a waiver request.

While each application is considered individually, the Board's Waiver Process and Policy states that the Board considers the following kinds of information in evaluating a waiver application:

- (1) A statement as to why the applicant's educational background does not meet the standard (i.e., why no undergraduate degree, why no qualifying J.D. degree, etc.);
- (2) A thorough description of the relevant educational history (schools attended, course of study and curriculum with transcripts of educational achievement from those schools, letters of reference particularly from law faculty, etc.);
- (3) Documentation of any postgraduate legal education (LL.M. or S.J.D. degrees);
- (4) Documentation of membership of the bar of another state or another country, if applicable;
- (5) Description of employment history, particularly any law-related

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<sup>31</sup> By contrast, all U.S. medical schools granting M.D.'s and D.O.'s are nationally accredited. Georgia requires that all medical school graduates complete post-graduate training in the United States or Canada (one year for U.S. and Canadian graduates and three years for other graduates). The Committee prepared a memo describing the process of admission to the practice of medicine in Georgia. The memo and supporting charts and appendices may be found at:  
[http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/GA%20MedLicenseEducationMemo%20\\_final%202.07.08\\_.pdf](http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/GA%20MedLicenseEducationMemo%20_final%202.07.08_.pdf) ; and  
[http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/GA%20Licensure%20MedLicenseEducationTable%20Attachment%20\\_final%202.07.08\\_.pdf](http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/GA%20Licensure%20MedLicenseEducationTable%20Attachment%20_final%202.07.08_.pdf) ; and  
[http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/GA%20Lic%20Q%20&%20A%20\\_final%202.07.08\\_.pdf](http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/GA%20Lic%20Q%20&%20A%20_final%202.07.08_.pdf) .

<sup>32</sup> See Rules Governing Admission to the Practice of Law in Georgia, Part F., Section 4. Waivers (February 2008).

employment (if the member of the bar in another state or another country, a description of legal practice and any significant achievements in the practice of law;

(6) A “Dean’s letter”, which is a statement from a Dean or professor at an ABA-approved law school analyzing the legal education received and stating whether or not it is the equivalent of an ABA-approved legal education. The Board may also request a “Dean’s letter” if it feels that such a review would be helpful in determining “good cause shown by clear and convincing evidence.”;

(7) A statement as to career goals and whether or not the applicant has obtained law-related employment in Georgia; and

(8) A narrative as to why the applicant feels that good cause by clear and convincing evidence has been established and any other documentation, material or information that the applicant feels is relevant to the establishment of good cause.<sup>33</sup>

None of the items listed is absolutely required and no combination of them automatically leads to approval of one’s waiver application. There is no specific format required for submission of such materials, although most applicants submit the material in the form of a letter or written “petition.” The decision of the Board to deny a waiver application is directly appealable to the Supreme Court.<sup>34</sup>

**10.** As of the submission of this report, 6 people have applied for waiver of the bar admission education requirements in 2008; 5 of them have been granted (2 foreign-educated). In 2007, 12 applied for a waiver of the educational requirements; 4 have

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<sup>33</sup> See Policy Statements of the Board to Determine Fitness of Bar Applicants and the Board of Bar Examiners, Waiver Process and Policy (Adopted April 8, 2005) at <http://www.gabaradmissions.org>.

<sup>34</sup> Part F, Sections 4 and 7, Rules Governing Admission to the Practice of Law. Ms. Becky M. Allison, Assistant Director and long-time employee of the Office of Bar Admissions, was asked by a Committee member about the frequency of such appeals. She stated that, to the best of her memory, only a handful had ever been filed during her tenure at the Office.

been granted (2 foreign-educated) and 3 have been tabled for more information. In 2006, there were 8 such waiver applications, 4 of which were granted (2 foreign-educated). In 2005, there were 6 such applications, 2 of which were granted (both foreign-educated). In 2004, there were 8 applications, 3 of which were granted (all foreign-educated).

Cumulatively, in the 2004-2007 period, there were 34 waiver applications, 13 (38%) of which were granted. In the 2004-2008 period, there were 40 waiver applications, 18 (45%) of which were granted (11 foreign-educated, 7 domestic).

**11.** Since 2003, Georgia's admissions Rules<sup>35</sup> have also provided for admission on motion without examination if the applicant has been engaged in the active practice of law in good standing in another United States jurisdiction for five of the last seven years and was admitted to that jurisdiction by examination.<sup>36</sup>

The same educational requirements apply to applicants for admission on motion as apply to those seeking admission by examination. Fitness certification is also required for any applicants for admission on motion. Georgia currently admits approximately 200 lawyers per year on motion.

**12.** Georgia's admissions Rules also provide for limited licensure of Foreign Law

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<sup>35</sup> See Rules Governing Admission to the Practice of Law, Part C, Section 1 (a) - (g) at: <http://www.gabaradmissions.org>.

<sup>36</sup> Thirty-three states and Washington, D.C. currently provide for admission upon motion. Twenty-nine of the thirty-three require that all such movants be graduates of ABA-approved schools. Comprehensive Guide, Chart VIII (2007).

Consultants, for whom the practice of law in Georgia is limited to rendering advice on matters of international law, the law of the foreign country where the applicant is admitted to practice, or to the law of a non-United States jurisdiction. A Foreign Law Consultant is not permitted to render legal advice on Georgia or federal law. Fitness certification is required for all Foreign Law Consultant applicants.<sup>37</sup>

**13.** The ABA has considered the issues raised by “distance learning” of several types, but has never approved any law school which operates exclusively online or via correspondence. Current ABA Standards allow a law student to credit up to the equivalent of one semester (12 hours) of “distance learning” credit hours toward a first law degree at an ABA-approved law school.<sup>38</sup>

**14.** Graduation from an accredited school is required to obtain a license to practice in Georgia for architects, chiropractors, dentists, pharmacists, physicians, psychologists and veterinarians.<sup>39</sup>

**15.** From 1997 to 2006, an average of 86.5% of the graduates from Georgia’s ABA-approved schools passed the bar examination, while those from ABA-approved schools

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<sup>37</sup> See Rules Governing Admission to the Practice of Law, Part E (February 2008) at: <http://www.gabaradmissions.org>.

<sup>38</sup> ABA Standard 306(d).

<sup>39</sup> For a complete list of requirements for licensure in these professions and others, see the Georgia Secretary of State’s Professional Licensing Board site at: <http://sos.georgia.gov/plb/> .

outside of Georgia passed at an average rate of 71.5%. Graduates from schools not approved by the ABA passed the Georgia bar examination at an average rate of only 19.3% during the same period.<sup>40</sup>

**16.** Nationwide, a total of 74,215 graduates of ABA-approved law schools took the bar examination in 2006. Of those candidates, 71% passed. At the same time, 4507 graduates of American law schools not approved by the ABA took the examination (3225 in California), and 28% passed. Of the 4505 takers who graduated from foreign law schools not accredited by the ABA (3630 in New York), 32% passed.<sup>41</sup>

**17.** The Georgia disciplinary rates for graduates of law schools not approved by the ABA are significantly higher than those for graduates of ABA-approved law schools. While an aggregate average of 3.25/100 Georgia lawyers have been disciplined in some fashion,<sup>42</sup> the rate is 2.63/100 for graduates of ABA-approved schools and 8.13/100 for graduates of schools that are not ABA-approved.<sup>43</sup>

**18.** In 2007, the Carnegie Foundation for the Advancement of Teaching published

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<sup>40</sup> Complete bar passage data from 1998 to the present may be found at: <http://www.gabaradmissions.org/>.

<sup>41</sup> "The Bar Examiner", Volume 76, Number 2, p. 8-9 (May 2007).

<sup>42</sup> This includes discipline ranging from a letter of admonition all the way to disbarment.

<sup>43</sup> A comparison of graduates from ABA-accredited and non-ABA-accredited schools in Georgia yields very similar results.

Educating Lawyers: Preparation for the Profession of Law,<sup>44</sup> in which the authors evaluate the strengths and weaknesses of legal education in the United States today. In conducting their investigation, they visited and studied several ABA-approved law schools. In the book's summary, the authors make the following observations about legal education in those schools:

[T]he research team found unmistakable evidence of the pedagogical power of the first phase of legal education. Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they are learning . . . to 'think like a lawyer.' This is an accomplishment of the first order . . . .

The process of enabling students to 'think like a lawyer' takes place . . . primarily through . . . the case-dialogue method . . . . By questioning and argumentative exchange with faculty, students are led to analyze situations by looking for points of dispute or conflict and considering as 'facts' only those details that contribute to someone's staking a legal claim on the basis of precedent. The case-dialogue method drills students, over and over, in first abstracting from natural contexts, then operating upon the 'facts' so abstracted according to specified rules and procedures, and drawing conclusions based upon that reasoning.<sup>45</sup>

In Chapter 2, "A Common Portal: The Case Dialogue as Signature Pedagogy," we find the following description of the case-dialogue method found in most ABA-approved law schools:

The dialogue of professor and students that plays such a central role in legal education's signature pedagogy . . . is . . . modulated by the professor's selection of various student responses, given that much, if not most, student participation . . . results from being called on by the

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<sup>44</sup> See fn. 3, *supra*.

