

WHO MOVED YOUR CHEESE? CONFESSIONS OF A RAT

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THE care and feeding of ABA/AALS Site Inspection Teams becomes critical every seven years in the life of a law school.¹ Because of the annual turnover in our ranks, many deans have yet to experience the unique combination of terror and fatigue that is a site inspection.² For the purposes of this essay, we will not dwell on the benefits to the legal profession and society that flow from regulating law schools,³ much less propose lessening the regulatory detail or argue that a ten-year cycle makes more sense—equally self-evident propositions. Nor will we discuss the self-unfulfilling circular flight pattern of schools seeking provisional approval.⁴ If your school is facing an inspection in the next two years, there is still time to plan for a successful team visit; don't worry, I'll tell you when to panic. If your school faces an inspection during this academic year, panic.

Deans who have not served on a site inspection team should volunteer immediately. I have learned a great deal every time,⁵ including the number of good ideas I steal and the number of other ideas that the visit casts into doubt. I almost feel guilty while on campus because the value of the visit to me seems to outweigh

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1. "A site evaluation of a fully approved law school shall be conducted in the third year following the granting of full approval and every seventh year thereafter." ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS R. 9, at 77 (2003-2004) [hereinafter ABA STANDARDS]. If the school is also a member of the AALS, as are most fully-approved ABA law schools, the AALS appoints one member of the team who writes a separate report focusing on AALS membership requirements. During the site inspection visit, the AALS "summarian" acts as a full member of the ABA team, as well.

2. The Section on Legal Education and Admission to the Bar, through the Consultant's Office, presents detailed information sessions for schools facing an upcoming inspection, as well as training for the chairs and members of site inspection teams, in addition to voluminous written materials. See The American Bar Association's Role in the Law School Accreditation Process, available at <http://www.abanet.org/legaled/accreditation/abarole.html> (last visited Oct. 30, 2003).

3. *But see* George Leef, *Lowering the Bar* FORBES, July 21, 2003, at 36. Mr. Leef concludes, "If we were really concerned about making legal services more affordable and enabling more minorities to have a shot at entering the profession, we would turn back the clock to the days before legal education was controlled by the lawyers' union." *Id.* This sentiment reminds me of the discussion of the line item veto by a professor who said, "The Confederacy had the line item veto. Like the Confederacy, it failed to catch on."

4. If you think proving a negative is hard, try attracting good students who are likely to pass the bar when good students are usually too smart to attend a law school that lacks provisional approval. Well-financed start-ups seem to have the best chance at quick provisional approval. As Danny DeVito's character says in *Heist*, "Of course you want money. Everybody wants money. That's why they call it money." *HEIST* (Warner Bros. Pictures 2001).

5. Although I have served as a member or chair of six site inspection teams, it goes without saying that this essay reflects my personal opinion and does not represent the position of the ABA or the AALS. Since it goes without saying, I'll put it in a footnote.

whatever benefit I can give the school. When writing my sections of the report later, I no longer feel guilty

A SELF STUDY THAT SINGS

About two years before the site inspection, the dean should call a faculty meeting to discuss the upcoming inspection, briefly review the ABA and AALS expectations, suggest that everyone re-read (or read for the first time) the ABA Standards for the Accreditation of Law Schools and the AALS By-Laws, identify any issues that the inspection team or their report may identify, especially if they can be addressed promptly, and propose how and when the self study should be written.⁶ While the Dean should take the leading role in writing vision statements and strategic academic plans (while ensuring that there is faculty buy-in), the self study must be primarily a faculty document. This does not mean that the faculty must write the document as a committee of the whole—a concept that will derail anyone's train of thought—but that there is ample opportunity for faculty input, discussion, and approval of the final draft. The dean should convince the faculty that drafting, reviewing, and approving a self study is not an onerous chore, but an exciting chance for self-reflection, vision, and honesty about the institution. All deans are so persuasive.

There are basically two models for self study authorship: appoint a small faculty committee to gather information from various law school and university offices and write the first draft or appoint a respected faculty member who can write and is capable of meeting a deadline. The committee will always be slower and less organized than a good professor, but the faculty culture and the availability of a willing, competent individual may determine which model you choose. Whether a committee or an individual, the drafter should begin work at least one year before the inspection. The drafter must have the reports and letters from the ABA and AALS that followed the last inspection, the most recent reports and letters from the ABA about foreign programs or LL.M. offerings, copies of the Standards and By-Laws, law school budget and university financial information, and any recent strategic academic plan or other documents about the law school's aspirations. The drafter should then seek current data from law school and university offices to include in the report, interview deans and directors about their roles and responsibilities, interview faculty committee chairs, and discuss issues in the self study with as many faculty members as possible while the first official draft is being written. (The first official draft likely will represent multiple drafts by the drafter.)

