TO BE OR NOT TO BE ....*

*Parham H. Williams***

ACCREDITED, that is!

Over the past three decades I have done the dean thing at three law schools: a long established state law school;[1] a long established private law school;[2] and a brand new private law school.[3] The first two were blessed early on with the badges of acceptability: full approval by the American Bar Association and membership in the Association of American Law Schools. The third law school had neither.

Although Chapman University was among the earliest institutions of higher learning established in California, having opened its doors in 1861, the University trustees only determined to establish a law school in the early 1990's. Following an encouraging Feasibility Study, the law school was launched in 1995 with high expectations for instant success. Actually, the expectations were fully justified. Chapman University's main campus is located in the heart of Orange County, California, a county with a population in excess of three million which, in 1995, had no American Bar Association-approved law school. Over the 134 years of its existence, Chapman had developed respected academic programs—undergraduate and graduate—and enjoyed a gratifyingly high level of respect as a significant regional university. Its leadership was visionary and energetic, its endowment had quintupled over the past decade, and its academic programs included the well regarded Argyros School of Business and Economics, the highly respected School of Music, the excellent Wilkinson College of Arts and Sciences, and the top-tier ranked Dodge College of Film and Media Arts. Surely, similar success would immediately crown the new law school.

However, "the best laid schemes o' mice and men gang aft a-gley."[4] Once again, the truth embedded in the good Scot's rhyme was reaffirmed, for now the arcane vagaries embedded in the California rules for admission to the bar erupted in the path of the enterprise. The populist inclinations of the legislature had decreed that the path to the bar examination be open to all, including not only

* My apologies to the Bard.

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1. The University of Mississippi School of Law was established in 1854.
2. The Cumberland School of Law (now a part of Samford University) opened its doors in 1847.
3. The Chapman University School of Law enrolled its initial class in the fall of 1995.
4. Robert Burns, *To a Mouse*, *in* EIGHTEENTH-CENTURY POETRY 459 st.7 (David Fairer & Christine Gerrard eds., 1999).

students graduating from American Bar Association-approved law schools, but students receiving degrees from schools accredited by California's Committee of Bar Examiners, and students completing work at schools that were accredited by no one.[5] To stem the predictable rush to take the bar examination by graduates of unaccredited schools, the legislature added a limiting provision by creating the First Year Law Students Examination, popularly known as the "Baby Bar."[6] The limitation applied only to students enrolled in unaccredited law schools, and required them to take the Baby Bar after the first year of legal education. If they achieved a passing score, they could continue in the unaccredited law school and, upon graduation, take the regular California bar examination. If they failed—the fate of nearly eighty percent of those who annually took the Baby Bar—it was back to selling used cars.[7]

Unfortunately for Chapman, its brand new law school necessarily fell into the "unaccredited law school" category. Its newly enrolled students thus faced the daunting obstacle of the Baby Bar at the end of their initial year. Hardly the sort of prospect that would encourage academically well qualified students to choose an unaccredited law school. Nonetheless, the enterprise forged ahead in an optimistic mode. If ABA provisional approval could be obtained before the first students were scheduled to graduate in May, 1998, all would be well. Whether students had taken and failed the Baby Bar, or simply had failed to take it at all, their graduation from an ABA provisionally approved law school would entitle them to take the regular California bar examination—or the bar examination of any other American jurisdiction. So, in the fall of 1996, the school undertook a Self Study applied for ABA provisional approval and hosted an ABA Site Evaluation Team. Unfortunately, the ABA Accreditation Committee declined to grant the coveted provisional approval. The results were predictable: a plunge in the morale of students and faculty, and a growing apprehension among students that the school might not achieve early ABA approval.

Enter a new cast—or at least a new dean.

The initial priority was to develop an action agenda that would position the Law School for a second attempt to secure provisional approval. The faculty responded effectively to the myriad challenges. Girding its collective loins, it set about the task of preparing an entirely new Self Study together with a Long Range Strategic Plan that provided the much needed road map for orderly development of the law school. Faculty committees drafted a set of policies imposing more stringent admission and retention standards and mandating a more rigorous grading scale.[8] Construction began on the new $30 million law school building on Chapman's beautiful main campus in Orange, California, and the University committed substantial merit-based scholarship funds to attract well qualified students. A new application for provisional approval was prepared

5. CAL. BUS. & PROF. CODE § 6060(e) (West 2005).

6. *Id.* § 6060(h).

7. The year after Chapman opened its law school, the legislature amended sec. 6060(h) so as to give students three bites at the Baby Bar apple, rather than one. *Id*.

