

# PRESIDENT'S PAGE

by Erica Moeser

**I**n the world of lawyer licensing, every so often the stars align. This may be one of those times. I begin with the assumption that the polestar for all of us who work in this field is consumer protection. At this point in time, a number of constituencies are finding that the fairest and most accurate way to judge a law school's bar examination performance is to interject consistency and (yes, the "t" word!) transparency into the collection of bar passage data on a school-by-school basis.

This is a moment—perhaps better expressed as a **MOMENT**—when the licensing authorities in this country can provide important information to the future consumers of legal educations. Frankly, it is probably past time that we venture into this territory, but here we are at long last and this is our chance.

Some background may be necessary to set the stage. Most law schools in America seek accreditation from the Council of the American Bar Association's Section of Legal Education and Admissions to the Bar ("the Section"), the one entity designated by the United States Department of Education to grant it. Roughly 200 law schools are accredited (or "approved," in ABA parlance). The rule book for law school accreditation is *ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS*, a document that is accessible via the Section's web page, [www.abanet.org/legaled](http://www.abanet.org/legaled).



Standard 301(a) states: "A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession."

Over the past year and a half, the Section has conducted an effort to put meat on the bones of this brief Standard by creating a trailing directive now adopted as Interpretation 301-6, which also appears at the web address noted above. The process of adopting this Interpretation was lengthy, inclusive, and often contentious. The resulting language is intended to define for all accredited law schools what level of bar passage performance is adequate for the law school to be deemed in compliance with Standard 301(a).

One problem that all parties recognized as the challenge of drafting the Interpretation proceeded was that the varying pass/fail points from jurisdiction to jurisdiction made choosing a uniform standard very difficult. For example, a law school in a jurisdiction with a 130 cut score on the 200-point MBE scale may produce graduates who pass the examination on the first attempt at a 90% rate, while a roughly equivalent law school (using any of a number of metrics) in a jurisdiction with a 142 cut score may produce graduates who pass at a 70% rate.

In my view, the Interpretation is far too benign, and in the view of others, it is too rigorous. An

unfortunate unintended consequence of drawing a bright line to express a fairly low hurdle is that less ambitious law schools just above the bright line lose incentive to improve since they have already cleared that low hurdle.

Sifting through the rhetoric that is part and parcel of the Interpretation-adoption process, one would occasionally hear the assertion that law students do not attend law schools in order to join the licensed profession. One gentleman even posited that they wish to become investment bankers. Given the time commitment and crippling expense of a legal education, I find it impossible to accept that any significant number of would-be law students decide to pursue legal educations in order to do something other than join the legal profession as their first choice.

But I digress. In order to breathe life into the administration of both Standard 301(a) and its companion, Interpretation 301-6, accurate bar passage data, handled by a neutral, is essential, and the source of that data should be the licensing agencies that know the numbers best and have no horse in the race.

Fortunately, the highest courts agree. In late January of this year, the Conference of Chief Justices adopted a resolution entitled "Encouraging Cooperation in Creating an Efficient System for Tracking Bar Examination Passage Rates for All Law School Graduates." Following a series of whereas clauses, the ultimate paragraph reads, "NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices urges the highest court of each state to request the bar admissions authorities and encourage law schools to cooperate with the Law School Admission Council, the National Conference of Bar Examiners, and the American Bar Association Section of Legal Education and Admissions to the Bar in the establishment of a national system for tracking bar examination test results."

The National Conference is ready to host the database that will achieve this objective. In order to move forward, we will need to enlist the jurisdictions' help in furnishing, exam by exam, the following information about each candidate: name; identifiers such as the LSAC number (and not the SSN) and birth date; other names used; the name of the law school that has conferred or will confer the J.D.; and whether the applicant passed, failed, or did not sit. We are prepared to assist jurisdictions as they undertake whatever technological adjustments are necessary to make the system work without further stressing already stressed staffs.

Over time, this database will permit the National Conference to generate a complete bar exam performance profile for each law school. This collection process will also relieve individual bar admission agencies of the need to respond to each of the 200 law schools that will otherwise be compelled by the Interpretation to seek the same information in various idiosyncratic formats.

The fact that the Conference of Chief Justices recognizes the importance of this data collection effort should help some bar admission agencies implement changes to their rules in order to release the name-specific bar passage information noted above to the National Conference. Here at NCBE we are committed to handling the material with appropriate caution and respect.

I hope that jurisdictions will share the view that having access to reliable information about a law school's track record will be a gift to the consumer of legal education before he or she commits so much time, money, and hope to obtaining a law degree.

Yes, the stars may be aligning, and it is my earnest wish upon those stars that bar authorities will recognize their unique ability to furnish data of unquestionable integrity that will have value to consumers and to the profession. Perhaps the MOMENT has arrived. 