The first draft should be delivered to the faculty for its initial review at least six months before the inspection, with copies to key university and law school administrators. After the first wave of discussion and correction of facts, the faculty

6. Standard 202(a) actually requires that law schools "shall develop and periodically revise a written self study, which shall include a mission statement. The self study shall describe the program of legal education, evaluate the strengths and weaknesses of the program in light of the school's mission, set goals to improve the program, and identify the means to accomplish the law school's unrealized goals." See ABA STANDARDS, *supra* note 1, at 16. I have never seen a self study written other than to prepare for a site inspection or revised between site inspections. If there is one, it should be enshrined in the ABA Museum.

should begin the process of approval. That may start at the level of faculty committees, with a revised self study presented to the entire faculty or it may be a series of faculty meetings devoted to discrete portions of the self study. Consistency of style and readability does matter; substantive corrections or additions approved by the faculty should be written by the drafter so that the document is not disjointed.

The final draft of the self study after ample time for input from the faculty and the central university, should be approved by the faculty at least three months before the site inspection. That allows sufficient time for printing,⁷ assembling the exhibits, publications, and other material that accompany the self study. The resulting box of paper is sent to the ABA, AALS, and the seven site inspection team members.

During the process of writing the self study, you may discover that the law school does not comply with a Standard or By-Law, perhaps because they were amended in the past seven years. While the dean should be aware of such changes and continuously ensure that the law school complies, it could happen. If at all possible, take the time and spend the resources to eliminate the issue before the self study is finalized. A school will not be sanctioned for years of non-compliance if, at the time of the site inspection, the school is in compliance, intends to remain in compliance, and appears to be able, financially or otherwise, to remain in compliance.

How long should the self study be? For most law schools, something in the neighborhood of 75-100 single-spaced or printed pages is adequate. Many self studies are longer because they revel in trivia, include matters reflecting committee compromises, or are simply verbose. The annual and site inspection Questionnaires that the law school completes includes detailed statistics; the self study need not repeat them. If the team needs to know more about a particular topic (e.g., how does the library work at a cellular level), they can ask during the visit or in follow-up questions afterwards while writing their report. In addition to the Questionnaires, numerous exhibits, publications, and copies of other documents are necessary to support the self study. A reference to an exhibit is sufficient, rather than a detailed synopsis. So long as it satisfies the Standards, there is no reason why the self study cannot be readable and interesting.

How candid should the self study be? Obviously, it must not contain false or misleading information, but every school has blemishes that need not be discussed graphically in the self study. There is no guarantee of confidentiality when it passes through so many hands,⁸ for one thing, and then there's defamation. Probably every member of every site team has learned negative facts about a school during the visit, understood why those matters weren't in the self study, and never mentioned them in the report. The dirty linen may involve feuds, within or without the law school,

7 Rather than just photocopying the self study, consider spending the money to print it. That may impress the accreditors, but it also makes it useful for other audiences, such as boards of visitors or alumni support groups. However, don't count on royalties from the sale of the self study to fund scholarships, chairs, or your Jaguar.

8. ABA Procedural Rule 25 provides for confidentiality of accreditation information and documents. ABA STANDARDS, *supra* note 1, at 93. If embarrassing information from a self study is leaked, the site inspection team and the ABA are the least likely suspects.

unfortunate personalities, scandal in the student body faculty, or staff, or weird pending litigation. It may highlight an underlying problem that is clear from the self study, or furnish the personal background for decisions. Or, it may just be interesting gossip.

At the same time, do not paper over every controversy or dispute about the recent history or direction of the law school. A faculty divided over important law school matters or a principled conflict between law school needs and university priorities should be fairly portrayed. A dean who manipulates every part of the process that is manipulable might receive a virtually perfect report, but that school will get no helpful advice from the visiting team, nor pressure from the accreditors that might convince the central university to improve law school conditions. The dean knows better than anyone if there is non-compliance or marginal compliance with the Standards and that it usually results from financial constraints. While today's university presidents are not intimidated by a negative ABA or AALS report, an honest, but sympathetic report may help accelerate improvements in the law school.

