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Edwin Prather, AABA President

President's Column

- A meeting with Governor Schwarzenegger's Judicial Appointments Secretary
- AABA to receive API Legal Outreach's Business Impact Award
- Another installment of President's Profiles

On August 22, 2007, President Elect Celia Lee and I had the opportunity to spend a morning with Governor Schwarzenegger's Judicial Appointments Secretary Sharon Majors-Lewis at her office in Sacramento. The meeting was a result of several months of negotiation with her office, but we were glad to have the opportunity to introduce our bar association to her and to present our issues.

We originally planned to challenge Majors-Lewis on the lack of Asian American appointments throughout the state during her term. The Governor's Office must have been privy to our plan for two days prior to our meeting the Governor made another round of appointments that included three Asian Americans. The most recent appointments also featured the appointment of an Asian American lawyer known to many of us: former assistant U.S. Attorney Elaine Lu, a board member of the Southern California Chinese Lawyers' Association. We began our meeting with Majors-Lewis by applauding the recent appointments and instead indicating that there was "much work left to do." It was over 100 degrees that day in Sacramento, but we were thankful that the "heat" was only

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outside as Majors-Lewis was surprisingly receptive to our message.

Majors-Lewis stated that she understood our position and lamented a lack of Asian American applicants. She stated that since Governor Schwarzenegger's first day in office, only 97 out of 1605 applications for judgeships in the state have come from Asian Pacific Islanders. After we discussed the various reasons for the greater number of applications from Caucasian males, I shared with Majors-Lewis that the Governor's Office had done much for Asian American judicial hopefuls by appointing young(er) attorneys to the bench. In recent months, the office has appointed a handful of new minority judges who are under 40 and who have less than 15 years experience in the practice of law. While there are limited numbers of Asian American attorneys who have practiced for 20 years or more, with 10 years each of civil and criminal experience as well as several jury trial as was the litmus test of former secretary John Davies, there a great number of superstar API attorneys in their late 30's who have finished their first 10 or 12 years of practice. I expressed to Majors-Lewis that she had not only given our members hope, but also opened to door to an entire universe of new stars who would be well qualified to serve our court system. While Majors-Lewis did state that she felt a candidate with ten years of experience would not likely land on her radar screen, she would continue to consider (and appoint) candidates with as little as 13 or 14 years of experience.

Majors-Lewis passed on a tremendous amount of information and insight for dissemination to our membership:

First, Majors-Lewis stated that she wanted us to know that a judicial application takes time and that its progress has much to do with timing. Every 60 days, Majors-Lewis submits 40 names to the state's Judicial Nominations and Evaluations Committee (JNE). Every appointee must be reviewed and ranked by JNE. Majors-Lewis stated that she would not consider any candidates ranked "not qualified" by JNE. She also indicated that a candidate's application spends 90 days or more with JNE before returning to her office. She reiterated that candidates (and bar associations) should have patience as applications move through the process.



President-Elect Lee, Secretary Majors-Lewis and President Prather just after discussing high-level judicial appointments.



Celia surveys the political climate around the Capitol

Second, Major-Lewis shared that while in the past the process considered candidates' trial experience, in the future she would focus on candidates' overall courtroom experience. She did add however, that she will continue to look for actual litigation experience in the courtroom and did not want candidates limited to experience in mediations or other case settlement work.

Third, Majors-Lewis stated that particular characteristics she looks for in a new jurist. She specifically mentioned that besides being very well qualified, a jurist must have integrity and great ethics.

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PRESIDENT'S PROFILES . . .



Annie Chuang is a partner at Shook Hardy & Bacon LLP specializing in complex products liability, tort and employment litigation. Annie went to law school at Southwestern in Los Angeles and was a judicial extern to the first Chinese-American

federal jurist, the Honorable Ronald Lew (C.D. Cal). She has been involved in AABA for several years, currently serving on the Judiciary Committee and volunteering at the AABA/Asian Law Caucus clinic on a regular basis.

What is the most important lesson you've learned on the job? Success requires teamwork

What was your favorite class in law school? Torts

If you were not an attorney, what would you be?

A movie or restaurant critic or maybe even a professional poker player

What is your most marked characteristic? My laugh

If you could change one thing about yourself, it would be...? Less procrastination

What is the last great book that you read? Eat, Pray, Love

What is the last great movie that you saw? Last King of Scotland

Who are your heroes in real life? My mom and dad

What is your favorite vacation destination? Hawaii

What is your favorite cuisine? Chinese, of course!

What do you consider to be your greatest achievement? I hope it is still to come.

Fill in the blank. Most AABA members probably don't know that I... grew up in Kansas

AABA is... about helping others



Ted Ting is a litigation partner at Reed Smith LLP specializing in commercial dispute, trade practice and real estate litigation. His cases include a wide range of business and competitive disputes such as fraud, contract, trade secret, franchise, corporate, and

business dissolutions. Ted is a co-chair of AABA's Judiciary Committee and somehow still finds time to be a dad and take his family on Hawaiian vacations.