8. The mean GPA in first-year classes could be no higher than 2.3 (the top grade being a 4.0); the mean GPA in upper level classes could be no higher than 2.5.

and submitted, and a second ABA Site Team came to visit. This time all the pieces came together: the Accreditation Committee recommended provisional approval, the Council of the Section of Legal Education and Admissions to the Bar added its imprimatur and, in February, 1998, the ABA's House of Delegates made it official.

Game over. Right?

Wrong!

Under then existing Rule 9(a) of the Rules of Procedure for Approval of Law Schools,[9] "[a] site evaluation of a provisionally approved law school shall be conducted each year." This necessarily required the annual preparation of a new Self Study and Site Evaluation Questionnaire,[10] and the visit of a full Site Evaluation Team of six or seven members. It should be noted that the costs to the school of preparing for and hosting a full-scale site evaluation are not insignificant. These costs are both tangible and intangible. Numbered among the former are the required "inspection fee," then fixed at $25,000[11] for the initial visit made in conjunction with the application for provisional approval, and $9,000[12] for each subsequent visit during the school's provisional status. Additional tangible costs included the travel, lodging, meals and related expenses that the school must reimburse to the visiting site team members.[13] The intangible costs are more pervasive and long-lived. In Chapman's case, a faculty Task Force, charged with the responsibility of collecting data and drafting a new Self Study, was established within days of the grant of provisional approval. The faculty and administrative staff were engaged periodically during the coming months in the myriad tasks associated with an intense self analysis and a revisiting of the objectives and goals expressed in the previous Self Study. Perhaps it could be argued that, having once fixed upon goals and identified strategies in the initial Self Study, the faculty thereafter could more usefully focus its time and energies on such matters as teaching, counseling and scholarship. After all, how many times can one productively re-examine one's own navel?

In any event, Chapman's navel was destined to be scrutinized four more times after the grant of provisional approval. Fortunately, each site team was peopled with experienced, knowledgeable legal educators who took seriously the task of evaluating the school, and whose wise counsel proved invaluable to the continuing development of faculty, students, law library, clinical programs, and

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9. The Rules are promulgated by the Council of the Section of Legal Education and Admissions to the Bar.

10. *See* AM. BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 101, Interpretation 101-1.

11. The Council has fixed this fee at $26,000 for 2005-06.

12. For 2005-06, the Council has fixed the fee for a full site evaluation at $11,000; the fee for a limited site evaluation will be $5,500. AM. BAR ASS'N, RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Rule 29 (Fees) (proposed May 2005) [hereinafter ABA RULES OF PROCEDURE], http://www.abanet.org/legaled/accreditation/sitevisit/fees.html (last visited Nov. 29, 2005).

13. For Chapman, these reimbursements and entertainment expenses averaged $10,100 per site inspection.

related functions. When the last team arrived in January, 2002, it found a radically different institution than the one which had opened in 1995. Housed in a new building acclaimed nationally for its aesthetics and functionality, staffed with a faculty that included two former U.S. Supreme Court judicial clerks, teaching a student body whose median LSAT scores ranked them in the upper forty percent of American law schools, enjoying an enviable faculty/student ratio of 13/1, and offering a curriculum that included an award-winning U.S. Tax Court Clinic, a highly effective Externship Program, an invaluable Ninth Circuit Appellate Advocacy Clinic, an exciting Constitutional Litigation Clinic, and an innovative Elder Law Clinic, the new law school readily won full ABA approval.

This time the game really is over. Right?

Wrong again!

Although the annual challenge of preparing for the next site evaluation receded temporarily into the welcoming shadows of memory, the ubiquitous Rule 9(a) surfaced to remind us that yet another site evaluation "shall be conducted in the third year following the granting of full approval . . .." So once again, a faculty task force was assembled to lay the groundwork for the preparation of the Self Study and accompanying documentation. This time, however, the faculty had the luxury of a full two years of preparation time rather than the three to four months to which it had become habituated. There actually was a sense of joy—perhaps joyous relief is more aptly descriptive—pervading the work of the task force and of the numerous faculty discussions regarding the successive iterations of the Self Study. At last, all was done and submitted. The Site Team visited in March, 2005, submitted a positive report, and the hierarchical elements of the ABA each in turn stamped its approval upon the school.

So, now the game is really, truly, cross-your-heart-and-hope-to-die over. Right?

Well, yes—at least for seven years![14]

Which finally brings us to the purpose of this essay: what lessons have been learned from this Odyssean journey?

Lesson No. 1: *There is truth in Mark Twain's pithy observation: "We can win other folks' approval, if we do right and try hard!"*[15]

Lesson No. 2: *To "do right," one must play the game in strict accordance with the rules established by the Council, however onerous and expensive they occasionally may appear.*

Lesson No. 3: *The accreditation process developed and employed by the Council does in fact produce beneficial results*. I think most would agree that more than any other single factor, the process has been responsible for elevating the quality of American legal education over the past thirty-five years.