PREPARING FOR THE VISIT

Depending on the circumstances, the Consultant's office may consult⁹ with the dean about the proposed chair of the team or the team members. My impression is that this does not happen in every case, and the practice may vary somewhat over time. The dean has no official role in the naming of team members, but if the dean knows of issues at the law school suggesting particular expertise that should be represented on the team, contacting the Consultant's office with a request for certain kinds of team members is appropriate. The Consultant's staff will inform you of the composition of the team well in advance of the visit. You or someone on your faculty will know almost all of them, with the possible exception of the university administrator or lawyer/judge, and then you will know someone who knows them. If a team member has a possible conflict of interest, the dean should notify the Consultant's office; the Consultant's office will wish to avoid even the appearance of impropriety.

You will work with the chair of the team to schedule the date of the visit; the Consultant's office will only specify that it is a fall or spring visit. Make it neither too early in the semester to give a complete picture, nor so late in the semester that everyone is consumed with preparing for finals. Avoid spring break, as well as the days just before and after it, when a quorum of students and faculty is iffy. Check the schedules of the president and provost to be sure they are available when the team is present. If yours is an independent law school, ensure that the chair of the board of trustees is available and, perhaps, chairs of trustee committees. While you are looking at calendars, schedule a short vacation for yourself after the team leaves.

Your assistant should offer to arrange flights¹⁰ for the team. You will provide housing. The hotel should be as nice as possible as close as possible to the campus. Keep the team happy by putting them in hotels that turn down covers and place

9. Note to Ed: Leave that in, that's what the Consultant is supposed to do.

10. The flights should be on FAA-certified carriers, despite the cheaper fares on Ed's Airlines. As deans know, NEVER EVER mess with someone's frequent flyer miles.

mints on pillows *and* keep them from driving far to and from school. Driving takes time and energy better devoted to visiting classes and eating in fine restaurants. Driving is also one of the leading causes of car wrecks, a huge distraction during the visit. Remember that every member of the site inspection team is equal, but the chair is more equal. Reserve a hotel suite for the chair with a large table or conference room for team meetings.

Rent the team a large¹¹ van so they can travel together to and from school and meals so they will not be lost separately. If they lose their way, you want them to do it together. Ask their counterparts on your faculty to meet each team member at the airport, e.g., the librarian meets the librarian, and convey them to the team hotel. Make dinner reservations for the team in nice restaurants near the campus.¹² In addition to the goodwill you earn by providing top-notch accommodations and dining, these people deserve to be treated well. They spend approximately one week of their year on this visit, including the preparation and report writing. For free. Bury them in kindness.

Select a room in the law school for the team to use as an office, snack bar, and retreat during the 2½ days they are on campus. The room should be centrally located, but not beside classrooms, offices, or other sources of noise pollution. Or, where the team might fear being overheard. The room should be large enough to accommodate the entire team easily with ample work space and with shelving or tables for extra copies of all the materials sent to the team, faculty publications, and the other information requested during the visit. (Even if the team read the materials in advance of the visit, it is not practical to bring it all with them.) There should be several computers with internet access in the room, as well as wiring for laptops, private phone lines, and other supplies: pens, paper, and trinkets with the law school logo. And, most importantly, the room should be supplied with fresh coffee, juices, soft drinks,¹³ muffins, fruit, cookies, and other snacks. All day long.¹⁴

Finally ensure that all professors are on campus during the two full days when the team is present. The team will try to visit classes and speak with each of them

11. For Pepperdine's site inspection last spring, I rented a team van alleged to be capable of holding seven people. This was true if two of the seven were as small and lithe as ballerinas. And, if no luggage was larger than a Subway take-out bag. If you can't find a large van, rent two Lincolns.

12. Speaking of the Subway take-out bag, on the last night of the Pepperdine inspection, there was a mix-up in the dinner reservation for the team at Wolfgang Puck's Malibu restaurant. It was not found under my name, Pepperdine Law School, or the name of any member of the team. (The reservation may have been under "Jim White," just out of habit, but that occurred to us too late.) The resourceful, yet practical team, led by its resourceful, yet practical chair, Professor Laura Gasaway, went two doors down to Subway and carried food to the hotel for a working dinner. I saved the receipt for the ABA Museum since it represents the smallest dinner bill incurred in connection with any ABA activity. See *supra* note 6. The more I think about it, an ABA Museum is a good idea. Everybody else has a museum. See, e.g., Virtual Library Museums, at <http://vtmp.museophile.com/> (last updated Sept. 25, 2003).