What is the most important lesson you've learned on the job? You get a lot further if you don't screw up

What was your favorite class in law school? Trial Advocacy

If you were not an attorney, what would you be? Less stressed

What is your most treasured possession? My autographed Joe Montana autobiography

What is your most marked characteristic? My stupid grin

If you could change one thing about yourself, it would be...? My lousy golf swing

Who are your heroes in real life? Hiro Nakamura and the cheerleader

What is your favorite vacation destination? Kauai

What is your favorite cuisine? American comfort food

What is your favorite restaurant? Gary Danko

What do you consider to be your greatest achievement? Having kids

Fill in the blank. Most AABA members probably don't know that I... was the Most Outstanding Math Student at my high school

AABA is... juicy

Proposed ABA Accreditation Standards Jeopardizes Diversity Pipeline Efforts

By Rodney O. Fong¹



Why are the Minority Bar Coalition of San Francisco, the Bar Association of San Francisco, the State Bar of California, the National Lawyers Guild, the National Employment Lawyers Association, the National Bar Association, the United People of Color Caucus, General Motors General Counsel, the Speaker of the California Assembly, dozens of law school deans and professors, the ABA's own Presidential Advisory Council on Diversity in the Profession, and many other diverse groups voicing their opposition to a proposed law school accreditation standard? According to these groups, the proposal sets forth a number of standards that would derail efforts by law schools, bar associations, and other concerned individuals and groups to diversify the legal profession. Department of Education challenges the ABA's ability to accredit law schools

ABA Accreditation Standard 301(a) requires that "A law school shall maintain an educational program that prepares its students for admission to the bar..." In late 2006, the ABA's Council of the Section of Legal Education and Admissions to the Bar (Council) came under pressure from the Department of Education (DOE)² over its ability to accredit law schools. The DOE was concerned about the ABA's new diversity requirements³ and the lack of transparency in its bar passage standards. The ABA responded that the Council's Accreditation Committee had always applied a "trigger" of 70% or below for bar passage rates for first time takers in order for law schools to maintain its ABA accreditation. Earlier this year, the Council's Standards Review Committee attempted to "codify"⁴ this unwritten standard by proposing new Interpretation 301-6⁵ which required law schools to maintain a minimum of 70% passage rate for first time takers for the last three years.⁶ Law schools that frequently fell below this standard might come under further scrutiny at the discretion of the Accreditation Committee.

The proposed Interpretation 301-6 generates overwhelming opposition

The Standards Review Committee vetted the proposed Interpretation to law schools, bar admissions authorities, and other organizations interested in ABA standards. Comments from across the country poured in. Many acknowledged the need of maintaining good educational programs and aspiring to high standards. But these brief comments were only the preface to a barrage of criticism for the new Interpretation.⁷

Professor William Patton from Whittier Law School produced a study that conservatively estimated that 36 ABA law schools⁸ nationally would not be able to satisfy the 70% trigger based on recent bar performance.⁹ Many of these schools have a history of providing access to students from underrepresented communities, including many historically black law schools. Shutting down these schools would severely set back efforts to diversify the profession.

Additionally, groups such as the National Employment Lawyers Association (NELA) were concerned that the benchmark "would likely result in decreased enrollment of people of color at ABA accredited law schools and disparate scrutiny of access-focused law schools." Law schools seeking to increase their bar passage rates would tend to rely more heavily on objective indicators for admissions, primarily the LSAT scores of its applicants. Studies by the Law School Admission Council have shown that minority groups perform lower on the LSAT.¹⁰ It is projected that less minority applicants would be admitted to law school if the Interpretation is adopted.

In addition, according to the proposed Interpretation, when law schools are placed on probation for low bar pass rates, the ABA examines the "quality" of

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To tip, or not to tip: c'est la question

By Isabel Choi, AABA Board Member

After undergoing countless language-barrier episodes and adjusting to our 430 square foot apartment with coral, Venetian-themed wallpaper, my husband Igor and I began to feel like old-hands with our ex-pat existence. We now knew not only to ply all of our neighbors with a sing-song “*Bonjour!*” or “*Bonsoir!*” but also became familiar with other greeting-related customs:

1. When entering a store, you immediately greet the clerk or salesperson with the same sing-song “*Bonjour, Madame!*” or “*Bonjour, Monsieur!*”, even if she or he is the surliest character you ever encountered. Failure to do so signals unqualified rudeness on your part.
2. Do not try to select or pick up items yourself—especially groceries. You lose this right when entering French soil.
3. Be prepared to know what you plan to buy before you step into the store, as the salesperson will accost you with “*Oui??*”. Responses such as “*Uh, je voudrais regarder* (I would like to look around)” are met with a quizzical look, which eventually stretches the face in opposite directions to create that skeptical regard so famously French. You can see how the hesitation in statement no. 3 can only be prolonged by the dependence required in no. 2, which if disobeyed, can form the impression as described in no. 1.



Ferris wheel at Jardin des Tuileries

La Patache

Igor, who does not speak French, can now stroll to the bakery alone and order our daily baguette, chocolate croissants, and pre-diabetes inducing strawberry pastry. I now can drop off loads of dry cleaning without having items being thrown back at me for failing to name them properly



en français. Negotiating our way through www.amazon.fr and purchasing TGV train tickets on possibly the least user-friendly website ever to exist in internet history, are no longer day projects. But mastering tipping in Paris still eludes us.

You've been there: is this amount offensive or ridiculous? For weeks, not knowing better, we had been tipping 20% to 25% everywhere. The startled glances and yelps of glee did suggest that perhaps we were being overly generous. One time, a waitress exclaimed, “*Mais*

non, what are you doing?? It is only 23 euros!” When we explained, no, the extra is for you, she muttered *Merci* but delivered that dubious pursing of the mouth. When my ex-pat friend witnessed

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NAPABA comes to San Francisco

Billy Chan, NAPABA Regional Governor and AABA Secretary

This month, the National Asian Pacific American Bar Association (NAPABA) came to San Francisco for its quarterly board meeting, and AABA was waiting with open arms. In typical AABA fashion, the Social Committee hosted a late-night event on Saturday, August 11, to showcase the nightlife our great city has to offer. AABA officers, directors, members, and law students gathered at Frisson in the Financial District to mix and mingle with the visiting NAPABA board and staff. Many recently-graduated AABA members were fresh off the July California bar exam and were eager for the opportunity to relax and reconnect with the AABA community.