<sup>45</sup> Educating Lawyers, Summary, p. 5 (2007).

instructor; for that reason, the patterns of speech and silence and the sorts of voices that are included or excluded from the room are also guided by the professor. The dialogue . . . is not the same kind of teaching that is found in either academic lectures or discussion groups. The dialogue is part of an ongoing conversation between master and artisan or journeyman who seeks to learn. In a sense, the dialogue of the legal case-dialogue method is embedded in the context of an apprenticeship system . . . .<sup>46</sup>

Several law schools, including Mercer University School of Law and Georgia State University College of Law, have recently held conferences with agendas specifically directed at the Carnegie Foundation's work. All Committee members were invited to attend both of the conferences. Several members attended one or both of them.<sup>47</sup>

**19.** As do the authors of Educating Lawyers, several witnesses and Committee members see traditional American legal education as transformative in nature. Speaking mostly of the first year experiences and the use of the "case-dialogue method" used in most ABA-approved law schools, these observers were favorably impressed with law schools' unique ability to take large numbers of entering students with disparate educational and cultural backgrounds and transform them into a

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<sup>46</sup> Educating Lawyers, p. 60 (2007).

<sup>47</sup> The Walter F. Georgia School of Law at Mercer University and the Mercer Law Review held a conference entitled "The Opportunity for Legal Education" at Mercer on November 9, 2007. A description of the conference may be found at: [http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/Mercer07lawreview\\_02.pdf](http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/Mercer07lawreview_02.pdf) .

Georgia State University College of Law hosted "The International Conference on the Future of Legal Education" on February 20-23, 2008. Materials from the conference may be found at: <http://law.gsu.edu/FutureOfLegalEducationConference>.

“community” of professionals.

This transformative effect does not take place merely through reading, attending lectures, or taking examinations. It is largely a function of activities like the following, which one sees in ABA-approved law schools but which are largely absent in many unapproved schools, particularly correspondence or similar distance learning schools: (i) give and take in the classroom; (ii) interaction with students and faculty both inside and outside the classroom; (iii) expressing and challenging one another’s ideas; (iv) engaging in curricular and extracurricular activities which hone both intellectual and managerial skills; and (vi) using seminars, clinics and class role playing to learn skills such as writing, speaking, interviewing, negotiating, counseling and exercising professional and ethical judgment.

These experiences are further enhanced because the students and faculty who participate together in them must, with notable exceptions, meet minimal educational requirements before they are accepted into ABA-approved law schools. One cannot adequately account and test for the skills learned via these experiences in a two-day bar examination alone.

**20.** Georgia is widely regarded as a leader in the American legal professionalism movement and a “vanguard” in using performance testing as part of its bar examination. Every first year law student in one of Georgia’s five ABA-approved law schools participates in a mandatory interactive professionalism program as part of each law school’s Orientation Program preceding the beginning of first year classes.

As of May 2008, Georgia is the only state in the nation in which all newly



admitted lawyers participate in a mandatory mentoring program. Any newly admitted active member of the State Bar of Georgia admitted after June 30, 2005, must complete the Transition Into Law Practice Program, which consists of both continuing legal education classes and a mentoring program.<sup>48</sup>

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<sup>48</sup> See State Bar Rules, Part VIII, Continuing Lawyer Competency, 8-104(B). See [http://www.gabar.org/programs/transition\\_into\\_law\\_practice\\_program/](http://www.gabar.org/programs/transition_into_law_practice_program/).

## Part IV.

### **SUMMARY OF TESTIMONY AND PRESENTATIONS**

The following are summaries of testimony given to the assembled Committee. Some matters were reported directly to the Committee, some were contained in materials provided to the Committee by the witnesses, and some were responses to questions posed by Committee members or guests. In some cases, members of the Committee itself presented information, much of which is also summarized here. All testimony was taken down by a court reporter.<sup>49</sup>

#### **A. Meeting of September 18, 2007**

Testimony from Sally Lockwood and Dan Freehling

##### **i. Sally Lockwood**

Sally Lockwood currently serves as Director of the Office of Bar Admissions of the Supreme Court of Georgia. Previously, she practiced law and then served as the Director of the Chief Justice's Commission on Professionalism. The following is a summary of her testimony and any supplemental material she presented to the Committee on this date.

Admission to the practice of law in the United States is regulated by each jurisdiction. Unlike in foreign jurisdictions, there is no national bar admission in the United States. In Georgia, the Supreme Court regulates the practice of law, including admission to practice. The Court has entrusted admissions decisions to two boards,

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<sup>49</sup> Most of this section of the report is paraphrased. Summarized testimony is generally reproduced here in the order in which the witnesses presented it. Lengthy quotations appear in single-spaced, double-indented format.

whose members are appointed by the Court. The Board of Bar Examiners administers the bar examination, and the Board to Determine Fitness of Bar Applicants (also known as the Fitness Board) investigates the character and fitness of each applicant and determines whether to issue certification of fitness. Both boards act pursuant to the Rules Governing Admission to the Practice of Law in Georgia and policies and procedures adopted by each board.

To become eligible to practice law, an applicant first must receive certification of fitness by the Fitness Board, and then take and pass the bar examination. The two boards act independently of one another, but both boards are staffed by the Office of Bar Admissions.

To be eligible to take the bar, the applicant must have a degree from an accredited undergraduate institution and be awarded the first professional degree in law (J.D. or LL.B.) from an ABA-approved law school. Additionally, the applicant must have received a score of 75 or above on the Multistate Professional Responsibility Examination (MPRE), an ethics examination administered by the National Conference of Bar Examiners (NCBE).

The Rules contain a “grandparenting” exception to the above educational requirements for those applicants who are graduates of law schools approved by the Georgia Board of Bar Examiners, but not by the ABA, who have been certified as fit to practice law, who satisfy the undergraduate educational requirement of the Rules and who graduated from law school prior to January 1, 1998. Applicants who meet these conditions are eligible to take the bar examination in the same manner as are graduates of ABA-approved law schools.

The Rules contain a provision that permits an applicant to petition either board for a waiver of any Rule (with the exception of filing fees and re-grading of an examination).<sup>50</sup> The burden is on the applicant to show “good cause by clear and convincing evidence” that the waiver should be granted.

The most frequent waiver request received by the Board of Bar Examiners is for a waiver of the educational requirements of the Rules. The Board of Bar Examiners has adopted a Waiver Process and Policy which sets forth the eight categories of information that the Board considers when reviewing a petition for an educational waiver. The Board considers each petition for waiver on a case-by-case basis, makes a decision, and then informs the applicant in writing whether good cause has been shown to grant the waiver.

Prior to 1967 the only educational requirements to take the Georgia bar examination were a high school diploma and two years of law school. Between 1967 and 1988 the Georgia Supreme Court gradually increased these requirements. In 1967, the completion of two years of college was added to the requirements, and by 1984, an undergraduate degree was required. In 1967, an LL.B. or equivalent degree from a law school requiring regular classroom attendance for three academic years was added; and in 1978, the requirement of graduation from a law school approved by the ABA or the Board of Bar Examiners was added. In 1988, the Rules was changed to require graduation (by 1998, later extended) from an ABA-approved law school.

The Board of Bar Examiners believes that ABA accreditation assures the public,

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<sup>50</sup> See Part F, Section 4 of the Rules Governing Admission to the Practice of Law.

the profession, and the student that the school provides a sound, comprehensive, and rigorous legal education. While the Board believes the Georgia bar exam is a fair, valid, and reliable two-day test and a rigorous examination, the exam does not, and is not intended to, substitute for the training in skills, abilities and values that an applicant receives in an ABA-approved school. Georgia currently has over 35,000 licensed lawyers, with over 1,000 more added every year. Educational eligibility standards are crucial to ensuring that the admissions process is free of any favoritism or bias, and that the newly admitted lawyers meet high expectations for substantive competence, practice skills, and knowledge of the ethical standards. The licensing process, combining an examination with an educational requirement, is very similar to that of many other professions.

Of the nearly 2000 annual fitness applications currently filed with the Office of Bar Admissions, approximately ninety percent pass through the fitness process without any problems. Ten percent are closely reviewed due to a variety of problem areas as specified in the “Policy Statement of the Board to Determine Fitness of Bar Applicants Regarding Character and Fitness Reviews.”<sup>51</sup> In a given year, forty to fifty applicants will be asked to attend an interview with the Fitness Board, and ultimately, five to ten are denied fitness certification.