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14. Rule 9(a) requires a site evaluation "every seventh year thereafter." *Id*. at Rule 9(a) (Evaluation of Provisionally or Fully Approved Schools), http://www.abanet.org/legaled/accreditation/rulesofprocedure/chapterd.html.

15. Puddnhead Wilson's New Calendar, ch. 14.

Lesson No. 4: *The action of the Council in 2001 to revise Rule 9 so as to reduce the labor and expense imposed on provisionally approved schools is commendable.*[16]

Lesson No. 5: *Also commendable is the Council's decision in 2003 to revise the manner in which inspection fees are charged to the schools.*[17] The benefits of the reform efforts in 2001 and 2003 are obvious. The limited evaluation of provisionally approved schools under new Rule 9(b) does not require the preparation of a complete Self Study, thus permitting the school's faculty to focus its time and energy on the important functions of teaching, counseling and scholarship. Further, the limited evaluation is conducted by one or two site evaluators rather than a full team, thus reducing significantly the financial burden imposed upon the school. Third, the report of the evaluator(s), though sufficient for the purpose of monitoring the school's progress, nonetheless is considerably more concise than those typically produced by a full team, thus conserving the

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16. The Council added a new section 9(b) which provides:

> In years two, four and five of a school's provisional approval status, the school shall normally be required to prepare a complete self-study, and the site evaluation shall normally be undertaken by a full site evaluation team. In years one and three of a school's provisional status, a full self-study normally will not be required and a limited site evaluation, conducted by one or two site evaluators, normally will be undertaken. The purpose of the limited site evaluation will primarily be to determine the extent to which the school is making satisfactory progress toward achieving full compliance with the Standards, and to identify any significant changes in the school's situation since the last full site evaluation. The Accreditation Committee shall have the discretion to order a full site evaluation in any particular year, and to order a limited site evaluation if it determines that a full site evaluation is not necessary in any particular year.

ABA RULES OF PROCEDURE, *supra* note 12, at Rule 9(b).

17. In 2001 the Council, concerned that the accreditation process was burdensome and that the fee structure failed to provide a consistent revenue stream to support the process, appointed the Task Force on Accreditation Processes. Chaired by E. Thomas Sullivan, Irving Younger Professor and Dean Emeritus, University of Minnesota School of Law, the Task Force gathered information about the practices of other accrediting agencies and sought input from law school deans and others interested in the ABA accreditation process. Initially, the Task Force recommended two important revisions in the frequency of site evaluations for fully approved schools: first, that a full site evaluation be conducted once every ten years rather than once every seven years, with a limited evaluation based on a "five-year review questionnaire" to be conducted mid-way through the ten-year period; and second, that when a school is newly granted full approval, it undergo a full site evaluation in the fifth year after receipt of full approval rather than in the third year. Memorandum from the Task Force on Accreditation Processes of the ABA (Sept. 13, 2002), http://www.abanet.org/legaled/accreditation/accreditation-processes-memo.doc. Unfortunately, a majority of Council members did not support these proposals at that time, and the Task Force withdrew them. Consequently, the Task Force recommendations were limited to a modification of the process for acquiescing in the establishment of post-J.D. and non-J.D. programs and to the adoption of a highly desirable annual fee system to replace the individual site evaluation fees. At its meeting of June 7-8, 2003, the Council approved the recommendations of the Task Force and the implementing revisions of the Standards and Rules of Procedure. The adopted revisions are available at ABA Revisions to the Standards, Interpretations, and Rules of Procedure Related to the Accreditation Process (Aug. 2003) [hereinafter ABA Revisions], http://www.abanet.org/leadership/2003/journal/300c.pdf.

time of the Accreditation Committee, the Council, and the staff in the Consultant's Office.[18] Similarly, the reform of the fee structure is beneficial both to the schools and to the Council. The collection of an annual fee from all fully approved law schools assures the Council of a consistent stream of revenue for the funding of its operations.[19] And for the schools, a known fee obligation of a relatively small amount[20] facilitates the annual budgeting process.

Lesson No. 6: *While the reform efforts are laudable, they fail to go far enough.* So, how far is "far enough?" At a minimum, the Council should resurrect the initial—and subsequently rejected—recommendations of the Task Force on Accreditation Processes. Specifically, the Council should revisit the recommendation calling for full site evaluations of fully approved schools once every ten years (with the limited mid-term evaluation), and the second recommendation calling for a full site evaluation of a newly approved school in the fifth year after receiving full approval, rather than in the third year.