The NAPABA board was especially grateful. Bettina Yip, NAPABA's Vice President of Programs & Operations, commented "It's nice to feel welcome. AABA really went out of its way to show us a good time. Edwin is doing a fine job here."

And from the city that gave birth to *craigslist* and *missed connections*, it was only fitting that some old acquaintances were reunited. Rafael Ace Climaco, a local sole practitioner at 22 Battery, one of the city's great legal brain trusts, ran into his old mentor from college: Marty Lorenzo,

NAPABA's Regional Governor for Southern California. "It's like a blast from the past," said Ace, "last time I saw Marty I was an undergrad at UCLA and he was an up-and-coming young associate." "It's true," chimed in Marty, now a partner at DLA Piper, "I look at Ace now and see a younger version of myself. Great things will continue to happen for Ace. I did a really good mentoring job."

NAPABA is the national association of Asian Pacific American (APA) attorneys, judges, law professors, and law students, providing a national network for its members and affiliates. NAPABA advocates for the legal needs and interests of the APA community and represents the interests of over 40,000 attorneys and 50 local APA bar associations, with practice settings ranging from solo practices to large firms, corporations, legal services organizations, non-profit organizations, law schools, and governmental agencies.

AABA is an affiliate organization of NAPABA, and so each AABA member is automatically also a member of NAPABA. From November 15-18, NAPABA will hold its annual national convention in Las Vegas. We hope to see you there!

The Future of Civil Rights in the Asian Pacific American Community

September 27, 2007

6:00 – 7:00 p.m.

U.C. Hastings
College of the Law
198 McAllister Street
Room B
San Francisco, CA

The AABA Civil Rights Committee invites you to a panel discussion on the future of civil rights in the Asian Pacific American community. Four distinguished panelists will lead a discussion on where the next battle lines are being drawn in the area of civil rights and how you can help. Will immigration always be a pressing issue for our community? What about marriage equality? As the baby boomers retire, will health disparities move to the forefront? And are there issues in higher education that demand our attention?

The Panel: Stuart Gaffney, Marriage Equality USA, API Equality, Emily Lam, Health Care Technology, Sin Yen Ling, Asian Law Caucus, Vincent Pan, Chinese For Affirmative Action. Moderator: Steve Ngo. Please email questions to sngo@minamitamaki.com

AABA Co-Sponsors
INSPIRE
2007
 API Leadership
 Conference

Join APA Five at Inspire '07, the premier leadership conference of our generation at our own Wells Fargo Penthouse on Thursday, August 16th along with other local community organizations. This is your chance to register for our upcoming INSPIRE '07 APA Leadership Conference on **Aug. 31 - Sept. 3, 2007**. If you don't get a chance to stop by the Penthouse, please visit: <http://www.apafive.org/registration>

Celebrate your culture with celebrities such as "Survivor" Winner Yul Kwon, James Kyson Lee, Justin Lin, and Tamlyn Tomita. Network with APA leaders from the Bay Area or beyond such as Assemblywoman Fiona Ma, Congressman Mike Honda and former Secretary Norm Mineta.

Attend enlightening workshops that address a range of diverse interests. Find your voice, share your inspiration and join in the camaraderie of APA | FIVE and the Asian Pacific American community!

For more info about the event: please also visit http://going.com/apafive_inspire07 or email Tina Nguyen at tina@apafive.org.

Asian Pacific Bar Association of Silicon Valley's **Annual Fall Scholarship and Diversity Award Reception** will be held at the San Jose City Hall Rotunda at 200 East Santa Clara Street , **6:30 p.m. on September 27, 2007**. California State Controller John Chiang will be the featured guest speaker. See <http://www.apbasv.org/> for more details. To register, please see <https://s08.123signup.com/servlet/SignUp?P=152054800&PG=1520548182300>.

Save the Dates

The Inaugural Minority Bar Coalition Conference

co-sponsored by AABA

By Marissa Tirona, AABA Board Member

Join the Minority Bar Coalition on **Friday, October 19, 2007** for its inaugural conference, "**And Justice For All: Building Bridges Within The Legal Community.**"

The conference, which will be held at Golden Gate University School of Law, will include 4 panels on various cutting-edge issues and a luncheon keynote speaker. The conference will conclude with the MBC's Annual Unity Awards Reception from 5:30 pm to 7:30 pm. Information regarding registration for the conference will be available in early September. If you have any questions or would like more information, please contact Marissa M. Tirona, AABA Board Member, at marissa_tirona@yahoo.com.

By Reichi Lee, AABA Director

The Employment Committee is proud to sponsor its **annual Career Day, September 8, 2007 at USF School of Law from 8:15-2:00 p.m.** Career Day is designed to prepare law students for the on-campus interview process. It gives students the opportunity to hear panel discussions on how to land a job in the private and public sectors, as well as practice their interviewing skills with an attorney. All law students are welcome!