Once an applicant receives fitness certification, he or she then applies to take the Bar examination. The Georgia Bar Examination is a two-day exam given twice a

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<sup>51</sup> See <http://www.gabaradmissions.org/> for specific statements on “Character and Fitness Reviews,” “DUI and Other Alcohol Related Offenses (adopted March 12, 2007),” and “Waiver Process and Policy (adopted April 8, 2005).”

year, in February and July. The first day consists of four essay questions, written and graded by a Bar Examiner, and two performance test items, written by the National Conference of Bar Examiners and graded by the Georgia Bar Examiners. The essay questions are taken from the subject areas listed in the Rules. All grading is done anonymously, by applicant number, not name. The second day of the Georgia Bar Exam consists of 200 multiple choice questions called the Multistate Bar Examination, developed by the National Conference of Bar Examiners. Questions are not jurisdiction-specific and cover six subjects: Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Property, Torts. 400 points are possible on the exam; 270 are required to pass. Over 1400 applicants took the July 2007 exam; about 600 took the February 2007 exam. The July exam is larger because it includes more first-time takers who just graduated from law school. Results are released in May and October. The February pass rate is 55-60%; the July pass rate is 75-80% because it includes more first-time takers.

Included with the Bar pass letter is a certificate of eligibility to practice law. The certificate is taken to a Superior Court judge who administers the Attorney's Oath. After being sworn in, an applicant enrolls in the State Bar of Georgia and becomes subject to the Georgia Rules of Professional Conduct.

There are other ways that one may be admitted to practice law in Georgia. One is admission on motion (known as reciprocity), granted to applicants from thirty-three other jurisdictions who have: (i) met the educational requirement (ABA-approved law school); (ii) passed the reciprocal state's bar examination; (iii) practiced for five of the past seven years in that state in good standing; and (iv) met the fitness requirements.

About 200 people are admitted through reciprocity each year.

Another means of admission is the category of Foreign Law Consultants, a limited form of licensure. Foreign Law Consultants are allowed to render legal advice only on matters governed by international law, the law of the country where they are admitted to practice, or the law of a non-U.S. jurisdiction. They are not allowed to render legal advice on Georgia law or federal law. Finally, a lawyer may be allowed to practice temporarily under a multi-jurisdictional practice rule in special circumstances.

The Board of Bar Examiners concluded that it was not well-equipped by training or resources to undertake the process of evaluating the educational programs at law schools and that the ABA Section of Legal Education and Admissions to the Bar was in a better position to perform this task .

Thirty-six percent of educational waiver applicants since 2004 have been approved.<sup>52</sup> All waiver applications over this time were from students who did not graduate from ABA-approved law schools.

To grant an educational waiver, the Board must be satisfied that the education an applicant received was the equivalent of an ABA education. This is typically shown with a Dean's (or professor's) letter that analyzes the applicant's education and concludes that the applicant's education was equivalent to an ABA legal education. The dean or professor must be at an ABA-approved law school.

The National Conference of Bar Examiners (NCBE) was founded in 1931 to serve as a resource to bar admission authorities nationwide, and has no regulatory or

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<sup>52</sup> As of the submission of this report, 45% of the applications filed since 2004 have been granted.

enforcement authority. It conducts workshops and seminars on grading and drafting questions, fitness issues, examination issues, and developments in legal education. The president of the NCBE will make a presentation at the December meeting on these issues, as well as trends in competency evaluations of lawyers.

Some states have lower educational standards to sit for the bar examination than Georgia. A majority of the states use the MPT and MBE, and those with lower educational standards tend to have lower pass rates. Only Wisconsin allows its law graduates to be admitted to the Bar simply by graduating from a Wisconsin law school (University of Wisconsin or Marquette University, both ABA-approved).

ii. Dan Freehling

Dan Freehling is the Deputy Consultant for Legal Education for the ABA Section of Legal Education and Admissions to the Bar. He provides advice to law schools about meeting the ABA Standards. The following is a summary of his testimony and any supplemental material he presented to the Committee on this date.

The ABA Section of Legal Education and Admissions to the Bar has two responsibilities: one is to provide services, in the nature of workshops and conferences, for the benefit of law schools. The other responsibility is accrediting or approving law schools. Since 1952, the Section has been recognized by the U.S. Department of Education as the sole national body for the accreditation of law schools. The highest court in each state, as well as in Puerto Rico, recognizes the ABA for purposes of bar admissions. The ABA does not accredit LL.M. degree programs.

Currently there are 196 ABA-approved law schools in the United States, with more applying for approval in recent years. Forty-one law schools have received ABA



approval since 1975, twelve in the Southeast. Approximately 141,000 students attend ABA-approved schools; just under half of them are women, and 20-25% are minorities.

To apply for ABA approval, a school has to be in existence for at least a year. An applying school is required to complete an extensive questionnaire and a self-study. After this, a six-person site visit is performed for three days. All aspects of the school are examined, and a detailed report is written. If a school is in substantial compliance with all of the ABA Standards and has a reliable plan for coming into full compliance within three years, a school will receive provisional approval. There are fifty-six Standards, plus many subsections.<sup>53</sup>

After the site visit, the committee submits a site report to the nineteen-member Accreditation Committee of the Section. The school makes a presentation before this committee and answers questions raised by the questionnaire, the visit, or the presentation. The accreditation committee then writes a report that recommends either approval or rejection. This recommendation is then forwarded to the twenty-one person Council of the Section of Legal Education. The school also makes a presentation to the Council. If the Council approves, then the school receives provisional approval, from which it has five years to achieve full compliance.

During the provisional period, the school undergoes a site visit each year. It is rare, but there have been instances where a school received provisional approval but failed to receive full approval in the five-year period. Following full approval, ABA site visits are conducted every seven years. If a school is found out of compliance in any

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<sup>53</sup> For some examples of specific ABA Standards, see Part III., (7), *supra*.

area, it has two years to correct it or lose accreditation.

Under the ABA Standards, the law library can be predominantly online, but must meet the research needs of the students and faculty. The ABA allows a law school to offer the equivalent of one semester of online distance learning, but most schools do not take advantage of this provision, possibly for economic reasons. The Section is studying distance education; perhaps in the future, more of the second or third years of law school may be delivered by distance learning, but the first year's in-class interaction with professors and fellow students is seen as too essential to move to distance learning.

Australia has been very aggressive in trying to obtain ABA accreditation for their schools and/or their accreditation process. The ABA doesn't have a timeline for this. The ABA has been involved with helping countries without a strong rule of law tradition to establish law schools, but this in its advisory role only.

The primary obstacle for distance education is the immersion into the law that occurs in the first year of law school. That will be difficult for the ABA to give up. The ABA cannot say there are no adequate ways to obtain a legal education outside of the traditional on-campus program, but the ABA does view its standards as the minimum standards for an adequate legal education. In the example of full-time versus part-time programs (full-time being the ideal, but some part-time programs are adequate), the part-time programs must still offer the student the full range of opportunities to be successful, and they must be very similar to the ones offered by the full-time programs. The ABA is currently reviewing a law school that offers distance education through teleconferencing.

If a school decided to offer the equivalent of two semesters of online education, then that school would be in violation of the ABA's Standards, and would have to apply for a waiver of those standards. If the waiver were not granted and the school persisted, then the accreditation would be jeopardized, even if the school was compelled by the legislature to offer two semesters of online education.

California allows students from unaccredited law schools to sit for the bar examination, but the pass rate is low and the students have to first pass what is known as the "Baby Bar." Thus, California's bar examination and "Baby Bar" are the gatekeepers, not the law schools themselves. There are very few unaccredited law schools where the students can sit for the bar in a different state, but there are many unaccredited law schools where the student can sit for the bar in that state. There are many students who attend unaccredited law schools because they want to learn the law but do not intend to practice.

Teaching quality is judged by sitting in on classes and looking at student evaluations. To measure the quality of online instruction, the ABA would most likely need evidence that the teachers are able to "push" the students hard enough in the online environment.

#### **B. Meeting of October 16, 2007**

Testimony from bar applicants BB, HW, BT, MS, SL;  
Testimony from Deans Daisy Floyd, Rebecca White, Barry Currier

##### **i. Applicant BB**

BB petitioned in fall of 2004 for a waiver of the educational requirement, and it was denied. She submitted another waiver petition in 2007; that petition had not yet

been decided as of the date of her testimony. The following is a summary of her testimony and any supplemental material she presented to the Committee on this date.

BB graduated from Nashville School of Law in 1998. She has an undergraduate degrees from the University of Kentucky and an MBA from Tennessee State University. She has been practicing law in Tennessee since 1998. She moved to Georgia in May 2005.

In her 2007 waiver request, BB submitted a letter from the Dean of Vanderbilt (Dean Syverud, currently at Washington University in St. Louis) stating that Nashville School of Law meets ABA accreditation requirements. Nashville School of Law is a traditional classroom school. BB believes the school did not pursue ABA accreditation due to expense. BB graduated second in her class. She chose Nashville because it offered evening courses. She has no lawyer disciplinary record in Tennessee. She clerked for a judge during her last year of law school. Her law experience was at a general litigation firm that did mainly probate and estate work.