13. Especially adequate supplies of Diet Coke.

14. I have been on inspection visits where the fleas had fled the hotel, where there were no good restaurants in the law school's or neighboring zip codes, and where faculty members sneaked me whole sections that "must be placed in the report to show what this dean is up to." These things happen. The only really unforgivable lapses are stale coffee, running out of Diet Coke, or weak snacks. If it's supposed to be a blueberry muffin, I want to see blueberries in it.

at least once; those with committee or other duties may be contacted several times. Prepare the law school directors and staff for the visit. While they should be candid and helpful, if there is any doubt about the propriety or practicality of giving information to the team, or information in a certain form, tell them to check with the dean first. If requested information cannot be compiled before the team leaves, it can be supplied later

THE VISIT

Typically, the visit begins with a tour of the law school and dinner with the dean and a few law school administrators. This is a time to discuss any major issues raised by the self study and any changes in the law school or university since the self study was finalized. The chair will outline the team's goals for the visit, emphasizing that the team is only a fact-finding body and that its report will go to the Accreditation Committee for determinations about compliance with the Standards. In the same way, the AALS summarian will report facts to the Membership Review Committee and the Executive Committee of the AALS.

During the visit, the team will endeavor to visit all classes, meet with the faculty, individually and as a group, have entrance and exit interviews with the president and provost, meet with students, interview key staff members, and, depending on the schedule, attend a reception with alumni, board members, and local lawyers and judges. The chair will deliver the same message about the purpose and limitations of the visit to each group. The chair of the committee, as well as individual team members, may visit the deans' suite repeatedly to verify information, identify the proper faculty or staff person to ask about certain matters, and list additional information or statistics that would be helpful.¹⁵ Neither the dean, nor any associate deans, should schedule any other meetings, or be off campus, while the team is on campus.

On the last day of the visit, the team conducts exit interviews with the dean and president separately, unless the president wants the dean present. If separate, the team tells the dean what it will tell the president, preventing surprise. The team will

15. During Pepperdine's recent inspection, I felt as unloved as the Maytag repairman because no one was visiting me, as I had repeatedly visited with the dean when I helped inspect schools. On the afternoon of the second day, I sent to the team's room the Top 10 Reasons Why None of the Site Team Visited Dean Lynn, including:

- (9) Afraid we would lose our train of thought while staring out his window at Catalina Island.
- (7) Professor X says Lynn is a Great Big Hamster.
- (5) We can't trust a guy who has a last name for a first name.
- (1) One word: Bowties.

The team fired back the Real Ten Reasons The Site Guys Haven't Been To The Dean's Office, including:

- (10) Most of us spent too much time being called to the Dean's office while students.
- (8) We're having enough trouble finishing all the food that keeps coming into our room to get out of here to see anyone.
- (6) We've been searching for the Faculty Appointments committee to see if there are any openings in our field.
- (1) Carr's bowties are bad enough scenery all by themselves. (Referring to Carr Ferguson, distinguished scholar, practitioner, and suspected author of the team's list).

briefly remind the president that its purpose was simply to find facts and then summarize the key facts, both good and less good. The chair and the team will attempt to answer any questions, but will not debate its findings at that meeting. Occasionally, a president will bluster or filibuster, but they are usually quite gracious and appreciative of the team's work.

AFTER THE WHIRLWIND

Following the brief vacation the dean is allowed, any follow-up requests for information from the team should be dealt with promptly. The team's report is due about 60 days after the visit ends and is then reviewed by the Consultant's office and ABA general counsel for form, content, and compliance with the Consent Decree under which the accreditation process is operating.¹⁶ Thereafter, the law school receives a copy of the report and is given a chance to correct any errors or omissions in the report. The report, together with the law school's response, goes to the Accreditation Committee, which will determine whether the school complies with the Standards or whether it requires further information before making that determination. Fully approved schools will be told that accreditation continues while the committee and the law school exchange letters, resolving and narrowing the issues. The process can last for years following a site visit and, occasionally, remains open when the next visit takes place.

When the first wave of letters and responses is completed, your law school is six and one-half years away from its next inspection. Or, by my count, four and one-half years away from beginning the next self study. Time flies when you're having fun!

16. See The American Bar Association's Role in the Law School Accreditation Process, available at <http://www.abanet.org/legaled/accreditation/abarole.html> (last visited Oct. 30, 2003). While the AALS timetable is not linked to the ABA's, the process is essentially the same.