If you are a student who would like to participate in a mock interview, you must sign up and submit your resume. Please contact **Ivana Lee** at lee.ivana@gmail.com

for more information. If you are an attorney who would like to help conduct mock interviews, please contact **Reichi Lee** at reichilee@yahoo.com.

ABA Commission on Racial and Ethnic Diversity in the Profession and
The Charles Hamilton Houston Institute for Race and Justice at the Harvard Law School
Present

Running for Office

October 3-5, 2007 : Cambridge/Boston, MA

Recent rulings by the United States Supreme Court have made clear that litigation should not be the only means by which communities of color seek to protect their rights, improve society, defend their liberties, or pursue justice. Legislation and administration are equally important.

Racial and ethnic minorities have a history of embracing the ideal of public service. Among minority law school graduates, research shows they perform more unremunerated public service than white graduates.¹ Yet racial and ethnic minorities have not always correlated that public service to the ideal of serving in elected office. Far too few minorities make the transition from active, community-based public service to public service through public office and leadership. The lawyer-legislator remains too rare a phenomenon among minorities. This does not indicate a lack of aptitude, affinity or ability. Nor does it demonstrate a lack of commitment, interest or vision. Instead, it reveals a glaring omission in our society. When minorities, especially minority lawyers, opt not to pursue public office, it represents a serious talent drain that deprives our local communities and our society as a whole of the benefits of their skills and experiences, their perspectives and insights, and their expertise and vision.

It's time to address that.

Please join the American Bar Association's Commission on Racial and Ethnic Diversity in the Profession and the Charles Hamilton Houston Institute for Race and Justice at the Harvard Law School for a three-day program that will prepare and train minority lawyers to run in elections for judgeships, city and county offices, city councils, school boards, state legislatures, and statewide and even federal offices.

Join us as we:

- Consider the reasons why too few minority lawyers seek public office;
- Assess how minority lawyers can become more effective in the political process;
- Explore avenues for minority lawyers seeking to run for public office;
- Examine how to run for office at different levels of government, especially local government and in judicial elections;
- Analyze how to run a campaign — including how to build a campaign team, draw volunteers, raise funds, seek endorsements, market a candidate, and meet voters;

- Debate effective campaign strategies when seeking public office;
- Assess the role and benefits of the political consultant;
- Discuss fundraising strategies and techniques for different types of campaigns;
- Examine the role of media and effective marketing in campaigns;
- Explain the role and manifestations of party politics;
- Review the best ways to get out the vote; and,
- Strategize about how to effectively nurture, train and support minority lawyers as public officials.

If you've ever considered running for public office, this program will provide the knowledge you'll need to make it a successful run.

About the Charles Hamilton Houston Institute

The Charles Hamilton Houston Institute for Race and Justice was founded in 2005 by Harvard Law School Professor Charles J. Ogletree, Jr. The Institute has been named to honor Charles Hamilton Houston, an African American lawyer and educator who dedicated his-life to using the law as a tool to reverse the unjust consequences of racial discrimination. The Institute will further Houston's vision of racial justice and equality through scholarship, policy analysis, training and education. It is uniquely situated to take full advantage of the vast resources of the Harvard Law School and the larger University as it addresses these issues in the civil and criminal law context.

About the ABA Commission on Racial and Ethnic Diversity in the Profession

The American Bar Association Commission on Racial and Ethnic Diversity in the Profession is the catalyst to change the legal profession to reflect the society it serves. The Commission helps racially and ethnically diverse lawyers advance their careers and standing in the profession; uses leadership, programs, and information to help the profession understand and eliminate racism, bigotry and discrimination; and works to increase racial and ethnic diversity in the legal profession and enrich the profession through diversity.

For more information or to be added to the mailing list to receive updated information about this program, please contact:

**ABA Commission on Racial and Ethnic
Diversity in the Profession
321 N. Clark Street, Chicago, IL 60610
(312) 988-5643 : MartineN@staff.abanet.org**

¹See Richard O. Lempert, David L. Chambers, and Testy K. Adams, "Michigan's Minority Graduates in Practice: The River Runs Through Law School," 25 Law & Social Inquiry 395(2000).

President's Column *continued from page 2*

Majors-Lewis also commented that a judge must be electable as every judge faces an election at some point their careers. She also mentioned that new jurors must have great potential and complement the skill set of the other jurists in that county.

Lastly, Majors-Lewis also stated that she wanted to form a partnership with AABA and asked us specific questions about our endorsement process. Our position as the oldest and largest local Asian American bar association in the country was not lost on her and she stated her desire to depend on our endorsement to reflect the highest quality candidate from the Bay Area. Majors-Lewis stated that she would look to us to provide guidance on minority candidates in our area and would like to meet with us regarding specific candidates again soon.

Our meeting with the Governor's Judicial Appointments Secretary was certainly fruitful and we look forward to working with her office in the near future to increase the number of Asian American jurists in our counties. If you have any interest in learning more about judicial appointments, please do not hesitate to contact myself, Celia Lee or any member of AABA's Judiciary Committee. We are all here to answer your questions and support any judicial aspirations. Our contact information is available at www.aaba-bay.com.

On August 13, 2007, I received

a letter from Dean Ito Taylor, Executive Director of Asian Pacific Islander Legal Outreach, notifying me that AABA had been selected as APILO's 2007 Business Impact Award recipient. Each year, APILO selects award winners to honor at its annual lu'au celebration. This year's celebration is APILO's 32nd and will take place on September 8, 2007, at Google's worldwide headquarters in Menlo Park.