BB does not want to consider attending an ABA-approved school in addition to her existing education and experience. BB's personal situation has made it appropriate for her to move to Georgia, which she did not intend to do when she got her degree from Nashville School of Law.

#### ii. Applicant HW

HW applied for a waiver of the educational requirement in 2005, and his petition was denied. The following is a summary of HW's testimony and any supplemental material he presented to the Committee on this date.

HW moved to Georgia from California to deal with a family member's illness.

He graduated from Trinity International Law School in California, a traditional classroom law school. Trinity is California-accredited but not ABA-approved. As such, he was permitted to sit for the California Bar.

HW did not pass the California Bar. The Dean of Students at Trinity sent a letter to the Board of Bar Examiners in support of his waiver application. He is a non-traditional student and had to attend school while working full time. The ABA-accredited schools in California did not offer evening classes when he attended law school.

HW believes that Trinity is not accredited due to an inadequate library. Prior to moving to California, HW was a police officer at Georgia State University. His brother is a John Marshall Law School graduate and is currently a practicing attorney in Lilburn, Georgia. HW also has 20 years experience in the insurance industry. His current family and financial situation prevents him from attending an ABA-approved school in Atlanta.

### iii. Applicant BT

BT has not petitioned for a waiver of the educational requirements. The following is a summary of BT's testimony and any supplemental material he presented to the Committee on this date.

BT was home schooled from fifth grade through high school in Georgia. Upon graduation he took the CLEP (College Level Examination Program) tests and passed, earning the equivalent of sixty hours of college credit. This was sufficient to enroll at Oak Brook Law School in California. Oak Brook is a correspondence law school that is not approved by the ABA or accredited by the state of California.

While studying at Oak Brook, BT worked for State Representative Lynn Westmoreland of Georgia in Atlanta. He took an active role in the state redistricting litigation of 2001.

Oak Brook required that BT keep a study log, and BT logged over 3,500 hours in his four years. BT then moved to Washington, D.C. to continue his work for Congressman Westmoreland after his election to the U. S. House. BT graduated from Oak Brook in April 2005.

He took and passed the California Bar in February 2006 on his first attempt. In January of 2007, he returned to Georgia and began working at a local law firm. He does legal research and attends trials and oral arguments but is careful to avoid the unauthorized practice of law. He chose not to apply through the waiver process after a fellow Oak Brook student was denied. Instead, he enrolled at John Marshall Law School, where he is currently a first year student.

Oak Brook classes are mostly by correspondence, with some email communication between students and teachers. No courses are delivered online. There was some in-person student interaction. Oak Brook students are required to pass the "Baby Bar" at the end of their first year.

BT always intended to practice in Georgia but chose to attend Oak Brook due to his work schedule. He did not want to delay his entry into the legal profession, so he skipped an undergraduate degree entirely. At the time of his decision to attend Oak Brook, he realized that there were accreditation issues but was under the impression that the doors of the legal profession would begin to open up to online legal education..

The correspondence type learning he experienced at Oak Brook was more

conducive to his learning style, although he does see the benefits of the Socratic learning method employed in traditional law schools. He got a lot of legal interaction through his legislative experiences. He had to travel to Oak Brook for a few weeks – once at the beginning of the first year, at the end of the first year, and for the appellate advocacy class.

BT agrees that the committee should be cautious about accepting online degrees, but does think it should be possible to get a waiver on an individual basis.

#### iv. Applicant MS

MS applied for an educational waiver in 2006; his application was denied. He reapplied in 2007; that application had not yet been decided as of the date of his testimony. The following is a summary of MS's testimony and any supplemental material he presented to the Committee on this date.

MS has lived in Alpharetta for the past eight years and has six children. He graduated from Concord Law School in California in 2004 and passed the California Bar in February 2005. He did his undergraduate degree at St. Bonaventure University in 1984 and received an MBA in 1987 from the University of Rochester. In May 2007 he completed an LL.M. in Taxation from Temple Law School (approved by the ABA).

MS is employed by Comcast where he negotiates sports contracts. His present job requires travel between Atlanta and Philadelphia, so he chose to attend law school online at Concord. At the time he entered law school, he did not intend to practice law upon graduation.

After graduation from Concord, MS's career goals changed. He would like to set up a law/consulting practice that can advise clients and help them navigate through the

legal aspects of the new media in his industry. MS originally applied for an educational waiver halfway through his LL.M. program in 2006; that petition was denied in 2006. He knew that his educational eligibility to take the Georgia Bar Examination would be a risk of attending Concord. He understands the ABA educational requirements but would like to see some form of exception, possibly through legal practice in another state, work under an existing Georgia attorney, one year of work at an ABA-approved law school, etc. He is unhappy that the waiver process does not state a particular reason for the rejection and would appreciate further clarity to that. With his 2007 waiver petition, he has submitted a letter from the Dean at Concord Law School, as well as a letter from Dean Joseph Harbaugh of Nova Southeastern University Law Center, an ABA-approved law school.

v. Applicant SL

SL applied for a waiver of Georgia's educational requirements to sit for the Georgia bar examination in 2005. That waiver request was denied. The following is a summary of her testimony and any supplemental material she presented to the Committee on this date.

SL is a graduate of Oak Brook College of Law. She is currently employed as a staff attorney with the Georgia General Assembly. She has lived in Georgia for the past 17 years. She regrets that her situation has been politicized. She began working at the Georgia House of Representatives while young and decided she needed a legal background. Oak Brook offered her the quickest path while allowing her to continue to work in the Legislature. She was aware at the time she attended Oak Brook that graduation from this school did not meet the educational requirement for sitting for the



Georgia bar examination and that she would have to apply for a waiver. She graduated from Oak Brook in 2004 and passed the California Bar on her first attempt in July of 2004.

Following her graduation from Oak Brook, SL intended to apply to take the Georgia bar examination through the waiver process, but a bill was introduced to the Legislature in early 2005, without her knowledge initially, that would have allowed her to obtain the right to sit for the Georgia bar examination outside of the waiver process. SL wanted to apply for a waiver but was confused about how to begin the process. She had to make several attempts at submitting the waiver application before it was accepted. Once it was finally accepted, the waiver was denied.

SL is frustrated that no clear reason was given why her waiver request was denied. She is particularly concerned that the Board of Bar Examiners might not have received or considered the Dean's letter she obtained from Dean Steven Kaminshine of Georgia State.<sup>54</sup> SL stressed that Oak Brook placed a strong emphasis on common law and the development of ethical and professional skills. She believes that her school's lack of an ABA accreditation is the only reason she was denied her waiver.

SL understands that GSU College of Law Dean Steven Kaminshine's letter

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<sup>54</sup> The file distributed to Committee members at the meeting confirms that the Dean's letter was indeed received by the Board. During SL's testimony, a Committee member sought to clarify SL's understanding of Dean Kaminshine's letter by reading portions of it aloud to SL. The letter states, "[O]ak Brook's nearly complete dependence on a correspondence school format, supplemented only by audio tape lectures, makes it impossible to conclude that Oak Brook students receive an education equivalent to that at ABA-accredited institutions. With virtually no live classes or opportunity for interactive learning . . . Oak Brook's program is not just non-traditional . . . it lacks essentials that are important aspects of a legal education at ABA-approved law schools."

stated that Oak Brook's legal education program was not equivalent to an ABA-accredited school, but that SL would be a competent, qualified attorney. SL does not believe it is within the Legislature's authority to establish the standards for bar admissions; such decisions rest with the judicial branch.

vi. Joint Written Statement Submitted by Deans Daisy Floyd (Mercer), David Partlett (Emory), Rebecca White (University of Georgia) and Steven Kaminshine (Georgia State)

Deans Floyd, Partlett, White and Kaminshine submitted a joint written statement in which they said the following:

Effective legal education includes three aspects: (1) the cognitive or intellectual; (2) the practical; and (3) the ethical. [Traditional law schools] are designed to teach and assess each of these aspects through a combination of curricular and extracurricular experiences and through creating a professional community in which students learn professional norms and values.

The bar examination assesses . . . the development of specialized knowledge of substantive law . . . [T]here are many skills that the bar examination cannot measure. It cannot assess . . . applicants' relationship skills, their competence at interviewing and counseling, at negotiation, at oral argument, and at exercising judgment under conditions of uncertainty. Nor can it assess the applicant's assimilation of professional values and development of personal identity. Whether future lawyers have developed these attributes is determined by the quality of the legal education they have received rather than by their performance on the bar examination.

The learning that takes places outside of the classroom is just as significant as what takes place within the classroom. Students further their skills and learn about professionalism and identity from being a part of a professional school community. For example, students begin their law school careers with an orientation program jointly offered by the law schools and the State Bar of Georgia. The purpose of orientation is to emphasize that students are joining a profession. It includes administration of a professionalism oath to the students gathered as a group and the opportunity to discuss issues of ethics and professionalism with lawyers.