Why should respect the Council reconsider these aborted recommendations? First, the composition of the Task Force[21] represented a cross-section of the most able, experienced persons in legal education. Their carefully considered recommendations are entitled to significant weight. Second, the Task Force recommendations were not developed in a cavalier fashion. Rather, they were the product of two years of intensive work in which the Task Force reviewed the practices of similar professional accrediting agencies, sought comments from deans of ABA-approved law schools, university presidents, state supreme court chief justices and bar admission authorities, and conducted open hearings at the

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18. In March, 2004, the author constituted a one-person site team which visited the provisionally approved University of St. Thomas School of Law to conduct its "year one" site evaluation. The inspection visit was completed in a day and a half, and the resulting report was eighteen pages in length. In January, 2005, the author chaired a full site team that visited St. Thomas for its "year two" evaluation. The visit consumed three and half days and the team's report was sixty pages in length.

19. The former system of relying on individual site evaluation fees was inherently flawed. The annual revenue from the fees fluctuated dramatically from year to year "because over a seven-year period the number of sabbatical site evaluations of fully approved schools varied from a low of 16 (e.g., in fiscal year 2002-03) to a high of 32 (e.g., in fiscal year 2000-01)." ABA Revisions, *supra* note 17, at 8. The great variance produced severe difficulties in budgeting for Council operations.

20. The 2005-06 annual fees are $3,850 for a school with an FTE JD enrollment of less than 500; $4,950 for a school with an FTE JD enrollment between 500 and 800; and $6,490 for a school with an FTE JD enrollment of more than 800. ABA RULES OF PROCEDURE, *supra* note 12, at Rule 9.

21. In addition to Chairman Sullivan (then Chair of the Council), the Task Force included Hubert H. Askew, Esq., Director of Bar Admissions, Supreme Court of Georgia (then a member of the Accreditation Committee), Professor J. Martin Burke, University of Montana School of Law (a former Chair of the Accreditation Committee), President Russell K. Osgood, Grinnell College (a former member of the Standards Review Committee), Pauline A. Schneider, Esq., Hunton & Williams (a subsequent Chair of the Council), Dean Rennard Strickland, University of Oregon School of Law (a past president of the Association of American Law Schools), and Dr. Paul S. Sypherd (retired provost of the University of Arizona and a member of the Accreditation Committee at the time of the Task Force report). *See* REPORT OF THE TASK FORCE ON ACCREDITATION PROCESSES, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (Sept. 2002), http://www.abanet.org/legaled/accreditation/accreditation-processes.doc.

annual meetings of the AALS and the American Law Institute, and at an ABA mid-year meeting. Third, the cost savings that would accrue from adopting the aborted recommendations are considerable. Assuming an average of twenty-six full site evaluations of fully approved schools each year,[22] at an average cost to each school of $10,000 per visit,[23] the aggregate quantifiable cost to the twenty-six schools is well over a quarter of a million dollars. By stretching the review period to ten years rather than seven, the average number of full site evaluations per year drops to approximately eighteen, with substantial reductions in the aggregate costs of the accreditation process.[24] Although some savings would accrue as a result of extending to five years the full site evaluation of newly approved schools, this is not as significant as the savings derived from extending the regular evaluation process. Nonetheless, the interests of the schools would be well served by a reconsideration of the original recommendation.

Assuming the Council takes a fresh look at the aborted recommendations but is still unwilling to permit a school to go visually uninspected for a decade, I suggest an alternative to the original recommendation. Initially, the Task Force recommended a full on-site evaluation every ten years, with a mid-term evaluation to be conducted on the basis of a modified "five-year review questionnaire" only. The suggested alternative is to employ the scheme developed for provisionally approved schools, viz., to have the mid-term evaluation based on a visit by a one or two-person team. No formal Self Study would be required; rather, the school would be required to prepare a comprehensive Site Evaluation Questionnaire. Having conducted a limited site evaluation of a provisionally approved school,[25] I am persuaded that such a visit effectively accomplishes the purposes of evaluation. The Questionnaire will provide the needed statistical information about the school's progress, while the physical presence of the site visitors will insure that faculty and student concerns, often of a confidential nature, can be heard.

And now, having resolved the problems of the accreditation process, it's time to sign off.

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22. *See supra* note 16 for the range of such visits over time.

23. This figure is probably conservative and includes only the transportation, hotel, meals and entertainment expenses for a six-person team, and does not include the ABA site fee (which is paid in annual increments) or the significant costs in staff and faculty time, copying, printing and other expenses related to the preparation of the Self Study and the visit of the site team.

24. The author is not so naïve as to suggest that these cost reductions would lead to decreases in the annual site fee paid by the schools to the Council. Such fees, like taxes, possess an inherent resistance to reduction.

25. *See supra* note 14.