In a subsequent phone call with APILO, after asking the usual questions such as "are you sure?," APILO indicated that it wanted to honor AABA specifically for its initiative and commitment in sponsoring legal clinics for low-income residents to obtain free legal advice and in promoting diversity in the profession. I certainly couldn't argue with that. I too am proud of AABA's efforts in this regard. This award belongs to all the AABA attorneys who have been volunteering at AABA's clinics and other community service efforts and to the AABA attorneys who continue to pressure their firms, offices and companies for diverse lawyers. In other words, this award belongs to all of us. I hope you can join us as AABA accepts this great honor.

I like to introduce you to additional members of the AABA family: Annie Chuang and Ted Ting. Annie and Ted come to mind this month as they are both involved in AABA's push for more Asian American jurists; Annie is a new committee member and Ted is a long-time co-chair. I've known Annie for only 2 or 3 years but I've

become quite impressed with her commitment to issues important to the Asian American legal community as well as the fact that she did a stint at an office close to my heart, the San Francisco Public Defender's Office. I've known Ted since we were both APALSA presidents at the same time at Los Angeles area law schools in 1995. It been great to watch him develop his practice and the only firm he's ever known, Crosby Heafy Roach & May, currently known as Reed Smith, and to keep his steady commitment to the Asian American legal community for over a decade.

Both Annie and Ted are part of AABA's group of young gun law firm partners from whom we have seen great things and expect even more from in the future. I hope you enjoy meeting them as much as I have. You'll find their profiles on page 3.

Proposed ABA Accreditation Standards Jeopardizes Diversity Pipeline Efforts *continued from page 4*

the entering classes as one factor. This quality is measured by reviewing the LSAT scores and undergraduate grade point averages of admitted students. This projected decrease in minority admissions was borne out by Whittier Law School where the minority enrollment declined since it was placed on probation by the ABA in August 2005 for low bar pass rates.¹¹

Closer to home, the Committee of Bar Examiners of the State Bar of California and several deans from California law schools argued that the 70% benchmark is overly restrictive and would unfairly

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impact jurisdictions such as California where the cut score is the second highest in the nation.¹² "Many of the applicants who fail the California examination would pass in several if not most other states as a result of the very large differences in pass/fail standards across jurisdictions" the Committee reported. The Committee went on to show that 52% of the 8858 applicants passed the July 2006 California bar exam. If California had used the New York cut score, 80% of the California bar takers would have passed.

Professor Patton, in his report, confirmed that "In some states there is a mathematical certainty that some well-qualified ABA schools will have bar passage rates below 70%." He specifically cited the July 2004 California Bar Exam when 11 of 19 California ABA law schools were below 70%. It was also noted by Prof. Patton and several California deans that the July bar exam has averaged around 70% the last few years with the February bar average much lower.

The Committee also commented that 75% of ABA graduates pass the first time and 15% pass after taking the exam two or more times. Further, studies conducted by the Committee showed that minority applicants often needed more than one attempt to pass. The Committee concluded 301-6 "would have a severe negative impact on the number of minority applicants...."

Professor Goodwin Liu of Boalt Hall's The Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity questioned "why the ABA has chosen to rely on first-time

rather than eventual bar passage rates." He noted that the ABA relied on first time passage rates simply because the data on first time passage was more readily available, citing the ABA's hearing in November 2006 before the DOE.¹³ Mary Louise Frampton, Director of the Boalt Hall Thelton E. Henderson Center for Social Justice, went further by providing statistics showing that there are substantial racial gaps in first time passage rates that substantially closes when eventual passage rates are considered.¹⁴

Dean Elizabeth Rindskopf Parker of the University of the Pacific McGeorge School of Law at the May 16, 2007 Standards Review Committee public hearing in San Francisco, challenged whether admissions to the bar was a good indicator of a quality education. This point was advanced by Professor Majorie Schultz of U.C. Berkeley's Boalt Hall who cited her on-going study of twenty-six factors for an effective lawyer. Only a handful of these factors were tested on bar exam. Dean Parker also questioned whether schools that further diversity and whose students perform better on the bar exam than their pre-law indicators, especially those schools in California, should be penalized.

Even Greg Murphy, the chair of the Council's Accreditation Committee, found the need to comment on the new Interpretation emphasizing the need to protect students. He strongly supported that benchmark of 70%. Murphy wrote, "The Council does not want students to spend three years of time, effort, and treasure preparing to become lawyers only to find themselves turned away at the gate."¹⁵ He described the emotional distress and serious

financial challenges that result from not passing the bar exam on the first attempt.

In addition, he dismissed the need for adjustments based on differences in state bar standards, favoring a national standard that could be applied uniformly to all law schools. Murphy believes that students should be afforded a good chance of passing the bar exam in any state, "Standard 301(a) exists to protect law students rather than law schools." "In short, law schools should be held to prepare their law students to be admitted in the jurisdictions in which they intend to practice," he added. On the issue of minority students, Murphy again placed the burden on law schools to prepare their minority students citing that there are law schools that succeed in training their students to "outperform their predictors."

Standards Review Committee revises proposed Interpretation 301-6

Based on the comments received by the Standards Review Committee, ABA staff discussions with the DOE¹⁶, and review by the Council, a revised proposed Interpretation 301-6 emerged on June 18, 2007. The revised Interpretation contained three significant changes.