In [school sponsored activities, including Law Review, Moot Court and Student Bar Association], students learn about being a professional . . . . [Participation] . . . teaches students to work together toward a common purpose, to resolve disputes, to manage funds, to work with outside authors, and to sharpen their research and writing skills.

Being part of a professional community also provides unplanned, but no less powerful, opportunities for learning. For example, student officers who disagree about the use of an organization's funds may meet with a faculty advisor or with the dean of students to work through the issues. That experience will model for them ways to appropriately resolve disputes, how to handle potentially competing obligations – to the organization, to individual members, to the law school – and how to act as a fiduciary in their roles as student officers . . . . The law school environment creates a place where students can safely practice and develop their skills, make mistakes and learn from them, develop relationships with peers and with faculty and staff, and learn how to live out the best ideals of the profession they seek to join.

vii. Dean Daisy Hurst Floyd

Dean Floyd is Dean of the Walter F. George School of Law at Mercer University. She appeared as a representative of the law school deans in Georgia. The following is a summary of her testimony and any supplemental material she presented to the Committee on this date (other than the joint Deans' statement referenced above).

The goal of law schools is to transform talented individuals into professionals, who possess knowledge of the law, the skills necessary to practice law, and the ability to exercise professional judgment. Traditional legal education is organized around these concepts, through the curriculum, extracurricular experiences, and the creation of a professional community.

The first year of school is devoted to the substantive issues of law. Students typically read judicial opinions and discuss them with the professors through the Socratic Method. The Socratic Method is the "signature pedagogy of law schools" (quoting the Carnegie Foundation Report). The student begins the transformation to

thinking like a lawyer, as well as modeling his or her fiduciary obligation to future clients. The student is required to be prepared daily, and the student's preparedness also impacts their classmates.

In subsequent years students also take courses that enhance research and presentation abilities. They study simulated problems to practice performing as a lawyer. Additionally, they will be placed with lawyers in clinics and externships, and share their experiences with professors and classmates.

Extracurricular activities include student organizations, which are student-driven and managed, and faculty-managed programs such as Law Review, Moot Court, and Mock Trial. The environment of the law school is enhanced through the participation of professional staff, the library, and volunteer lawyers from the community.

The ABA limits the number of hours that can be taught by distance education, and it is very small.

There are many aspects of a legal education that are not captured by the bar examination. The bar examination tests only substantive knowledge and written analysis and written communication skills. It does not test oral communication skills, interviewing, counseling, relationship skills, which are very important to the practice of law.

An undergraduate degree is also very important to legal education, as the law school builds upon the undergraduate experience. Law schools continue the personal development by integrating professional development with personal development as students take on identity as lawyers.

Legal education is launching new initiatives to instill professionalism and ethics

in their students, so that they are prepared to face the ethical challenges they will face in the practice of law.

The full-time faculty of the law school is part of its governance. The ABA requires a certain percentage of the faculty to be full-time, so that their concern is education as well as the law. There are part-time faculty members who bring perspective (as lawyers or judges). The law students have access to, and substantial interaction with, the faculty.

viii. Dean Rebecca White

Dean Rebecca White is Dean of the University of Georgia School of Law and appeared as a representative of the Deans of the Georgia law schools. The following is a summary of her testimony and any supplemental material she presented to the Committee on this date (other than the joint Deans' statement referenced above).

For law school admission, LSAT (Law School Admission Test) scores, undergraduate GPA, extracurricular activities, work experience, and letters of recommendation are the primary tools to evaluate prospective students. There are many more qualified students who apply than the University of Georgia School of Law has room to accept, but almost all of the qualified applicants would be able to attend an ABA-accredited law school.

Law school hones analytical skills and teaches people how to think, how to solve problems. Law schools try to convey to students over the three years that law is a profession, a responsibility and a privilege, that the learning they receive is critical, not just for their success, but for the society they are going to enter.

ix. Dean Barry Currier

Dean Barry Currier is the Dean of the Concord Law School in Los Angeles, California. The following is a summary of his testimony and any supplemental material he presented to the Committee on this date.<sup>55</sup>

Dean Currier is a former dean of an ABA accredited law school (Cumberland School of Law at Samford University), but is now the Dean at Concord, a for-profit California-based online school not accredited by the ABA. He has experience as a lawyer, law school faculty member, Dean, and an ABA regulator. He decided to take the role of Dean of Concord Law School due to an interest in the future of technology in legal education and its role in facilitating learning for a new generation of students as well as easing the financial pressures of law students. The legal profession is slow to embrace technological advances.

Distance learning means learning with a separation of time and/or space between the instructor and the student. The ABA allows for some of a student's credit to be earned through distance learning, but no current ABA-approved school is doing as much of it as the ABA would allow. Different types of learning include synchronous (in real time) or asynchronous (not at the same time, such as a taped classroom

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<sup>55</sup> As part of his presentation, Dean Currier signed on to Concord's website and provided a demonstration of the various methods of "attending" classes or accessing Concord's materials. At another session, Director of the Office of Bar Admissions Sally Lockwood and Committee Reporter Roy Sobelson witnessed Concord's synchronous and asynchronous teaching modes remotely from an office at Georgia State University on September 26, 2007. Dean Currier's Powerpoints presented to the Committee may be found at <http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/Currier%20Concord%20Overview%2010162007.pdf> ; and <http://law.gsu.edu/rsobelson/SuprCtLegalEdCte08/Currier%20DL%20Overview%2010162007.pdf> .

presentation). Discussions can be unmoderated (students communicate directly with each other) or moderated (students communicate through the professor, who may then send the communication to the other students). A typical Concord class uses live audio presentations to the students and text-based responses back to the professor. Higher level technology is available (such as two-way video) but not used due to technology and reliability issues.

Distance learning is pervasive outside of legal education, especially in high schools. Over one million students are in fully online programs and over three million students are taking an online class. Other countries, particularly in the United Kingdom, have extensive experience with online education – far more than in the United States. Students entering law school will increasingly be accustomed to online learning and will want it in their legal education.

ABA accreditation is too dependent on measuring minutes in class and not dependent enough on measuring the skills, knowledge, values and experience that we want students to acquire in law school. Once we determine how to measure these things, we can then determine the most effective way to transmit and develop these skills, be it through face-to-face, distance, clinical, or other forms of education.

The federal government uses the phrase “regular and substantive interaction” to describe a class that is technologically assisted as opposed to correspondence. A good online program should include regular and substantive interaction between both students and faculty as well as between students. Purely studying alone might prepare a student to pass the bar but it will not prepare him or her to be a lawyer.

There is no agency that rates distance learning programs. In addition to regular

interaction, a distance learning program should be required to have a full-time faculty and a breadth of curriculum. Concord is distinguished from some other programs that are “glorified reading.” Concord’s size (1,500 students) allows it to have a broad curriculum.

Concord has multiple assessment points, and the school can tell the amount of time a student was on the school’s platform. The students at Concord are more active in reporting violators of the student honor code than at the ABA schools where he has taught. Students in today’s classes communicate in very different ways (email, Instant Messaging, etc.) than students in the past and this continues through legal education as well as their non-educational life. Concord can provide the “third component” of legal education – moral and public policy issues – as well as in-person education can. This area depends largely on the qualities of the teacher, and can be sufficient or deficient in both face-to-face and online settings.

Dean Currier reviewed the divisions of California’s law schools. There are now four, soon to be five: ABA-approved (20), Non-ABA but California-accredited (18), Unaccredited residential (15), Correspondence (13). The Correspondence division will soon be split into “Unaccredited distance learning” and “Unaccredited correspondence.” Concord will soon be merged into Kaplan University, which is regionally accredited by the Higher Learning Commission (HLC). Concord offers two degrees, the J.D., which allows graduates to sit for the California Bar, and the E.J.D. (Executive Juris Doctor), which is designed for people who want a legal education but do not intend to become practicing lawyers.

About one-fourth of Concord’s students are located in California. The cost is



below the median residential public law school. Concord's bar pass rate is 41%, which is below most ABA schools but better than the bottom four or five. The pass rate is 83% for students with a 3.0 or higher GPA.

The typical Concord student is in his or her forties. About 20% of its graduates also have a Ph.D. or M.D. Concord hires professors, who teach classes, plus graders, who grade essays. Students are kept in cohorts for two years. Class schedules are flexible.

Students are put on probation if they fall more than two modules behind the class. Students are allowed to get up to two classes ahead but no more. Instantaneously graded quizzes give students feedback on how well they understood the material they studied. All essays are graded and returned within forty-eight hours.

Students are required to listen to several guest lecturers throughout a course on a variety of topics relevant to the course. In synchronous classes, the professor can ask questions of students via instant messaging. Body language is a missing component, but participation rates are very high. Typically sixty to eighty percent of students in a class respond to general questions. Moderation by the professor assists in this – students respond to the professor, who then puts some responses back to the class.