First time bar passage was no longer the sole benchmark. Law schools could show compliance by scoring within 10 points of the annual state average in three of the most recent five years. Thus, if the

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Proposed ABA Accreditation Standards Jeopardizes Diversity Pipeline Efforts *continued from page 10*

California annual average for first time takers was 65%, a school would be in compliance if it exceeded 55% for the stated period. Also, the 70% benchmark was revised slightly to apply to schools where twenty percent of the graduates take the bar exam outside the primary jurisdiction. That school would be in compliance if the overall first time bar passage rate by takers in the three largest jurisdictions exceeds 70%.

The second major change allows schools an alternative standard of showing that 80% of its students passed within three attempts and within three years from graduation. This provision conceded that first time bar passage rate alone was not an accurate measure.

The third change requires schools to be in compliance with these benchmarks or trigger an automatic two-year probation. Previous practice of the Accreditation Committee did not result in an automatic probation, but instead allowed schools to provide additional information of compliance. The Accreditation Committee then had the discretion of placing a school on probation.

Comments submitted continued to criticize revised Interpretation

These revisions did little to quell the opposition to the proposed Interpretation. By July 16, 2007, 40 comments had been submitted to the ABA by law school deans, bar associations, and other ABA committees.¹⁷ Even with the "10

points" provision included, critics feared that the standards would still adversely impact law schools with large minority enrollments. Comments submitted by the Society of Law Teachers (SALT), noted that "it would likely result in the de-accreditation for the very law schools that serve as a gateway to the profession for many people of color."

The concern over the impact on diversity efforts was echoed by the Council's own Diversity Committee, the ABA's Council on Racial & Ethnic Justice, and the ABA's Presidential Advisory Council on Diversity. They commented directly on the negative impact the Interpretation would have on law schools affiliated with Historically Black Colleges and Universities (HBCU) and those schools with specific goals to diversify the profession. Furthermore, in addressing the new 80% eventual pass rate provision, these groups and many others highlighted out that eventual pass rates for African-American graduates was 77.6%.¹⁸

SALT went on to criticize the standards as paternalism, not consumer protection. It pointed out that, assuming the bar passages rates are published, prospective law students, "who are highly educated individuals capable of making informed decisions" should be allowed to make their own choice on which law school to attend. The standard would limit their choices by de-accrediting the law schools that would admit them.

Furthermore, SALT was concerned that emphasize on the bar exam would cause a law

school to modify its curriculum by focusing on bar related courses and away from jurisprudential courses and clinical and skills simulation courses to the detriment of producing graduates prepared to practice law. It concluded by encouraging the ABA to take a strong stand and not allow the DOE to "alter the future of the bench and bar by removing opportunities for people of color to enter the profession."

Law school deans complained that it would create an unfair standard for accreditation and result in an administrative mess. The deans opined that the standards do not treat law schools in a fair and consistent manner regardless of size or location.

The deans were also troubled with the accuracy and feasibility of tracking its graduates' performance. Not all state bar examiners notify law schools of its graduate's performance on the bar exam. Compounding the problem, most states do not track the number of times a taker has attempted the bar exam. Until the states have a consistent reporting standard, the Interpretation would create an administrative nightmare.

Professor Patton submitted a new report noting that 22 law schools would not be able to meet the "10 points" standard based on school's performance during the last three years.¹⁹ He also pointed out that there was insufficient data provided by various states to ascertain the impact of the 80% provision of

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the revised Interpretation. He challenged the ABA to provide such data or if it did not have such data, to refrain from promulgating standards without knowing its full impact upon the profession.

Standards Review Committee revises proposed Interpretation 301-6 AGAIN

On July 30, 2007, the Standards Review Committee met in Chicago and after a three and a half hour meeting, decided on a third version of the Interpretation. The revised Interpretation now provides only two bar exam standards.

As reported by Dean Fred White of Golden Gate University School of Law, who was present at the meeting, law schools must now show, that for at least three years of the most recent five years, that its annual first-time bar passage rate is above, at, or no more than ten points below the average first-time bar passage rate, for graduates of ABA-approved law schools taking the bar examination in the jurisdiction reported by the school. The Committee did away with the 70% first time pass rate standard.

In the alternative, a school may be in compliance if it can show that "its graduates consistently pass a bar exam at a rate of 70% or more within three years of graduation." The Committee lowered the eventual pass rate of 80% and eliminated the "within three attempts" limitation.

Dean White noted that the Standards Review Committee,

particularly the chair, Dean Richard Morgan, voiced both its dissatisfaction with the DOE's determination to have "bright lines" in the standards and with the rushed nature of the adoption of the proposed interpretation. Accordingly, the Standards Review Committee also recommended that the Council delay the implementation of the third revision and put it out for another "notice and comment" period.

ABA staff advised the Committee that the Council would probably not delay the adoption of the revised Interpretation nor the forwarding of the Interpretation to the House of Delegates for concurrence for two reasons: (1) the DOE staff's stated concern that an interpretation should be in place before the ABA recertification meeting with the DOE in June 2008; and (2) the DOE concern that the ABA have time prior to that meeting to report on the efficacy of the new interpretation.

Projected impact of the new Interpretation

Although all law schools are now acutely aware that bar passage will be examined by accreditation teams, most law school, especially those not identified in Prof. Patton's reports, will continue unaffected by the new Interpretation. In the last twenty years, the majority of law schools have already been developing internal academic support programs to assist their first year students. These programs will now be tasked to maintain or improve the bar passage rates.

Law schools that have been

consistently below or near the state average for ABA-accredited schools must begin to take steps to improve their pass rates. Some schools will decide to re-examine its admission criteria, curriculum, teaching methods, grading curves, and other factors affecting student performance. Hopefully, increase resources will be allocated to academic support services to work with low performing students. Other schools will seek external remedies, such hiring a bar review prep company to work with its graduating students.

The eventual pass rate standard will now require law schools to service its repeat takers, which few law school do presently. Only two law schools nationally²⁰ have bar services programs specifically working with graduates even after graduation and through the bar exam. Law schools with low first time pass rates, especially those in states with low state averages, will be further challenged to improve the performance of its repeaters in order to reach the 70% eventual pass rate standard.

The impact upon diversity will also be felt. The acceptance of eventual pass rates as a standard has lessened the pressure on schools with high minority populations. More schools should now be able to reach the eventual pass rate even if it does not meet the first time standard provided services, such as tutoring and financial assistance for repeat takers, are made available.

However, the increased focus on bar pass as an accreditation standard will place greater focus on admission criteria. Unfortunately, the LSAT continues

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to be misused by law schools as a predictor of bar exam performance. As law schools attempt to fill their classes with high LSAT students, less and less applicants with low LSAT scores, typically students from underrepresented communities, will be offered admissions. The burden will fall upon faculty to closely scrutinize the admission files for success indicators rather than default to numeric scores.

The next steps

What happens next? The Council was scheduled to act on the Interpretation during the ABA's Annual Meeting in San Francisco on August 10, 2007. The proposal, once passed by the Council, would have immediately gone to the ABA's House of Delegates to become "codified". However, on late Friday afternoon on August 3, 2007, the Council Chair, William Rakes, sent out a message that a decision had been reached by the Executive Committee of the Council to withhold action on the Interpretation to allow further consideration of "other ideas and approaches" and to provide more opportunity for feedback and comment once an Interpretation is approved by the Council. The timetable has been extended so that a Report from the Council could be presented to the House of Delegates at its midyear meeting in Los Angeles, February 6-12, 2008.

Questions still remain. Were the most recent standards too low for the Accreditation Committee and the DOE? How will the most recent

standards affect law school accreditation, especially those whose mission is to serve the underrepresented communities? How far is the ABA willing to go to maintain its ability to accredit law schools? How much does the ABA value diversity in the profession? Will law schools step up its academic programs to comply with the new Interpretation? Stay tuned for more episodes.

(Endnotes)

¹ Rodney O. Fong is currently the Assistant Dean of Bar Exam Services at Golden Gate University School of Law. Dean Fong also serves on the State Bar of California's Council for Access & Fairness and chairs the Law School Committee. The comments contained in this article reflect the author's views not the views of Golden Gate University or the State Bar of California.

²In November 2006, the DOE extended the ABA's authorization to accredit law schools for eighteen months. This was highly unusual since authorization is usually for a five year term.

³ ABA Standard 212 requires law schools to "demonstrate by concrete action a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities...."

⁴ The term "codify" was used by Dean Richard Morgan, chair of the Standards Review Committee, in an April 9, 2007 e-mail message to memo to Greg Murphy, chair of the Accreditation Committee, "...the SRC's proposal was simply an effort

to codify the existing practices of the Accreditation Committee; we did not attempt to develop new policy...."

⁵ The complete text of the proposed New Interpretation 301-6 can be found at www.abanet.org/legaled.

⁶ Greg Murphy, in a memo to Richard Morgan dated May 2, 2007, noted that "For the last several years the Accreditation Committee has utilized "triggers", if you will, of (1) first time bar passage; (2) below 70% ...; and (3) ten points or more below the state's ABA-Approved law school average." Murphy's memo goes on point out other differences between the proposed Interpretation and the past practice of the Accreditation Committee. This memo can be found at www.abanet.org/legaled.

⁷ All written comments submitted to the ABA prior to the May 16, 2007 and the transcript of the May 16, 2007 public hearing of the Standards Review Committee in San Francisco can be found at www.abanet.org/legaled.

⁸ The law schools listed include: Appalachian, Barry, Cal Western, Capital, Catholic, CUNY, Chapman, District of Columbia, Golden Gate, Gonzaga, Howard, Inter-American, John Marshall, McGeorge, New York Law School, North Carolina Central, Northern Ohio, Oklahoma City, Pace, Pepperdine, Regent, Roger Williams, St. Mary's, St. Thomas, San Francisco (USF), Santa Clara, Southern, Southwestern, Texas Southern, Texas Wesleyan,

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Thomas Cooley, Thomas Jefferson, Touro, Western New England, Western State, Whittier, Widener.

⁹ Professor Patton's report entitled "A Critique of ABA Proposed Interpretation 301-6 of Standard 301 Regarding Law School Bar Passage" can be found at www.abanet.org/legaled

¹⁰ Law School Admissions Council, "LSAC National Longitudinal Bar Passage Study (1998)". Many commentators drew attention to findings in the study that the first time pass rates for African-American students was 61.4%.

¹¹ Whittier College v. The American Bar Association, U.S.D.C. Central District of California, Case no. CV 07-01817 PA. In its Reply Brief to Defendants Opposition to Plaintiff's Application for Preliminary Injunctions, Whittier stated that it with its 2003-2004 entering class, it began to gradually eliminate students with LSAT scores below 150. The school went from 50.5% diversity in its entering class in 2000-2001 to a 30.9% diversity in the entering class of 2006-2007 in its attempt to satisfy the ABA.

¹² A chart submitted by the State Bar of California's Committee of Bar Examiners showed that California has a cut score of 144, second highest in the country behind Delaware at 145. In comparison, Arkansas, Maine, New Hampshire, Nevada, and Rhode Island had the next highest

cut scores of 140. New York's cut score is 135.