Because the classes are arranged by cohorts, the students get to know their classmates over time. All classes are taped and can be replayed. Students can gain access to ABA law libraries if they need to, but they also have extensive online resources. Concord has an arrangement with the University of North Alabama to provide books by mail if the students need them.

Student organizations have been a challenge, both because of the distance aspect and the fact that most of the students are working adults. There is a speaker series. Justice Scalia was a recent speaker. Concord students average 27 hours per week for the 48 weeks of class, which translates to two hours outside of class for every hour in class at a typical ABA law school. Concord is in the process of establishing faculty councils and committees.

Concord does not require applicants to take the LSAT. Concord usually requires a 3.0 grade point average in the applicant's undergraduate major. The California "Baby Bar" is the filtering device. Concord at present has no dialogue with the ABA about obtaining accreditation. Concord's students have been allowed to sit for the bar in six states. Dean Currier will be chairing a committee on technology at the ABA and hopes to provide a white paper on the possible standards it could set for distance learning. California will soon be setting standards for the number of hours required to be in an interactive synchronous class setting. There is no real downside to not having a traditional library, since so much is provided online and the students are so used to doing research online.

### **C. Meeting of November 13, 2007**

Testimony from Sally Lockwood, Professor Clark Cunningham, William P. Smith, III

#### **i. Sally Lockwood**

Sally Lockwood currently serves as the Director of the Office of Bar Admissions of the Supreme Court of Georgia. Previously, she practiced law and then served as the Director of the Chief Justice's Commission on Professionalism. The following is a summary of her testimony and any supplemental material she presented to the

Committee on this date.

The number of foreign-educated lawyers who seek admission to the practice of law in the United States is increasing. The growth of international business is prompting changes in foreign legal education and exerting pressures for admission to practice in the United States. The number of foreign-educated lawyers sitting for the bar exam nationwide has increased by 28% since 2000.

Under the current Georgia educational eligibility Rule (graduation from an ABA-approved law school), a foreign-educated lawyer must apply for a waiver in order to sit for the Georgia bar examination. Since 2004, Georgia has received sixteen requests for waivers of educational requirements by foreign educated lawyers. Eight were granted waivers. Most of the applicants were from countries with common law traditions, such as England, Scotland, Canada, and Australia. Several applicants from Continental Europe have demonstrated that they have taken an Anglo-American Law track in their continental law schools.

Any law school, even outside the United States, may apply for ABA approval. In most cases, foreign law schools find it difficult and cost-prohibitive to comply with all of the ABA requirements, especially the requirement that law be a graduate degree. The University of Melbourne in Australia now has a post-graduate program much like an American law school. Several Australian schools and officials originally desired to achieve ABA accreditation; now, they are asking if the ABA would evaluate Australia's accreditation procedures instead. Other ABA Standards that are difficult for foreign law schools to meet are those on promotion and tenure, student-faculty ratio, courses based on the American legal system, student loans, and diversity.

Thirty-one United States jurisdictions allow foreign-educated lawyers to take their bar examinations, but each of these imposes additional requirements on foreign-educated lawyers.

American legal education is still viewed as the model for ideal legal education around the world.

ii. Professor Clark Cunningham

Professor Clark D. Cunningham is the W. Lee Burge Professor of Law and Ethics at the Georgia State University College of Law. The following is a summary of his testimony and any supplemental material he presented to the Committee on this date.

The word “profess” (as in profession) comes from the Latin root meaning “to take an oath or vow.” Historically, one who joins a profession takes an oath and becomes a member of a unique community. Among other things, members of a professional community (doctors, lawyers, etc.) pledge to do more than just earn money; rather, they are committed to acting for the common good and protecting their clients’ (or patients’) interests, even if inconsistent with their personal interests.

The Carnegie Report<sup>56</sup> has some negative things to say about the second and third years of a typical law school education, but it emphasizes the great success of typical first year programs in which students from all personal and academic backgrounds develop a common way of speaking and looking at problems in less than one year.

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<sup>56</sup> This is the name commonly given to the Carnegie Foundation book, Educating Lawyers, *supra*.

The typical law school training (often referred to as the “Socratic Method”) has its roots in English legal history. When lawyers had a case to litigate in London, they often had to travel from far away. During the pendency of their cases, they stayed in one of a number of “inns,” which exist to this day. The inns were not merely hotels, however. They became places where students would stay and “learn from the masters.” Much of this learning occurred in the large dining halls, at the front of which there was a “bench” where senior lawyers and judges sat. From this bench, the judges conducted either real cases or demonstration (moot) cases. These “moot” cases were presented by the judges, who then asked the students questions about them and encouraged the students to argue different sides of them.

The modern law school classroom (especially for the first year foundational courses) is intended to operate in much the same way. The professor at the front of the room presents cases and asks the students to argue the merits of one side or another, as if the professor is the judge hearing a dispute. In this fashion, students are forced to hear and respond to the professors’ and other students’ arguments and perspectives, and hone their analytical, speaking and writing skills in the process. This also serves as an acculturation process, in which students learn common professional values and adopt an identity that is consistent with those values.

The pattern of legal education that evolved in foreign countries, including common law countries, was a university education, followed by several months of a full-time transition into practice course, and then a period of supervised practice. Canada is the only common law jurisdiction other than the United States that employs the graduate school model for legal education. Unlike the United States, Canada still

maintains the tradition of a transition course following law school and then a period of supervised practice.

The greatest difference between legal education in foreign countries and in the United States is that United States jurisdictions do not require post-law school apprenticeships; we “put all [our] chips on the quality of the law school education.” The ABA’s Standards and requirements ensure that any graduate of an ABA-accredited law school has met certain educational prerequisites and had certain educational experiences, such as being exposed to a wide variety of views as mentioned above.

iii. William P. Smith, III

William P. Smith, III, is General Counsel of the State Bar of Georgia. The following is a summary of his testimony and any supplemental material he presented to the Committee on this date.

Economic forces related to foreign lawyers are clearly at work now. The State Bar of Georgia is visited almost monthly by representatives from other countries (China, Brazil, the Republic of Georgia, and Australia, among others) who are interested in obtaining access to practice in the American legal system.

GATS<sup>57</sup> and NAFTA<sup>58</sup> are international treaties. Since the treaty powers of the United States Congress trump all state regulations, and GATS and NAFTA rules are

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<sup>57</sup> The General Agreement on Trade in Services, a treaty of the World Trade Organization (WTO), of which the United States is a signatory.

<sup>58</sup> The North American Free Trade Agreement, entered into by the United States in 1994.

enforceable through injunctive powers and trade sanctions by international bodies<sup>59</sup>, we need to consider the impact of GATS and NAFTA on any rules we adopt relating to the admission and subsequent regulation of foreign lawyers to practice in Georgia.

As a result of these treaties, we must treat all lawyers of foreign nations in the same manner. In fact, it appears that we have to treat all foreign lawyers in the same way we would treat American lawyers admitted in other American states.<sup>60</sup>

The Conference of Chief Justices has adopted a resolution encouraging states to look favorably upon some recognition agreement with Australia regarding admission of Australian lawyers to practice in United States jurisdictions.<sup>61</sup> If Georgia entered into such an agreement about bar admissions practices with Australia, most favored nation obligations under NAFTA and GATS would mean that we would have to enter into similar agreements with other members of the World Trade Organization.

We are also prohibited by these treaties from adopting artificial limitations on the

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<sup>59</sup> Foreign lawyers who are allegedly aggrieved by a state's adoption of admissions provisions contrary to NAFTA or GATS do not have a private right of action. Complaints are dealt with by the NAFTA Secretariat, which sits in Brussels, Belgium. Ultimately, the United States could suffer trade sanctions for a state's violation of these treaty obligations.

<sup>60</sup> Rules that provide for temporary admission of lawyers admitted only in foreign states (aka *pro hac vice* admission) would apparently have to be applied in similar fashion to lawyers from foreign countries. Under our current practices, we do allow for such admission by foreign lawyers, but we do so on a case by case basis, and it occurs only occasionally.

<sup>61</sup> Conference of Chief Justices, Resolution 7: Regarding Authorization for Australian Lawyers to Sit for State Bar Examinations (adopted as proposed by the International Agreements Committee of the Conference of Chief Justices on February 7, 2007). The resolution may be found at: <http://ccj.ncsc.dni.us/LegalEducationResolutions/resol7AustralianLawyersStateBarExams.html>.

number of foreign lawyers we will admit to practice. Also under these treaties, we cannot limit admissions to individual lawyers, as opposed to organizations. This can have profound effects in American jurisdictions, where we currently admit and license only individuals and limit the kind of partnerships and similar arrangements lawyers may enter into with non-lawyers when they practice law.

**D. Meeting of December 12, 1007**

Testimony from Erica Moeser, the Honorable Mary Staley, William Hill and William P. Smith

i. Erica Moeser

Erica Moeser is President of the National Conference of Bar Examiners, a member of the ABA Standards Review Committee, former Chair of the ABA Section on Legal Education and Admissions to the Bar, and a veteran of several ABA law school site inspection teams. The following is a summary of her testimony and any supplemental material she presented to the Committee on this date.