¹³ The DOE hearing transcript is available upon request.

¹⁴ Frampton cited a study conducted by Linda Wightman, "LSAC National Longitudinal Bar Passage Study (1998)". The study shows that eventual bar passage rates for various minority groups, e.g. American Indians (82.2%), Asian Americans (91.9%), African Americans (77.6%).

¹⁵ Letter from Greg Murphy to Dean Morgan of the Standards Review Committee, dated May 14, 2007.

¹⁶ The DOE has been driving the ABA to adopt stricter standards. For a discussion of the DOE's influence on the standards, see the ABA Memo dated June 18, 2007 that can be found at www.abanet.org/legaled.

¹⁷ All written comments submitted to the ABA by July 16, 2007 regarding the revised Interpretation of June 18, 2007 can be found at www.abanet.org/legaled.

¹⁸ The LSAC National Longitudinal Bar Passage Study reported that the eventual passage rates for racial and ethnic groups were: American Indian, 82.2 percent (88 of 107); Asian American, 91.9 percent (883 of 961); black, 77.6 percent (1062 of 1368); Mexican American, 88.4 percent (352 of 398); Puerto Rican, 79.7 percent (102 of 128); Hispanic, 89.0 percent (463 of 520), white, 96.7 percent (18,664 of 19,285); and other, 91.5 percent (292 of 319).

¹⁹ These schools included: Appalachian, Barry, Capital, Catholic, CUNY, District of Columbia, Golden Gate, Gonzaga, Howard, John Marshall, Oklahoma City, St. Mary's, St. Thomas, Southern, Texas Southern, Thomas Cooley, Thomas Jefferson, Touro, Western New England, Western State, Whittier, Widener

²⁰ Only Capital University and Golden Gate University have bar services programs, primarily for its first time takers.

To tip, or not to tip: *continued from page 5*

such an act, she said, "That is really, really nice of you guys. Most people here don't tip at all. Maybe one or two euros, but it is rare." Despite this, we continued to provide decent tips, if a bit less. Here's the cheat sheet for restaurants: tipping is not expected, but 5% is appreciated and 10% is recognition for extraordinary service. Some places state in their menus that 15% service is included in the prices. If you pay by credit card, note that there is no line on the slip for adding tips.

Alas, our tipping karma did not pay out. It started with Igor wishing to show his appreciation that I agreed to accompany him to a Formula 1 race in Small Village, Belgium. Aware that I formerly dabbled in modern and contemporary dance, he bought tickets to a performance of *Giselle* by the Cuban Ballet Company visiting Paris. Touched, I did not have the heart to disclose to him that I had no interest in classical ballet.

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To tip, or not to tip: *continued from page 14*





We were surprised to learn that the performance did not start until 9:30PM. When we arrived at the Grand Palais, we understood why. Instead of an air-conditioned, dark and enclosed performance theater, the Grand Palais was built like a greenhouse and converted into a theater. Light filtered in until 10PM. Moreover, being one of the few stifling, hot days in the unusually cold summer, the large glass exhibition hall enveloped heat like a greenhouse as well. As our temperature tolerance wavers within the 65 to 75 Bay Area degree range, Igor and I crack at the first sign of heat. We get irritable and cannot process anything. Thus, after purchasing a lukewarm Pelligrino, we made our way to the seating area fashioned with school-type risers. Although the seats were marked well enough to accommodate the nearly blind, a slim, black-clad young man dashed over and escorted us to our plastic seats. We sat down heavily, cursing the swirling warm air. The usher hung around and asked if we needed anything else. No, thanks. After a pause, he disappeared.




It dawned upon us about 10 minutes later that he was wearing a money bag around his waist. Then we all too clearly saw five other similarly black-clad ushers scuttling around and collecting tips, and they were shooting us the evil eye. I slumped into Igor's shoulder. "Honey, we can't win them all."

We were grateful when the ballet finally started. The heat, however, refused to wane, and we were miserable. When Giselle died from heartbreak in Act 1, we felt no remorse. As the lights came up, Igor asked sluggishly, "How long was that first act?" 45 minutes. "WHAT? That felt like three hours!" So like kids playing hooky, we scampered down the school risers and escaped into the cool night. At the Korean restaurant where we had dinner, we left a generous tip to kick us back into good karma.

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INSPIRE '07 APA Leadership Conference on **Friday Aug. 31-Sept. 3, 2007**. Please visit: <http://www.apafive.org/registration>

SEPTEMBER

Annual Career Day. **Saturday, September 8, 2007**. USF Law School.

The Future of Civil Rights in the Asian Pacific American Community. Thursday, **September 27, 2007** 6:00 p.m. – 7:00 p.m. U.C. Hastings College of the Law, 198 McAllister Street, Room B, San Francisco, CA

Annual Fall Scholarship and Diversity Award Reception. San Jose City Hall Rotunda, 200 East Santa Clara Street, 6:30 p.m. **September 27, 2007**.

OCTOBER

The Vietnamese American Bar Association of Northern California (VABANC) Annual Dinner, October 12, 2007 in San Jose, CA (Location TBD). For more information, contact Quyen Ta at qta@kvn.com

The Inaugural Minority Bar Coalition Conference co-sponsored by AABA. **Friday, October 19, 2007**. "And Justice For All: Building Bridges Within The Legal Community." Golden Gate University School of Law, San Francisco.

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