The National Conference of Bar Examiners (NCBE) views itself as a service bureau to bar examiners across the nation. In that capacity, it has created four standardized tests used by most American jurisdictions as part of their “bar examination.” The four tests are: (i) the Multistate Bar Examination (MBE), a 200-question multiple choice examination covering standard foundational subjects such as contracts, torts, property, evidence and constitutional law ); (ii) the MPRE (a 50-question multiple choice ethics examination, administered at a separate time and place from other parts of the bar examination); (iii) the MEE (an essay examination covering a number of topics); and (iv) the MPT (a performance test, in which the examinee is given



a “mock file” to work with. The file contains an assignment – such as writing an opinion letter or memo – and the supporting research materials to use, such as statutes and case law).

The NCBE takes extraordinary steps to validate its questions and examinations, using sophisticated tracking and measurement devices. It is also quite careful about safeguarding its exams and questions. It retires old questions on a regular basis, and publishes many old questions on its web site to help students who cannot afford the rather expensive bar review courses.

All but two states use the MBE as part of their bar examinations. About twenty states use the MBE, MEE and MPT together, and also require that applicants take and pass the MPRE separately. All states are free to weigh the NCBE test scores with scores on other parts of their bar examinations in any way they wish.<sup>62</sup> NCBE and bar examiners nationwide are beginning to have discussions about developing a test and weighting regime that is uniform, so as to increase the “portability” of scores on bar examinations. This is especially important given the number of lawyers whose practices lead them to handle matters in more than one state.

Correspondence law schools have been around for a long time, but they have never been viewed as a popular way to qualify lawyers for the bar. In fact, there are very few jurisdictions that have adopted the correspondence model as an acceptable

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<sup>62</sup> Ms. Moeser testified that Georgia’s “cut score” of 133-137 (i.e., minimum passing score on the MBE) is somewhat below the national mean of about 141-142.

form of legal education.<sup>63</sup> Online schools are emerging, and the bar admissions community is not very well educated about them. Concord may well emerge as the “gold standard,” raising the question of whether the ABA will find a way to accredit it. One notable difference between Concord and others is that Concord has found a way “to be sure that [the] student body is interacting with the faculty and interacting with one another, and that had been an early area of skepticism” within the ABA. The ABA is not immediately confronting the question of what to do with distance education, but it is open to fostering some experimentation.

In 2006, there were nearly 74,000 people taking and passing the bar examination. Of those, approximately 4504 came from non-ABA accredited schools, 3225 of whom were from California schools. Amongst the ABA-accredited schools’ graduates, 71% passed. The pass rate for those graduating from non-ABA schools was 28%.

Georgia is a national leader in the professionalism movement, as well as in bar admissions.

As to relying upon the bar examination itself as an indicator of one’s competence to practice law, Ms. Moeser opined:

[It would be] a horrible mistake to conclude . . . that the bar exam itself is the perfect separator. It is really simply a sampling of knowledge and it works best as an adjunct to an acceptable legal education . . . . [W]ere we to eliminate legal education altogether, and create an incentive only for people to take the bar exam . . . it couldn’t possibly be a two-day bar exam . . . . [P]art of what the bar exam does is accept as a matter of trust

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<sup>63</sup> As noted above, California, the District of Columbia and New Mexico are the only jurisdictions that allow graduates of correspondence schools to sit for their bar examination. See fn. 21, *supra*.

that someone who is a graduate of a law school that has met some accepted educational standards is in fact broadly educated, has gone through sufficient . . . intellectual maturation, has been steeped in enough of the professional values, that you're essentially checking them off at the . . . last station on the line before they go out into commerce and start either helping people or harming people . . . . [I]t would be unfortunate that I left you with the impression that all you have to do is allow anyone to take the bar exam and . . . by passing that bar exam they have brought enough to the table for you to be able to license them with confidence, I don't think that's the case.

ii. Judge Mary Staley

The Honorable Mary Staley is Judge of the Superior Court in Cobb County, Georgia. The following is a summary of her testimony and any supplemental material she presented to the Committee on this date (other than the Report of the State Bar of Georgia Legal Education Study Committee referenced above).

High standards for bar admission are critical to protect the consumers of Georgia, who are generally not in a good position to evaluate the skills of lawyers they hire. They "deserve and need in their family problems, in their business problems, in their criminal law problems, the highest standard that we can provide." For that reason, Georgia's standards for admission have increased steadily in recent years, now requiring that all candidates for admission graduate from college and an ABA-accredited law school.

Lawyers are trained as law students to challenge each others' ideas. They are also, in accordance with ABA minimum standards, exposed to training in ethics and professionalism. Law schools not only teach ethics and professionalism, they also exhibit and model it through their professors, enforcement of their Honor Codes, etc.

[E]ducation is important, but education doesn't make a person in the terms of just knowledge. You can get on the computer and you can read .

. . . and you can learn all sorts of things. But it's the interaction of human beings one-on-one in a classroom talking about ideas, setting standards, enforcing standards, that human interaction that develops a person to be a lawyer . . . those of us who went through law school and learned to have to stand on your feet and think on your feet, and as they said, think like a lawyer.

iii. William B. Hill, Jr.

William B. Hill, Jr., currently in the private practice of law, served as Deputy Assistant Attorney General of Georgia and as a State Court Judge and then Superior Court Judge in Fulton County. The following is a summary of his testimony and any supplemental material he presented to the Committee on this date (other than the Report of the State Bar of Georgia Legal Education Study Committee referenced above) .

Students who enter law school generally have higher undergraduate grade point averages and higher LSAT scores than ever before. They are also more well-traveled and well-educated than ever before. Our lawyers are also asked to handle more and more complex problems.

[T]he bar exam is the minimal requirement but schools are educating the students to practice law above the minimal requirements. So the conversation we should be having is not how do we maintain our current requirements to sit for the Georgia bar, but how do we push them up, and as we push them up we force our law schools to push the students that they're graduating higher, so that they are practicing above the minimal standards.

We should never have a discussion where we're talking about lowering the educational standards. And when you look at what's delivered inside the four walls of our law schools, they are educating these people to think critically and that's what law school is about. It's not about memorizing laws and statutes . . . you can go find that stuff on the internet, but it's how to think critically. How to listen to a client, cut out all the background noise, identify the one or two outcome determinative issues, and then plot a course to get your client where he or she needs to be. That is a skill and a talent and . . . you can't learn it other

than in an environment in which there is personal interaction.

iv. William P. Smith, III

William P. Smith, III, has been General Counsel of the State Bar of Georgia since 1984. Previously, he practiced law in Decatur, Georgia. The following is a summary of his testimony and any supplemental material he presented to the Committee on this date.

The State Bar of Georgia was incorporated in 1964 and has kept disciplinary records since then. Out of every 100 lawyers admitted to the State Bar of Georgia, 3.25 of them suffer some form of discipline ranging from a letter of admonition to permanent disbarment. If you divide Georgia lawyers into two categories, graduates of ABA-approved schools and graduates of other schools, there is a significant difference in the average number of discipline cases per 100.

Amongst graduates of non-ABA-accredited schools, the discipline rate is 8.13/100; amongst graduates of ABA-accredited law schools, it is only 2.63/100. Amongst all the accredited schools in Georgia, the average ranges from 1.8/100 (Georgia State) to 3.94/100 (Mercer). Amongst the unaccredited schools, the average ranges from 7.11/100 (Atlanta Law School) to 8.97/100 (John Marshall).<sup>64</sup>

**E. Meeting of February 13, 2008**

i. Jerome Braun

Jerome Braun served as the Director of the Office of Bar Admissions in Georgia from 1982-1990, when he became Senior Executive, Office of Admissions for the State

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<sup>64</sup> Since John Marshall was provisionally approved by the ABA on February 14, 2005, there have been no recorded instances of discipline.

Bar of California, until his retirement in 2005. The following is a summary of his testimony and any supplemental material he presented to the Committee on this date.

There are now over sixty law schools in California. About twenty of them are ABA-approved, ranging in quality from excellent (e.g., Stanford) to mediocre. All but one of the ABA-approved law schools are non-profit.

The remainder, about equally divided, are either accredited by the California Committee of Bar Examiners or not accredited at all. About ninety-five percent of the unaccredited schools are for-profit.

Many of the unaccredited schools are correspondence or online schools, with as few as ten to fifteen students at a time.<sup>65</sup> Students who attend these schools often have no connection to California other than the fact that they must take both the “Baby Bar” and the California bar examination (if they pass the “Baby Bar” and graduate from law school) in California. There is no requirement that they attend any classes in person.

Several of the California-accredited schools are similar to ABA-approved schools, but fall short of some ABA requirements, such as library size. Many of them are found in remote areas where there are no ABA-approved schools. Most of these schools have less than one hundred students.

Students who attend the unaccredited schools have to take the First Year Students’ Examination (commonly known as the “Baby Bar exam”) at the end of their

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<sup>65</sup> In terms of regulation, California basically treats online and strictly correspondence schools the same. State rules only distinguish between resident and non-resident schools. To qualify as a “resident” school, the school must have its principal place of business in California.

first year of study.<sup>66</sup> This examination consists of fifty multiple choice questions and four essay questions dealing with criminal law, property, contracts and torts. The pass rate on the examination is generally “abysmal,” ranging from ten percent to the mid-twenties.

The bar exam in California serves a different purpose than it does in many states where the bar exam serves as a check to make sure that applicants have mastered the basic information in law school to be able to go into practice.

The bar exam in a state that allows people broad access to the examination has to serve different purposes. It really has to be a weeding out examination and California’s is. And you will see that whereas . . . the ABA schools in Georgia . . . had pass rates that were in the middle to upper nineties . . . . ABA law schools in California . . . have pass rates that are in the eighty percent – seventy-five to eighty percent level. And even some schools like Stanford, with very famous people, sometimes take the bar exam and are not successful. . . . But some of the ABA law schools in California are very, very weak . . . and that brings down the ABA level.

In June 2007, there were 496 correspondence law school students who took the examination, 20% of whom passed. The passing percentages amongst those schools who sent thirty-five or more first year students to the examination were: (i) Abraham Lincoln University School of Law (117 takers, 19.7% passing); (ii) Concord Law School (237 takers, 19.8% passing); (iii) Northwestern California University School of Law (64 takers, 26.5% passing); and (iv) William Howard Taft University (39 takers, 15.4% passing).

As for first year students at unaccredited schools, there were 204 takers in June

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<sup>66</sup> Students at California-accredited law schools who do not have at least two years of college must also take the “Baby Bar.”

of 2007. The passing percentages amongst those schools who sent thirty-five or more first year students to the examination were: (i) California Southern Law School (72 takers, 22.2% passing); and (ii) Pacific Coast University College of Law (37 takers, 13.5% passing).

The passing rate percentages can be very misleading because the number of takers from the correspondence or online schools tends to be so small. In addition, these schools, often owned and run by practicing lawyers, spend a lot of time tutoring their students for both the “Baby Bar” (which they must take in California, regardless of where they live) and the actual bar examination, which is also administered in California.

On the actual bar examination in July of 2007, California’s pass rate for takers who graduated from California ABA-approved schools was 76%. For graduates of California accredited law schools, the pass rate for July 2007 was 32%. For graduates of California’s unaccredited schools, the pass rate in July of 2007 was 21%. For graduates of California’s correspondence law schools, the pass rate in July of 2007 was 31%.



## **Part V.**

### **A. FINDINGS**

After hearing the testimony of witnesses, reading and reviewing materials presented to the Committee, and engaging in deliberations, the Committee concludes as follows:

1) That the judicial branch of government, specifically the Supreme Court of Georgia, is the appropriate entity to establish the standards for admission to the bar and to govern the practice of law in Georgia.

2) That to protect the public and maintain appropriate standards for the practice of law in Georgia, the Supreme Court should continue to require that applicants for admission to the bar meet high standards for education, character and fitness. The Court should not eliminate or reduce in any way the existing educational requirements for admission to the bar.

3) That the American Bar Association (ABA) is the accrediting agency upon whose standards the Supreme Court of Georgia, the Office of Bar Admissions and the Board of Bar Examiners should continue to rely in determining whether a law school's educational program ensures that its graduates have been exposed to the training in law, ethics and professionalism necessary to practice law in a competent, ethical and professional manner.

4) That graduation from an ABA-approved law school is an acceptable and appropriate, albeit not exclusive, indicator that one has been properly exposed to the legal, ethical and professional training one needs to enter into the practice of law.

5) That the bar examination is an appropriate method of testing an applicant's minimal competence in legal knowledge and training.

6) That passing a bar examination, in and of itself, should not be relied upon as an appropriate indicator of a bar applicant's ability to practice law in a competent, ethical and professional manner.

7) That the current Waiver Process and Policy (adopted April 8, 2005) sets forth the following eight categories of information that the Board "*has found very helpful*" (emphasis supplied) in considering waiver requests:

1) A statement as to why the applicant's educational background does not meet the standard (i.e., why no undergraduate degree; why no qualifying J.D. degree; etc.);

2) A thorough description of the relevant educational history (schools attended, course of study and curriculum with transcripts of educational achievement from those schools, letters of reference particularly from law faculty, etc.);

3) Documentation of any postgraduate legal education (LL.M or S.J.D. degrees);

4) Documentation of membership of the bar of another state or another country, if applicable;

5) Description of employment history, particularly any law-related employment (if the member of the bar in another state or another country, a description of legal practice and any significant achievements in the practice of law);

6) A "Dean's" letter, which is a statement from a Dean or professor at an ABA-approved law school analyzing the legal education received and stating whether or not it is the equivalent of an ABA-approved legal education. The Board may also request a "Dean's" letter if it feels that such a review would be helpful to determining "good cause shown by clear and convincing evidence";

7) A statement as to career goals and whether or not the applicant has obtained law-related employment in Georgia; and

8) A narrative statement as to why the applicant feels that good cause by clear and convincing evidence has been established and any other documentation, material or information that the applicant feels is relevant to the establishment of good cause.

8) That the current Waiver Process and Policy *recommends* that each applicant

attempt to provide information as listed in (7) above, but it does not *require* that an applicant provide any specific information or use any particular format to present the information he or she deems appropriate to support a waiver request.

9) That the standards for admission to the practice of law currently employed by the Georgia Board of Bar Examiners and the Office of Bar Admissions are reasonable, fair and effective.

10) That the Board of Bar Examiners implements the Rules Governing Admission to the Practice of Law in Georgia and Waiver Process and Policy appropriately, but that this Committee's recommended modifications to the policy (presented below) will improve the current system by providing applicants with the opportunity to supplement their applications and providing those applicants whose waivers are denied with specific information regarding the basis or bases for denial.

## **B. CONCLUSIONS AND RECOMMENDATIONS**

It is the consensus of the Committee that no changes should be made at this time to the Rules Governing Admission to the Practice of Law in Georgia governing educational eligibility or any other relevant issue.

It is the further consensus of the Committee that, in evaluating an application for a waiver of the educational requirements of the Rules Governing Admission to the Practice of Law in Georgia (February 2008), the Board of Bar Examiners should consider the following criteria:

- 1) The educational background of the applicant;
- 2) The quality of the applicant's educational achievements;

- 3) The applicant's substantive employment history; and
- 4) The career goals of the applicant.

We further conclude that an objective, specific and transparent waiver policy should be used, and that the policy should specify what materials and information the Board of Bar Examiners requires the applicant to submit in order to consider a waiver application in a fair, meaningful and comprehensive manner.

The current process provides for the fair and proper consideration of the criteria listed in 1 – 4 above, but certain changes (presented below) will improve the Waiver Process and Policy. At the same time as we recommend the changes below, we emphasize that it is crucial that the Board retain its discretionary powers to grant or deny a waiver, that each applicant's request be considered on its own individual merits, and that the Court impose no "black letter rule" which eliminates the Board's discretion in ruling on waiver applications.

The Committee recommends that the following changes be made in the current Waiver Process and Policy:

- 1) That the written waiver policy specify the four criteria listed above as those which the Board of Bar Examiners will consider in deciding whether or not to grant an applicant's waiver application;

- 2) That in reviewing applications for waiver of educational eligibility standards, the Board *require* that every applicant provide the Board with specified information or clear and convincing evidence as to why such information should not be required of the applicant;

- 3) That category 6 in the current Waiver Process and Policy be restated to

eliminate any suggestion that the Board has a duty to obtain a “Dean’s Letter,” if the applicant fails to submit one. We recommend the following language:

6) A “Dean’s letter,” which is a statement from a Dean or Professor of an ABA-approved law school analyzing, in depth, the legal education received by the applicant and stating whether or not it is the equivalent of an ABA-approved legal education.;

4) That if any applicant’s waiver application fails to meet the required written standards, the Board of Bar Examiners direct the Director of Admissions to advise the applicant, in writing, of: (i) the information that has not been properly submitted; and (ii) the fact that the application will not be acted upon until such information has been provided or the applicant provides clear and convincing evidence as to why it need not be provided in support of the applicant’s waiver application; and

5) That if the Board of Bar Examiners denies an application for waiver of the educational requirements, the Board of Bar Examiners direct the Director of the Office of Bar Admissions to provide to the applicant, in writing, a clear statement that the application has been denied and identification of the category or categories of information that do not meet the standards for approval and why.

In conclusion, it is the consensus of the Committee that these modifications in the procedures for processing requests for waivers of educational requirements to take the Georgia bar examination will make the process objective, specific and transparent. These modified procedures, combined with the existing educational and related requirements for taking the bar examination, will best serve the interests of the citizens of the State of Georgia.